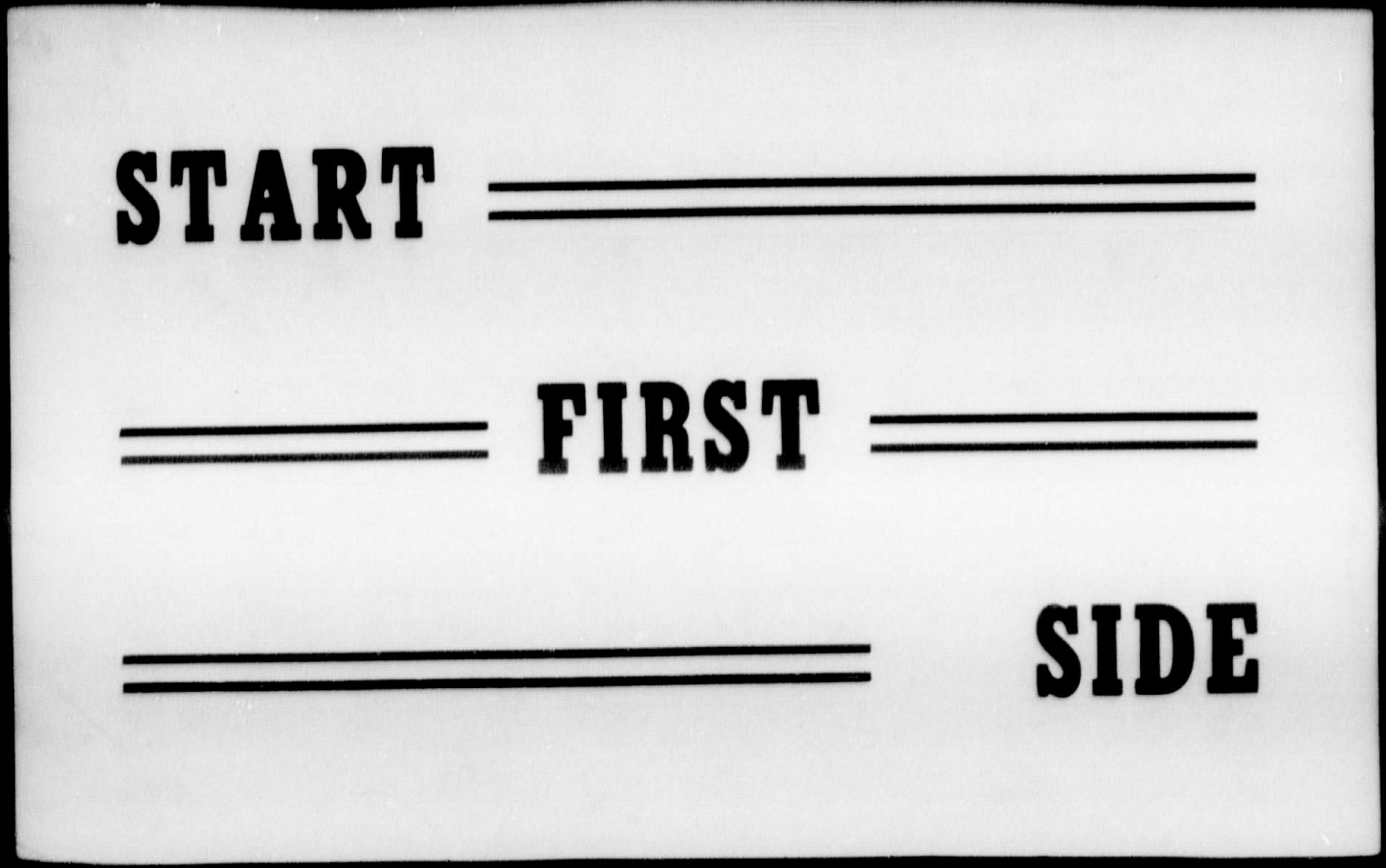
REEL NO. 44.31


START
FIRST
SIDE

Gen. A-70-

EX-LIEUT- HAUFEK. F-

RECORDED AT CMHQ IN AB 160-1

Kem-A 90 Col Paterson Col
Lt-Col Graham Sup JA

A

Army Form A 9.

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

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

Proceedings of a General Court-Martial held at Cove, Hants on the 21st day of April 1944 by order of Maj-Gen J.H. Roberts DSO MC, Comd Cdn Rft Units Commanding Cdn Rft Units dated the 17th day of April 1944

President.

A/Col A.T. Paterson DSO OBE "E" Gp

Members.

Lt-col P. Cawdron SCOC 1CGRU
Major W.M. Carlyle RCA 2CARU
Major W. Kennedy CIC 1CIRU
Major J.R. Mather CIC 1CIRU

WAITING MEMBERS

Capt N.M. Cousins CIC 1CIRU
Capt H.A. Farthing RCA 1CARU

No illegalities or irregularities such as would warrant withholding confirmation.
H.G. Marsden
(H. G. Marsden) Lt-col.
A.J.A.G., C.M.H.Q.

PROCEEDINGS REVIEWED 2 June 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Major G.M.Graham, Barrister-at-Law HQ CRU Judge Advocate.

Trial of* Lieut Frank HAUFEK, Intell Coy, 1CGRU

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

The Court satisfy themselves that Capt T.L. Carter is not available to serve owing to exigencies of the service. Major J.R. Mather CIC, 1CIRU waiting member takes his place as a member of the Court.

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

The accused is brought before the Court.

Prosecutor,† Lieut J.H.G. Margetts, Cdn Prov Corps 1CGRU or defending officer† Lt A.M. Wilding White, Int Corps 1CGRU

At 1020 o'clock the Trial commences.

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

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

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

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

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

Certified true copy of original proceedings herein.
2 June 44
J.A.G. Rep 3

B

The President, members and judge-advocate are duly sworn

Q by JA:"Do you object to Sgt Vanier acting as shorthand writer at your trial? "
A: "No, sir". W15120 Sgt Vanier, T.M. duly sworn as shorthand writer

The following officers under instruction are duly sworn.

Waiting Members

Charge-Sheet.

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

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

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

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

Answer.

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

Answer.

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

Answer.

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

Answer.

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

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

WHEREAS, by Order dated the 17th day of April 1944, made by me the undersigned Convening Authority, for the trial by General Court Martial of Lieut Frank HAUFEK to be held on 21 April 1944 - Capt A.L. Gollnick, CIC, 1CIRU was appointed a Waiting Member of such Court,

AND WHEREAS it has been reported to me this date that the said Capt A.L. Gollnick will be unable, due to the exigencies of the service, to attend,

I now, therefore, by virtue of the powers in me vested do nominate and appoint Capt M.M. Cousins, CIC, 1CIRU to act as a Waiting Member of the said Court in place and stead of Capt A.L. Gollnick aforesaid.

In the Field
20 Apr 44

(J.H.Roberts)Maj Gen
Comd, Cdn Rft Units
CONVENING AUTHORITY

A.T. Patterson Col

D.M. Graham Capt

X
A/Col Paterson DSO
G.M. Graham Barr
DA

4

COURTS - MARTIAL

ARMY FORM A 47

FORM OF ORDER FOR THE ASSEMBLY OF A GENERAL OR DISTRICT COURT MARTIAL

.....ORDERS BY. Maj.Gen J.H. Roberts..DSO..MC.....

Commanding the ..Cdn.Rft.Units.....

(Place and Date) Farnborough, Hants, 17 Apr 44

The detail of officers as mentioned below will assemble at Room 1, Hut 15, LCSRU, on the 21st day of April 1944 for the purpose of trying by a .....court-martial the accused Lieut Frank HAUFEK (name) on strength LCSRU (rank) (unit) named in the margin (and such other person or persons as may be brought before them)
Intelligence Coy.(Formerly OC 12 Cdn Fd Sec Section)

PRESIDENT.

A/Col A.T. Paterson,DSO,OBE,is appointed president

MEMBERS

		"E" Gp
Lt-col P. Caudron	RCOC	1COBU
Major W.M. Carlyle	RCA	2CARU
Major W. Kennedy	CIC	1CIBU
Capt T.L. Carter MC	RCA	1CARU

WAITING MEMBERS.

Major J.R. Mather	CIC	1CIRU
Capt A.L. Gollnick	CIC	1CIRU

JUDGE-ADVOCATE.

Major G.M.Graham, Barrister-at-Law, HQ CRU

9 HR

[redacted] is hereby) appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to Col i/c Admin, HQ CRU

Signed this seventeenth day of April 1944.

J.H. Roberts

(J.H.Roberts) Maj-Gen
Comd, Cdn Rft Units

CHARGE SHEET

B-2
AT Patterson Col.
5
Graham Major
17

The accused, Lieut. Frank HAUFEK, formerly Officer Commanding No.12 Canadian Field Security Section, but now on strength of Intelligence Company, No.1 Canadian General Reinforcement Unit, an officer of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Sec. 16 A.A.

WHEN ON ACTIVE SERVICE, BEHAVING IN A SCANDALOUS MANNER UNBECOMING THE CHARACTER OF AN OFFICER AND A GENTLEMAN

in that he

At Heathend, Farnham, Surrey, between 5 Feb 44 and 23 Mar 44 did by consorting with and writing letters of affection to one, Anne Belanger, wife of C.990, L/Cpl. Maurice Herve Belanger, 12 Canadian Field Security Section, a soldier of the Canadian Army Overseas, he, during part of the period aforesaid, having been Officer Commanding of the said soldier and at all times during the said period having been the superior officer of the said soldier, thereby causing discord between said Anne Belanger and said soldier, her husband.

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

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

in that he

At Heathend, Farnham, Surrey, between 5 Feb 44 and 23 Mar 44, improperly conducted himself by consorting with and writing letters of affection to one, Anne Belanger, wife of C.990, L/Cpl. Maurice Herve Belanger, 12 Canadian Field Security Section, a soldier of the Canadian Army Overseas, he, during part of the period aforesaid having been Officer Commanding of the said soldier, and at all times during said period having been the superior officer of the said soldier, thereby causing discord between said Anne Belanger and said soldier, her husband.

Field
17 Apr 44

(R.W. Frost) Colonel.
O.C. No.1 Cdn Gen Rft Unit.
Canadian Army Overseas.

TO BE TRIED BY GENERAL COURT MARTIAL

(J.H.Roberts) Maj-Gen
Comd
Cdn Rft Units

In the Field
17 Apr 44

(See K 13)

The question provided for in R.P 29 (A) having asked the accused Defending Officer applies for one weeks adjournment

An explanation for this application is requested of Defending Offr.

Defending Offr:

" I was in Aldershot last Monday on duty and I met Lt Haufek and he asked me to defend him at this trial. I said that I certainly would. He told me he had made application for Summary Trial and that if this was granted he would not need me to defend him. He said he would let me know. I returned to Witley Camp where I have been for a week waiting to hear from him. I believe he made an attempt to reach me but he had nothing to tell me anyway. I did not hear anything further until the night before last at 11 pm when I was duty officer. I was given a copy of the Convening Order. I could not phone Lt Haufek at that time. The following day, yesterday, Lt Haufek spent marching from Aldershot to Witley with the other officers of CGRU. He did not know when the Court Martial was convened and that he was not to receive Summary Trial. He did not know the date of his trial until yesterday afternoon. I did not get a chance to study the charge sheet and Summary nor to study the appropriate sections of the Army Act. Nor did I get a chance to speak to Lt Haufek until yesterday afternoon - and I certainly have not been able to interview possible witnesses for the defence. In fact I am, at the moment, entirely unprepared to defend this case. "

Judge Advocate:

" You did not receive the charge sheet and summary until Wednesday?"

Ans: "I received them yesterday evening."

Judge Advocate;to the accused:

" Once you have been handed the Charge Sheet and Summary of Evidence in your case you are entitled to a Defending Officer. Now, according to my information you received these documents on 8 April. It is now the 21st. Why did twelve days passbetween the time you got the charge sheet and the day you got a defending officer?

The Accused:

" It was on Saturday 8 April that I was called before Col Frost. At that time I also made an application for Summary Trial. I was waiting to hear whether I would have the privilege of being tried summarily. At the time I wanted to contact Mr. Wilding White - I could not reach him. Last Monday I did contact Mr Wilding White as he dropped in from Witley. I asked him to defend me. I went to the Adjutant 1 CGRU (Capt McNaughton) and gave in his name. On Tuesday I asked the Adjutant to contact the Intelligence Coy which was already at Witley and get permission for Mr. Wilding White to come over to Aldershot. I have never heard any more about it. After the route march to Witley I contacted Mr White at once and found out that he had been notified the night before.

Judge Advocate:

" When you met Mr White last week in Aldershot why did you not give him the Charge Sheet and Summary then?"

Defending Offr:

" I was other there on duty and I had a very short time

to speak to Lt Haufek as I was waiting for the truck to bring me back. I was attached to 2nd Div until recently and Lt Haufek could not contact me as we were on exercises etc. "

Judge Advocate: "As far as the records show Mr Haufek has been in a position to arrange for his defence since the 8 April. That is 13 days ago. Now, what is the least possible time that you require to prepare the defence?

Defending Offr:

" One week, sir."

Judge Advocate: "You understand Mr Haufek that you will be under close arrest for that time?"

Accused: "Yes, sir."

Prosecutor: " The witnesses are warned for some draft for the Field."

Judge Advocate: "A General Court Martial is the second duty in the Army in priority after duty for immediate action, so the witnesses will be here."

Defending Offr: "I would draw the attention of the Court to RP 39 and the note on p 644."

THE COURT CLOSES FOR CONSIDERATION OF APPLICATION FOR ADJOURNMENT.

THE COURT REOPENS:

JA: "The court have considered the matter and have agreed that further time should be given but it is considered that an adjournment to Wednesday morning the 26th April 1944 at 1000 hrs should be sufficient."

Defending Offr: " I would like to say that the extra two days until the Friday would be most useful to me."

Judge Advocate: The court is adjourned until 1000 hrs on 26 Apr 44, and if, at that time, you can satisfy the Court that a further two days are necessary, they will be granted."

THE COURT ADJOURNED at1100 hrs 21 Apr 44.

THE SAME COURT RE ASSEMBLED AT 1000 hrs on 26 Apr 44.

The Defending Offr inquires of the Court whether he may make an objection to the charge. The JA states that as the accused saw fit to plead on the 21st April, the time for such objection is passed. The Rules have been complied with.

Defending Offr: "Can the Court consider an objection, now?
JUDGE ADVOCATE: "The court can ~~violate~~ abrogate the Rules of Proceedure if it sees fit." J.M.G.

President: "Make your objection, and the Court can consider it."

Defending Offr: " Sir, this charge reads that the accused "did by consorting with and writing letters of affection to one, Anne Bellanger, wife of C990 L/Cpl Maurice Herve Belanger,

J.M.G.

particulars of the charge. If the facts are, or cannot be, scandalous as the evidence discloses, then they should have been shown in the particulars. The facts which make this a worse kind of consorting are so important, they should have been stated in the particulars, and if it is being left until the evidence has been heard, then this is nothing but a fishing expedition to find out more.

JUDGE ADVOCATE:

" You cannot certainly say that any officer of the Canadian Army who, by his conduct, causes a man under his command, and this man's wife to quarrell does not commit an offence."

DEFENCE:

It is not scandalous.

JUDGE ADVOCATE:

" That is not for you to say.

DEFENCE:

If you compare Section 16 with the neibouring sections, I submit that the crime here is less than the crime alleged in the neighbouring sections. It follows that this cannot be scandalous conduct.

JUDGE ADVOCATE:

" Will you note the part that says "unbecoming the character of an officer and gentleman." The character of the officer and gentleman connected with the crime is what constitutes the offence. "

PRESIDENT:

" Will you make your objection and then let us rule on it."

DEFENCE:

My objection is that the offence charged does not amount to an offence under Section 16 or under the Army Act and that if it depends on the evidence bringing out the more or less seriousness of the offence alleged, those facts should have been stated in the particulars, but they are not

PRESIDENT:

" Is your point not covered by Para 2 of fn 1 to this Section: ' The addition of an alternative charge under s 40 will meet a case where the evidence, as ultimately given before the court, may justify a more lenient view of the case.' ?"

DEFENCE:

"No, sir, I am attacking the first charge, I was not referring to the second charge.

PRESIDENT:

" But that is why Sec 40 in the second charge has been put in."

DEFENCE:

It is a legal argument, I am submitting.

to speak to Lt Haufek as I was waiting for the truck to bring me back. I was attached to 2nd Div until recently and Lt Haufek could not contact me as we were on exercises etc. "

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12 Field Security Section, a soldier of the Canadian Army Overseas, he during part of the period aforesaid, having been Officer Commanding of the said soldier and at all times during the said period having been the superior officer of the said soldier, thereby causing discord between said Anne Belanger and said soldier, her husband." Now that is the first charge, under Sec 16, and it is described as scandelous conduct, and there is one punishment only and that is to be cashiered. The question then is whether these particulars do amount to scandalous conduct, whether this is such an offence. Is it so serious that the Court can feel that it will have no hesitation in cashiering this man. Section 17 says that "Every Person subject to military law who committs any of the following offences; that is to say: Being charged with or concerned in the care of distribution of any public, regimental money or garrison property, steals, fraudulently misapplies, or embezzles the same etc shall, on conviction by court martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned." The Penalty under this section is not as heavy as that under Sec 16 and yet the acts described in Sec 17 surely appear more serious than those charged against Lt Haufek today.

JUDGE ADVOCATE:

" Even if you are entitled to make an objection, you must make it in accordance with the rules. You must endeavour to prove that the charge in question does not disclose an offence, under the Army Act."

DEFENCE:

I am working up to that, Sir. This offence is punishable with cashiering only, and in other sections there are offences a great deal more serious than that alleged in the particulars and yet in those cases the Court is allowed to make up its mind to use a much lesser punishment. Is it not reasonable to assume that Section 16 of the Army Act was intended for much more serious offences than those?

JUDGE ADVOCATE:

" If an officer had given a bad cheque for £1, would you consider that a serious offence?"

DEFENCE:

I don't know, sir.

JUDGE ADVOCATE:

" There are facts alleged that are alleged to be scandalous conduct. That is a question of fact. The Court may decide that what has been done is not scandalous conduct, after it has heard the evidence."

DEFENCE:

You mean that conduct that is described in the charge sheet as scandalous conduct?

JUDGE ADVOCATE:

" That is what is alleged to be the offence."

DEFENCE:

If, sir, you claim that this consorting, whatever that may be, may be shown to be better or worse than that which is shown in the

particulars of the charge. If the facts are, or cannot be, scandalous as the evidence discloses, then they should have been shown in the particulars. The facts which make this a worse kind of consorting are so important, they should have been stated in the particulars, and if it is being left until the evidence has been heard, then this is nothing but a fishing expedition to find out more.

JUDGE ADVOCATE:

" You cannot certainly say that any officer of the Canadian Army who, by his conduct, causes a man under his command, and this man's wife to quarrel, does not commit an offence."

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PRESIDENT:

" Will you make your objection and then let us rule on it."

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PRESIDENT:

" Is your point not covered by Para 2 of fn 1 to this Section: ' The addition of an alternative charge under s 40 will meet a case where the evidence, as ultimately given before the court, may justify a more lenient view of the case.' ?"

DEFENCE:

"No, sir, I am attacking the first charge, I was not referring to the second charge.

PRESIDENT:

" But that is why Sec 40 in the second charge has been put in."

DEFENCE:

It is a legal argument, I am submitting.

JUDGE ADVOCATE : I must advise the Court first that the objection made can be said to come within the rules. The objection could be on the grounds that the charge does not disclose an offence. But the gist of this offence is causing discord between a man and his wife, the man being under the command of the accused. This is my legal opinion: the objection is not well founded . If the Court decide to grant it, they must give their reasons for so doing.

THE COURT CLOSES FOR CONSIDERATION OF THE OBJECTION

THE COURT REOPENS.

JUDGE ADVOCATE: "I have been instructed to advise you that the Court has disallowed your objection and that the Court will now proceed with the case."

DEFENCE: May I make a motion to object to that decision?

JUDGE ADVOCATE: "You have already made your motion and every word you have said has been taken down, and the Court has made its decision."

OPENING ADDRESS BY THE PROSECUTION:

Gentlemen: I shall endeavour to prove through witnesses and by the production of exhibits that the accused's conduct towards the wife of L/Cpl Bellanger was scandalous. That this conduct was prejudicial to good order and military discipline and of a nature that reflects such discredit upon the Canadian Army that the accused is unfit to remain in it.

I intend to produce a sworn statement by the accused in which he admits this association with the wife of L/Cpl Belanger and corroborates the evidence the witnesses will give. Further the accused therein admits being the author of certain letters to Anne Belanger wife of L/Cpl Belanger.

These letters will be produced as evidence. They are pertinent to this case because in them the accused avows his love for Anne Belanger wife of the aforesaid L/Cpl Belanger. Therein refers to clandestine meetings and promises. Therein also solicits money from said L/Cpl 's wife. They also refer to a telegram sent by the accused to Mrs. Belanger.

A copy of this telegram will be produced as evidence, as it calls Mrs. Belanger away from her child and her husband who was on leave. This at the instigation of the accused.

Witnesses will give evidence that the conduct of the accused caused discord between L/Cpl Belanger and his wife. That this conduct was unilitarylike and ungentlemanly because the accused visited Mrs. Belanger at her hom, well knowing her husband was not there by virtue of the accused being the Commanding Officer of the said husband.

C

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

Proceedings on Plea of Not Guilty.

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

Answer: Yes, sir. (see attached sheets.)

The prosecutor makes an opening address [redacted]

The prosecutor proceeds to call witnesses.

First witness for prosecution.

Lieut SHG Margetts, Cdn Provost Corps Coy, 1CGRU. being duly sworn states:

[redacted]

I am Lieut SHG Margetts, Cdn Provost Corps Coy, 1CGRU and I took a Summary of Evidence in the case of Lt Haufek on the 4th and 5th April.

JUDGE ADVOCATE:

Q.1 Was he cautioned?
A.1 He was cautioned as follows: " Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

Q.2. What was his reply?
A.2. He desired to give evidence on oath. And the statement on page 5 of the Summary is that taken down from him at the time and the initialling of changes is by him and the changes are by him also, in his own handwriting.

THE DEFENCE DECLINES TO CROSS EXAMINE.

JUDGE ADVOCATE reads aloud in whole to the Court the evidence of the accused given under oath at the Summary of Evidence.

(In the opinion of the Court and of the Judge Advocate it is not necessary to comply with RP 83(B) in connection with this witness.)

SECOND WITNESS FOR THE PROSECUTION) C990 L/Cpl Maurice Herve BELANGER, formerly 12 Fd Sec Section, now on strength of Intsl Coy, CGRU, being duly sworn, is examined by the Prosecution:

Q.3. How long have you been a member of 12 Fd Security Section?
A.3. I was a member of 12 Fd Security Section from 12 Dec 41 to 23 April 1944.
Q.4. Now will you tell the story of the relations you have had with the accused with regard to this case?
A.4. I have known Lt Haufek since he came to the section on 8 Jan 44.
Q.5. What was he doing there?
A.5. He was taking command of the section, he was my CO.
Q.6. Is he still your CO?
A.6. No, not now, but I recognise him.
Q.7. Will you tell the court when you remember the accused ceased to be your CO.
A.7. He ceased to be my CO around 13 Mar 44.
Q.8. Will you tell the Court the events in which the accused met your wife?
A.8. On 5 Feb 44 there was a social at the Masonic Club at Farnborough and that night the accused who was my CO had been invited and myself and my wife were going along. We decided we would all meet at the queen's Hotel. The accused met my wife there for the first time to my knowledge. SM Browne was there at the same time. We went on to the social. After the social Mr Haufek brought the girl that he had with him home and from there we went to my own home and my wife made coffee and sandwiches. My small son woke up and I went upstairs and put on his dressing gown and brought him downstairs and introduced him to the accused and he played with him until the coffee and sandwiches were ready.
Q.9. What was your work in the section at the time?
A.9. I was previously a batman-driver there. At the time the accused gave me my promotion I was still a driver because we had no driver to release me.
Q.10. How many men are there in a Fd Security Section?
A.10. There are thirteen. That was the establishment in force at the time.
Q.11. With relation to your home and your wife will you tell the Court about the events of the next time you found the accused at your home?
A.11. Shortly after the social party, that was on a Saturday night, on a Sunday night after bringing Lt Haufek back he said he would like to go out for a drink and have a social evening. I agreed that that would be a good idea. I came home to find Lt Haufek there, and he said he had come back to see how things were. And on the 9th....
Q.12. Just one moment, there might be some doubt in the minds of the Court to which dates you are referring?
A.12. The date I have just mentioned was on 9 March.

PRESIDENT:
"There was a social evening and then on the Sunday night you met again."
A.12. Yes, the accused my wife and myself.
PRESIDENT:
"The third time he came home."
A.12. Yes, sir.
Q.13. On these three occasions, will you tell the court what you found?
A.13. When I went in the house the accused was sitting on one chair and my wife on another. He asked me how I was and how things between me and my wife were going.

Q.14. Will you tell the court if there was anybody else in the room?

A.14. At that time there was nobody else in the room and the door was closed. On 9 Feb I was sent up to 1CBJC at Chobham to do some security work there until the draft had moved out. On my return I was detailed to go to Farnborough North station to see troops move out. I was instructed that there was one train leaving at 1900 hrs and another at 2200 hrs. I went on the job about 1800 hrs and at 1830 the accused came on the job in civilian clothes and asked me whether things were alright. I said that so far things were alright as the troops had not arrived. He told me about the trains leaving at 1900 hrs and 2200 hrs. He told me to go round keeping my eyes open and make a good job of it. After he left. After the first draft had left I was informed that the second draft had been cancelled. I returned to the office to make my report and from there went home. As I arrived home the accused was in the house.

Q.15. Will you tell the Court what you found and the time that that occured?

A.15. I went home, it was about 2130 hrs. The accused was there with my wife and also a landarmy girl.

Q.16. Now tell us about the family quarrel when the accused came there?

A.16. On the 24 February I was engaged in a family quarrel with my wife and the accused was called. He came in and told me he had been called in and asked me what it was about. After some discussion he told me that I should go back to the office and sleep there for the night. To that I agreed, so I got prepared and went back to the office. The accused and I left, he in the station wagon and I on my motorcycle. I was suspicious of something wrong so I returned back home, and on my return I found that my wife was gone so I sat down and waited with my motorbike parked in front. I was in the dark. About 20 minutes later I saw the car coming down and slow up when they saw my motorbike. I recognised the car because it had a squeak in the breaks. It went away. I went out and hid my bike. About half an hour later I heard the car come back and I recognised the same squeak, and I know that that was our car because I used to drive it. This time the accused came out of the car and knocked on the door. I did not give any answer. After knocking, the accused went round and knocked on the window. Again no reply. He came back to the front and shouted someting to the effect that the cost was clear. Then I saw my wife come out of the car and they came round the back way as it was unlocked. I was still in the house in the dark. My wife came in first and put on the light. They were surprised to see me in the house. The accused told me that he knew that I was going to come back. He said he had come back to take my wife out to have a drink to calm her down. We agreed again that I was going to sleep at the office and this time I made sure that the car was following me.

Q.17. Will you tell the Court what the accused told you when he suggested that you go back to the office?

A.17. The accused told me that it was better for me to go back there and that he saw no sense in my being there. I knew very well he was bluffing and by the surprise on his face.

JUDGE ADVOCATE: "That is not evidence."

Q.18. Will you tell the Court whether he game you the advice as a CO or as a personal friend?

A.18. The accused told me to go back to the office or if I did not he would tell the police but he told me that as my CO he could not be involved in such a thing - he would leave it in someone elses hands.

Q.19. Will you tell the Court about the next day?

A.19. When I saw him the next day he said I should let my wife go for a weekend and also told me I should mind the baby and let her go on her own. I agreed and said I should take care of the baby from Saturday noon until Sunday night.

Q.20. What happened then?

A.20. My wife left for her weekend on Saturday afternoon and I returned to the office.

Q.21. What did you find there?

A.21. I noticed that the accused was also on a weekend, because he had said he was going on weekend because he had had a tiring week. He had left a phone number to call in case of anything very urgent.

Q.22. What other incident was there?

A.22. First of all on 3 March 44 I came home and found the accused home and I can remember well because it was the next day the 4th of March my wedding anniversary.

Q.23. You say you found him at home?

A.23. Yes, he was with my wife. He was sitting on one chair and she on the other as usual. He said he had been coming to see how things were. He suggested that we go from the house for some drinks. I did not feel in the mood after finding him there to go for a drink. So I said no. I could do nothing about it he being my CO because he could have made it miserable for me at the other end. The next day the accused called me and advised me that my wife was going to her father's place for a holiday and he also told me that I could have the car to take her to the station at North Camp. I was detailed on 6 March to take the accused to Reading. My wife knew I was going to Reading the same day and she said I could ask if we could not all go together. That afternoon the accused said that my wife had phoned him and asked the same question. He gave me a release slip for having a civilian in the car. I produce the release slip that the accused signed in front of me (Release slip handed to Court and Marked "Ex A") That is in the handwriting of the accused except for the signature of my wife at the back. He told me that I was to come to the office in the morning of the 6 March To pick him up in the car. Instead of that the accused drove the car himself down home to get me and my wife. From there we went to Reading and went to the station. The accused left me at the station with my wife until the train left.

Q.24. Will you tell the Court what the accused knew about your leave?

A.24. He knew that I was going on leave on 16 March 44 because we had discussed the matter and it is easy to see who is going on leave when by looking at the duty roster.

Q.25. Will you tell the Court if the accused knew where you were going to spend your leave?

A.25. He knew because I had discussed the matter with him. I was going to stay with my wife at her father's, in Gloucestershire.

Q.26. Now when you were on leave on the 21st March, will you te ll the Court what happened on that day?

A.26. On 21 March I went to Gloucestershire and when I got to the house her two sisters told me.....

JUDGE ADVOCATE: "As a result of what they told you what did you do?"

"A.T.Paterson" Col
"G.M.Graham" Major

VEHICLE RELEASE FORM

Authority is granted for the use of vehicle W.D. No.....
for recreational use by ...L/Cpl...Belanger...W.W.....C-999.....
Rank Name No.
from .....Aldershot..... to .....Reading.....
date ....7.Mar..44.....

xxxx

Can F. ST. 1073 A
40/P & S 1390

RELEASE BY CIVILIAN PASSENGER CONVEYED IN CANADIAN MILITARY VEHICLE

In consideration of transportation in a Canadian Military vehicle being furnished me by His Majesty's Canadian Government, I, for myself, my heirs and representatives, hereby release and agree to save harmless the said Government, its employees and military personnel in respect of any claim which may accrue to me by reason of any loss, damage or injury howsoever arising out of or incidental to such transportation.

Dated at ..Aldershot..... this ..seventh.....day of ..March.....

19 ..41.....

"Anne Belgrave"

WITNESS:

"E. Hewlett" Capt

Name

Unit.....18 F.D. Coy R.C.E.

Ex "B"
"A.T.Paterson" Col
"G.M.Graham" Major

Charges to Pay
.....s. .....d.
RECEIVED

POST OFFICE

No..... 18

OFFICE STAMP

TELEGRAM

(English Bicknore Coleford Glos

Prefix. Time handed in. Office of Origin and Service Instructions. Words
11 49 A C O 17

.....m

From ..... Priority

To .....m

Anne Boulanger
Hillway(?) English Bicknore
Coleford Glos

Please come at once contact me on arrival important

Frank

For free repetition of doubtful words telephone "TELEGRAMS ENQUIRY" or call, with this form at office of delivery. Other enquiries should be accompanied by this form and if possible, the envelope.

B or C
T51-8132

This is exhibit "B" referred to in the case of Lt. P. Haufek taken before me the 4th day of April 1944

"S.H.G.Margetts"

13 Mar 44

Ex "C" (10 sheets)
"A.T.Paterson" Col.
"G.M.Graham" Major

My Darling:

Only a very few hours ago I wrote you a few lines, not knowing I may have a chance later on to write you more.

I shant write to you after this while "M"s leave lasts (16.--25. Mar) since he is going to spend it with you.

But please do not let anyone stop you from writing to me.

You see, I miss you so much. I should like to have you keep your promise and write daily. Unless you have changed your mind.

I have left the place, as you know and wait here now (at the pool) to go on course.--

It may turn out by missing last weekend, we missed our last chance. You see one never knows, whats going to be next.

Did you got my telegram? If so, why didn't you phone?

Let me know, when it is safe to write to you again. And should you come back soon don't miss to contact me-(phone Aldershot 741)

Hope to hear from you soon and often.

I am yours

"Frank"

P.S. there is no redhead
or other woman.

P.S. Yes I meant everything I said

This is exhibit "C" referred to in the summary taken by me in the case of Lt. F.Hnufek taken before me this 4th. day of April, 1944.

"S.H.G.Margetts"

20

13 Mar 44

Darling:

Just a line for I have a board of officers waiting to take over.--

Received your two letters.--

Was very tempted to come and see Saturday last, but couldn't afford it, otherwise you would have had the surprise of seeing me.--

"M" is coming 16 Mar on his leave to see you.--

tel: at present Aldershot 741

Get in touch with me as soon as you come back.-

Will be going on course shortly.--

Dont forget me.

I am yours

"pa"

"DMG"

This is exhibit "D" referred to in the summary of evidence taken before me in the case of Lt. F. Haufek this fourth day of April 1944.

"S.H.G.Margetts"

This is exhibit "G" referred to in the summary of evidence in case of Lt. F. Haufek this 4 Apr 44 21
"S.H.G.Margetts"

16 Mar 44

My Darling:

Your letters make me so awfully happy and longing for you, I shall not know before long, what to do with myself if I don't see you soon. Yes, I miss you. The Lord only knows how much. If you miss me only half as much, it will be heaven on earth - some day (and I hope with you not too far off) - when we'll be together for all time.

We could have 14 days together, if I am able to borrow a few pounds before 5 Apr 44. You see on that date I will be eligible for 14 days leave. I let you in on the little secret, that I already have made arrangements to get some money, but the question is will I get it before the 5th.

Will you stay with your dad that long? If I shouldn't get the money in time could you manage to help me out until the money comes?

There is always the chance, that I have to go on course before that. But I would take a chance on it.

Do you still want me to spend my leave with you at your dads? "GMG"
Or have you different plans.

Will you be coming back here, when his leave is over?

Dont forget as soon as you come back phone Aldershot 741, which is our Mess phone and I can be got there between 12-1230 and 5.30 - 6 P.M. every day.

When you write send it to INT Coy - 1 C G R U - Cdn Army - England.

Oh, my darling. - words fail me to keep on writing now. I shall wait and get a bit more quiet and then write some more. - As it is now just trying to write to you gets me so excited, I feel I could just run off and keep on running until I catch up with you.

There is one thing I want you to know, honey:--I trust you darling and I do believe you love me; so you cannot possibly be interested in other men. - And for your information there is only one woman for me--YOU.--Yes, I do love you, dearer than life itself. - You know, don't you?--

So long for now dearest.

I am yours

"Frank" xxxxx

P.S. Hug Johnnie for me
and give my regards
to your dad and sister.

Honey:

Its later in the afternoon of the same day.--Just looked for mail, but there is none for me.--What happened to the promised daily letter.- Of course there is a delay to be likely caused, that I've left and come to the Coy.- All the same there was no letter yesterday also.-- Are you sorry you promised to write daily?

Now my thoughts turn to "M".--He has likely left on his leave already and is possibly with you right this minute.

I do know I have to put up with it, but this knowledge doesn't make me feel any happier.--

Oh, I do wish I could be with you.--I do hope we can arrange to spend my leave together or if I couldnt get my leave, at least a weekend.--

Oh,honey I miss you so.--

Love to you and Johnnie.--

I am

Yours

"Frank" xxx "MMC"

This is exhibit "F" referred to in
the summary of evidence in
the case of Lt. F. Haufek taken before
me this 4 Apr 44.

"S.H.G.Margetts"

This is exhibit "G" referred to in the summary of evidence in the case of Lt. F.Haufek taken before me this 4 Apr. 44
"S.H.G.Margetts"

17 Mar 44

My Darling:

Just received your letters 14 and 15 Mar. I am awfully happy. I do hope you can come next week. I have made arrangements to be off from Friday next week (my birthday 24 Mar) until Monday morning. So make sure you can come and be with me for the weekend.--

When and if I get my leave 5. Apr. could we spend 14 days at your home?

Did you tell your dad?

I wished you did for I do not want to come as a stranger.

So you really mean to be my very own.-- "OMG"

I am so happy over it, be sure

I am yours only.--For ever and a day.--

I miss you so. Thats why you have to be sure to come soon.--

I LOVE YOU

Yours always

"Frank" XXX

P S "M" claims you knew before you left, that he'd spend his leave with you.--
Of course he probably wanted me to believe he got you back for himself.--
I do believe you

Best regards to dad and sister of yours and hug Johnnie.
If we go back for our leave you might as well leave him there.

This is exhibit "H" referred to in the summary of evidence in the case of Lt. F. Haufek taken before me this 4 Apr 44

"S.H.G.Margetts"

18 Mar 44

Whilst on orderly officers duty, a dance at the mess going on and YOU away from me.

ALONE

1.You are a lovely flower,
So dewfresh and so bright--
You are at every hour
My hearts foremost delight.

2.Just now you are a doubting,--
Hungry for life and love
Some day I swear your happiness
Will outshine life above...

Yes, I will.

This will give you a very slight idea, what I am going through, being so far away from you. How I am missing you and how I hope you will be with me next week end. I shall write to friends in Tunbridge Wells, so might be able to stay there from Friday night till Monday morning. If you dont mind getting up early to take the first train back. - And if they have no room this time we can probably go up to your home. That is if you have told your dad about us and you succeeded to make him think well of me...

"GMG"

You see, I do want your dad to think well of me. Even I know my faults and shortcomings, of which I have many. - I sometimes wonder how you will put up with me in years to come. Is your love really of the kind, that will permit you to at all times see in me your loved one only--with all his faults etc.?-- I do hope it will be so. For you are my last love. May be more even. - May be my only love.....for though I have loved, had yet to find one, who would the way that you by all appearances do.--Now, please, don't misunderstand me, it is not doubt I wish to give expression, it is may be just the wonder or miracle, if you like, that I should have to come so far and live that longe, before I met the woman. I was always wanting and wishing for, the girl I dreamed about from the first time I realized there were two sexes in this world. I don't know whether I am able to make myself clear, nor--whether you'll be able to understand. - The only thing I do know is this: I want you for always, I want you more than life itself - And I want to hold you and for heavens sake dont ever quit loving me. - as you know I am yours

"Frank" XXX

My only Darling:

This is Sunday. - No letter from you again. Why? I suppose "X" is with you and probably the scale has turned against me.-- So what can I do about it? Nothing--but keep on loving you.--

Only one:

Often I think of you--
You and your loveliness,
Often I dream of you --
Of heaven and happiness.

What more can I say Darling?
Except

I shall always
love you.--
"Frank" XXX

"GMG"

This is exhibit "I" referred to in the summary of evidence in the case of Lt. F. Haufek taken before me this Fourth day of April, 1944.

"S.T.C.Margetts"

This is exhibit "J" referred to in the summary of evidence in the case of Lt F.Haufek taken before me this 4 Apr 44.

"S.H.C.Margettes"

30 Mar 44

My Darling Anne:

Did you get my telegram? I wonder.- For it already is 9 P.M. and I have no word from you.--Do you realize how little time we have left?- I am sure you don't.- Even the weekend I dreamed of is cancelled. - So you see we must hurry, if we want to snatch a very few happy hours --I wonder, did you get my last letter?-Oh, my Darling, why don't you hurry and come.- I am sitting on my bed, partly packing and partly burning papers, which I can't take along; and all along I can't do a thing, for my thoughts are with you and I am trying to wish you here. If I have to go without seeing you, I shall go crazy. I think life surely owes me a bit of happiness, be it only for a short little while. If I don't hear from you by tomorrow night then I shall take all this to "Gramma"(?) so you'll find it when you come back. I would have gone there already, but I was afraid of missing your call, if I left barracks.--

"GMG"

Just had a bit of tea.--Now I am back again to keep on chatting with you a little while longer.--

This is going to be an awful lonely night.--Not even a few written words from you and I did expect you to come. Of course I am silly.-- Thousand different things may have prevented you to come.-
Well tomorrow - maybe I shall be with you.--

But the pity of it is, that there are so very few tomorrows left and I should so wish to see you and talk to you before I leave. There is so much to be talked about.--

I wonder, what your dad thinks of me? Did you tell him all about us?-He should really know, don't you think?

Well it's now 20 to 10 P.M. and I shall go to bed.-All alone by myself- wishing for you - wanting you so much.--I shall fall asleep with you in my heart and may be a good and kind dream god will let be be with you in my dreams.-

Good night my Darling.-there goes hope I'll be with you tomorrow.--

I love you
and I am yours
forever and a day

Yours
"Frank" XXX

There's not much more I can say without getting too soft.--

I shall take this letter to "Granvera"(?) today, in case you couldnt come in time to see me off. But I shall be a very sad man, if I have to go without seeing you.--

I wished I knew, what you are doing, how you are, did you have any trouble, in case "M" came up there for his leave, was he there, when my last letter came and my telegram? I am really worried. I wished I could drop everything and go up there to see you.-- But I can't. The Army is holding me fast.-- But I belong to you all the same.--You know that.--I had such hopes to celebrate my birthday with you.--Likely as not I'll be all alone.--please keep on writing.-Try to keep your promise of a daily letter.-I'll do the same if its at all possible.--I promise.

Should you read this letter first, before you see me, you can just come up here to barracks (try phone ald 741 first)

This is exhibit "K" referred to in the summary of evidence by Lt. Hafler taken in the case of Pvt. Apr 44 before me this "S.H.C.Barracks"

I am in Corunna barracks.--ask any bloke to get a hold of me. Send him to the Orderly Room Intelligence Coy. and they will tell him, where to find me.-- I have left orders at the Mess to notify me at once in case you phone.-- So you see I have done all I can to not miss a chance of meeting you, should you call.--

Now I must go on with my work. Again: Keep on loving me, stay with your father, if you will get your divorce (Sergeant Major Brown #12 section will help you along with this, I spoke to him - cruelty etc) and stay all mine.--for I need you, because you mean everything to me.--

Should I have to go without seeing you, write at once a detailed letter, answering all this.--

Now, be good and love me, Darling.--

You know that I am All yours

"Frank" XXX "DWG"

God bless you and
Hug Johnnie for me.

P S Be sure to be at your dads, when I get leave or notify me of your plans millions of Kisses from your lover and hubby

21 Mar 44

My only Darling Anne:

And this is the first day of spring. Will I hear from you today? Will you come in time to kiss me good-bye?

I know, if you only knew what its all about, I am sure you would hurry down here to see me once more. Unfortunately I could not mention anything in my telegram.

Now read close:

When I get settled down, wherever I am going I shall endeavor to get my leave. I have 14 days coming next month and I do hope to stay long enough in this country to enjoy my leave with you and Johnnie. For that purpose it would be advisable you stay with your dad, for I think this would be the logical place to spend our leave.-

"GMG"

If I can't get my leave (or anyway) I shall try and find a little place near me, so we can spend the remainder of my stay

England together. This, I take it, is agreeable with you.--You love me, remember.- And after I am gone I should be happy to know, that you stay on with your dad and save a bit of money so there won't be any delay, when I call for you,--so you can come at once and join me--over there. O.K.? Of course it is, for you and I are going places together.--

You keep on writing to me daily under: Lt. F. Haufek, Int. Coy. # 1 C.G.H.Q. - Cdn. Army Overseas - England - and it will always reach me - no matter where I might go.--

I promise: There will be no other woman. Because I am yours and I will stay yours.--and you will stay mine, all mine.-- I will work hard to get promotion, to be able and provide for you and Johnnie.-- I just love you, as I've never thought it was possible to love anyone.--Now, one word of advice: Don't fool the love of a man, who has seen life and knows just what value to attach to a true loving woman.--

This is exhibit "G" referred to by me in the summary of evidence in the case of Lt. F. Haufek taken before me this 4 Apr 44

"S.H.C.Margetts"

Q.27.What did you find when you got there?
A.27.I found that my wife was gone to go back to Aldershot. I found my wife at Aldershot that night, when I got home at about 0030 hrs. I asked her what it was all about and she told me she had received a telegram....

JUDGE ADVOCATE: "What this witness heard in the absence of the accused is not evidence"

Q.28.Will you produce the telegram that your wife showed you?
A.28.This is the telegram that my wife showed me (Telegram handed to Court and marked Exhibit "B".)

DEFENDING OFFR:"I don't think that telegram should be given in evidence. I don't think that somebody who says he was given it should hand it in."

JUDGE ADVOCATE:

Q.29.Did your wife give you this telegram?
A.29.Yes, sir.

PROSECUTION:

"I would suggest that the statement of the accused, corroborates the statement of this witness."

JUDGE ADVOCATE: "This is just something that his wife gave to this soldier, it may or may not apply to the accused.

Q.30.Will you go on with your story?
A.30.On the 24th we went to Glouscestershire as the baby had been left there. When we were up there I noticed that she had changed coats and I saw some letters in the pocket of her coat in the hall so I kept them and read bits of them and the letter of 21 March refers to the telegram I have handed in. These are the letters I found in her coat pocket that morning (Letters consisting of ten sheets are handed in to the Court and marked "Ex "C") After reading through the letters - especially the one of 21 March referring to the telegram - I was sure the letters and telegram were from him, the accused. After that I went to see my CO and told him what I had found and told him he was abusing.

DEFENDING OFFR: "I would like to put in an objection that these letters are not relevant."

Q.31.With regard to these letters, will you tell the Court who they were from?
A.31.Lt Haufek.
Q.32.Do you know his handwriting?
A.32.Yes, and I recognised them to be from him because he referred to "Johnny" in them. And he always called my son Johnny although his name was really John. And he said "M is on leave on the 16th" and he knew my name was Maurice, because he had called me that.
Q.33.Were there any other reasons that you knew the letters had been written by the accused to your wife?
A.33.I already mentioned that he referred to "M" because he knew that my name was Maurice and that I was going on leave.
Q.34.Were there any other reasons?
A.34.I think I said them all.
Q.35.Willyou tell the Court who the letters were addressed to?
A.35.I did not see the envelopes but the letters were addressed

GMG.

"Anne" and my wife's name is "Anne".
Q.36.What did you do with these letters?
A.36.I went with them to my CO first and asked him what it was all about. He said what was what all about. I showed him the letters but not too close. I warned him that if he put his feet inside my house again he might be shot.
Q.37.Will you tell the Court why you warned him?
A.37.I warned him because I married my wife because I loved her and I did not want any more trouble coming from him . Then I went to my new CO Capt James and asked what could be done.
Q.38.Will you tell the Court why you did not complain about the accused's conduct before that?
A.38.Because if I had done anything he could have made it very bad for me at the other end.

CROSS EXAMINED BY THE DEFENCE:

Q.39.You said the OC left the Security Sec on 13 March?
A.39.About 13 March.
Q.40.And that he came to the Section, when?
A.40.About 8 January 1944.
Q.41.What was the first date on the letters?
A.41.The first one was dated 13 March, but there are two with no date on them.
Q.42.But the earliest date is 13 March?
A.42.I think so.
Q.43.That is rather an important date, don't you think so?
A.43.I don't see why.
Q.44.Well for the OC to be around?
A.44.He was around after that.
Q.45.Well could you tell me what arrangements were made about money you received and your wife received from the Canadian Army?
A.45.My wife received an allowance for herself and one child. I had my pay but I had to give one pound a month until January last because you have to have £200 to get married and I have had to make it up. I used to get some money gambling sometimes and by being a batman driver.
Q.46.You got your expenses refunded?
A.46.I could not have any expenses as a batman driver.
Q.47.Yes, but when you were promoted?
A.47.I would have if I had had any.
Q.48.You say you gambled?
A.48.Yes, I used to get enough to buy my cigarettes and things and give my wife an occational 15/- or 10/-.
Q.49.Your wife would receive about $35 a month as dependents allowance?
A.49.Idon't know exactly what it is.
Q.50.She would receive also some money for the baby....

PRESIDENT: "$12."

A.50.Yes.
Q.51.She would also receive a certain amount of your pay?
A.51.$23, half my pay.
Q.52.Whose money did you consider that to be?
A.52.I considered it to be mine.
Q.53.Yours?
A.53.Yes, definitely.
Q.54.It was assigned to your wife?
A.54.We shared our money.
Q.55.Did you ever ask her for money?
A.55.She never let me go without a penny.

Q.56.Have you ever hit her?
A.56.Yes, I did on two occasions. I have hit her twice in my life.
Q.57.When you hit her what was the result?
A.57.Once she had a black eye. Once she fell on the floor.
Q.58.Was she unconscious?
A.58.I don't know. I set her on a chair and she came to.
Q.59.If she came to she must have been unconscious. When was the first time you gave her a black eye?
A.59.She had a bruise on the side of her face.
Q.60.That was in London around Christmas?
A.60.Yes,I think so.
Q.61.And that blow did not knock her out?
A.61.Yes, it did.
Q.62.Was that on Christmas eve?
A.62.I don't remember.
Q.63.What was the condition of her face after that?
A.63.Well, she had a bruise. She had a black eye in January some time, that was the second time I hit her.
Q.64.You say quite definitely that when you tried to borrow money from your wife she always gave it to you?
A.64.She always told me I could get money if I needed it.
Q.65.What do you think are the requirements of a happy married life?
A.65.The duty of the husband to his wife is to look after her and they must agree fifty-fifty.
Q.65.Do you think it is happy married life to have a date with your wife on Christmas eve, then don't show up then come in and knock her out?
A.65.You have to remember that in the Field Security you are liable to be out up to 24 hrs a day, and if you have security work to do you can't tell your wife about it.
Q.66.In other words you could be out some nights on duty. I was referring to last Christmas eve when you were in London, you were to go out with your wife, you did not show up. You did not come in until midnight?
A.66.Yes,sir.
Q.67.And then.....
Q.67.There is one think you asked me about a happy couple, my wife has got her parents in Gloucestershire, and each time on leave I have been to her home, she has two sisters and her Mother and Father and it pleases her to go there. But there is no man for me. And on Christmas eve I met some friends from Canada and we went drinking and I did not come home.
Q.68.So you preferred to go and get drunk with other men than to go out with Your wife?
A.68.Thats not the same, we started to have a drink.....

JUDGE ADVOCATE:

Q.69:Did you have a date with your wife?
A.69.Yes.
Q.70.And instead did you go out drinking with some friends?
A.70.Yes.

JA: "Alright, now go on."

DEFENCE:
Q.71.How long were you in London on that leave?
A.71.From the 23rd to 30 December.
Q.72.During that time did you go out on other nights by yourself?
A.72.Yes, sir, there was one other night.

Q.73. And what time did you get in that night?
A.73. It was about 10 pm.
Q.74. How about the second night you knocked your wife cold at 3am?
A.74. You said the night I came back from leave.
Q.75. No, the night you got back at 3am while you were in London?
A.75. The first time was on Christmas Eve....
Q.76. You knocked her out....
A.76. No, sir, I didn't knock her out that time.
Q.77. Have you always been completely faithful to your wife?
A.77. Yes, but in the Fd Security you have to make contacts and you have to meet your informers...
Q.78. But did you have to have sexual relations with anybody but your wife?
A.78. No, sir.
Q.79. How did you get gonorrhoea last July and August?
A.79. Yes, I had it.
Q.80. And who did you get it from?
A.80. Do I have to answer that question?
Q.81. Did you not report it?
A.81. No, sir.
Q.82. What hospital were you in?
A.82. In 17 Cdn Gen.
Q.83. Where did you catch this desease?
A.83. I could not say, I don't know.
Q.84. Did you catch it in Farnborough from a WAAF on 23 June?
A.84. How can you be so sure of the date - No I did not catch it there.
Q.85. It was the 27 June, I'm sorry. Were you there on 27 June?
A.85. I don't know.
Q.86. Did you know a WAAF at the time?
A.86. I know lots of WAAFs.
Q.87. Did you or didn't you report to the MO that you had contracted gonorrhoea from a WAAF?
A.87. I told him that because I did not want to involve another person.
Q.88. Well who did you get this disease from?
A.88. I don't know.
Q.89. Well whom would you involve?
A.89. I might involve my wife.
Q.90. If you have never had sexual intercourse with anyone else how do you know you did not get it from her?
A.90. I might have.
Q.91. Did you make arrangements with the hospital to have your wife examined?
A.91. I told them to.
Q.92. So you had relations with her after you had the disease?
A.92. Yes.

Q.93. JUDGE ADVOCATE: "Do you know the name of the Officer to whom you spoke about this disease?"

A.93. I am not sure, perhaps Major B. Langer.

DEFENCE:
Q.94. But for the past year has your wife refused to have sexual relations with you?
A.94. She never refused me for a year.
Q.95. How long then?
A.95. It might be three or four months, but not a year.
Q.96. You are supposed to go back for another test on 28 April of this year?
A.96. Yes, sir.
Q.97. Now this money that your wife gets, you feel that in justice it belongs to you?
A.97. We agreed to share it.
Q.98. And have you been on subsistance?
A.98. Yes, since late last year.
Q.99. How much do you get?
A.99. About 9/- a day.

Q.100.Did you give that money to your wife?
A.100.I used to split my cheque with her.
Q.101.Did you pay the rent?
A.101.She paid the rent.
Q.102.Do you think it is consistent with a happy married life to go round to dances without your wife the whole time?
A.102.I have been to a few dances but all on duty always.
Q.103.About how much did you borrow from your wife?
A.103.About 10/- or 15/-.
Q.104.How often?
A.104.About once a month.
Q.105.Would it not be true to say that you borrowed about £8 a month regularly from her?
A.105.Definitely not.
Q.106.Is it not true to say that the only contribution you have made to the upkeep and rent was during the first four weeks of your living on subsistance?
A.106.I used to buy my own rations.
Q.10 .About 3d a day....that was all?
A.107 No.
Q.108.What was the other time then?
A.108.It was when I used to take my wife out three or four times a week.
Q.109.That was your only contribution?
A.109.That was all I had.
Q.110.Where did you get it?
A.110.It was my subsistance.
Q.111.You did not give that to your wife then?
A.111.Yes, but then I had to borrow money to replace it.
Q.112.Now did you ever go to your wife's bag and take money?
A.112.No,sir.
Q.113.Did she ever hide her bag from you?
A.113.She did after I had found those letters.
Q.114.Did she not hide it before that?
A.114.Perhaps.
Q.115.In other words you say your wife would hide things in her purse. Did she not hide it because of money? That would be the natural thing to do....if she had other things to hide she would hide them and not put them in the bag?
A.115.Money never tempted me.
Q.116.Is it not more normal for a person to hide a bag because there is money in it?
A.116.No, sir.
Q.117.On this occasion you went up to London, did you borrow money from your wife?
A.117.She lent me a pound.
Q.118.Did you ask for more?
A.118.I get first 10/- and asked her to make it a pound and she did.
Q.119.Did you say what you wanted it for?
A.119.No,sir.
Q.120.You had no difficulty getting it?
A.120.At first she did not like the idea but then she gave it to me. I had given her £7 when we went on leave.
Q.121.Where did you get the £7?
A.121.We have been gambling and I had been lucky.
Q.122.Do you often play dice for high sums?
A.122.Not very high sums-sometimes only pennies.
Q.122.Do you do card tricks?
A.123.Yes, sir, all sorts of things,I used to be on a concert party.
Q.123.When you got back on this occasion late in London, who opened the door to you?
A.123.I can't remember
Q.124.It was not your wife's Aunt?
A.124.It might have been the Aunt.

Q.125.What did she say to you?
A.125.She said where have you been.
Q.126.Didn't she say that this was not quite playing the game?
A.126.I don't recall
Q.127.And then you abused your Aunt?
A.127.I did not.
Q.128.Then you came through and had an argument with your wife?
A.128.Well,
Q.129.And then you hit her didn't you?
A.129.There was only one time I hit her on 29 December and then..
Q.130.Who was present when you hit her?
A.130.Her Aunt was present, anyway she hit me when I came in the door,on the face.
Q.131.Your wife hit you in the face?
A.131.Yes.
Q.132.Supposing for a moment that she did hit you, is that any reason for hitting her?
A.132.No matter who it is, if someone hits me in the face, I shall hit them back.
Q.133.So this is happy married life?
A.133.We were happy, sir, we have been happy.
Q.134.The next occasion when you hit your wife was in January, that was the time she was suffering from a black eye?
A.134.Yes, sir, but it was not a black eye when they saw it, it was just brown.
Q.135.Do you remember what date you did that?
A.135.No...
Q.136.Was it about two weeks before your wife met Lt Haufek on 5 February?
A.136.Yes I think so.
Q.137.Do you remember you came down from London on a Sunday lunch time?
A.137.I remember now sir.
Q.138.You came back unexpectedly at noon? That was when you were on pass?
A.138.I was on pass but I was still on duty - you are on duty 24 hrs a day, 7 days a week in the army.
Q.139.And you did not bring your wife to London with you?
A.139.I asked her but she did not want to come.
Q.140.What reason did she give?
A.140.There were a lot of reasons.
Q.141.What were those reasons?
A.141.First of all if I was to be sent on duty somewhere she would get suspicious and say I was going out someplace else because she is jealous.
Q.142.But why did she not go b ack to London with you?
A.142.I asked her to go to London and she said she would not and I asked her why and she said she did not want to go, so I said I was going to London anyway.
Q.143.You have just said that there were a number of reasons why she would not go -what were those reasons?
A.143.You must excuse me I don't always say what I want in English - I am French. I did not mean to say that.
Q.144. When you got back on Sunday she had had lunch I believe?
A.144.Yes.
Q.145.And you demanded that she get your dinner for you?
A.145.I had to get it myself.
Q.146.Was all this in January?
A.146.Yes.
Q.147.After lunch did she ask you any questions?
A.147.No.
Q.148.Did she not ask you where you had been?
A.148.No.
Q.149.When did she ask you that?
A.149.After I said I had been to London.

Q.150.What did you say when she asked where you had been in London?
A.150.I said she would never know.
Q.151.Now, had your wife invited some friends to tea that day, Joyce Wild and a girl friend of her?
A.151.I know someone came to tea.
Q.152.Do you know Joyce Wild?
A.152.Yes.
Q.153.Did she come to tea?
A.153.Yes, she came one day I can't remember if it was the same.
Q.154.During all the time they were there did you sit in a chair and not speak?
A.154.Yes, I did sit in a chair.
Q.154.Did you speak?
A.155.I don't remember what I did.
Q.156.You sprawled in a chair and did not talk.After that what did Joyce Wild suggest?
A.156.I don't remember.
Q.157.Did she suggest that she go with her and see the girl friend off?
A.157.I don't remember,sir.
Q.158.And later didn't your cousin come with two friends in the CWAC?
A.158.I don't remember.
Q.159.And when your friends were there you were more cheerful and you spoke?
A.159.I had to speak to my cousin.

JUDGE ADVOCATE:"You have been given every latitute possible and the Court does not want to hinder you any way, but will you tell us what bearing all this evidence has on the case."

DEFENCE:"I have got to go into all this if I am to show that there was discord in the Belanger home before Lt Haufek appeared on the scene."

Q.160.It was suggested that someone should go out and get beer?
A.160.I went out and got the beer.
Q.161.Where did you get the money?
A.161.My wife gave it to me, she said she would give me the money if I went to get the drinks.
Q.162.How much did she give you?
A.162.She gave me £1 and told me to buy 10/- worth of beer.
Q.163.And how much did you bring back?
A.163.Ibrought back 6 quarts.
Q.164.What did you do with the change?
A.164.I gave her 10/- and kept the rest of the change because she had told me to spend 10/-.
Q.165.How much money did you have on that weekend you went on?
A.165.I can't remember.
Q.166.Did your wife ask what had happened to the £8 you had gone away with?
A.166.I don't recall.
Q.167.This was shortly after pay day . And as a result of that discussion did you not hit your wife in the eye?
A.167.I don't know if that was the time.
Q.168.Was it not on the date the party had occured?
A.168.I don't recall the date of it, sir. I don't know if it was on that date.
Q.169.I don't want the date, I want to know if it was on the same DAY?
A.169.I don't remember.

Q.170.But there was a dispute that evening?
A.170.I don't remember if it was that night.
Q.171.Was it that evening you gave her the black eye?
A.171.I don't recall.
Q.172.It was some other evening then?
A.172.I don't remember, I mean, yes sir, it was.
Q.173.Have you a friend in Chobham?
A.173.Yes, I have lots of friends in Chobham.
Q.174.Did you go there on 9 February?
A.174.I went there from 9 to 17 February on duty.
Q.175.And did you have friends in Chobham before going there?
A.175.No.
Q.176.Have you been to dances at Chobham?
A.176.Yes, I have. I have been going around the pubs and dance halls on a tour of duty.
Q.177.How many nights a week would this keep you on duty.
A.177.About three nights a week or two.
Q.178.What time did you come in?
A.178.Sometimes 10 sometimes 11 and sometimes 12.

THE COURT ADJOURNED AT 1250 hrs for lunch

THE SAME COURT REASSEMBLED AT 1345 hrs.

Q.179.Lets go back to 5 February. You said that you went to the Queens Hotel and then went to your house?
A.179.Yes, sir.
Q.180.What inquiries did the accused make about the black eye?
A.180.At the queens hotel the accused said to my wife 'who gave you the black eye, eh? I suppose Maurice did". My wife laughed and said 'yes" jokingly and the accused was joking too.
Q.181.What did he say after that?
A.181.He said it was a joke or something.
Q.182.What was her condition at the time?
A.182.She was alright.
Q.183.When you got home, did the accused ask any other questions?
A.183.Not that I know of.
Q.184.What day of the week was it?
A.184.It was a Saturday.
Q.185.Did he make any investigations that night to your knowledge?
A.185.I do not know, sir, he did not make any investigations in my presence.
Q.186.On the third meeting you said that they were sitting on two chairs and that there was no one else in the room and the door was closed?
A.186.Yes, that was before I went to Chobham.
Q.187.What is the name of the landlady?
A.187.Mrs. Roberts.
Q.188.Does she stay in room?
A.188.She is in most of the time.
Q.189.She is lame isn't she?
A.189.No..
Q.190.She is a cripple isn't she?
A.190.Well,yes, if you call it that.
Q.191.Where does she usually sit?
A.191.In the kitchen, which is next to our sitting room and there are doors and one between the rooms.
Q.192.And was she sitting there that evening?
A.192.Yes, she was.
Q.193.And was the door open or closed?
A.193.Closed.
Q.194.How do you remember.
A.194.I know that when someone comes to visit us or to visit her we do not keep the door open.
Q.195.On 9 February you came in and saw the accused there?
A.195.You said on 9 February - on 9 February I was in Chobham.
Q.196.What about your statement that you found him at home?
A.196.That was on 17 February.
Q.197.Who was there at the time ?

A.197.The landarmy girl.
Q.198.What was her name?
A.198.Joyce.
Q.199.What was her other name?
A.199.I don't know.
Q.200.Where was she living?
A.200.About ½ a mile away, about 15 minutes across the fields.
Q.201.She was there asfar as you know the whole evening?
A.201.Yes.
Q.202.Was the door open on that evening or not?
A.202.No, sir.
Q.203.Was the landlady in the kitchen?
A.203.Yes.
Q.204.On 24 February you were engaged in family quarrel, what quarrel was that?
A.204.Well, she was talking to me about weekends and things, I don't know exactly what it was all about. It was always about the same thing. I would come home and she would ask me to go out and I did not want to go. Then I would ask her to go out and she would not want to or would want to go for a drink, we never just went out for a walk it was always drinking every time.
Q.205.How long had these arguments been going on?
A.205.Quite a while sir, about six months, perhaps longer.
Q.206.To return to this particular evening, you don't remember about what the quarrel was?
A.206.No.
Q.207.What did you do to her?
A.207.It resulted that I agree that she go to London for a weekend.
Q.208.What did you do to her physically.
A.208. I....
Q.209.Did this landarmy girl feel compelled to call up the OC and get him to come around?
A.209.The Landarmy girl was not in the room at that time.
Q.210.She did call in the OC, what led her to do this?
A.210.She was in the kitchen and I did not talk to her.
Q.211.Did you ask your wife on that evening for £5?
A.211.No.
Q.212.Did you get £5?
A.212.I did.
Q.213.Did you ask for £5?
A.213.No.
Q.214.But you got it?
A.214.Yes, I got it alright. I assigned the money.
Q.215.Did you threaten to have her assigned pay cut?
A.215.I think so.
Q.216.Did you go to the paymaster about it?
A.216.I was going to have it sent to my mother.
Q.217.How much was it?
A.217.It was $20 a month.
Q.218.When did it go up to $23?
A.218.I could not say.
Q.219.Did you arrange for it?
A.219.It just came automatically.
Q.220.Now, about this 20 or 23 dollars....is it not compulsory that it has to go to the wife?
A.220.I always understood that it could go as deferred pay.
Q.221.Did you not make threats to your wife that you would have it taken away from her. Did you not say that you would send it to some woman in Chobham, did you not say you would send it to your common-law wife?
A.221.No,sir, I don't remember.
Q.222.Didn't you threaten to transfer this money to some other woman?
A.222.No, only to my mother.
Q.223.How about your friend in Chobham?
A.223.I never ....
Q.224.Did you never say to Lt Haufek that you had a woman in Chobham, what did you call her?
A.224.I just called her a girl.

Q.225.What else did you say to your wife?
A.225.I said I was going to transfer my money to my mother not to any girl.
Q.226.To return to the question, you said you obtained £5 from your wife on 24 February?
A.226.Yes, sir.
Q.227.How did you obtain that?
A.227.Because I asked her.
Q.228.Did you threaten to destroy her wardrobe?
A.228.No.
Q.229.Did you ever tear the dresses or the hats?
A.229.No.
Q.230.Did you not that evening take her by the arms and damage her arms until she gave you the £5?
A.230.No,sir.
Q.231.The landlady was there that evening and Joyce Wild was there that evening and you still say that you did not do that?
A.231.No,I did not.
Q.232.After that did you not continue to threaten?
A.232.I never did.
Q.233.After the CO was called did he come around?
A.233.Yes, he did.
Q.234.What did he do then?
A.234.He did what I stated in my statement. He said he had been called in and asked what it was all about.
Q.235.What did you tell him?
A.235.He told me to come back to the office and sleep there.
Q.236.Were there marks on your wife's arms?
A.236.Yes.
Q.237.How did they get there?
A.237.When she got to hit me I got her by the arms.
Q.238.Did you twist her arms?
A.238.I just held her by the arms when she was sitting down.
Q.239.Did the CO have a talk with Mrs. Belanger that evening? in your presence?
A.239.Yes.
Q.240.What about?
A.240.He asked her a few questions.
Q.241.What questions?
A.241.He asked her if there was any other man in her life and she said she could not answer.
Q.242.Did he ask her about how you had been treating her?
A.242.I can't remember.
Q.243.He did not ask any questions?
A.243.I can't recall what he said.
Q.244.Was it a long conversation?
A.244.He was there about 15 minutes.
Q.245.Who else was in the room?
A.245.The landaway girl was in,she left and went into the kitchen?
Q.246.Where was the landlady?
A.246.In the kitchen.
Q.247.Did he ask her if you had borrowed money from her?
A.247.He did not ask her but she said that I had borrowed money from her., and he asked me if it was true and I said yes.
Q.248.Did he ask you about your treatment to your wife?
A.248.I remember that he talked to me in the office but I don't remember in the house. I think he said to me, you should not do those things.
Q.249.He could not say that unless he had asked you about "these things"
A.249.I suppose he was referring to the black eye.
Q.250.Did he ask you then about that other woman you mentioned in Chesham?
A.250.No,sir, not at the house.
Q.251.Did he ask your wife about your relations with other women?
A.251.I don't remember.

Q.252.Did he ask you about your marital relations with her?
A.252.I don't remember, sir.
Q.253.Did he ask you to give the $5 back?
A.253.He said I should give it back.
Q.254.Did he advise Mrs. Belanger that if you were physically violent to her again to seek the help of the civil authorities?
A.254.He may have, he said that as my CO he could not interfere but he could see that the police did something about it.
Q.255.Didn't Mrs. Belanger want to get away that night?
A.255.As far as I know she did not want to run away at 10pm. She just said it would be better if she was alone.
Q.256.Did she not want to go to a hotel?
A.256.No.
Q.257.Did he not stay to try to stop her going away that night?
A.257.Something was said to that effect.
Q.258.In other words she was suggesting going away.
A.258.Not that I know of. She just mentioned that she would like to be alone.
Q.259.You and the CO then went away together?
A.259.Yes.
Q.260.You said that you came back later?
A.260.Yes.
Q.261.Did the CO and Joyce and your wife go to have a drink together?
A.261.I did not see Joyce when my wife came back with him in the car.
Q.262.Joyce lives about 15 minutes away?
A.262.Yes.
Q.263.You remember when they came up to the house, did they call up to the landlady to let them in?
A.263.They did not call upstairs at all. The first time they came with the car and when they saw the motorcycle they kept on. The next time they stopped.
Q.264.At any time did they call upstairs to the landlady, when Mrs. Belanger came in?
A.264.No.
Q.265.Was the landlady in bed?
A.265.Yes she and her husband were both in.
Q.266.What did the CO say when he saw you?
A.266.My wife turned on the light and she made an exclamation and the accused seemed surprised and the accused said he knew I would come back.
Q.267.Did he say he had taken Miss Wild with them?
A.267.I don't remember.
Q.268.Did you attempt to hide in the house?
A.268.No.
Q.269.What kind of furniture was there in the room ?
A.269.2 cosy chairs,a piano and a table, I was sitting at the end of the piano.
Q.270.Were you sitting in the dark?
A.270.I was sitting in the dark so I could surprise them when they came in.
Q.271.Weren't you hiding because you were afraid the CO would find you?
A.271I was not afraid, I wanted them to see me and know that I knew what was going on.
Q.272.Did the CO say anything about her nerves?
A.272.He said they were in a bad state.
Q.273.What did he say to you?
A.273.He made me promise that I would not return that night, and go back to the office.
Q.274.Did you and the CO leave together?
A.274.I left first on my motorcycle and he was following behind in the car.
Q.275.How far behind?
A.275.It must have been 200 feet but I was making sure that he was following me.
Q.276.Did you at any time promise not to illtreat your wife?
A.276.I did.
Q.277.What happened the next morning?
A.277.On the 25th the CO sent for me and said I ought to let my wife go on a weekend and I should look after John.

Q.278.Did he say anything about your treatment of your wife?
A.278.That morning, no sir. - Yes he did sir,I'm sorry.
Q.279.And get you to promise not to go on illtreating her.?
A.279.Yes, sir. And he also suggested she go on weekend on 28 Feb.
Q.280.Did your wife phone the OC in the office?
A.280.I don't know sir.
Q.281.Did she ask him to come down and see her again?
A.281.I don't know, sir.
Q.282.Did he go and see her on 28th?
A.282.I don't know sir.
Q.283.Do you know anything about her having lodged a complaint with him a ain on account of maltreatment?
A.283.No, I don't.
Q.283.To your knowledge he did not go down to the cottages on the 28th?
A.283.No.
Q.284.What happened on 2 March? Did you mention the wedding anniversary to the OC?
A.284.I mentioned the wedding anniversary before that.
Q.285.When was it?
A.285.On 4 March.
Q.286.Did you and the OC have any talk about it at that time?
A.286.I had mentioned that I wanted to have the weekend.
Q.287.Did he come down to make peace between you and your wife at that time?
A.287.I don't know.
Q.288.He had talked to you about it?
A.288.There was no talk about making peace, there was no necessity, I was asking for a weekend to spent with my wife.
Q.289.Did your wife at any time ask you for a divorce?
A.289.Well she talked about it.
Q.290.How often?
A.290.She might have asked me a couple of times.
Q.291.How long ago?
A.291.About four months.
Q.292.What did you say?
A.292.My reply was that I would not give her a divorce.
Q.293.Did you ever threaten her life?
A.293.I never..
Q.294.Did you produce a pistol at any time?
A.294.I never had a pistol.

COURT:
Q.295.You must have had a pistol as a DR?
A.295.I was a batman driver and I did not have a pistol.
Q.296.In previous evidence you said you had a motorcycle?
A.296.I was only issued with a tommy gun for the car.

DEFENCE:
Q.297.How this girl you mentioned in Chobham-who detailed you to the Chobham area?
A.297.Lt Maufek sent me there on special duty.
Q.298.Did you ask to be sent?
A.298.I did not know anything about the place.
Q.299.On 14 March you went on leave and the 21st you were at your wife's home. - What were you doing in between times?
A.299.I was at home, at Woking and at Chobham seeing some friends.
Q.300.Did you say that Lt Maufek phoned your wife?
A.300.He have not get a phone. I meant to say that he got in touch with her if I did say it.
Q.301.Did you ever ask the OC to be let off to go to Chobham?
A.301.I never asked for a night off to go to Chobham.
Q.302.How about the Basking trip?
A.302.He went to Basking on an official trip.
Q.303.Didn't you ask ....
A.303.I did not feel like going on one of his drinking parties so I asked for the night off to go to Woking.
Q.304.Now, on the wedding anniversary where were you?
A.304.I went home after I was through with the office.
Q.305.Where did you go in the afternoon ?

Q.278.Did he say anything about your treatment of your wife?
A.278.That morning, no sir. - Yes he did sir,I'm sorry.
Q.279.And get you to promise not to go on illtreating her.?
A.279.Yes, sir. And he also suggested she go on weekend on 28 Feb.
Q.280.Did your wife phone the OC in the office?
A.280.I don't know sir.
Q.281.Did she ask him to come down and see her again?
A.281.I don't know, sir.
Q.282.Did he go and see her on 28th?
A.282.I don't know sir.
Q.283.Do you know anything about her having lodged a complaint with him a ain on account of maltreatment?
A.283.No, I don't.
Q.283.To your knowledge he did not go down to the cottages on the 28th?
A.283.No.
Q.284.What happened on 2 March? Did you mention the wedding anniversary to the OC?
A.284.I mentioned the wedding anniversary before that.
Q.285.When was it?
A.285.On 4 March.
Q.286.Did you and the OC have any talk about it at that time?
A.286.I had mentioned that I wanted to have the weekend.
Q.287.Did he come down to make peace between you and your wife at that time?
A.287.I don't know.
Q.288.He had talked to you about it?
A.288.There was no talk about making peace, there was no necessity, I was asking for a weekend to spent with my wife.
Q.289.Did your wife at a y time ask you for a divorce?
A.289.Well she talked about it.
Q.290.How often?
A.290.She might have asked me a couple of times.
Q.291.How long ago?
A.291.About four months.
Q.292.What did you say?
A.292.My reply was that I would not give her a divorce.
Q.293.Did you ever threaten her life?
A.293.I never..
Q.294Did you produce a pistol at any time?
A.294.I never had a pistol.

COURT:

Q.295.You must have had a pistol as a DR?
A.295.I was a batman driver and I did not have a pistol.
Q.296.In previous evidence you said you had a motorcycle?
A.296.I was only issued with a tommy gun for the car.

DEFENCE:

Q.297.How this girl you mentioned in Chobham-who detailed you to the Chobham area?
A.297.Lt Haufek sent me there on special duty.
Q.298.Did you ask to be sent?
A.298.I did not know anything about the place.
Q.299.On 14 March you went on leave and the 21st you were at your wife's home. - What were you doing in between times?
A.299.I was at home, at Woking and at Chobham seeing some friends.
Q.300.Did you say that Lt Haufek phoned your wife?
A.300.We have not got a phone. I meant to say that he got in touch with her if I did say it.
Q.301.Did you ever ask the OC to be let off to go to Chobham?
A.301.I never asked for a night off to go to Chobham.
Q.302.How about the Basking trip?
A.302.We went to Basking on an official trip.
Q.303.Didn't you ask ....
A.303.I did not feel like going on one of his drinking parties so I asked for the night off to go to Woking.
Q.304.Now, on the wedding anniversary where were you?
A.304.I went home after I was through with the office.
Q.305.Where did you go in the afternoon ?

A.305.I came back home.
Q.306.When?
A.306.I don't know. But it was early.
Q.307.Did you ever buy a pistol from the Field Security Section?
A.307.Yes, early in 1942 there was a small 22. and I bought it from a Sergeant, and I resold it the next day to a Sergeant who is now with No 16.

RE EXAMINED BY THE PROSECUTION:

Q.308.Will you tell the Court what your married life was like in between these quarrels.
A.308.Well inbetween those quarrels we had very happy times and one thing that was always brought up was that we wanted to save money and instead of that it was always costing from £1 to £3 to go out in the evenings.
Q.309.Whom did you sleep with when you went home?
A.309.I slept with my wife every night.
Q.310.In other words you had a normal married life.?
A.310.Yes.

DEFENCE: (By permission of and through the Court)

Q.311.Did you ever force your wife into marital relations by physical violence?
A.311.Yes, once.
Q.312.Why was force necessary?
A.312.Because it had been more than a week since we had had anything together and every time we used to go to bed there was always something brought up, she was tired or something and the following day she was always alright to go out drinking.

BY THE COURT:

Q.313.About this weekend in London, you said you had told your wife she would not know where you had been, where had you been?
A.313. I spent the night at the YMCA . I was in the lounge. You can often spend the night there.
Q.314.To the best of your knowledge, has your wife ever received treatment for VD?
A.314.No, sir.
Q.315.Still you told the Court and expect it to believe that she was responsible for your contacting VD last summer. That is what you led the Court to believe?
A.315.Yes sir.
Q.316.You also stated to the Court that since you had VD yourself and before you are cured you had relations with your wife?
A.316.Yes sir.
Q.317.Did you contract VD a second time from your wife?
A.317.I never had no second time, sir.
Q.318.How long have you been married?
A.318.Two years on 4 March, sir.
Q.319.You mentioned that the first timeyou hit your wife in London she had hit you first. You remember very well that when you went into the room you saw the accused there and that the door was closed, you remember that very well. While you expect the Court to believe that you don't remember when you blacked your wife's eye?
A.319.I said it was at the beginning of January some time.
Q.320.You don't remember the exact date?
A.320.No.
Q.321.You don't remember that date but you remember the date you went on leave?
A.321.But there were certain things that were remarkable about those dates, you always know those dates.
Q.321.Do you not consider marking your wife's eye a remarkable date?
A.321.Yes, sir.

Q.322.You mentioned in your evidence that when your wife went to London the accused was on weekend also. What was the number he left to the Section to be called?
A.322.It was a Farnham No, I don't remember the No.
Q.323.You said also that you did not have a pistol at any time so therefore you could not threaten your wife?
A.323.I meant I had a pistol but...
Q.324.Did you say in your evidence that you had never had a pistol?
A.324.I meant in this house.
Q.325.During the time you have been married have you had a pistol in the place you occupied with your wife?
A.325.No,sir.
Q.326.Where your wife and you have been living, have you had a pistol?
A.326.No, sir.
Q.327.About those £5. The Defending Offr asked you if you asked your wife for £5 and you said no. You then said you got £5, you did not ask for it. But you stated elsewhere that when you wanted money you always asked your wife to land it to you. How did you get this £5.
A.327.I did ask my wife for £5. And she gave it to me.
Q.328.Is your wife English?
A.328.Yes, sir.
Q.329.Where did she live, in Gloucestershire?
A.330.She lived at Heathend, her parents were in Gloucestershire.
Q.331.Your wife is a Protestant and you a Catholic?
A.331.Yes, sir.

BY THE JUDGE ADVOCATE:

Q.332.The writing on the letters, on the release form, is Lt Haufek. The release form was written by him in front of you, is that right?
A.332.Yes, sir.
Q.333.If you had just picked those letters up somewhere and not in your wife's pocket, would you have been able to tell whom they were written by?
A.33.Yes, sir, I could because I have another letter written by Lt Haufek since those which I have, and it is signed by him the same as the others.
Q.334.you spoke to Mr. Haufek about them in the office?
A.334.Yes, sir.
Q.335.What did he say?
A.335.He said I love your wife and I will have her some time. He admitted they were his letters.
Q.336.Who did you report this matter to?
A.336.I reported it to the CO and he took it up with Legal Aid at CMH.
Q.337.What happened after that?
A.337.They called me over there and the next thing I heard I had to report to Mr Margetts.
Q.338.Did I understand that you were called to the Legal Aid?
A.338.Yes, sir.
Q.339.Did you ask permission to go?
A.339.I was at the office when the phone call came through, that was after my CO had reported to Legal Aid. And I was told to go and see some officer up there.
Q.340.The phone call was a result of your seeing your CO about the matter?
A.340.Yes.

(In the opinion of the Court and of the Judge Advocate it is not necessary to comply with RP 83(B) in connection with this witness)

THIRD WITNESS FOR THE PROSECUTION)Cpl (A/CSM (WO II))Browne RW, No B75949,)formerly of 12 Fd Sec Section, being duly)sworn is examined by the Prosecution:

Q.341.What is your Unit?
A.341.I used to be in 12 Security Section but I am now in No 18.
Q.342.How long were you with No 12 Section?
A.342.From May 43 until now.
Q.343.Who was OC of your Company? in January?
A.343.Lt Haufek.
Q.344.Is Mr Haufek in the Court?
A.344.Yes, he is there (indicating accused)
Q.355.Will you tell the Court when he was OC of No 12 Sec?
A.355.It was about 8 January 44.
Q.356.When in March did Lt Haufek cease to command?
A.356.I could not say just when.

DEFENDING OFFRS offers Pt II Order to Prosecutor to settle date.

Q.357.Lt Haufek ceased to command wef 8 March 44. Now will you tell the Court if you know that the accused carried on his duties at the Section after that date?
A.357.He could not very well carry on his duties but he could have been about. He was there for a few days anyway.
Q.358.Do you know L/Cpl Belanger?
A.358.I do.
Q.359.Will you tell the Court if he was a member of your section?
A.359.Yes, he was made a L/Cpl in February.
Q.360.I understand that there was some discussion between you and the OC regarding affairs in the Belanger household?
A.360.Yes.
Q.361.Will you tell the Court what the nature of this discussion was?
A.361.Mr Haufek mentioned that things were not going too well at the Belanger household, and that he did not think they were getting on well. I advised him not to get mixed up in it. I did not hear anything more about it until such time as Belanger took proceedings.
Q.362.Do you recognise the handwriting on these letters? (Exhibit C)
A.362.It is similar to Lt Haufek's.

JUDGE ADVOCATE:

Q.363.Can you say definitely , as you did in the Summary?
A.363.Yes, I can definitely say that it is his handwriting.

DEFENCE DECLINES TO CROSS EXAMINE THIS WITNESS.

BY THE COURT:

Q.364.Cpl Belanger was given his stripe in February some time?
A.364.Yes, sir.
Q.365.Presumably his work at that time was satisfactory then?
A.365.Yes, sir.
Q.366.Did Belanger have much language difficulty in the course of his duty?
A.366.Not to my knowledge.

G.M.G.

Q.367.Did he mention that he had difficulty with English because he was French?
A.367.No,sir.

BY THE JUDGE ADVOCATE:

Q.368.When was this conversation you had with Lt Haufek?
A.368.I could not state the date, it was in February, I think.
Q.369.Have you seen these letters (Ex "C") before today?
A.369.Yes,sir.
Q.370.Now you gave evidence at the Summary of Evidence. You read over your evidence and signed it. I am going to read the last paragraph to you:"I recognise the handwriting on Exhibits A,C,D,E,F,G,H,I, J,K.L, (the letters) as being in the handwriting of the accused."
Now, are these letters in the handwriting of the accused?
A.370.Yes, sir.

(In the opinion of the Court it is not necessary to comply with RP 83(B) in connection with this witness.)

DEFENDING OFFR:
"I would like to present a motion that the Prosecution has not proven a prima facie case. First of all the evidence of Cpl Belanger is useless. He contradicts himself continually. I think it has also been amply shown that discord existed in the Belanger household long before Lt Haufek came on the scene, in fact it had existed for the best part of a year and the CO did not cause any extra discord in any way. There is no evidence of his consorting with her. He went down several times because he thought it was his duty to do so. The only thing that remains are the letters of affection. If that is the only ground left , then it cannot be considered scandalous conduct. He had ceased to be CO on 8 March and the first letter is dated 13 March. He went into that household to do his duty. When we are at OTU it is drummed into us day after day, 'know your men, know their families, etc'. He in the end apparently fell in love with Mrs. Belanger, and I do not think that in such circumstances it is an unlikely thing to happen. He finds that she had been badly treated and with a husband with VD. Take a look at those letters - they are the letters of a man really in love - not someone out to have some fun. The same thing happened with her. She has been bullied around by this husband of hers for a year. If you notice in the letters to her, he mentions her father, and wanting to be well thought of by him - it was all above board. The part we refer to today all happened after Lt Haufek had ceased to be CO of Cpl Belanger. He made no advances to Mrs. Belanger before he was satisfied that there was no hope of reconciliation between her and her husband. "

PROSECUTION:
" The letters in themselves do show that he was causing discord between husband and wife. He mentions that "H is coming" so that there won't be any disturbance. The accused expected Belanger to be with his wife and to cause disturbances."

THE COURT IS CLOSED FOR CONSIDERATION OF THE MOTION.

THE COURT IS REOPENED.

JUDGE ADVOCATE:"I am to advise you that your motion has been denied, and the Court would like to hear the Defence side of the case. "

JUDGE ADVOCATE:
"Lt Haufek, it is now your turn to put your side of the case. You may give evidence yourself on oath, in which case you are subject to cross-examination by the Prosecution and by the Court. You may make a statement not on oath, in which case you will not be cross examined; you must realise of course that the Court will place greater weight on a statement given on oath then on one not on oath. You may call witnesses as to facts or character or both - you may give evidence yourself on oath, you may hand in a written statement or your Defending Officer may hand in a written statement."

DEFENDING OFFR:
"I would like to examine my other witnesses first before Lt Haufek gives his evidence."

JUDGE ADVOCATE:
"You may if you like. But that would not create such a good impression with the Court - If Lt Haufek sits there and hears all the evidence he can get up and "stop up the gaps" in the evidence he has heard.

DEFENDING OFFR:
"Very well, sir."

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The prosecution is closed.

Defence.

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

Answer. **Yes, sir.**

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

Answer. **Yes, sir.**

Question. Is he a witness as to character only? *Answer.* **Only as to fact, sir.**

INSTRUCTIONS TO THE COURT.

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

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

(Where any evidence is given for the defence.)

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

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

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

Answer. The accused in his defence says†

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

GMG.

Instruction

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

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

FIRST WITNESS FOR THE DEFENCE) The accused, Lt Frank Haufek, Canadian Intell Corps, 1 Intell Coy, LCGRU, formerly OC 12 Fd Security Section, being duly sworn is examined by the Defence:

Q.371.Would you tell the Court your story of how it happened that you met Mrs. Belanger?
A.371.I ...

JUDGE ADVOCATE:"This is just a suggestion. But if you want to stick to your evidence in the Summary, it is already entered as an Exhibit. If there is any additional evidence, that is different."

ACCUSED:"I have nothing to add, but I want to clear up some points."

JUDGE ADVOCATE: "I would also like to point out that a lot of your evidence is hearsay."

DEFENDING OFFR:"I think it would be better to go through it all again."

Q.372.Will you tell the Court the story of how you met Mrs. Belanger?
A.372.It was on 5 February of this year.
Q.373.Will you tell the Court what date you became OC?
A.373.It was on 12 January. I was there on attachment on 8 January for four days then I was made OC.
Q.374.Now, about meeting Mrs. Belanger?
A.374.I was invited by the Masonic Lodge in Farnborough to attend a social. At the same time I heard that 1/Cpl Belanger was invited with his wife. We decided to go together and to meet at the Queens Hotel before. When I met his wife that night she had a black eye - and there was one thing in L/Cpl Belanger's statement was wrong. I did not say "I suppose Maurice did it" I said"I suppose it was the door, the usual thing." To begin with I did not call Mrs Maurice. We did not say anything further at that time. But I noticed then for the first time that it looked as though something was wrong. We went to the social and I had a lady friend with me. She was a friend of the people I was staying with. I took her home. Then it was suggested that we finish the evening by having some coffee and sandwiches at the Belanger's house. That was logical as I intended to take them home anyway. We had coffee and sandwiches, then I took the Sgt Major home and went home myself. I did not have a driver at the time so I drove myself. At that time due to a new establishment I made Sgt Browne a CSM and everyone all the way down moved up which left a vacancy for a L/Cpl. So Belanger was made a 1/Cpl. Then about the second time I met Mrs. Belanger - the same evening L/Cpl Belanger suggested that I should be invited to a meal. I am not in the habit of going to peoples places to get meals but I was interested in this family and in getting to the bottom of the situation so I accepted. I came to supper the next night. I did offer money to buy the beer that night but he said he was the host so he would get it. While he was away I was talking to Mrs. Belanger and she asked me if I could see her sometime the next week. I saw her the next week and discussed things and that is how I found out what was happening. On 24 February I received a phone call (I had asked Mr. Belanger to feel at liberty to call on me at any time) this call was made by Joyce Wild who is the granddaughter of Mrs. Roberts, the landlady. She asked me to come at once because Belanger was illtreating his wife again. I got there and asked what it was all about. I heard all about it from her and he was present all the time, and was not able to deny the allegations. His wife was sitting in an easy chair by the fire shaking all over, her arms were red and had weals all over them. I found out that he had demanded £5. He did not get it at once so he twisted her arms.. I did not know what to do because I did not want the thing to get publicity - there is quite enough trouble with Canadian soldiers already. I did make the remark to the effect that I was sorry that I was his OC - it was in the heat of the moment and I think rather natural that I should have wanted to treat him as he deserved, but did not. I warned him that if these goings on did not stop I should advise his wife to go to civil authority for help. Mrs. Belanger did not feel that night like spending another night under the same roof, and she wanted to move. She told me that in front of him. I suggested that Belanger should come and stay in the office. He agreed to that and got his things ready. While he was getting the things ready Mrs. Belanger spoke to me and implored me to come back because

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sje wasafraid he would come back. I took him to the office and left him there. I went back. I suggested to Joyce Wild and Mrs. Belanger that we all go for a drink. We did so and then took Joyce home and then came back all of which took about 45 minutes. We came up to the house, the door was locked so Mrs. Belanger called up to the landlady asking if the back door was open or not? We went in the back door, when we came into the sitting room Belanger was sitting there in the dark. It was no surprise to us because Mrs. Belanger thought he would come back. The motorcycle outside proved to us that our fears were correct. I spoke to him again and asked him to leave with me and stay away for three days until his wife recovered. I came with him to the office and stayed up with him all night to see that he would not go back again. Next morning I had him up again to my office and spoke to him again, again telling him that I had made up my mind to advise his wife to seek help from civil authority. He mentioned to me on the 26th that his wife had said she wanted to go to see her relatives in London. I said why don't you let her go to her father's for some time to recuperate. On the 28th I again received a phone call. Mrs. Belanger was on the phone herself asking me to come because something else had happened. As a result of what I heard there that evening I spoke to Belanger again in the office. He told me at that time about having a woman in Chobham and showed me a wrist watch he had received from her. I had the impression that he was not interested in his wife and wanted to get out of the holy wedlock of matrimony,without paying any alimony. On the 2 March Belanger mentioned his wedding anniversary was on 4 March and could he have a weekend. There was no reason why he should not, so he had it. On the 3 March I went down to the house. I was fully convinced by then that Mrs. Belanger would never again make a wife to her husband. We talked of personal things that evening for the first time. We discussed the past and future insofar as the two of us were concerned. I have four children at home and we decided we could make a go of it together. On 5 March - L/Cpl Belanger had told me that his wife was going up near Gloucester to her father's and I told him he could use the station wagon to take her to North Camp Station. On the Tuesday I was to go to Reading. On Tuesday I had a phone call from Mrs. Belanger since she had found that we were going to Reading she wanted to know if she could go with us. I called in L/Cpl Belanger and asked him why he did not say that his wife was going through Reading and he said he thought the car was military and could not carry civilians. So I made out a release slip and told him to get his wife to sign it and that it would be alright for her to be in the car. In the morning I took the car down and picked them up at the house. That was on the 7 March. On 21 March I saw Mrs. Belanger again. In the morning the officers were called in by the OC Intelligence Coy and were told that we were moving. There was a lot of wishful thinking and we thought we would be moving quite far., by Saturday morning. But it did not happen that way. We did not know where we were going. So I sent a wire on that day. In answer to the wire she arrived in Aldershot at about 16 hrs on the 21st but did not contact me until 1715 hrs. We went and had tea and took in a cinema together and I put her on the bus for Heathend at 2045 hrs the same evening. On 23 March I advised her to stay with her father for some time and make up her mind what she would do. I did consider it much better for her to get a diverce as she originally intended than to spend all her life with this man. On the 23 March I was notified that there was somebody asking for Lt Maufek so I went out and there was L/Cpl Belanger. He showed me these letters. I recognised them as my own and said I had written them. He said he would shoot me in the back if I came back to the house. I did make the remark that I would prefer to be shot in the front. He then gave me his solemn promise that he would not illtreat his wife again. I said that in return I would not contact Anne Belanger so long as she was his lawful wife. I did not in fact contact her until some time after proceedings have been started against me. I saw her twice. Once with Joyce Wild on a Sunday. I was already under open arrest and I saw them for a very short time. The second time Mrs. Belanger was alone and I only saw her for a few minutes again. That was all because she had had a nervous breakdown when she heard I was under arrest and had been in bed for two weeks. To end up, I would like to bring up a few points. First, ever since 3 March when I realised how I felt about Mrs. Belanger I did not visit her at her home nor did I attempt to go there. Second, Whenever I did visit her before I was careful to have the door open and Mrs. Roberts was always next door. Thirdly,the first letter I have addressed to Mrs. Belanger was dated 13 March which was five days after I had handed over my command of 12 Fd Sec Section.

Fourthly, with reference to "g" in my letters, I only referred to his coming because I knew she did not expect him and I wanted to warn her. The second reference that I would not write while he was there was because I did not want Belanger to prevent my letters getting to her, she might have experienced more of his violence. Belanger can get violent on one glass of beer - I'm afraid that will happen tonight, and I beg the Court to stop it somehow.

DEFENCE: "I want to ask question to the accused about his conversation with Mrs. Belanger"

JUDGE ADVOCATE:"That is hearsay evidence. Actually what you want him to tell us is what you asked Belanger about."

DEFENCE:"Yes, but something Belanger did not admit."

JUDGE ADVOCATE"I think the Court is in a position to see that Lt Naufek acted in a certain way because of conversations he had had and certain conditions he had discovered. The Court has to decide on these facts.

DEFENCE:

Q.375.Was Miss Joyce Wild present on any of the occasions you saw Mrs. Belanger?
A.375. She was present on 24 February at the beginning by L- Cpl Belanger ordered her out of the room, into the kitchen and closed the door.

CROSS EXAMINED BY THE PROSECUTION:

Q.376.What is your religion?
A.376.I am a Roman Catholic.
Q.377.Are you married?
A.377.I am married and have four children.
Q.378.Are you happily married?
A.378.I was until about three years ago. A letter never reaches me from home now.
Q.379.In other words another man has come between you and your wife?
A.379.Yes.
Q.380.Before you met Anne Belanger you know of this condition at home?
A.380.Yes.
Q.381.What prompted you to take this interest in the Belanger family?
A.381.Because I was the OC and as it has been said we are told to take an interest in our men and their families.
Q.382.To the extent of visiting their wives in the husband's absence?
A.382.No.
Q.383.During these quarrels you stated that you thought that Belanger was treating his wife improperly, why did you not take action about it?
A.383.Because I did not think it would help matters.
Q.384.When you were threatened with a shot in the back by Belanger why did you not take disciplinary action then?
A.384.The man was excited and it would have been unfair to him.
Q.385.Had you met Anne Belanger before 5 February?
A.385.No.
Q.386.You said that you knew on 3 March that you and Anne Belanger cared for each other. Had you spoken in these terms to her before that date?
A.386.No.
Q.387.Will you tell the Court just what brought this about?
A.387.I said we were engaged in a personal discussion, I was thinking of my four children who would be needing a mother after the war and that Anne Belanger's son would probably be needing a father. I said in my evidence"I must admit that I was attracted to Anne Belanger the first day we met but I still did honestly try to be a peace-maker."

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Q.388.It would seem logical that you as an officer and gentleman should have refrained from visiting the wife of your L/Cpl when he was absent?
A.388.Not at all.
Q.389.You mentioned that there was always someone present with Anne Belanger and you. What about the time you came back in the car and found Belanger there?
A.389.That was the only time, for a few minutes.
Q.389.I suggest that that was not the only time you were alone with Anne Belanger?
A.389.There was the time we went to the Cinema, it is true.
Q.390.At one time you knew that Belanger's wife was going for a weekend?
A.390.Yes.
Q.391.You also went for a weekend?
A.391.Yes.
Q.392.Did you see Anne Belanger on that weekend?
A.392.Yes, at 3 pm on the Sunday.
Q.393.Where did you see her?
A.393.At Farnham.
Q.394.Did you see her on the 26th?
A.394.I did not.
Q.395.Do you know the number Farnham 5729112
A.395.Yes, that is where I stayed.
Q.396.I suggest that you stayed the night in Farnham with Anne Belanger?
A.396.I did not.
Q.397.Did you order Belanger back to barracks on the 24th?
A.397.After Mrs. Belanger had said she would not stay in the same house with him I suggested that he go to the office.
Q.398.And you returned to Anne Belanger to comfort her?
A.398.She had asked me to.
Q.399.Did you tell the husband that you were going back?
A.399.I did not because it was to prevent him coming home again.
Q.400.When he did not keep this "agreement" and returned to the house, did you give him an order to return them?
A.400.No. I followed him back to see that he stayed there.
Q.401.That was unusual for an O?
A.401.I don't think so.
Q.402.You have attended a dance or two at LOCHU and Aldershot at various times?
A.402.Yes.
Q.403.I suggest to you that you met Anne Belanger at a dance at Aldershot?
A.403.I did not.
Q.404.You have never been to a dance with Anne Belanger?
A.404.Yes, I have.
Q.405.Where was this dance?
A.405.At the officers Mess.
Q.406.Where was L/Cpl Belanger?
A.406.I could not say.
Q.407.You know he was at Chobham.?
A.407.Yes, I think he was.
Q.408.And you sent him to Chobham?
A.408.No, I did not.
Q.409.But you knew he was in Chobham?
A.409.Yes.
Q.410.And then you took his wife to a dance? Were you not alone with her at the dance?
A.410.There were other officers there.
Q.411.How did you bring her to the dance?
A.411.I picked her up with two other officers in the car.
Q.412.When did you arrange to meet Anne Belanger on the weekend of the 26th?
A.412.I spoke to her on the phone. She called.
Q.413.You are aware, Mr. Haufek,that Anne Belanger is the wife of Cpl Belanger and that he is her sole support?
A.413.I am not aware that he is her sole support.

Q.414.Where else does she get money from?
A.414.Her father helps herout.
Q.415.But outside of charity then, Belanger is her only support?
A.415.Yes.
Q.416.She draws the usual pay and allowances....

JUDGE ADVOCATE: "If we are going to get onto the question of pay I think you had better get this from Mrs. Belanger herself."

PROSECUTOR:"Very well,sir."

Q.417.You are not a born british subject are you?
A.417.No.
Q.418.Possibly then, your interpretations are different to ours. What do you mean in your letter by "hubby". Your last letter was signed"your lover and hubby."?
A.418.That was wishful thinking.
Q.419.Your interpretation of "hubby" is husband?
A.419.Yes.
Q.420.Is it usual for an officer and gentleman to suggest to the wife of a L/Cpl under his command that she save money for him?

DEFENCE:"That is not charged"

JUDGE ADVOCATE: "What is your point there, Mr Margetts? "
PROSECUTOR:"I want to show that he asked her for money."
JUDGE ADVOCATE:" I think the Court will use its own knowledge of military matters and the evidence as shown today as to these facts."

PROSECUTOR:

Q.421.You said somewhere in your evidence that the Belanger home was not actually a marriage at all and yet through these letters you suggest a fear that these very letters will affect their married life and that they might cause discord.
A.421.That is not true.
Q.422.What is the meaning of "I shall not write to you while M's leave lasts"?
A.422.That was to prevent violence on his part to Anne Belanger.
Q.423.How about this passage:"Now my thoughts turn to "M" - He has possibly left on his leave already and is possibly with you right at this minute." "I do know that I have to put up with it, but this knowledge doesn't make me any happier."What do you mean by that?
A.423.I meant that he was subject to these fits of temper and she had to suffer from it.
Q.424.You did not say Anne Belanger had to put up with it, you said YOU had to put up with it?
A.424.We both felt we were both morally free.
Q.425.Do you realise that in the case of Anne Belanger anyway there is a good legal marriage?
A.425.I understand there was a legal marriage.
Q.426.I suggest that you wrote this bit because you were jealous?
A.426.My answer is no.
Q.427.What does this mean:"I have made arrangements to be off from Friday next week (my birthday 24 Mar) until Monday morning. So make sure you can come and be with me for the weekend." Were you going to spend the weekend with her?
A.427.Sooner or later it will happen, I know.
Q.428.And again on 19 March you wrote:"I suppose M is with you and probably the scale has turned against me - So what can I do about it? nothing but keep loving you." I expect that by that you meant that Belanger and his wife were living a normal married life again.
A.428.By the scales I meant that she was always weighing her happiness and on one side and the security of her son on the other.
Q.429.I suggest that she was weighing your seductive breaking up of that marriage on one side and her husband on the other?
A.429.I cannot agree with that suggestion.

Q.430.You mention divorce and that SM Browne would help her, had you in fact spoken to SM Browne?
A.430.That is referring to the fact that I discussed the matter with him.
Q.431.Will you tell the Court what justification in your mind allowed you to send that telegram calling the wife of a L/Cpl away from her husband who was on leave and from her child?
A.431.That was because we knew we cared for each other and we knew we were morally free.
Q.432.Why did you not tell Belanger this?
A.432.He was told. The idea being that Anne Belanger would discuss it with her father before we took any steps.
Q.434.You are sure of being able to secure a divorce?
A.434.Yes.
Q.435.You realise that it will be difficult for Belanger to get a divorce? he is a Catholic and from the Province of Quebec?
A.435.Yes.
Q.436.I suggest that you never had any idea and have not now any idea of marrying Anne Belanger?
A.436.That is not correct.
Q.437.Have you informed your wife or children - if they are old enough- of the facts?
A.437.No.
Q.438.In the PS of a letter dated 17 March you say"H claims you know before you left, that he'd spend his leave with you. - of course he probably wanted me to believe he'd got you back for himself." What do you mean by that?
A.438.Meaning that I thought he got around his wife again - she always seemed to forgive him. Against the wishes of her parents and relatives she took him back for the sake of her small son.
Q.439.What about the reference to your going to spend your leave at her "Dad's?"and leaving "J[illegible]nie"there?
A.439.She was going to come back and pack her things leaving her son up there to go back to.

BY THE COURT:

Q.440.Would you describe to us the wrist watch which Belanger showed you and stated he received from his girl in Chobham?
A.440.The band was narrow, the watch itself was rectangular and cushion type, I could not describe it any further.

BY THE JUDGE ADVOCATE:

Q.441.On 24th February what accusations did Mrs. Belanger make against her husband in front of the three of you?
A.441.She told me of being illtreated before.
Q.442.Is there anything she accused him of at that time that he has denied here today?
A.442.Yes, sir, he claimed that he had never threatened her life. She said he had.
Q.443.I take it from one remark you made that you realised the danger in interfering in the private lives of your other ranks?
A.443.That is why from 3 March I never set foot in the house again.
Q.444.Between 7 and 21 March you say you never saw Anne Belanger - you did at least maintain correspondance from 13 to 21 March?
A.444.That is right.
Q.445.Why did this correspondance suddenly begin on the 13th?
A.445.I had been thinking a lot at that time - I had long evening in which to think things over.
Q.446.Did Belanger ever complain about his wife's conduct to you?
A.446.Yes he once threw in my face that on the 24th I had heard only one side of the story. I asked him to tell me his side. He said that Joyce Wild and his wife had on one evening gone out and he could not find them.
Q.447.He never mentioned to you anything about his wife's conduct up in Gloucestershire?
A.447.No,sir.
Q.448.When were you advised of the charge pending against you?

Q.430.You mention divorce and that SM Browne would help her, had you in fact spoken to SM Browne?
A.430.That is referring to the fact that I discussed the matter with him.
Q.431.Will you tell the Court what justification in your mind allowed you to send that telegram calling the wife of a L/Cpl away from her husband who was on leave and from her child?
A.431.That was because we know we cared for each other and we knew we were morally free.
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A.432.He was told. The idea being that Anne Belanger would discuss it with her father before we took any steps.
Q.434.You are sure of being able to secure a divorce?
A.434.Yes.
Q.435.You realise that it will be difficult for Belanger to get a divorce? he is a Catholic and from the Province of Quebec?
A.435.Yes.
Q.436.I suggest that you never had any idea and have not now any idea of marrying Anne Belanger?
A.436.That is not correct.
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A.437.No.
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A.438.Meaning that I thought he got around his wife again - she always seemed to forgive him. Against the wishes of her parents and relatives she took him back for the sake of her small son.
Q.439.What about the reference to your going to spend your leave at her "Dad's?"and leaving "Jeanie"there?
A.439.She was going to come back and pack her things leaving her son up there to go back to.

BY THE COURT:

Q.440.Would you describe to us the wrist watch which Belanger showed you and stated he received from his girl in Chobham?
A.440.The band was narrow, the watch itself was rectangular and cushion type, I could not describe it any further.

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Q.446.Did Belanger ever complain about his wife's conduct to you?
A.446.Yes he once threw in my face that on the 24th I had heard only one side of the story. I asked him to tell me his side. He said that Joyce Wild and his wife had on one evening gone out and he could not find them.
Q.447.He never mentioned to you anything about his wife's conduct up in Gloucestershire?
A.447.No,sir.
Q.448.When were you advised of the charge pending against you?

A.448.It was friday morning 31 March at 9.30.
Q.449.And you had no information about it prior to that?
A.449.No,sir.
PRESIDENT:
Q.450.When you were talking about the squabble you came in at, you said you were sorry that you were the man's CO. What would you have done if you had not been?
A.450.It would have made no difference - but I was rather hot under the collar at all this and I was angry.
Q.451.About the trip to Reading - the Cpl told his wife he could not take her and you said it would be alright. Is that in the Regulations?
A.451.Yes, sir.
Q.452.You have read the regulations?
A.452.Yes, sir.
Q.453.And that is what you understood?
A.453.Yes, I was going to Reading on duty anyway to the CID there.

(In the opinion of the Court and of the Judge Advocate, it is not necessary to comply with RP 83(b) in connection with this witness)

SECOND WITNESS) Mrs. Laura Roberts, 1 Bank Cottages,Heathend Road,
FOR THE PROSE./) Farnham, Surrey,
CUTION) being duly sworn is examined by the Defence:

Q.454.Will you tell the Court who you are and your address?
A.454.I am Mrs. Laura Roberts, of 1 Bank Cottages, Heathend, Road, Farnham.
Q.455.How long have you been there Mrs. Roberts?
A.455.I have been living there with my husband for 25 years.
Q.456.Have you any lodgers?
A.456.Yes, Mrs Belanger and Mr Belanger and the baby.
Q.457.Could you describe how the rooms are set out downstairs?
A.457.There is the front room and the kitchen and scullery behind, and two bedrooms.
Q.458.Is there a door connecting kitchen and the front room?
A.458.Yes.
Q.459.Do you go out much Mrs Roberts?
A.459.Not much.
Q.460.Why don't you?
A.460.I prefer just being quiet and I am a bit of a cripple.
Q.461.Have you let the front room?
A.461.Yes, to Mrs. Belanger.
Q.462.From your position in the kitchen are you able to hear what goes on in the front room?
A.462.Yes, I can hear a little.
Q.463.Whether the door is open or shut?
A.463.I can still hear a bit when it is shut.
Q.464.Were you present on the occasion when Lt Haufek came to the house?
A.464.I was in the kitchen.
Q.464.Was the door open?
A.464.The door between the two rooms was open all the time.
Q.465.Could you hear them?
A.465.I could hear a conversation going on but I did not listen to what they were saying because I was not interested.
Q.466.Did you ever know of anything wrong between them?
A.466.No.
Q.467.What was he there for?
A.467.As far as I know about the trouble between Mr and Mrs Belanger.
Q.468.Could you tell us what you know of the Belangers?
A.468.They came twelve months ago last September, that is in 1942.

Q.469.Could you tell us what their relations were from the start?
A.469.They were alright when they first came to me.
Q.470.How long did that last?
A.470.Until about the New Year of 1943.
Q.471.What sort of trouble started then?
A.471.There was always crying and quarrelling.
Q.472.What sort of things did you hear from that room?
A.472.I heard noises like scuffling and chairs moving and whimpering.
Q.473.Did you ever hear Mrs. Belanger screaming or making alot of noise?
A.473.No, sir.
Q.474.You did not hear her?
A.474.No,sir.
Q.475.Did they go away last Xmas and New Year?
A.475.Yes.
Q.476.For how long?
A.476.About a week, I should say.
Q.477.What did Mrs. Belanger look like when she got back?
A.477.She looked a fright-she looked as if she had been drawn through a hedge backwards.
Q.478.What did you say to her about it?
A.478.I said, whatever is the matter with you, she showed me her bruised face and said her husband had done it.
Q.479.Did you ever hear them discuss anything about money?
A.479.Only once, when he came in one day and asked for £5. she had to give it to him in the end to keep peace.
Q.480.What did you hear going on?
A.480.They were talking in the room.
Q.481.Nothing else?
A.481.I only heard talking.
Q.482.Do you know Joyce Wild?
A.482.She is my grandaughter?
Q.483.Did she at any time go to phone Lt Haufek?
A.483.Yes.
Q.484.Why?
A.484.Because Belanger was worrying Mrs. Belanger.
Q.485.When was that?
A.485.I can't remember.
Q.486.Did you see Mrs. Belanger that night?
A.486.I did not speak to her, but she came in the kitchen, she seemed too distressed to speak.
Q.487.What did she look like?
A.487.She looked all worn out.
Q.488.How long has she been looking like that?
A.488.About 12 months.
Q.489.What was the reason for that?
A.489.She had been worried by her husband.
Q.490.Have you anything more to say about what Mr Haufek came for?

JUDGE ADVOCATE:"You are getting this witness into an awkward position, talking about something she can only guess at."

DEFENCE:
Q.491.Did you ever hear him asking her questions?
A.491.I could hear them but could not hear what they were saying

CROSS EXAMINED BY THE PROSECUTION:

Q.492.Was the Belanger family happy in between these quarrels?
A.492.Yes.
Q.493.Did they lead a normal married life?

DEFENCE: "I object, how can she answer that question?"

JUDGE ADVOCATE:" Isn't she a married woman herself?"

A.493. Yes.
Q.494.They, until recently, lived together as man and wife?
A.494.As far as I know, yes.
Q.495.And they had squabbles just like any married couple?
A.495.Yes.

(In the opinion of the Court and of the Judge Advocate, it is not necessary to comply with RP 83(b) in connection with this witness)

THIRD WITNESS FOR THE PROSECUTION) Miss Joyce Wild, Upper Hale, Surrey, being duly sworn is examined by the Defence:

Q.496.Willyou tell the Court who you are and where you live?
A.496.I am Joyce Wild, landarmy girl, and until two weeks ago I lived with my parents at Upper Hale.
Q.497.Do you know the Bank Cottages?
A.497.Yes, my grandmother lives there
Q.498.How far are you from there?
A.498.About ten minutes walk across fields.
Q.499.Who else lives at No 1 Bank cottages besides your grandmother?
A.499.Mrs Belanger and Mr Belanger and their baby.
Q.500.Do you ever go there?
A.500.Yes, often, practically every day.
Q.501.Who is your friend there?
A.501.Mrs. Belanger.
Q.502.How long did you live at your home near there?
A.502.Since December, before that I was stationed away.
Q.503.Do you know anything of the relations between Mr and Mrs Belanger?
A.503.Yes, they are not very happy together.
Q.504.How long has this been going on?
A.504.To my knowledge since last summer, that is when I first saw them. Q.505.What used to happen?
A.505.He used to come in and hit her about. This used to happen nearly every night.
Q.506.How long had this been going on?
A.506.Since about last October.
Q.507.For what reasons did he hit her?
A.507.He would come in not very happy and she would want to go out and he would not and then other times he would want to go out and she was tired so they quarrelled and he used to hit her.
Q.508.Did you hear these goings on?
A.508.Once I heard her crying from the kitchen.
Q.509.Have you ever heard him threaten her?
A.509. Once he threatenedto tear her clothes up if she did not give him money. He once threatened to kill her before Xmas.
Q.510.Have you heard or seen him do anything like that?
A.510.I saw him tear a hat up once. He came in and we were going to a show, Anne and I were because he said he would not be in, and he saw us getting ready so he just took her hat and tore it. Mrs. Belanger did not know what to say.
Q.511.Do you remember when that was?
A.511.It was sometime in February.

Q.512.When in February?
A.512.In the middle I think.
Q.513.Is there anything that you know of that would have made Mrs. Belanger not want to have anything to do with her husband?
A.513.Well, last summer....

JUDGE ADVOCATE:"That is hearsay. And do you suppose that Mrs. Belanger discussed those sort of things with Miss Wild? I should think it was unlikely."

JUDGE ADVOCATE:
Q.514.In what way did she discuss these matters with you?
A.514.She used to say she was miserable with Maurice, that was all.

JUDGE ADVOCATE:"This is not direct evidence, you should get Mrs. Belanger to give it."

DEFENCE:"If she hears them carrying on, is that not direct evidence? The parties in the quarrels might be unwilling to give the evidence.

PROSECUTION:"But this witness, is,I think, repeating something that has been told her."

JUDGE ADVOCATE to witness:

Q.515.This evidence you have been giving us, is it was you were told by Mrs. Belanger?
A.515.It was what I heard and saw.

DEFENCE:
Q.516.Will you tell us about something you heard with your own ears and saw with your own eyes?
A.516.When he asked for £5, she said she had not got £5,so he said he would go upstairs and tear her clothes. So she said she would give him the money. I could hear them making a lot of noise and Maurice asked me to go and phone the CO. Then I refused to do it and went to my grandmother's room. About half an hour later they were making so much noise next door that I went and phoned because I was frightened.
Q.517.Is there anything else?
A.517.No, I don't think so.
Q.518.Did you see Anne Belanger after that dispute?
A.518.Yes, I did see her.
Q.519.Could you tell us about what she looked like?
A.519.She came out and she had weals on her arm and she said that Maurice had been twisting them.

CROSS EXAMINED BY THE PROSECUTOR:

Q.520.Can you tell us when Lt Haufek first care down to the house?
A.520.I don't know.
Q.521.Could it have been on account of Lt Haufek's visits that Belanger illtreated his wife?
A.521.No, he did it before he came.
Q.522.Did Mr Haufek's visits make things worse?
A.522.They were just as normal as before.
Q.523.In other words, there was some normality in the household?
A.523.Yes, sometimes he could be quite nice.

DEFENCE:
Q.524.What do you mean by normal?
A.524.He would come back sometimes and be very nice.

JUDGE ADVOCATE:
Q.525.When they first came there they got on well, is that what you mean?
A.525.I was not there.
Q.526.When you knew them, were they quarrelling a lot?
A.526.They had several rows.
Q.527.Were they going out together?
A.527.About once a week.
Q.528.Did you and Mrs. Belanger go out together frequently?
A.528.Sometimes.
Q.529.And on those occasions, he was at home?
A.529.No, he was on duty, or anyway he was not there.
Q.530.Where would you go?
A.530.To the Cinema or the Hippodrome.
Q.531.Did you go to dances?
A.531.No.
Q.532.Did you go to pubs?
A.532.No, except to get a bottle of grapefruit to bring home.
Q.533.In the kitchen you heard noises but with the door closed you could only assume what was going on, is that right?
A.533.Yes.
Q.534.When he had asked for money and she refused, was that the only time you saw those marks on her arms?
A.534.Yes.

BY THE COURT:
Q.535.Have you ever seen Cpl Belanger strike his wife?
A.535.I saw him knock her against the hedge and another time against the house.
Q.536.When was this?
A.536.One evening he said he was on duty so Anne and I were going to a show. On the road we met him on his motorcycle he stopped and got off and said he did not want her to go out tonight and knocked her against the hedge. The other time was Easter Monday and we went down to have a drink together and Maurice saw someone he knew in the pub and Anne said she did not know him so they had a bit of a squabble about speaking to him. On the way back he kept pushing her against the hedge and when she said don't push me he pushed her against the side of the house.
Q.537.He never struck her with his hand in your presence?
A.537.No.

JUDGE ADVOCATE:
Q.538.How old are you, Miss Wild?
A.538.Eighteen.

(In the opinion of the Court and of the Judge Advocate it is not necessary to comply with RP 83(b) in connection with this witness)

DEFENCE:"I was going to call the MO with the records of Belanger VD but he had to go on medical duty. His Cpl is here and he keeps all the records and could produce the evidence in documentary form. The O/C Records of 3 CMC has the records. This Cpl is the one who gives him the test for cure."

JUDGE ADVOCATE:"What do you want to show from this evidence"

DEFENCE:"I want to show that he contracted gonorrhoea from a WAAF in Farnborough.

JA:"Was he under oath when he made that statement?"

DEFENCE:"NO."

JA"And he said today under oath that he made that statement

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to save somebody,he did not say it was the truth. You will not be proving anything by producing those documents. "

DEFENCE:"It is most relevant to prove that he got it from somebody else."

PROSECUTION:"Belanger said he told the hospital that he got it from a WAAF, he did not say so under oath today."

DEFENCE: "His evidence is contradictory."

JA:"All that evidence would prove is that he did state to the MO that he got gonorrhoea from a WAAF, and he has already admitted that he stated that today."

CLOSING ADDRESS BY THE DEFENCE:

"Gentlemen, it has been shown today that this so called "consorting between Lt Haufek and Anne Belanger was entirely for the purpose of finding out how conditions in that household were and of improving them. This is an example of what happens when a person, an officer, is misunderstood in doing something that he considers his duty, even it may get him into trouble. In the course of doing this he says that he fell in love with her, considering her to all intents and purposes an unmarried woman. And he states that he hoped some day to marry her. I think that I have definitely shown that there was discord between man and wife long before Lt Haufek came into their lives; physical violence, hitting, and forcing the wife to have relations with him. I think someone who came into contact with these facts would be falling down on his duty if he did not investigate them.Then when one helps a person in distress like that, one finds that pity is very much akin to love. And what could be more natural for her than to fall in love with this man who was trying to straighten her life out after an awful year or more with a brute of a husband? I cannot help feeling that falling in love is something honourable. I feel that it is obvious that the letters were written by a man who is definitely and wholly in love and not by someone just out to have some fun. I think that the evidence is amply sufficient to cover any summing up that I might make. "

CLOSING ADDRESS BY THE PROSECUTOR:

" Gentlemen; I submit on behalf of the prosecution that the charge against the accused has been proved.

The letters alone are scandalous. consider a few portions therefrom - these written by an officer to the wife of a soldier - the officer recently the Commanding Officer of the soldier and certainly the superior officer of the soldier at all times. May I quote in part from these letters.

Letter 11 Mar 44

"I shan't write to you while "M"'s leave lasts (16-25 Mar) since he is going to spend it with you. But please do NOT let anyone stop you from writing to me." "Let me know when it is safe to write to you again." P.S. "There is no redhead or other women."

Letter 16 Mar 44

"How could have 14 days together.""I shouldn't get the money in time could you manage to help me out until the money comes?" "Will you be coming back here when his leave is over?"As it is now just trying to write to you gets me so excited."

Second letter 16 Mar 44

"Now my thoughts turn to "M" - He has possibly left on his leave already and is possibly with you right at this minute." "I do know I have to put up with it, but this knowledge doesn't make me any happier."

GMS

Letter 17 Mar 44
"I have made arrangements to be off from Friday next week (my birthday 24 Mar) until Monday morning. So make sure you can come and be with me for the week-end." PS "M" claims you knew before you left, that he'd spend his leave with you. - of course he probably wanted me to believe he'd got you back for himself." "Best regards to dad and sister of yours and hug Johnnie. If we go back for our leave you might as well leave him there."

Letter 18 Mar 44
This is a poetic effort with which I do not propose to bore the court but follows the general theme of those previous.

Letter 19 Mar 44
"I suppose "M" is with you and probably the scale has turned against me - So what can I do about it? Nothing - but keep loving you."

Letter 20 Mar 44
"Well it is now 20 to 10 pm and I shall go to bed. All alone by myself - wishing for you - wanting you so much. I shall fall asleep with you in my heart and maybe a good and kind dream god will let me be with you in my dreams."

Letter 21 Mar 44
"Unfortunately I could not mention anything in my telegram", "that you stay on with your dad and save a bit of money so there won't be any delay when I call for you - so that you can come at once and join me - overthere." "I Wished I knew what you are doing, how you are, did you have any trouble in case "M" came up there for his leave, was he there when my last came and my telegram? I am worried." "If you will get your divorce (Sgt Major Browne No 12 Section will help you along with this, I spoke to him, cruelty etc. and stay all mine." "PS be sure to be at your dads when I get my leave or notify me of your plans." "Millions of kisses from your lover and hubby."

These letters tend to show that the Belanger home is not all that could be desired but also suggested that they were trying to get along. Also they show that the accused was conscious of causing discord between Anne Belanger and her husband by his concern regarding the receipt of his letters and telegram coming to the knowledge of L/Cpl Belanger. - He says "I am worried." then he suggests that Mrs. Belanger should leave her son John - "If we go back for our leave you might as well leave him there."

The telegram is outrageous. The letters show that the accused was aware that L/Cpl Belanger was on leave with his wife. Yet he saw fit to call her away from her husband and child by this telegram.

I submit that the sending of these letters and the telegram is obviously conduct not becoming the character of an officer or a gentleman.

The evidence of L/Cpl Belanger clearly proves that the accused, by virtue of him being Officer Commanding Belanger, knew that Belanger would not be home until after 10 pm. That the accused took advantage of this and visited Anne Belanger while her husband was supposedly on duty.

I contend that this act of the accused was not in the interest of the army or the well being of the Belanger family as such, but is a case of a public officer, under colour of exercising the duties of his office, improperly uses that office to further his own ends.

Evidence has been adduced that the conduct of the accused has caused discord between L/Cpl Belanger and his wife to the extent of Belanger asking legal assistance.

The second in command of the accused at the time in question, SM Browne, gives evidence tending to prove that the conduct of the accused towards Mrs. Belanger was of a nature not condusive to good order and military discipline. In fact advises the accused to be careful.

The accused mentions threats by Belanger to his wife and child. - He makes no mention of military action to correct this. Mention is made of illtreatment by Belanger to his wife Anne when the accused was allegedly called in. The accused makes no mention of subsequent disciplinary action but does state that at the instigation of Anne Belanger that he returned to comfort her. He states that he was never alone with Anne Belanger but previously mentions "taking Joyce home then returnin to the Belanger home."Certainly he was alone in the car with Mrs. Belanger after leaving Joyce.

Cross examination has shown that the accused has at least on one occasion taken Mrs. Belanger to a dance and further, on the weekend of 27 February met Anne Belanger clandestinely at Farnham.

DEFENCE:" I would like to obtain permission to file a brief, and unless I get permission to do so I consider that the accused is suffering an injustice. I did not have time to prepare an address for summing up. I have not had time to weigh all the evidence."

JA:"How long do you want?"

DEFENCE:"Until Monday."

JA:"The Court is going to consider the find today. You must remember Mr Wilding White that this is a military court and you are not in a civil court. If Mr Haufek feels that he is suffering injustice he will have to say so. Otherwise if you just feel that you yourself have not done all that you could I may tell you that you have certainly defended this case to the last inch."

JA to the accused:" Mr Haufek, do you feelthat something which should have been mentioned in your defence has been left out and that you need time to prepare another address? "

Accused:"I can't think of anything, sir; I am satisfied."

PROSECUTOR: "I have not finished my address, sir;"

" He further states that he visited Anne Belanger on 3 Mar 44 evidently when her husband was not there, when it became clear that they cared for each other. - This on the eve of the Belanger wedding anniversary.

The alleged unsatisfactory state of the Belanger marital set up can in no way mitigate the seriousness or justify the conduct of the accused. It was married life in wartime under difficult conditions. It was a home, a family with a child. L/Cpl Belanger was the sole support of that family. The accused is already married.

The conduct, proven, of the accused was just as serious to Belanger as if there had been actual seduction. It has been truly said that greater provocation hath no man than this. If Belanger when he confronted the accused with these letters, had in the rage of the moment, killed the accused, would this court convict him of murder with this evidence as his defence?

Regarding the conduct of officers may I quote from a well known authority on "Customs of the service." Quote: "However charming they may be, you must make no attempt to know your men or their families "socially," this is, by visiting their houses as a guest or other form of social liaison. To do so is to invite accusations of favouritism and unfairness, which are difficult to refute, bad for your reputation amongst seniors and juniors, and detrimental to Service discipline. To refrain from doing so is not a question of class distinction or "snobbery"; your position as a commissioned officer with powers of command and punishment makes it impossible.

KR(Can) 413 reads as follows: Officers, warrant officers and non-commissioned officers will adopt towards subordinates such methods of command and treatment as will not only ensure respect for authority, but also foster feelings of self respect and personal honour essential to military efficiency. They will avoid intemperate language or an offensive manner."

I would respectfully refer the Court to specimen charges No 41 and 42 MML. regarding the comparative seriousness of this offence.

Finally, may I quote in part Appendix to RO 325 which pertains to conduct and efficiency of officers:

1. In time of war, it is absolu ely essential that commande of all grades, from the highest to the lowest, should be fully qualified, both by character and efficiency, for the discharge of their vital responsibilities. No amount of training, organisation, manpower or equipment can lend to the defeat of the enemy unless the command in all grades is in energetic and capable hands, and remains so at all times.

3. It therefore follows that on this question of efficient leadership no compromise is permissible. Where individuals have proved, or appear likely to prove, unequal to their responsibilities, they must be removed without hesitation and replaced by others who are considered better qualified.

4. Ill considered leniency in the case of inefficient leaders is not only dangerous to the cause, and disheartening to better men who are thus denied opportunities of risin , but is costly in lives.

I submit, while everything possible has been done for the defence of the accused, that the prosecution case against the accused has been established. "

SUMMING UP BY JUDGE ADVOCATE:

" First of all I want to pay my compliments and thanks to the Prosecuting and Defending Offrs for making a very difficult case run as smoothly as it has. The case has been presented most fairly by Mr Margetts and the accused must feel that he has been defended every step of the way and he can have no regrets whatever at having selected Mr Wilding White.

I am here to rule on questions of law only and the Court is there to judge from thefacts. This Court is governed by the fundamental principle of English law which as everyone knows is that a man is innocent until he is proven guilty. When Mr Haufek came into the room he was to all intents and purposes an innocent man and it is up to the Court to decide whether he may leave the Court in the same way. They must be satisfied that the facts have been proven beyond a reasonable doubt. The doubt to which I refer is not one construed in the minds of someone by desire, or pity or wish for revenge but the doubt brought about by hearing the facts which would be in the mind of any reasonable man under the same circumstances.

I think that there is nothing more that I can usefully add at the present time. The case is just one of weighing the evidence unless there is some point of law which the Court or the Defending or Prosecuting Offrs would like me to discuss. "

GMG.

PLEA IN MITIGATION OF SENTENCE:

" There is nothing to say other than that the accused has been in the Army since September 1939, that he joined in the ranks and worked up. That he joined on 7 September but due to certain difficulties in getting naturalisation papers in order was not allowed to actually join until November 1939. He now has his naturalisation papers.

Also it must be taken into consideration that he became involved in this case as a matter of duty, because it had been drummed into him at OCTU that he must know and help his men. We are even told there to write letters to their wives, know their children etc.

One does not often find someone like this who tackles a difficult job knowing that he may get into trouble doing it, because it is his duty. I think that fact and his length of service in the army is all I want to add."

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E

Finding.*

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

The Court is closed for the consideration of the finding.

The Court find that the accused **is not guilty of the second charge but is guilty of the first charge. The finding of Not Guilty is read in open Court and the President announces that the finding of the Court on the First Charge being subject to confirmation will be promulgated later.**

A.T. Gibson Col. — PRESIDENT

S.M. Graham Major — JUDGE/ADVOCATE

In the Field
26 Apr 44

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

Proceedings on Conviction *before Sentence.*

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

~~xxxxxxxx~~ J.M.G.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the* ~~xxxxx~~**Prosecutor:"Yes,sir."**

J.M.G.

The above statement (with the schedule of convictions and ~~x~~ **are** **respectively** in which trial has been dispensed with) is read, marked **Y & Z** signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the* ~~xxxxxxx~~**Prosecutor:"Yes, sir."**

J.M.G.

Question.

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

Question.

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

Cross-examined by the accused.

J.M.G.

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

Question to the accused.

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

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused Lt Frank HAUFEK, Canadian Intelligence Corps, Intelligence Coy, ICGRU, to be Cashiered.

Sentence. CASHIERED

A.T. Paterson Col
PRESIDENT

P. McGraham Major
JUDGE/ADVOCATE

In the Field
26 Apr 44

I reserve confirmation of the finding and sentence for Superior authority

13 May 44

J.N. Roberts
J.N. ROBERTS, MAJ GEN
Comdr. Can Rft Units

I confirm the finding and sentence

P.J. Montague
(P.J. MONTAGUE) MAJOR-GENERAL
i/c Administration
Canadian Military Headquarters
23 May 44

Promulgated and ~~extract~~ taken at Zwaademuer Camp this twenty fifth day of May 1944

Louis Keene Col.
(LOUIS KEENE) Col.
Commanding
No 1 Can NETD
(Home Scot)

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Summary of evidence in the case of Lt. Frank Haufek, formerly Officer Commanding No.12 Cdn Field Security Section. Now on strength of Intelligence Company No 1 Canadian General Reinforcement Unit. An Officer of the Canadian Army Overseas, charged with behaving in a Scandalous Manner unbecoming the character of an Officer and a Gentleman.

THE COMMANDING OFFICER DIRECTS THAT THE EVIDENCE BE TAKEN ON OATH.

First Witness for Prosecution

C.990 Lance Corporal Maurice Herve Belanger, No. 12 Canadian Field Security Section, a soldier of the Canadian Army Overseas, duly sworn states:

I have been a member of No 12 Cdn Field Security Section since 11 Dec 41 to date. I have known the accused since he took Command of the 12 Cdn Field Security Section 8 Jan 44. He was my Commanding Officer from that date until approximately the 13 Mar 44. I now recognise the accused here.

The accused met my wife on 5 Feb 44. My wife and I on that date met the accused at the Queens Hotel Farnborough. After attending a social the accused, myself and my wife also Sergeant Major Brown, 12 Cdn Field Security Section, went to my home at 1 Bank Cottages, Wellington Lane, Heathend, Farnham, Surrey. While there I brought my son in to show to the accused. The accused knew that Anne Belanger was my wife and that John was our son. The accused knew that I was a member of his unit because I was his driver for some time and a Field Security Section only consists of 13 all ranks.

Some days after the accused met my wife I returned home and found the accused in the house. He mentioned that he had dropped in to see how things were. The accused was alone in the room with my wife.

On 9 Feb 44 I was sent to the No 1 Cdn Base Staging Camp for security duties there until noon 17 Feb 44. On my return 17 Feb 44 I was detailed to go to Farnborough North Station for security check as troops were leaving from that station. I was told that one train was to leave at 1900 hrs and another at 2200 hrs. At 1830 hrs the accused visited me on the job and asked me how things were. I told him that trains were due at 1900 hrs and 2200 hrs. After the first train the R.T.O. informed me that there was no more trains. I returned home after visiting the office and arrived there at about 2045 hrs. On going into the house I found the accused there. He said that he had just dropped in to see how things were and perhaps we could go for a drink. On this occasion there was a Land Army Girl in the room also.

On or about the 24 Feb 44 my wife and I were engaged in a family quarrel when the accused arrived. He stated that he had been called in by the Land Army Girl. He questioned me and my wife then he advised me that I should go back to the office and sleep there that night. I agreed and the Officer Commanding and I left the house together. He in his car and I went on my motorcycle.

I became suspicious and returned home and found my wife gone. So I sat in the front room and waited. After waiting about half an hour I saw the car slow down in front of the house. I recognised the car I used to drive because the brakes were squeeky. It was bright moonlight night. The car as it passed my

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Motorcycle drove on. Seeing that, I then went out and hid my motorcycle and returned into the house. After about twenty minutes waiting I saw the car come to the front of the house and stop. I then saw the accused, and recognised him, as he came to the front door and knocked. I did not answer the door. Then the accused went to the back door and knocked on the window. I still did not answer. At that I saw the accused through the window and heard him call that it was all right or words to that effect. I then saw my wife get out of the car. She came into the house by the back door followed by the accused. When she switched on the light she was surprised to see me sitting there. The accused said that he had come back and took my wife out for a drink because he knew her nerves were in a bad state and he thought it would help. He also said that he thought I would return and cause more trouble. I knew definately it was a bluff. I agreed again to go back to the office but made sure that the car was coming also.

The next day I went into my Commanding Officers office. He there suggested to me that I should allow my wife to go on a weekend alone and if I would take care of Johnnie it would do her some good because she had mentioned to him that she would like very much to go on a weekend. I told the accused that I would do as he suggested. My wife did go away for the weekend. On Saturday in the afternoon I returned to the office the accused was not there. In carual conversation I heard the accused mentioned that he was going away that weekend as he had, had a pretty tough week.

On the 5 Mar 44 the accused knew my wife was going to visit her father and was going from North Camp station. The Officer Commanding told me I could take my wife and baby to the station in the car. I had previously been detailed to drive the car to Reading with the Officer Commanding that day. On the 6 Mar 44 in the afternoon the accused asked me why I had not told him that my wife was going through Reading.. Because he said my wife had telephoned him and asked if she might come in the car as far as Reading. He also said that she had told him that I had refused saying that it was not a civilian car. The accused told me that it was alright and made out a vehicle release form in his own handwriting for me to have signed by my wife. This is that vehicle release form.

The accused knew that I was due for leave starting 16 Mar 44 to 25 Mar 44 as I had discussed my leave with him. Also the leave roster is prominently displayed on the wall in the orderly room. I told the accused before going on leave that I was going to visit my wife in Glos. On the 21 Mar 44 I was on leave and found that my wife was not at her fathers place at English Bickmore, Colsford, Glos. where she was supposed to be. I was informed that she had returned to Aldershot but had left the baby. The same day I returned to Aldershot and found my wife at home. She told me that the accused had sent her a telegram. She took the telegram out of her purse. This is the telegram here. The telegram was addressed to my wife Anne Belanger, English Bickmore, Glos,. and was sent from Aldershot Command Post Office at 1149 and was signed "Frank". It reads,"Please come at once, contact me on arrival, important."

My wife returned to Gloucestershire on the morning of 24 Mar 44. After she had gone I noticed that she had changed coats and left behind the coat she had been

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wearing. I saw a bunch of letters in the pocket of the coat. I read the letters. Here are these letters now. I immediately recognised the handwriting of the accused. They were signed Frank. In one of the letters the writer gives his name and address as Lt. F. Haufek, Int Coy, No 1 C.G.H.U. It is the same handwriting as the accuseds on the vehicle release form. The letters are addressed to Anne. In one of the letters the accused mentions the telegram. I as mentioned in nearly all the letters as "M". The accused knew that my name was Maurice as on at least one occasion the accused had called me Maurice. The letters refer to "M" going on leave 16 Mar 44 to 25 Mar 44. Also a letter refers to "I shant write to you while "Ms" leave lasts (16-25 Mar 44) since he is going to spend it with you". My sons name is John but the accused called him Johnnie. The letters mention "Hug Johnnie for me".

Here are the letters I found in my wifes pocket. They tell such a story of conduct towards my wife by the accused that I thought I had better have legal assistance to stop him breaking up my home. I did not question or argue with the accused on previous occasions as at first I thought I could trust him as he was my Officer Commanding and later when I became suspicious I realised that he could make things miserable for me as he was Officer Commanding my section.

... .

CROSS EXAMINED BY THE ACCUSED

(Q) The day I met your wife did she have a black eye?

(A) Yes, she had a slightly black eye.

(Q) When you found myself and your wife alone in the room, was the door to the adjoining room open or shut?

(A) Shut.

(Q) Do you recall that I suggested to you that your wife should spend some time with her father?

(A) Yes, but after I had agreed to let her go on the weekend.

(Q) Did you spend all your leave at your Father-in-Laws home?

(A) No.

(Q) Did you contact me before you asked for legal Assistance?

(A) Yes.

(Q) Did we on this occasion exchange promises?

(A) Yes.

The accused declines to further cross examine this witness.

(M.H. Belanger) L/Cpl

The vehicle release form referred to by the witness, produced, read over to the accused, marked Exhibit 'A' signed by me and attached hereto.

The telegram referred to by the witness, produced, read over to the accused, marked Exhibit 'B' signed by me and attached hereto.

The letters referred to by the witness, produced, read over to the accused, marked Exhibits 'C', 'D', 'E', 'F', 'G', 'H', 'I', 'J', 'K', 'L', signed by me and attached hereto.

(S.H.G. MARGETTS) Lieut
Officer Taking Summary.

Second Witness for Prosecution

S.75949 Cpl (A/CSM) Robert William Browne, No 12 Cdn Field Security Section, a soldier of the Canadian Army Overseas, having been duly sworn states:

I am W.O. 2 (C.S.M.) of No 12 Cdn Field Security Section and have been with this section since May 1943. I recognise the accused here. He was Officer Commanding No 12 Cdn Field Security Section, my section, for some time in January 1944 and continued as such until approximately the 12 Mar 44. L/Cpl Belanger was a member of 12th Cdn Field Security Section during that time.

The Officer Commanding discussed conditions at Belanger home with me. During this conversation. I as the Sergeant Major of the section and second in Command, suggested to the accused that he should be careful not to become too involved. As I thought that the Officer Commanding was taking too much interest in this affair.

I recognise the handwriting on Exhibits A, C, D, E, F, G, H, I, J, K, L, as being in the handwriting of the accused.

CROSS EXAMINED BY THE ACCUSED

(Q) Do you remember the evening at the Queens Hotel, Farnborough when we were with L/Cpl and Mrs Belanger?

(A) Yes.

(Q) On that occasion had Mrs Belanger a black eye?

(A) Her eye was bruised.

The accused declines to further cross examine this witness.

(R.W. Browne) A/CSM.

The accused was cautioned as follows:

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

The Accused: I desire to give evidence under oath.

First Witness for Defence

The accused, Lieut Frank Haufek, Intelligence Company, No 1 Canadian General Reinforcement Unit, and Officer of the Canadian Army Overseas, having been duly sworn states:-

I met Mrs Anne Belanger on or about 5 Feb 44 in company of L/Cpl Belanger and Sergeant Major Browne. At this time she sported a black eye. Her behaviour was that of a woman thoroughly frightened. I decided to find out about it, I did. The black eye was a souvenir for refusing to fulfill Belangers demand for money. This had happened on several occasions. The estrangement having existed for approximately one year, especially since Belanger contracted V.D. Her wish to obtain a divorce was met with threats to her life and the childs. I assured her that I would be at her service at any time. I gave her my private phone number and the one of Corunna Officers Mess, since I quite frequently spent some time there, of an evening. She already knew the office phone number.

In the evening of 24 Feb 44, I received a phone call at the mess from Miss Joyce (grand daughter of Mrs Belangers land lady) to please come at once for Belanger was illtreating his wife again. I went there and found Mrs Belanger with her right arm badly swollen. Belanger had asked for money again and was refused. So he twisted his wifes arm finally getting five pounds.

In the presence of L/Cpl Belanger she then told her story of continued suffering. He was unable to deny any of her accusations. At my request he promised to return the five pounds. I tried to impress him with the terrible wrong he was inflicting on his wife and said that in case of reoccurance I should advise his wife to seek the help of civil authority. Mrs Belanger exhausted and shaken all over refused to stay any longer with him under the same roof, and was fully intending to pack and leave the same night with her little boy to stay at some hotel. I couldn't see any sense in doing that and suggested that Belanger should sleep at the office instead. He finally agreed and got ready. While he carried his stuff to the car Mrs Belanger implored me to come back because she was frightened that he would return and in one of his fits of temper start all over again. I promised. I came back and took her and Joyce to have a drink to get her settled down. After approximately fourty-five minutes we returned. First taking Joyce home. We came up to the house and noticed a motorcycle near the pathway which confirmed her fears anew. We both approached the door, knocked and found it locked. We tried the other door. It was open. Upon entering we found Belanger in the dark. I impressed him with the necessity to leave at once and give his wife a day or two to recover. He promised but was back the next day. I then had him ride on his motorcycle in front of the car and to make sure he would not leave again unnoticed, I took the trouble to stay up in my office all night. I had offered Mrs

Belanger to freely call me at the office anytime. She called the next afternoon telling me he had returned.

During the morning of 26 Feb 44 Belanger mentioned in my office he was giving his wife a treat by telling her to go to London over the weekend to visit relations. I thought that was good for her and suggested he should send her for some time to her Father and give her a chance to recuperate. He consented that the idea was all right.

In the afternoon 28 Feb 44, Mrs Belanger again called and asked me to see her. I went there and was told of a really outragious incident. The night before after refusing to be intimate with him, her husband choked her into submission. I again talked to Belanger and tried to make him understand his wrong especially since he by the way of bragging told me he had a woman at Chobham.

On 2 Mar 44 during a conversation Belanger mentioned that on 4 Mar 44 was his wedding anniversary. Having become interested in this family I dropped in on Mrs Belanger on 3 Mar 44 but was convinced by her that there would never be a possibility of a reunion with her husband.

G.M.G.

Though I admit that I was attracted to Mrs Belanger from the time we met I still, and genuinely, tried to be a peacemaker. After finding out under this date that she would never again be the wife to Belanger, a resolution taken about a year ago, I did advise her to go and stay with her father and think the situation over. I considered that, if necessary she would do, to get a divorce than to carry on like this. So she went to stay with her father on 7 Mar 44.

On the 3 Mar 44 it became clear to us that we cared for each other. I am stating here and now that whenever we met we did so with others present. In the case of sitting alone in the room we made it a point even to keep the door open to the next room. The land Lady was sitting there at all my visits.

Next time I saw Mrs Belanger was on 21 Mar 44. We went to a cinema and she took the bus at 2045 hrs to 1 Bank Cottage, Heathend.

In the morning of 23 Mar 44 L/Cpl Belanger looked me up at No 1 CGRU showing me the letters he found and warned me not to come to the house again unless I wanted to be shot in the back. I was not frightened. After he promised solemnly not to ill treat Mrs Belanger ever again I gave him my promise not to contact her as long as she was legally his wife. For her sake it was understood to let things rest quietly since in spite of having a mistress he claimed to love his wife.

As to my letters which were written after the 12 Mar 44, first - referance to Belanger's leave was made to prepare Mrs Belanger. Second - "I shall not write while 'M's leave lasts", I made this decision to prevent trouble between Mrs Belanger and Belanger if he should go there.

Haufek

(F. Haufek) Lieut

The accused declines to call witnesses in his own behalf.

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I certify that the forgoing summary of evidence consisting of seven pages was taken down by me in the hearing and presence of the accused and that rule of procedure 4 has been complied with.

In the Field
4 - 5 Apr 44

(S.H.G. Margetts) Lieut
Cdn Provost Corps Coy.,
No 1 Can Gen Hft Unit
Officer Taking Summary

J.M.G.

"Y"

R.T. Paterson Col. G.M. Graham Major J.A.

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
	Lieut.	Frank HAUFEK	No.1 Cdn Gen Hft Unit.

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

	Within last 12 months		Since enlistment or appointment	
For	N.A.	times	N.A.	times
For	N.A.	times	N.A.	times
For	N.A.	times	N.A.	times
For	N.A.	times	N.A.	times

[redacted]

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

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

2. The accused has not been previously convicted by G.C.M. or Civil Court

[redacted]

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

or,

[redacted]

Placed under Close Arrest 0830 hrs 31 Apr 44 H.E.M. Capt

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

Placed under open arrest and suspended from duty 0930 hrs 31 Mar 44

5. The present age of the accused according to his MFM 4 [redacted] is 42

6. The date of his commission specified in his MFM 4 [redacted] is 9 Oct 43

7. The service which the accused is allowed to reckon towards discharge is N.A.

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

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

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

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11. (In the case of an officer.) The accused holds in the [redacted] the rank of [redacted] C.A.A.F.

Lieut. dated 9 Oct 43, and in his regiment (or corps), the rank of

Lieut. dated 9 Oct 43.

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

In the rank of N.A. years.

In the rank of N.A. years.

In the rank of N.A. years.

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

SCHEDULE

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

Name Frank HAUFEK of No.1 Cdn Gen Rft Unit Regiment

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

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

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

Signed this ~~8th~~ 21 Apr 44 day of April 1944

(W.E. McNaughton) Capt.
Adjt. No.1 Cdn Gen Rft Unit.
Canadian Army Overseas.

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

21 Apr 44
W. Ewin Capt.
26 Apr 44
W.E.M. Capt

MFM 6
(AFB 122)
10/P&R/126 (3438)

No Name HAUFEK, Frank Sqn, Battery, or Company Corps Intelligence Company Date of enlistment 21/11/39 GC Badges Service or Proficiency Pay

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED NO ENTRIES	8 Apr 44			W.E. McNaughton, Capt.	

CERTIFIED TRUE COPY OF ORIGINAL DOCUMENT
IN MY POSSESSION

(W.E. McNaughton) Capt.
Adjt., No.1 Cdn Gen Rft Unit,
Canadian Army Overseas.

(PTO)

77

I, ...Lieut. Frank HALLETT..... (Unit) No.1 Cdn Gen Rft Unit

Elect to be dealt with summarily under Section 47 of the Army Act in connection with the charge(s) pending against me.

I acknowledge having duly received a copy of the Charge Sheet and copy of the Summary (~~or Abstract~~) of Evidence at 1400 hours on 8 Apr 44

I consent to the use of the Summary (or Abstract) of Evidence in connection with the charge(s) pending against me and agree to dispense with the witnesses giving their evidence orally.

Signed at Field

this 8th day of April 19 44 F Hallett

.....
(Signature)

Witness .....

Date .....8 Apr 44.....

J.M.G.

76

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Corunna Barracks, Aldershot, HANTS preliminary to my Court-Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

Signed at Aldershot, HANTS.

This 8th day of

.....April.....1944

F. Haufek

.....

(F. Haufek) Lieut.

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

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

F. Haufek

(F. Haufek) Lieut.

Case of Lieut. Frank HAUFEK

78

LIST OF WITNESSES

Prosecution: C.990, L/Cpl. Belanger, M.H., 12 Cdn Field Security Sect.

[redacted] B.75949, A/CSM Browne, R.W. 12 Cdn Field Security Sect.

Lieut. Cormier, Legal Branch, C.R.U. H.Q.

LIST OF EXHIBITS

Vehicle Release Form	(marked as Exhibit "A")
Telegram	(Marked as Exhibit "B")
Letters	(Marked as Exhibits "C", "D", "E", "F", "G","H", "I", "J", "K" and "L").

(W.E. McNaughton) Capt.
Adjt., No.1 Cdn Gen Rft Unit.
Canadian Army Overseas.

J.M.G.

48-147

Ste Haughton B.C.

SCHEDULE.

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

Accused: B.136712 Pte Bentley Everett HAUGHTON

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

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

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

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

Time in confinement awaiting present trial—a total of 13 days, of which Nil days were spent in hospital.(1)

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

Sentence Awarded by the Court:

Imprisonment for a period of eighteen months without hard labour.

(Sgd) ..... Judge-Advocate, if any. 23 Jan 45 Date awarded. (Sgd) Geo. Hale Major President. (RP 45, 50.)

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

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

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

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6,4a(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

I confirm the findings and sentence of the court.

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

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

(Sgd) C.G. Wood Col

Date 23 Jan 45 Commanding ADMS 4 Cdn Armd Div Confirming Officer.

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

Accused.	Date.	Signature of Offr.
B.136712 Haughton Bentley Everett	27 Jan 45	(Sgd) A.D. MacPherson Lt-Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

45-147

CFAMS 10 (Issue of AFAM 40/P.S.(R.)/CGAM (49/50))

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Col. C.G. WOOD Comd ADMS 4 Cdn Armd Div dated 21 Jan 45

ACCUSED.

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

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.136712	Pte	Bentley Everett	Haughton	13 Cdn Lt A/Amb, RCAMC

CERTIFIED TRUE COPY

[signature]

CAD J. A.

Cdn Sec G.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date) 23 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 19/119

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

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

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

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

A3. The Court is opened. The accused is GH brought before the Court. At 1730 hours trial commences.

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

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

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

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

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

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

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

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

Ans No (2)

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

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

President	MAJOR	G. HALE	22 Cdn Armd Regt
Member	Capt	K.S. GRILLS	28 Cdn Armd Regt
Member	Capt	F.C. McKERROW	21 Cdn Armd Regt
Judge-Advocate			
Prosecutor	Capt	T.S.G. McMURTRY	12 Cdn Lt Fd Amb
Defending Offr	Capt	H.M. JOLLEY	CDC # 6 Coy

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

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B136712 Pte Bentley Everett Haughton before arraignment make(s) (no) GH plea

(1)

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB 160 Vol III

SCHEDULE.

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

Accused: B.136712 Pte Bentley Everett HAUGHTON

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

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

GH As present under sentence for ~~Imprisonment (or Detn)~~ (1)

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

Time in confinement awaiting present trial—a total of 13 days, of which Nil days were spent in hospital.(1)

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

Sentence Awarded by the Court:

Imprisonment for a period of eighteen months without hard labour.

(Sgd) ..... 23 Jan 45 (Sgd) Geo. Hale Major

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

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

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

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

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

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign there personally. AA 172 fn 1.)

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

I confirm the findings and sentence of the court.

~~I direct that the accused be not compelled to undergo imprisonment until further order.~~ (1)

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

(Sgd) C.G. Wood Col

Date 23 Jan 45 Commanding ADMS 4 Cdn Armd Div

Confirming Officer.

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

Accused.	Date.	Signature of Offr.
B.136712 Haughton Bentley Everett	27 Jan 45	(Sgd) A.D. MacPherson Lt-Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

45-147

FIELD GENERAL COURT-MARTIAL

CFAO6 (To be Vol of AFAB) 40/P.R.S./6648 (4001) 4/38B

Convened by Order of Col. C.G. WOOD Comd ADMS 4 Cdn Armd Div dated 21 Jan 45

ACCUSED.

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

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.136712	Pte	Bentley Everett Haughton		22 Cdn Lt Fd Amb. RCAMC

CERTIFIED TRUE COPY

A.D. J.A.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date) GH 23 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 19/119

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see Form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 60-70, 73, 74, 94, 103, 119, 132.)

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

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

A3. The Court is opened. The accused is (GH) brought before the Court. At 1430 hours trial commences.

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

GH

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

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

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

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

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

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

Ans No (2)

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

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

President	MAJOR	G. HALE	22 Cdn Armd Regt
Member	Capt	K.S. GRILLS	26 Cdn Armd Regt
Member	Capt	F.C. McKERGOW	21 Cdn Armd Regt
Judge-Advocate			
Prosecutor	Capt	T.S.G. McMURTRY	12 Cdn Lt Fd Amb
Defending Offr	Capt	H.M. JOLLEY	CDC # 6 Coy

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

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment after RP 6(3) and fn 2 were not followed. See D1 p 2.)

A8. The accused B.136712 Pte Bentley Everett Haughton before arraignment make(s) (no) (GH) plea (1)

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

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

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and see separate copies of CF A96 to record proceedings. 2. RP 22, RP 33. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B3. ~~The Court considers the accused's statement (5) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (not) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

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

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

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

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

(1. *RP 39(C), 116. KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

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

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

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

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

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

Ans. .....

Do you intend to call witnesses on your behalf ?

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

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

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(4).)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A65.*)

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

(1. *RP 43, 117(6). See Notes to Part I of Schedule.* 2. *RP 44(6).*)

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

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

(1. *AA 54(3) (6), RP 45, 120(4).* 2. *AA 54(7), RP 45, 117. The alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

Ans. YES

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

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

(1. *MFR 285 or AFB 296.* 2. *MAM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1.*)

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

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

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

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

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

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566. Overseas RO 309, 2323, RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 58(1), KR Con 564. As to assembly and disposal of record after trial see instrs on back of Convening Order. Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*

2. *RP 50. As to release from arrest by*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused R 136712 Pte Bentley Everett HAUGHTON, (RCASC) 12 Cdn Lt Fd Amb RCAMC a soldier of the Canadian Army Overseas is charged with:

First Charge
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, on 31 Aug 44, absented himself without leave from his unit, 12 Cdn Lt Fd Amb RCAMC, from 0001 hours on said 31 Aug 44 until he was apprehended by Military Police in Paris at 1700 hours 23 Dec 44.

Total time absent 114 days 17 hours.

(Sgd) A.D. MacPherson Major
A/OC 12 Cdn Lt Fd Amb

To be tried by Field General Court Martial.

(Sgd) C.C. Wood Col
ADMS 4 Cdn Armd Div

In the Field
21 Jan 45.

MED OFFRS CERTIFICATE
KR (Can) Para 557

I certify that I have this day examined No. B.136712 Pte Haughton B.E. of 12 Cdn Lt Fd Amb RCAMC and in my opinion he is fit to undergo trial by court martial.

Sta Field

Date 23 Jan 46

(Sgd) K.A.C. Clarke Capt RCAMC
MO

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt. A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B.136712	Pte		Bentley Everett	HAUGHTON	12 Cdn Lt Fd Amb RCAMC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (date) 12 Jan 45 endorsed by me, (~~for the purpose of identification only~~), "To be tried by Field General Court-Martial".

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

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

4. ~~I hereby appoint (or direct Offrs to form the Court, the~~ Fd Offr as President for the reasons ~~stated~~ ~~hereinafter~~.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G. HALE	22 Cdn Armd Regt

MEMBERS.

Capt to be detailed by OC 21 Cdn Armd Regt

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 23 Cdn Armd Regt	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	to be detailed by OC Lake Sup R (M)	

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in (Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)
Holland	C.C. Wood	Colonel

Date 21 Jan 45 ~~Commanding~~ ADMS 4 Cdn Armd Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAMS (1st Item of AFA) 40/P & S/1697 (4931)

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

Charge of AWL against H.136712 Pte Bentley Everett HAUGHTON 12 Cdn Lt Fd Amb RCAMC.

1st Witness

Capt F.S. Whittington, 12 Cdn Lt Fd Amb RCAMC sworn states -

Q. Are you quartermaster and Adjt of your unit?
A. Yes.

Q. During the time you have been employed as such have you had the opportunity to judge the character of the accused?
A. The accused is an average soldier and his services have been satisfactory.

R.P. 83 (B) complied with.

2nd Witness

K.32180 Sgt Dove, A., 12 Cdn Lt Fd Amb RCAMC sworn states -

Q. Sgt Dove what is your job in your unit?
A. I am section Sgt 12 Cdn lt Fd Amb.

Q. How long have you held this position?
A. One year and two months, sir.

Q. Have section officers been changed in that time?
A. Yes Sir.

Q. During the time the accused was in your section how would you say he did his job generally?
A. He did his job very well and his conduct was good.

Q. Can you give the court any specific instances on which you base your judgement?
A. On the drive through France one convoy was on the road continuously for sixteen hours during wet weather and Pte Haughton did a very good job.

R.P. 83 (B) complied with.

Plea by the defending officer in mitigation of punishment attached as Sheet 2.

CONSIDERATIONS IN MITIGATION OF PUNISHMENT OF
B.136712 Pte Bentley Everett HAUGHTON
charged with
Sec 15(1) Absenting Himself Without Leave.

1. The youth of the accused. Although he has been on active service since Dec 1942 he will not be 20 years of age until 6 May 1945.

2. The accused has had an unfortunate experience with the Dependents' Allowance Board, which, due to ignorance, he has translated into a grievance against the Army. He is the sole support of a widowed mother. At the age of 17½ years he was employed in a factory where he was earning 65¢ an hour. He gave up his job and falsified his age in order to enlist. He assigned the sum of $20.00 per month from his army pay for his mother's support. To this the Dependents' Allowance Board added the sum of $25.00 per month. When he left home his mother found employment in a canteen. The allowances were immediately cut off with the exception of $5.00 monthly from his pay. Although this was eventually corrected this experience has coloured his attitude toward the Army to such an extent that he frequently felt it justified any derelictions from duty of which he might be guilty.

3. His age, education and intelligence are scarcely adequate for him to have as great a sense of responsibility as is necessary and desirable. It will be noted that although he continued at school until he was 16 years of age, he completed only Grade VII.

4. We suggest, therefore, that we are here dealing not with a hardened military malefactor but with an immature individual of somewhat limited intelligence.

SUMMARY OF EVIDENCE

in the case of

B136712 Pte Bentley Everett HAUGHTON

RCASC 12 Canadian Light Field Ambulance RCAMC

charged with

absence without leave from 0001 hrs 31 Aug 44 until 1700 hours 23 Dec 44.

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

First Witness
K70416 CPL MILLAR W J

I, Cpl Millar W.J. am section clerk of "B" Section, 12 Cdn Lt Fd Amb. On 30 August 44 I was in the section lorry having just crossed the Seine River. We had been left behind and Pte Hale one of the section DRs came back for us. When we arrived at the section harbour area about 1800 hours that day I was informed by Capt J.B. Middleboro, our section commander, that he had sent B.136712 Pte Haughton B.E. one of our section DRs to Headquarters 12 Cdn Lt Fd Amb to pick up mail,etc. I understand that Pte Haughton was sent on the run to HQ at approx 1500 hours while the section was in convoy. I have not seen Pte Haughton since that date until his recent return to the unit the first week in January.

Cross examination by officer taking summary.

Ql. "Is Capt J.B. Middleboro still commanding "B" Section of 12 Cdn Lt Fd Amb?"
Al "N, sir, he was struck of strength on transfer to another unit over a month ago."

Cross examined by the accused.

Ql. "Had you any idea on that day, just how far the section was going before it harboured?"
Al. "No, I had no idea of any definite distance."

(Sgd) W.J. Millar

Second Witness

K 22180 Sgt Dove A
I am K 22180 Sgt Dove A, section Sgt of "B" Section 12 Cdn Lt Fd Amb, the section of which B136712 Pte Haughton B E was on strength. I arrived with the section lorry at the section harbour area at approx 1800 hrs 30 Aug 44. On arrival I found that Pte Haughton was absent. On investigation I learned that Pte Haughton had been sent to HQ of 12 Cdn Lt Fd Amb at approx 1500 hours that afternoon to pick up the

mail. As Pte Haughton was still absent at 2300 hours I reported the absence to the section commander and also told the section clerk to advise HQ 12 Cdn Lt Fd Amb of the absence.

Pte Haughton has not been with the Section since that time and I have not seen him until his return to the unit on 5 Jan 45.

Cross examined by officer taking summary.

Q1 "How far would you judge the distance from your section harbour area to HQ 12 Cdn Lt Fd Amb to be?"

A1. About 10 miles, sir, but we were in a strange area and I am not sure of what roads were available."

The accused declines to cross examine this witness.

(Sgd) A Dove

Third Witness

D81454 CSM (WO II) Birch J

I am D81454 CSM Birch J, Warrant Officer i/c Tpt 12 Cdn Lt Fd Amb. On 30 Aug 44, I was at Headquarters 12 Cdn Lt Fd Amb and late in the afternoon I saw B136712 Pte Haughton B.E. He drove into HQ lines on his M/C and parked it against a lorry near to where I was standing. I asked him what he was doing here and he stated that he had come for the mail. I told him to take his M/C and get to the mail man. He did so and I never saw him again until his return to the unit on 5 Jan 45.

The accused declines to cross examine this witness.

(Sgd) John Birch CSM

Fourth Witness

K70678 Sgt Foster, K.W.

I am K70678 Sgt Foster, orderly room serjeant, 12 Cdn Lt Fd Amb. I present herewith copy of certificate of apprehension dated 24 Dec 44, referring to B136712 Pte Haughton BE. This document arrived with Pte Haughton on 5 Jan 45.

(Sgd) K.W. Foster

The Certificate of Apprehension dated 24 Dec 44 produced as documentary evidence was read over to the accused marked exhibit "A", signed by mehd attached hereto.

The accused declines to cross-examine the witness.

(Sgd) PSW Whittington Capt
Officer taking Summary.

The accused was cautioned as follows:

Q.1 "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

A.1 "I do not wish to say anything."

The accused does not call any witnesses.

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

(Sgd) P.S.W. Whittington Capt
Officer taking summary.

14 Jan 45.

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42

I certify that No B.136712 Rank Pte Name HAUGHTON B.B.

Unit RCASC att 12 Cdn Fld Amb Coy was arrested at PARIS (Place)

at 1700(hour) on 23 Dec 44 (date) and that at the time of his arrest he was wearing (military uniform) or

Signature of Provost-Marshal, Assistant Provost Marshal or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on arrest.

C. Beaulne Lieut
(Sgd) ~~[illegible]~~
DAPM Paris

Field
24 Dec 44

Exhibit "A"

This is Exhibit "A" referred to in the Summary of Evidence in the case of B136712 Pte HAUGHTON, B.B. taken before me this 14th day of January 1945.

(Sgd) FSW Whittington Capt.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

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

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B.136712	Pte	HOUGHTON BE	12 Cdn Lt Fd Amb RCAMC

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

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

For AWL AA Sec 15(1) 5 times.

For Failing to Appear(AA Sec 15(2) 1 times.

For Conduct to the prejudice AA Sec40 1 times.

For ____ times.

Date of first entry in Field Conduct Sheet 2 Aug 43

Date of last entry in Field Conduct Sheet 13 Jul 44

2. ~~Particulars of the preceding court martial or civil court are~~ as the Schedule overleaf.

*Strike out if not applicable.

~~3. The accused was sentenced to~~

~~Adjutant.~~ ~~(or O.C.)~~

4. The accused has been awaiting trial on the present charges for -- days in civil custody; and for 31 days in military custody, *i.e.*, 18 days in open arrest, 13 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 20 years

6. The date of his attestation / calling up for military service is 31 Dec 42

7. The service which the accused is allowed to reckon is 2 years 23 days

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

8. The accused is in possession of† Cdn Volunteer Service Medal and Clasp

9. ~~Particulars of any other matter which the accused has brought to notice as entitling him to consideration~~

Date of Promotion.

In ~~regular succession~~ ____

In ~~lower establishment~~ ____

In ~~appointment~~ ____

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

(72672) W.L.30722/3701 80,000 9/44 A.&E.W.Ltd Gp.698

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

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

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

Signed this 23 day of January 1945

(Sgd) A.D. MacPherson A/Lt-Col
OC 12 Cdn Lt Fd Amb

No. B136712 Name HAUGHTON B E | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 31-12-42 | GC Badges | Service or Proficiency Pay | $1.40 | MFM 6 (AFB 122) (W.P.A.S./126 (5438))

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 31 Jun 43. Last entry 27 May 43. Cases of drunkenness Nil JMG?					
Ex C. Borden Ont	2-8-43	Pte		AWL from 0530 hrs 2-8-43 until 1130 hrs 4-8-43 (2 days 6 hrs) AA Sec 15(1)	Documentary	Admonished	5-8-43	Maj E.G. Lee	Forf 3 days Pay FR&I 149
Hamilton	30-8-43	Pte		AWL from 0600 hrs 30 Au 43 until 1335 hrs, 9 Sep 43 (9 days 7 hrs 35 mins) AA Sec 15(1)	CSM Taylor	168 hrs Detn	13-9-43	Col Benson	Forf 10 days pay FR&I 149 (1)
C Borden	8-10-43	Pte		AWL from 0530 hrs 8 Oct 43 after being warned for Special Dut, until 0400 hrs 12 Oct 43 (3 days 22 hrs, 30 mins) AA Sec 15(1)	Documentary	27 days Detn	12-10-43	Lt-Col R.J. Dufresne	Forf 4 days pay FR&I 149
									Total forf 31 days pay
Debert NS	18/11/43	Pte		Failing to appear at place of parade appointed by his C.O.	Sgt Allen	7 days C.B. with extra duties	18-11-43	Lieut Portugais	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8 Apr 44	Pte		AA Sec 15(1) AWL from 2300 hrs 8 Apr 44 to 0800 hrs 9 Apr 44 TTA 9 hrs	Sgt Mead, H.E.	Admonished Forf 1 days pay	10 Apr44	Lt S Christie	Forf 1 days pay FR&I 149(1)(a)
Field	31 May 44	Pte		AA Sec 15(1) AWL from 0815 hrs 31 May 44 to 0930 hrs 2 Jun 44 TTA 2 days 1 hr 15 min	B52165 Sgt Borraddl,EH B51728 Sgt Johnston	Forfeits 7 days pay and 3 days pay	3 Jun 44	Lt-Col R.S. Lambe	Forfeits 3 da s pay FR&I 149 (1)(a) 7 days FR&I 149(2)
Fiel	13 Jul44	Pte		Conduct to the prejudice of good order and Military Discipline improper language to an NCO K22180 Sgt Dove A AA Sec 40	Sgt Dove A Pte Hatch JA	10 days F.P. and forfeits 10 days pay	14 Jul 44	EE Tieman Lt Col	EET

CERTIFIED TRUE COPY
23 Jan 45 (Sgd) FSW Whittington Capt Adjt
Officer having custody of Original

GH

5 N. – 61
Pte. Havelin, M.

RECORDED AT CMHQ IN AD 150 5W-61

FIELD GENERAL COURT-MARTIAL

CPA86 (To form of AFAI 40/1 of 30.8.45)

Convened by Order of Brig G H Tarleton DSO MC Comd Brussels Grn dated 3 Nov 45

ACCUSED.

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

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit
B-136643	Pte		Moses	HAVELIN	RCASC, [illegible] Bn, 2 CBRC Instt Cdn Sec HQ Brussels Garrison

PROCEEDINGS REVIEWED

Sec 45 A/Prod, HQ

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

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) BELGIUM on (*date(s)*) 16 Nov 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns in ROs. For guidance on procedure when a variation in this form arises, see form for Court in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs as to how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 102, 119, 132.)

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

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

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1015 hours trial commences.

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

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

A5. President to accused: Do you object to Lt M De La Croix as interpreter? Ans No Sir

The Interpreter is sworn.(1) Do you object to Sgt D M Campbell as shorthand writer? Ans No Sir

The shorthand writer is sworn.(1)

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

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

Ans No Sir.(2)

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

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

President	Major	F A BATTLEGEON	Gen List	1 Cdn C M Centre
Member	Major	G B H COX	RCArmdC	1 Cdn C M Centre
Member	Capt	D L MACDONELL	Cdn Scottish att	1 Cdn C M Centre
Judge-Advocate	CAPT	AM ECCLESTONE	ADJA Cdn Sec HQ Brussels Gen	
Prosecutor	CAPT	A J THOMPSON	1 Cdn C M Centre	
Defending Offr	CAPT	P T H O'NEILL	CAC attd 1 PRS	

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes Sir

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv. Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 87 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused B-136643 Pte Moses HAVELIN before arraignment make(s) (no) ~~not~~ plea.(1)

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Cdn Sec HQ Brussels Grn
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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

President to accused : Do you wish to make a statement ? Ans NO SIR. (5)

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

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

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

B4. On the charge(N) to which the plea(N) of Guilty is (~~are~~) not changed the President records findings(N) of Guilty in Part I of the Schedule.(1) R

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFICERS CERTIFICATE

(KR(Can)Para 557)

I certify that I have this day examined B-136643, (No)

Pte. HAVELIN, M. and in my opinion is

Attd: Can Sec Brussels Garrison

fit to undergo trial by Court-Martial.

Station Ghent

Date. 10 Nov 45

D M Stuart Capt. R.A.M.C. (Sgd)
Medical Officer
(unit) Central M.I. Room, Ghent.

FIELD GENERAL COURT-MARTIAL

Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of ry other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AF 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(5).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
B-136643	Pte		Moses	HAVELIN	RCASC, 13 Bn, 2 CBRG, att Cdn Sec HQ Brussels Garrison

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~s~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet~~s~~ attached and on (date) 3 Nov 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

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

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

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

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

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

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	F A BAILLARGEON	Gen List	1 Cdn C M Centre

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Major	G S H COX	RCArmdC	1 Cdn C M Centre
Capt	D L MACDONELL	Cdn Scottish	1 Cdn C M Centre

WAITING MEMBER.

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

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	A M DOCKSTONE	ADJA Cdn Sec HQ Brussels Garrison	

On Active Service in the Fd

in BELGIUM (Country.)

Date 3 Nov 45

G W Tarleton

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(G W TARLETON)

Commanding Brussels Garrison

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAMS (in lieu of AFA3) 40/P & S/1697 (4481)

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

CHARGE SHEET

The accused, B-136643 Pte Moses HAVELIN, RCASC, 13 Bn, 2 CERG, att Cdn Sec H.Q Brussels Garrison, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

In that he

in the Field, absented himself without leave from 0800 hrs 6 August 45 until apprehended at 2031 hrs 4 Sep 45.

(Total absence: 29 days 12 hrs and 31 minutes)

SECOND CHARGE
Sec 41
Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ASSAULT WITH INTENT TO COMMIT FELONY, CONTRARY TO SECTION 48 OF THE OFFENCES AGAINST THE PERSON ACT, 1861

In that he

in the Field, in GHENT, Belgium, on or about 1 Sep 45, assaulted Mme Marthe BOELAERTS, with intent to ravish her.

In the Field
2 Nov 45

(L F Logan) Lt col
Comd
Cdn Sec H Q Brussels Garrison

"Approved on behalf of the Cdn JAG Overseas
in accordance with R.A.(CMP) 540"

In the Field,
1st day of Nov 45.

(A. F. Mallectoine) Capt
A D J A
Cdn Sec H.Q Brussels Gsn.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL.

In the Field
3 Nov 45

(G N TARLETON) Brigadier
Commanding
Brussels Garrison

F.G.C.M.

PROCEEDINGS OF T/O.J.

No. H.186643, Pte. HAVELIN, L., HQ&S, 1e Bn, 8 CDNI, attd CAN Sec
No. Wetteren Garrison

THE PROSECUTION PROCEEDS TO CALL WITNESSES.

FIRST WITNESS FOR) Mde Marthe BOULANGER, Heuvel Street No 6 GHENT, Belgium, being
THE PROSECUTION) duly sworn, is examined by the Prosecutor:

Q. Are you Mde Marthe BOULANGER, Heuvel Street No 6 GHENT, Belgium?

A. Yes sir.

Q. Do you recognize anybody in this room?

A. Yes sir.

Q. Will you point to who it is?

A. Yes, (Witness points to accused).

Q. How long have you known him?

A. Between six and eight months.

Q. How did you come to know him first?

A. As a customer he came with his watch into my store.

Q. What kind of a store have you?

A. Goldsmith, watchmaker.

Q. How many times have you seen this soldier during the six or seven months you have known him?

A. Eight or nine times, I cannot tell exactly.

Q. Did you see him on 1 Sep last?

A. Yes, he came in my store.

Q. At what time?

A. About 1700 Hrs.

Q. And what happened?

A. He entered my store and asked for my husband.

Q. Was your husband there?

A. No.

Q. What happened then?

A. I told him his watch was repaired and gave it to him.

Q. You?

A. He paid me.

Q. And then what happened?

A. He gave me a 100 francs note and I gave him 50 francs back, at that time a customer entered - the soldier went aside for a few minutes and when the customer left again, the soldier approached me, came behind the

counter, he grabbed me and I was compelled - he forced me to enter the room, the next room with him, he pushed me in a chair.

Q. Just a minute, did you try to get away from him?

A. When he forced me to sit down in a chair with a revolver, at that time I was able to stand up, but he threw me on the floor. At that time he opened his pants and showed me his penus. At that time somebody entered and I shouted "there is my husband". I ran out at that time and the soldier also came out and he told the civilian something about one thousand francs which I didn't understand.

Q. Who was the Civilian?

A. One of the witnesses.

Q. What was his name?

A. M. Dubsey.

Q. Yes?

A. I ran away, the soldier started to fight with the civilian Dubsey.

Q. Just a minute here, which happened first, did you get out first or did the fight start first?

A. When the civilian came in, the soldier immediately challenged him for a fight, at that time I went away.

Q. Did the soldier have anything in his hand.

DEFENDING COUNSEL

I object, that is a leading question.

JUDGE ADVOCATE

Yes, reframe that question.

PROSECUTION CONTINUES

Q. Will you describe exactly everything about the soldier and what happened at that point. Describe everything that the soldier did.

A. Do you want me to repeat everything?

Q. Yes everything.

A. He came in about 1700 hrs and asked for my husband.

Q. No, just at this point, he came into the shop with her and challenged the civilian - I want you to tell everything that happened at that point?

A. The civilian just had approached to the counter, the soldier at that time came out of the next room, he told the civilian that I had a thousand francs from him and didn't want to give them back. The soldier tried to fight the civilian, at that time I ran out.

Q. How did he try to fight the civilian?

A. He came out of the next room and went to the civilian who stood near the door and he went to the civilian and said "Come on" - at that time I ran out and do not know what happened after that.

Q. What happened next?

A. The soldier left with his car -

Q. Now wait a minute, you say you ran out, what happened next?

A. I went into the next house and people living there, a man which lives there came with me, at that time the soldier went out of my establishment stepped into his car and drove off.

Q. When did you see the soldier next?

A. A week later I had to identify him.

Q. Where?

A. Leopold Barracks.

Q. How did you have to identify him?

A. He stood with some other soldiers and I had to point him out.

Q. Did you have any trouble pointing him out?

A. No I immediately recognized him for the other soldiers were rather small and he is rather tall.

Q. Is that the only way you recognized him?

A. No, as he was a good customer of mine I immediately recognized him.

Q. You say that when the soldier took you into the other room, he threw you on the floor, where was he then, what position was he in?

A. He lay also upon me on the ground.

Q. And did he do anything else?

DEFENDING OFFICER

I object to that too - she is to say something that she has no right to say.

JUDGE ADVOCATE

On what grounds, leading question?

Yes.

JUDGE ADVOCATE TO PROSECUTOR

You better ask what happened next.

WITNESS CONTINUES

When I was lying on the floor and he showed me his penis but at that time, somebody entered, I was able to escape and ran away, the civilian came into the store.

Q. You say he pointed a revolver at you, did he still have this revolver when he went out of the room?

A. No, at that time, before that time he had already put the revolver back in his tunic but the civilian told me.

Q. Just a minute, did you see the revolver again after then?

A. No, I didn't.

Q. What did you do after the soldier left?

A. With a neighbor of mine went to the civilian police 4th Section.

Q. What did you do next?

A. Then two of the civilian police and I went with them to a civilian police station.

Q. And what did you do there?

A. When a neighbor ... which went to the police station told the civilian police.

Q. Just a moment now, I just went to know what you did, were you present at that time?

A. It was a soldier who was dressed as a civilian who assaulted me.

Q. Just a minute now, you said you went to the civilian police station and now you say a civilian said something, was that in your presence?

A. When the civilian went the first time to the -

Q. Now I am not interested in what the civilian did, I want to know what happened when you went to the police station?

A. I explained.

Q. Explained to who?

A. To the Chief of Police.

Q. What did you say?

DEFENDING OFFICER

I object to that on the grounds that the accused was not present.

JUDGE ADVOCATE

He is asking the witness what she said.

WITNESS CONTINUES

A. The same as I told just now.

Q. Just tell me as closely as you can what you said to the civilian police?

JUDGE ADVOCATE

Before you ask that question, would you establish what time this would be.

PROSECUTOR CONTINUES

Q. What date was this?

A. 1 Sep.

Q. And what time?

A. It happened about 1900 hrs and it happened about 1730 hrs.

Q. Now tell me closely as you can exactly what you said to the civilian police?

A. I told them that a soldier had come into my store, asked for my husband. I told him my husband was not there - I gave him his watch, he paid me at that time. When the civilian left, the soldier came behind the counter, grabbed me and he took me in the back room, he forced me to sit down in a chair. I didn't tell the Civilian Police that the soldier had showed me his penus but told them that at that time the soldier threw me on the floor and that somebody entered, I shouted "There is my husband" - the soldier released me, I was able to get away. I ran out and the civilians entered the store.

Q. Why didn't you tell them that the soldier had taken out his penus?

A. It is hard to say at that time, I was a little shy, the civilian police asked me if something happened, I told them no.

Q. And after you had left the civilian police station, what did you do next?

A. I went with the civilian police to the Can Provost Brabant Lan.

Q. What did you do there?

A. I made there the same statement.

Q. Did you tell them that the soldier had taken out his penus?

A. Yes I did.

Q. Now just tell the Court as close as you can exactly what you told them took place in the back room?

A. He forced me to enter the back room and pushed me in a chair, at that time he pulled his revolver. At that time I was able to stand up from the chair but he struck me and threw me on the floor. When I lay on the floor he took his penus and lay also down on the floor. At that time the tall lady and somebody entered the store.

Q. Right, and after you left the Can Provost, tell what time would this be?

A. The time I went to the Provost was approximately a quarter past six.

Q. And where did you go after that?

A. I went home and took my bicycle and went to my husband.

Q. Where was he?

A. On the Corsedijk of Ghent at Evergem.

Q. About what time did you see him?

A. I finished at Provost Hq at about 1900 hrs, I met my husband at about 2000 hrs.

Q. And what did you do when you saw your husband?

A. I told him everything.

Q. What do you mean by everything?

A. Everything what had happened.

Q. Did you tell him anything more than you told at the Can Provost Office?

A. No I didn't, I told him the same.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q. You say that you had known the accused for eight or nine months, is that right?

A. It should be approximately right.

Q. And had been in your store eight or nine times?

A. Approximately, yes.

Q. Did he come there as a friend of yours or as a customer of the shop?

A. Always as a customer.

Q. And what did he buy?

A. He bought a pair of watches and a couple of repairs.

Q. Now about times he used to buy one hundred dollar American bills in your shop?

A. I don't know what you are speaking about.

Q. You never sold the accused, or your husband to your knowledge never sold the accused any one hundred dollar American bills?

A. Not as far as I know.

Q. Going back to the beginning of your story when the customer came,(the accused) entered your shop, you say that you gave him a watch, is that right?

A. Yes it is.

Q. Was he acting peculiarly at all at that time?

A. I don't understand what you mean sir.

Q. After the transaction with the watch money, you have stated that he went around behind the counter and grabbed you?

A. Yes sir.

Q. How did he catch you?

A. He first grabbed my arm, next he took me in the -

Q. He grabbed you by the arm?

A. Yes.

Q. Did you scream?

A. I was that scared, I couldn't scream.

Q. And he forced you into the other room?

A. He pulled me into the next room.

Q. Did you try to pull away from him?

A. Yes I did.

Q. Did you try very hard?

A. Yes I did but he was stronger than I was.

Q. When he got you in theother room, he pushed you, you say.

A. Yes.

Q. Did he do it very roughly?

A. Roughly enough.

Q. Then you say he pointed a pistol at you and you stood up, is that right?

A. Yes it is.

Q. And then he threw you on the floor.

A. Yes.

Q. Did he throw you down very hard?

A. Yes.

Q. Did you go to a doctor after this?

A. Yes later in the same afternoon when I went to see my husband in Irungen, I went to a medical sister and she examined me.

Q. When he threw you to the floor, you say he laid down on top of you, is that right?

A. Yes it is.

Q. He lay on you enough so that you couldn't get up and get away, is that right?

A. No, I couldn't escape.

Q. In other words, he was lying flat on top of you, is that right?

A. Yes.

Q. If the soldier was lying flat on top of you, I suggest that it was quite impossible for you to see him undo his pants.

A. I was that scared, I didn't know exactly how it went but all I know is he opened his pants.

Q. If you were so scared that you do not know what happened, why do you come here and tell the Court on oath things that you do not know happened?

A. You asked me sir if he lay flat on me, I don't know exactly how he lay down on me.

Q. But you do remember definitely seeing him open his pants?

A. Yes I do.

Q. In which hand did the accused hold the revolver when he pointed it at you on the chair?

A. Left hand, the revolver was in his left pocket, so he took his left hand.

Q. When you said before that he threw you on the floor, what did he do with the revolver?

A. I guess he put it back in his pocket.

Q. I suggest to you that this soldier was a rather busy man, I suggest that he was lying on top of you holding a revolver in his left hand and was taking out his pants with his right hand.

A. It didn't happen at the same time, there was an interval between. I sat down in the chair when he took his revolver, when I stood up I ran away.

Q. Well where did you run to?

A. I ran to the door to get away but didn't succeed.

Q. Why didn't you succeed?

A. Because he grabbed me again.

Q. Did you reach the door?

A. No.

Q. Did you scream?

A. Yes I did.

Q. You screamed at that time?

A. I did, I screamed but was so scared, there was no sound.

Q. What happened when you heard the doorbell ring?

A. I shouted "There is my husband" - he released me.

Q. Then why in front of the Court did you make the following statement - "The front door bell rang and I called ~~xx~~ Emilius Dubaer"?

A. No, I shouted "My husband is there".

Q. You did not call Emilius Dubaer?

A. When I went out Emilius Dubaer went -

Q. When the front door bell rang, did you call your husband or Emilius Dubaer?

A. I called for my husband.

Q. Why did you state in front of a previous Court that you called for Emilius Dubaer?

A. They probably misunderstood me.

Q. You have appeared before to-day in front of two other Courts, is that right?

A. Yes, one in Brussels and one in Ghent.

Q. Which was first, Brussels or Ghent?

A. Brussels.

Q. On the second Court, did you make a statement "I called Emilius Dubaer".

A. They misunderstood probably.

Q. After you appeared in front of that Court, did you have an opportunity to read your statement?

A. Yes, they translated it to me.

Q. And you signed it?

A. Yes, I signed it but probably at the time the civilian went by it could have been somebody else.

Q. Did you make that statement or not that you called in Emilius Dubaer?

A. I cannot tell you Sir, they probably misunderstood me.

Q. In other words, you did not say it?

A. No I didn't, I shouted "My husband is there", ran to the door and the civilian stood in front of the door.

Q. Did you in front of any other Court say "I called Emilius Dubaer".

A. No.

Q. You have not said it?

A. No, definitely not, they have misunderstood me.

Q. When you went out to the front from the back room, you went first and the soldier followed, is that right?

A. Yes it is.

Q. Did he follow immediately behind you?

A. I ran out and called for the civilian who just went by, Emilius Dubaer and at that time the soldier was right behind me.

Q. When you went in front of the shop Emilius Dubaer was in the shop, is that right?

A. No, he just went by.

Q. You called to him, is that right?

A. Yes I did, he just went by, he just went by the front door.

Q. What caused the door bell to ring?

A. A little boy came in.

Q. A little boy came in, came in your shop?

A. Yes, that is the reason why the bell rang.

Q. You haven't mentioned this little boy before have you?

A. They never asked me for it, I have to answer the questions they put to me.

Q. You stated to the first Court which was I believe in Brussels -

JUDGE ADVOCATE

It might be better if you identify the statement with the signature.

EXAMINATION CONTINUED

Q. Is that your signature?(showing witness original document of sentence)

A. Yes.

Q. In this statement which you have identified as having been signed by you, you stated -"The shop bell rank, I called out "my husband", and the soldier jumped up, I jumped up and ran into the shop. The soldier followed me into the shop, said, "You are me 1000 francs", another customer was in the shop, his name is Emilius Lutzer.

A. I ran out, he went by, I asked him to come in.

Q. Why did you state in front of the other Court that he was in your shop?

A. The witness can tell I am telling the truth.

Q. I am not interested in the witness, I want to know why you made the statement"Another customer was in the shop, his name was Emilius Lutzer".

A. The bell rang, the soldier released me, I jumped up and went outside and Emilius Lutzer went by, I called to him.

Q. Where was the child at this time?

A. I don't know, he probably was gone.

Q. Did this child come in your shop to buy something?

A. The kid passed me some things but I don't know exactly what.

Q. And when the kid was asking you something, you saw Lutzer walking past your shop, is that right?

A. Yes I opened the door and he just came by.

Q. Well why did you say he was already in the shop in front of the other Court?

A. They probably misunderstood me, mistranslated.

Q. In other words you are objecting to this being accepted by this Court as being your true statement.

A. Yes I do, I didn't say what is in that statement.

Q. Was that statement translated for you after you had made it before you signed it?

A. I don't know exactly. They made me sign it. They asked me to sign what I stated.

Q. But they read it back for you and translated it?

A. I guess so, I don't know exactly.

Q. Well if they did, why did you sign it if it was not true?

A. I don't know, I answered the questions they put to me, if they don't translate it the way I tell them, I can't help it.

Q. You read the statement after did you not?

A. I probably did.

Q. And you signed it?

A. Yes I did.

Q. You signed it as being your true statement?

A. Yes, I was in the idea that they had translated it all right.

Q. In other words any time your statements don't jibe, it is the fault of the translator, is that right?

A. I certainly didn't say what is in this statement.

Q. You say the soldier came behind you as you came out in front of the shop, is that right?

A. Yes it is, I run out and called to Emilius Dubeer and the soldier was behind me.

Q. When Emilius Dubeer entered, did you see the child in the shop?

A. Yes the kid went outside.

Q. You saw the child go out, is that right?

A. I don't remember exactly.

Q. You stated a moment ago that the child went out, did the child go out or not?

A. When Emilius Dubeer came in, the kid was already out.

Q. Where was Emilius Dubeer when you called him exactly?

A. He just went by.

Q. The child at that time was in the shop, is that right?

A. I don't know exactly.

Q. Did you ever see this child?

A. Yes.

Q. Are you sure there was a child in your shop?

A. The door opened and the first one to come in was a kid.

Q. And you have never at any time stated that Emilius Dubeer was in the shop when you entered?

A. I didn't state that, I always told that I ran out and called for Dubeir to come in.

Q. On the second Court, did you state to that Court -"The front door bell rang, I called Emilius Dubaer. The soldier got up off of me, pointed this pistol at Emilius Dubaer", did you make that statement?

A. No it is not -

Q. You have never made that statement?

A. I must have been mistranslated.

Q. Is that your signature? (showing witness original statement made on 4th January Bundle of Evidence).

A. Yes.

Q. Was this statement read over to you and translated to you before you signed it?

A. I don't know exactly, whether they read it over to me or not. I answered the questions they put to me.

Q. You have a very convenient memory, you totally omit the two statements which I have shown you with your signature, is that right?

A. I don't say that, but I just didn't state the way you tell me.

Q. In other words they are not true?

A. They may be the truth but I never said Dubaer was in the shop and they never asked me that question.

Q. When the soldier reached the shop behind you and this child had left and Dubaer entered, you say that the soldier stated you owed him a thousand Francs?

A. Dubaer spoke to the soldier and the soldier told Dubaer I owed him a thousand francs.

Q. In what language did he speak to Dubaer?

A. Probably in English but Dubaer said -

Presumption

Oh, that is hearsay.

Examination Continued

Q. You say he spoke in English, is that right?

A. Yes he did, but he also spoke Flemish to Dubaer.

Q. And he said you owed him a thousand francs?

A. Yes, he said that in English.

Q. Weren't you a little surprised that he stated that you owed him a 1000 francs?

A. Emilius Dubaer told him I didn't owe him a thousand francs at all and I ran out.

Q. How did Dubaer know whether you owed him a thousand francs or not?

A. I told Dubaer that somebody had assaulted me, so he came in.

Q. You told Dubaer that somebody had assaulted you, but did he know whether you owed a thousand francs or not?

A. You will have to ask Dubaer.

Q. Does Dubeau know your financial position very well?

A. No, Dubeau doesn't know at all.

Q. Why did you not tell the police in the first place, the civilian police, all the details of what had taken place in your shop.

A. I told them everything, the only thing I didn't tell was he showed me his penus.

Q. Why didn't you tell them?

A. Nothing else happened and it is pretty hard to say.

Q. When you left the Civilian Police Station after having found it very hard to say, did you go to the Cdn Provost Coy?

A. Yes.

Q. How far away are they?

A. Two minutes maybe.

Q. But you did tell all the details to the Cdn Police did you not?

A. Yes I did.

Q. You didn't find it hard to tell?

A. I became a little better by that time.

Q. You overcame your shyness in ten minutes, is that right?

A. It lasted till 1930 hrs.

Q. Was it at the beginning or at the end of the interview that you told the Cdn Provost that he had taken out his penus?

A. When the police told me to tell everything, so at last I told.

Q. Did the Civilian Police tell you to tell everything?

A. They didn't ask me for it.

Q. I put it to you that this incident never took place that you made up your story on the way to the Civil Police and you increased your story on the way to the Cdn Provost Coy?

A. You asked me to tell the truth, I swore I would and I swear everything is the truth.

Q. But before the other courts you swore then to tell the truth didn't you?

A. Which Court?

Q. Before the other two Courts, one in Brussels and one in Ghent?

A. I told just the same as I do here.

Q. In other words everyone is wrong but you?

A. There is only one thing wrong, that I shouted "There is my husband" and I ran outside and called Dubeau to come in.

Q. In other words these are the only two mistakes you have made on the witness stand to-day, is that right?

A. Yes sir, all the rest is exact.

Q. In other words these were the two mistakes you made here to-day?

A. You mean which mistake?

Q. The one about calling Duhaer and the one about Duhaer being in the shop?

A. No I didn't call for Duhaer.

Q. When you went to this medical sister, did she recommend that you should go to a hospital?

A. No she didn't.

Q. Did your husband go with you to this medical sister?

A. That medical sister was there at the time at the place where I went to see my husband.

Q. Was she a friend of yours?

A. She is a neighbor of ours out there.

Q. And she was at the place where your husband was?

A. She was in the garden, also was my husband.

Q. At what time did that take place?

A. 2015 hrs.

Q. You stated when you arrived at the place where your husband was staying, that she and your husband were in the garden?

A. Yes.

Q. Why did you say before that you went to a medical sister later in the afternoon?

A. She lives and is a neighbor of ours out there and from Saturday on she is there and so am I.

Q. Why did you say earlier that you went later in the afternoon to see a medical sister?

A. I didn't have to go because she was already there, I perhaps made a mistake.

Q. Oh, in this case the mistake is yours is it?

Q. When you got to the house, your husband and the medical sister were in the garden, is that right?

A. Yes it is.

Q. What is the name of the Medical Sister?

A. Nellie Kliesten.

Q. She was in the garden with your husband when you got there?

A. They were in the garden when I arrived there, they were about ten metres between each other.

Q. Both in the same garden, or in two different gardens?

A. My husband was on the path and she was in the garden.

Q. Did he call her over or did you?

A. On my arrival, I started to scream and she came.

Q. Why did you start screaming?

A. I don't know why I did.

Q. You didn't scream when you were being assaulted did you?

A. Yes I did, when I ran out and saw M. Dubaer I called to him and started screaming out.

Q. Did you make any further visits to a doctor after this medical sister?

A. No, the first night I couldn't sleep, so she gave me some pills to make me sleep.

Q. I put it to you that from the time you came into the Court until now you have been lying consistently that your story has vestige of truth in it?

A. You asked me for the truth and I told it.

Q. And the other times when you gave evidence on oath, where there was any difference, it was all the fault of others?

A. They probably misunderstood me.

RE-EXAMINED BY THE PROSECUTION

Q. Did you make a mistake to-day when you said, "When the shop door rung, I called out for my husband"?

A. I called my husband.

Q. The question was did you make a mistake when you said that?

A. I don't understand exactly what you mean sir.

Q. You said to-day, when the shop door rung, I called out "My Husband", is that the truth or not?

A. Yes it is, that is right.

Q. You said to-day -"I saw Emilius Dubaer passing and I called out to him", is that the truth or not?

A. When I was outside of the house.

Q. Where were you when you called out"my husband" ?

A. Lying on the ground.

Q. Where?

A. In the back room.

Q. Where were you when you called to Emilius Dubaer?

A. On the door.

Q. On what door?

A. Front door, I didn't call for Dubaer for I didn't know his name.

Q. What did you say?

A. Somebody assaulted me.

Q. How did you direct Emilius Dubaer's attention?

A. I told him sir, "Will you come in, somebody assaults me".

COURT

Q. Had this soldier ever been in the back room on any previous visit?

A. No.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH R.P. 82(B).

THE WITNESS WITHDREW

PRESIDING OFFICER

I would like to ask the Court at this point that in the event of an adjournment, that the witnesses be kept apart.

PRESIDENT

Yes - That is rather difficult for the Court to manage but we will take the other witness B. Sadlier right away.

[illegible] SADLIER, [illegible], Belgium, being duly sworn, [illegible]

EXAMINATION BY [illegible]

Q. Are you L. Sadlier Sadlier, [illegible]?

A. Yes sir.

Q. Do you recognise anybody in this room?

A. Yes. (Witness points to the accused)

Q. Did you see that soldier on the first day last?

A. Yes sir.

Q. At what time?

A. Between twenty to and a quarter to five, I can't tell exactly.

Q. Where?

A. M. Stephart's house.

Q. Will you tell exactly what happened?

A. I passed by Stephart's house and Madame stood in the door gate, she asked me to come in for somebody had assaulted her, her face was blue and pale.

PRESIDENT

Will you explain to the witness that you have to translate everything he says into English and if he talks too long, it is going to be confusing.

WITNESS CONTINUED

When I stood there for about five minutes, I saw somebody wearing civilian clothes standing behind her. I heard him say two or three times to Madame "You owe me a thousand francs". The man then went outside, he went to his car and threw something in it, he then came back and came to me and ordered me three times to go in. The third time he took me by the throat and pushed me inside. That is all I know. He then went outside as a crowd gathered around, he went to his car and pulled off. That is all I know.

Q. Who was this civilian that you say you saw in there?

A. The man I pointed out (witness points to accused).

Q. What did you do when this woman Mme Boelaerts spoke to you first?

A. I didn't move, I still stood on the street with her.

Q. Why did you stay on the street?

A. Madame asked me to stay outside with her.

Q. What did you do then?

A. Nothing, I stood outside and waited to see what is going to happen.

Q. Where was this civilian when you first saw him?

A. He came from the back room, out of the kitchen. He then went towards me and at that time he spoke of a thousand francs, in the store.

Q. Where were you?

A. In the door gate.

Q. Did he say anything to you?

A. Three times he told me "Binnen" Flemish for Come in.

Q. Was this before or after he went to the car?

A. He first went to the car, and when he came back, he spoke to me and next he went outside again and drove off.

Q. When he said "Come in", did you go in?

A. No.

Q. And what happened then?

A. He then grabbed me by the throat and pushed me inside there. I stood approximately one metre inside the store.

Q. Were you afraid of him?

A. Yes I was.

Q. Why?

A. When he pushed me inside he pulled out a revolver out of his right pocket but I stood very close to him.

CROSS-EXAMINED BY DEFENDING COUNSEL

Q. Were you past the door of the shop when Madame called you?

A. When I came by, Madame called me.

Q. You were right in front of the door at that time?

A. Yes.

Q. Did you stay right in front of the door all the time?

A. Yes.

Q. Did you see anyone else in the house outside of the accused and Madame?

A. No.

Q. Was there anyone else in the house or shop?

A. I don't think so.

Q. Were you in a position where you could have seen anyone else come out of the shop?

A. Yes definitely. No one could have come out but I would have seen them.

Q. You didn't see a child in the shop?

A. No.

THE PROSECUTOR DECLINES TO RE-EXAMINE

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH R.P. 95 (B).

THE WITNESS WITHDRAWS.

AT 1240 HOURS ON THE 10TH DAY OF NOVEMBER, 1945, THE COURT ADJOURNED UNTIL 1430 HOURS ON THE 10TH DAY OF NOVEMBER, 1945.

ON THE 10TH DAY OF NOVEMBER, 1945, AT 1430 HOURS, THE COURT RECONVENED PURSUANT TO ADJOURNMENT, THOSE BEING PRESENT THE SAME PERSONS AS WHEN ADJOURNED.

THIRD WITNESS FOR THE PROSECUTION) No 106 Inspector Edmond DE MEESTER, No 1 Police Station, GHENT, att 1 Can Provost Corps GHENT, being duly sworn, is examined by the Prosecutor:

Q. Are you No 106 Inspector Edmond DE MEESTER, No 1 Police Station, GHENT, att 1 Can Provost Corps GHENT?

A. Which section?

Q. First section, att Can Provost Corps, Ghent.

A. Yes sir.

Q. Do you know Mme Boelaerts?

A. No sir.

Q. Have you ever seen her?

A. No I have never seen her.

Q. Do you know Francis STEVAERT?

A. No Sir.

Q. Do you remember anything that happened on the 1st Sep last?

A. I was on duty at our HQ and Mme came down to our HQ and she was telling me just what happened at her place Hovel Street No 6, the real name is Overrevel Street.

Q. About what time was this?

A. It was on a Saturday, so I came on duty at four o'clock and as I remember it would be about 6.30 or seven o'clock on Saturday afternoon so I told to Sgt Newman -

Q. Now just a moment, will you just tell the Court what she told you.

JUDGE ADVOCATE

Just a moment, before you do this, you are introducing this witness as "recent complaint" and therefore I must warn the Court that evidence of "recent complaint" is admissible provided it is recent and is made at the first available opportunity, not as evidence of the facts as stated but as evidence of the consistency of the conduct of the prosecutrix. The evidence may be given so far only as relates to the accused and you will have to establish Capt Thompson that it was voluntarily given and not as a result of questions. You will have to establish before the Court how the evidence was obtained.

PROSECUTOR CONTINUES

Q. Will you tell the Court how you happened to see her at that time?

A. Well because Mme came down to our HQ and I was on duty that night, as the interpreter was not there, so she told me what happened and I told to Sgt Newman what the score was so he said to take a statement from Mme who was with two police from the 5th Section and I asked her to sit down. I took the statement and Sgt Newman was there, I took it

in Flemish. Once the statement was made, I made her sign it and I gave the statement to Sgt Newman who gave it to the interpreter who had to translate from Flemish into English. That is the way I came into the Boulearts for the first time while doing my duties.

Q. When she first came to you, how did she tell you this, was it as a result of being asked questions or was it voluntary on her part?

A. No, she had been first to the police section and they sent her to our section.

Q. Now you said when she first came to you she told you something, now was that because you questioned her or on her own?

A. No I didn't ask questions, she told me the story and I took it down in Flemish. It only lasted a half hour that is all and in the presence of the civilian policemen I told her to go home and I gave the statement to Sgt Newman to give it to the interpreter to have it translated, that is what you asked me sir.

PROSECUTION

I would ask the witness to give evidence of the statement which she gave?

DEFENDING OFFICER

I object

JUDGE ADVOCATE

On what grounds?

DEFENDING OFFICER

Because she stated that she gave the full details under questions by the Provost.

CROSS-EXAMINED BY DEFENDING OFFICER AS TO ADMISSIBILITY OF STATEMENT OF THE ACCUSED

Q. When this woman came to you and sat down and gave the statement did you ask her any questions?

A. No sir.

Q. During the statement?

A. Yes I had to ask the day and hour, I have to on all statements.

Q. When she gave you the statement did you consider it first in all, is that the full details?

A. Yes sir, at the end when she finished to tell, I said is that all, she said "Yes" and then I told her, please sign the statement.

Q. But you did ask her some questions?

A. No.

Q. The time and date?

A. Of course.

Q. Then you asked her some questions?

A. No.

Q. You asked her at what time it took place?

A. Yes.

Q. Is that a question or not?

A. It is our duty.

Q. Is it a question?

A. It is our duty to ask . .

Q. Inspector I am not insinuating that you have gone beyond your duty, now you have told the Court that you asked her the date?

DEFENDING COUNSEL SUBMITS THAT THE STATEMENT TAKEN BY THIS WITNESS IS NOT ADMISSIBLE AS EVIDENCE

Sir, questions were asked as to date and hour and at the end she was questioned as to whether that was all. I submit to the Court that the evidence is inadmissible because it was obtained under questioning and I ask that all the evidence introduced by this witness be disregarded on the evidence of the previous witness Jane Boelaerts who stated she told all the story under questioning.

PROSECUTOR ADDRESSING

Mr President, I submit that certain things such as date and hour had to be brought out by questioning and I submit that what she did say without questioning is evidence and must be brought out.

THE PROSECUTOR DECLINES TO REPLY

DEFENDING COUNSEL ADDRESSING THE COURT

Mr President, the prosecution is seeking to introduce into evidence a statement made by a female, sic, to another witness. This is what is known in law as "complaint". Complaints of this nature are allowed in cases such as the accused is charged with. The mere fact that the statement is made in answer to a question is not in itself sufficient to make it inadmissible as a complaint. The question for the Court is whether the statement is spontaneous in the sense that it is an unsolicited and unvarnished story of what happened. In such case the decision as to the character of any questions put, the relationship between the questioner and the complainant, as well as the other circumstances, are matters within the discretion of the Court. The Court must be satisfied that what was told was an unsolicited and unvarnished story, not a story fabricated by leading questions or coaxing as a result of leading questions. Are there any further questions by President, the Court or the Defending or Prosecuting Counsel?

THE COURT IS CLOSED TO CONSIDER THE OBJECTION OF THE DEFENDING COUNSEL.

THE COURT HAS ALLOWED THE OBJECTION OF THE DEFENDING COUNSEL AND HAS RULED THAT THE STATEMENT MADE TO THE WITNESS IS INADMISSIBLE AS EVIDENCE.

THE COURT IS RESUMED AND THE PRESIDENT TELLS THE PROSECUTOR IN OPEN COURT THE RULING CONCERNING THE OBJECTION BY DEFENDING COUNSEL.

Q. Would you give to the Court as closely as you can remember exactly what this woman told you?

A. Well the woman came down that afternoon and as far as I remember because it is a delicate question, as far as I remember that soldier has a bronze arm watch in repair in that shop so the soldier came down to fetch this wrist watch back again. As far as I remember was there has been between that a question which I think now according to what the Boelaerts said and which I have put down in the statement that he tried to rape that woman. He, that soldier, had thrown that woman on the floor also according to the statement of the Boelaerts he had thrown her on the floor and he tried to rape her. That is all gentlemen and that is in the statement in Flemish which should be here in the Court.

PRESIDENT

I know Inspector but we can only take what we get under oath. We cannot introduce any statements, that is why you were called here

PRESIDENT TO WITNESS CONTINUED

TO/T.M.Y. The evidence must be under oath.

WITNESS CONTINUES

I only took down on my statement what Mme Boelaerts told me you see

THE PROSECUTOR CONTINUES

Q. Now when she said he attempted to rape her, was that said voluntary or was it said as a result of questions on your part?

A. No I didn't make any more questions to her because it was a very delicate question and I let her talk and I wrote it down.

CROSS-EXAMINED BY DEFENDING OFFICER

Q. When this woman came to see you, did she seem to be in a very disturbed state?

A. Something yes, I suppose that woman would be more emotive, she was not very excited either such an event.

Q. In other words would you not think the woman was not as excited as if someone had tried to rape her?

A. Yes, I was surprised, she said she knew that soldier for several months, that was surprising to me, she was not very excited. Other women they usually cry or tell or shouting or something like that but she was not.

Q. She did not scream or go into hysterics?

A. No, she was rather calm, she didn't cry or something.

Q. Did she name the soldier who she claimed had tried to rape her?

A. No sir, I cannot remember.

Q. But you are of the opinion that the average woman who someone has attempted to rape would be more excited and hysterical than this woman was?

A. Yes sir, that is what I think.

THE PROSECUTOR RECURRED TO RE-EXAMINE

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH R.P. 58 (2).

THE WITNESS WITHDREW.

FOURTH WITNESS FOR THE PROSECUTION } M. Francis [illegible] (Husband of Mme Boelaert) 6 Overboorts Street GHENT, Belgium, being duly sworn, is examined by the Prosecutor:

Q. Are you M. Francis [illegible], husband of Mme Boelaert, 6 Overboorts Street, Ghent?

A. Yes sir.

Q. Can you speak English?

A. Just a little.

Q. Do you remember seeing your wife on 1 Sep last?

A. Yes I do.

Q. At what time?

A. About 2000 hrs.

Q. Where?

A. At Drongen.

Q. Under what circumstances did you see her?

A. She was overtime, she came in screaming. I went to her and asked her what had happened. She told me that she had been assaulted at home. I asked her what had happened, how it happened.

DEFENDING OFFICER

I object to this. I don't think it can be justified under the grounds of "Recent Complaint". It happened 4 or 5 hours after.

JUDGE ADVOCATE

You are objecting on the grounds that it was not made on the first available opportunity?

PROSECUTOR

I submit that it was at the first available opportunity.

DEFENDING OFFICER

If the crime was committed to-day and you didn't see some other person for three years, then after three years it isn't "Recent complaint". In this case three hours passed which to me is equal to three years.

PROSECUTOR

Sir, in this case the logical first thing to do would be to go to the police and as soon as she had gone to the police, she proceeded to the place out of town where her husband was and I submit that under these circumstances it was the first opportunity she had to complain to her husband about it.

DEFENDING OFFICER WITHDRAWS HIS OBJECTION

PROSECUTOR CONTINUES WITH THE EXAMINATION IN CHIEF OF WIT WITness

Q. Will you tell the Court slowly and as exactly as possible everything she told you at that time?

A. She told me the soldier assaulted her and threw her on the floor and held up her dress and he then pulled out his penis and tried. Somebody entered, a little bit, the soldier released her and she ran out.

Q. When she told all this, did she say it spontaneously, of her own accord or did she say it as a result of questions you asked her?

A. I simply asked her what was wrong because she was screaming and she was quite sad, she started to tell me everything spontaneously.

CROSS-EXAMINED BY DEFENDING OFFICER

Q. Where did you have lunch to-day?

A. At home.

Q. Did you have lunch with your wife?

A. Yes sir.

Q. Did you discuss the case?

A. Yes.

Q. Did you ask her what occured in this Court this morning?

A. Yes.

Q. And she told you?

A. Yes.

Q. Where about's were you when you first saw your wife on the 1st of May?

A. I was at Irvgen.

Q. Yes but where about?

A. At the week-end cottage.

Q. Which room were you in, in the week-end cottage?

A. There is only one room.

Q. And you were in that room?

A. I was in the garden.

Q. Why did you tell the previous Court that you were in the house?

A. I didn't say so.

Q. May I refer to the original statement, have you appeared before a previous Court?

A. Never.

Q. Have you ever made a statement before a Con Court before?

A. On this case?

Q. Yes?

A. Yes I had to go to Brakent Inn.

Q. Did you make a statement there?

A. Yes by means of an interpreter.

Q. Did your wife tell you this morning that an interpreter was a very useful thing?

A. No she said it was not very easy for her at times.

Q. Did you make a statement in front of that Court?

A. Yes.

Q. After you made that statement, was it translated to you?

A. It was not.

Q. Are you saying that the Con Officer who signed that [illegible] was compiled with was a liar?

A. No.

Q. Was he lying?

A. The interpreter who was up there just simply told me a summary but he translated it completely right away.

Q. The interpreters, you mean, are not very good?

A. There were four interpreters.

Q. Is that your signature, you have signed that this was correct? (Defending Offr shows witness signature on his statement attached to supplementary Summary of Evidence).

A. By means of the interpreter, yes.

Q. The interpreter says that you said that "when my wife came into the house screaming", is that right or not?

A. In the house at Drongen?

Q. Yes, she came in the house screaming?

A. In the garden.

Q. There is a difference between the garden and the house, where did she come in?

A. She entered the garden, next she entered the house and was still screaming.

Q. She was still screaming, she was very upset was she?

A. She was very excited but not hysterical.

Q. Was she screaming?

A. Yes.

Q. Who else was in the garden with you?

A. Three children, a man and a woman.

Q. Who was the woman?

A. In the next house.

Q. Was she in your garden?

A. No.

Q. She was not in your garden?

A. No.

Q. Are you certain she was not in your garden?

A. When she saw my wife coming and that my wife was screaming, she came in the house.

Q. Where was she first, was she in the garden or was she not in the garden?

A. Between the door and the garden.

Q. Between what door?

A. The front door.

Q. Of your house?

A. Of her house.

Q. In other words she was not in your garden?

A. No, it is everybody's garden.

Q. Oh I see, have you ever sold American dollar bills?

A. No.

Q. Never to anyone?

A. No.

Q. I put it to you that you have sold American Dollar bills?

A. No never.

Q. How long have you known the accused?

A. six months.

Q. How often have you seen him?

A. Maybe six, seven or eight times.

Q. Did you see him as a friend or how did you see him?

A. Just as a customer for having his watch repaired and for buying watches, he bought two of them.

Q. He bought two watches from you?

A. Yes.

Q. How many repairs did he have done in your place?

A. Maybe four watches.

Q. Are you suggesting to me and to this Court that you sold this man two new watches and that he went to your place six, seven or eight times to have them repaired four times. Do you repair watches?

A. Yes I do.

Q. Do they stay repaired when you repair them?

A. As long as you don't drop them or fight with them.

Q. This man bought two watches from you and he went to your place 7,8 or 9 times to have these two watches repaired, is that right?

A. Every time it was small repairs once a glass, another time something else, the last time the watch was broken, the upper part of the watch was completely broken.

Q. How long have you been married?

A. ten years approximately.

Q. Have you seen your wife as excited before as she was on this occasion.

A. No never.

Q. How far away from you was she when you first noticed that something was wrong?

A. Approximately ten metres.

Q. In other words ten yards or metres away you could easily see she was excited and screaming, is that right?

A. When I spoke to her, she started screaming.

Q. I put it to you that you have been selling American dollar bills?

A. No sir.

Q. I put it to you that you discussed thoroughly with your wife at lunch time the evidence which she gave before this Court this morning, is that right?

A. I was very surprised when she told me and I guessed that this was the way that they should try to avoid the soldier to be condemned.

Q. Did you ask her what evidence she gave before this Court?

A. No, I didn't have much time, I was rather busy in the store.

Q. Were you working in the store at lunch time to-day?

A. No, but when there is customers, I have to go and serve them.

Q. Did she tell you what evidence she gave before this Court?

A. She told me that she had to tell everything what she already told the first time.

Q. Did she tell you that in detail?

A. No she told me previously all about it.

Q. But you did discuss the case rather thoroughly?

A. Yes because I had to come here, it is quite natural that I discussed the matter with her.

Q. Yes and you discussed with her what she had told?

A. She told me previously about it.

THE COURT

Q. How far is it from your shop to your place in Drongen?

A. About half an hour.

Q. Walking, riding or how?

A. With a bicycle.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH R.P. 83(B).

THE WITNESS WITHDRAWS.

DEFENDING OFFICER

I would like to have it recorded in the proceedings at this point that I previously requested that in the event of an adjournment that the witnesses be kept separate and according to the evidence of this last witness, this has not been done.

THE DEFENDING OFFICER SUBMITS THAT A PRIMA FACIE CASE HAS NOT BEEN ESTABLISHED BY THE PROSECUTION WITH RESPECT TO THE CHARGE

I would like to submit to the Court for the Defence that no Prima Facie case has been established. I would like to draw the attention of the Court at this time to the actual charge involved which is "Assault with intent to Commit Felony, in that he, on or about 1 Sep 45, the accused assaulted Mme Marthe BOELAERTS, with intent to ravish her." And I think I am correct at this time to direct the Courts

attention that the only evidence introduced here to-day which has anything to do whatsoever with the charge is the evidence about what happened in the back room. After she emerged from the back room and what she told to any of the witnesses doesn't matter at all to the points of the case. The fact is, it must be established what happened in the back room. It is a sound legal principle that in any case where assault or rape is alleged to have taken place, that the primary requisit is any medical testimony. This woman has told us this morning that she has been dragged in a room, pushed in a chair and thrown on the floor, yet the prosecution has not at any time adduced any evidence to show bruises or marks or any ill effects. It is with the submission for the Defence that these are requisitions of any prosecution in a case of this kind. The only evidence which has been brought by the prosecution as regards the actual charge is the evidence of Mme Boelaerts and I would ask you for that reason to disregard all the other evidence, none of which touches what happened in the back room. We have here many versions of what happened in the back room all from Mme BOELAERTS. It is not sufficient for her to say it was the fault of the translater - I don't believe that the interpreters are careless, I can't bring myself to believing that such carelessness was all the interpreters fault. She gave two previous statements on oath, one in Brussels and one in Ghent, both statements differ but when asked about it to-day, it is the fault of the translater or interpreter. There is no denying these are her statements as her signature is on them and she admits it is her signature but claims the differences to be the fault of the interpreter. I would ask the Court how much value they can place on her word when she gives evidence before this Court. There are two pieces of evidence which are very necessary in a charge of this kind and those are Medical Testimony and what actually happened in that back room. Neither one of these pieces of evidence have been produced by the Prosecution and I therefore submit that a Prima Facie case has not been established by the Prosecution and I would ask that the charge against the accused should be dismissed now.

THE PROSECUTOR ANSWERS

Mr President, there is I submit evidence before the Court on which you could logically convict the accused as charged. There is uncontradicted evidence before the Court that the accused grabbed the woman pulled her by the arm, pushed her onto the chair, threw her on the floor, threatened her with a revolver and got on top of her and the question of intent to ravish, there is uncontradicted evidence before the Court that he took out his penus and got on top of her, also that she tried to get away from him. When he had her by the arm that she tried to run away from him, when she got up from the chair but was grabbed by him and thrown on the floor and again with the revolver, all of which shows on his part an intent to ravish her notwithstanding a resistance on her part. I therefore submit that there is sufficient evidence before the Court to put the accused on his defence.

THE JUDGE ADVOCATE ADVISES THE COURT

Mr President, Members of the Court, the defence has submitted that the charge against the accused should be dismissed at this stage, that the Prosecution has failed to introduce a Prima Facie Case. At this stage of proceedings the Court need not consider the credibility of witnesses nor that the Prosecution has proved its case beyond a "reasonable doubt". The Court need only consider if sufficient evidence

has been adduced by the Prosecution upon which if uncontradicted, the Court could convict the accused. If the Court feels that there is sufficient evidence upon which they could convict the accused, then they should disallow the submission of the Defending Officer. If on the other hand they feel that there is not sufficient evidence upon which they could convict the accused, then they should allow the submission.

With regard to the evidence before this Court, I wish to warn the Court again that the evidence of what was said to the Police Inspector and to M. STEYAERT by the Prosecutrix is to be regarded as a "complaint" and it is not evidence of the facts complained of evidence of consistency of the conduct of the Prosecutrix only. At the present time the only evidence to be considered as to the facts is the evidence given by the Prosecutrix herself at the trial.

THE COURT IS CLOSED TO CONSIDER THE SUBMISSION OF THE DEFENDING OFFICER.

THE COURT DISALLOWS THE SUBMISSION OF THE DEFENDING OFFICER AND THE COURT IS REOPENED AND THE DECISION IS ANNOUNCED IN OPEN COURT.

"D-6"

FIRST WITNESS FOR THE DEFENCE) B.136643 Pte Moses HAVELIN, (the accused), RCASC, 13 Bn, 2 CBRG, att Cdn Sec HQ Brussels Grn, being duly sworn, is examined by the Defending Officer:

Q. For how long a time have you know M. Francis STEYAERT and Mme Marthe BOELAERTS?

A. Since last June sir.

Q. Will you tell the Court in your own words how you came to know them and what transactions you have had with them?

A. I have bought two watches from them and a diamond ring as I was making a little bit of money rolling dice and one of the other soldiers was buying American money so he was a fairly good friend of mine and I asked where he was getting it. He said -"I'll take you to the place where you can buy any amount of American money you want, maybe some Cdn money." So he took me to this jewellery shop where I bought some American money from the husband of this woman. Later I showed some American money to an American soldier. He told me it was counterfeit.

PROSECUTOR

I suggest this is hearsay.

JUDGE ADVOCATE

We allow the Defence greater leniency Mr Thompson.

WITNESS CONTINUES

It was a hundred dollar bill which was counterfeit and so I took it back the 1st Sep to get my Belgian money back for it. I paid 6000 Belgian francs for the $100 bill and all they would give me back was 5,000 francs.

Q. Who?

A. Mme Boelaerts, so we had an argument. I wanted my 100 dollar bill back and she could keep the 5,000 francs until she saw her husband and by that time she had locked it in the safe. She told me to take the 5,000 or she would call the police, so as I was AWL from the army, then I left.

Q. Where did this discussion take place?

A. In the room next to the Jewelery shop.

Q. What happened when you emerged from the back room?

A. She went out, she told me she was going to call the police.

Q. Did she say what for?

A. No she didn't.

Q. How were you dressed?

A. I was dressed in civilian clothes.

Q. Did she know you were a Cdn soldier?

A. Yes sir.

Q. She had seen you in uniform?

A. Yes sir.

Q. Did you at any time assault this woman?

A. No sir.

Q. Did you lay your hands on her in any way?

A. No sir.

CROSS-EXAMINED BY THE PROSECUTOR

Q. How do you account for the fact that you had a revolver in your hand when you came out of the door?

A. I had no revolver.

Q. You heard the evidence of this civilian who was standing at the door and said you had a revolver?

DEFENDING OFFICER

Objection, the witness in question never stated that the accused had a revolver in his right hand.

PRESIDENT

He stated he had it in his right hand pocket.

PROSECUTOR CONTINUES

Q. What was this revolver doing in your pocket?

A. I didn't have one.

Q. How do you account for the fact that this witness says you had a revolver in your pocket?

A. I never had a revolver in the army, I was issued with a sten gun on the 10th of May last.

Q. Where did you get this car from?

A. It was a taxi.

Q. Do you travel around in taxis usually?

A. No, just on short trips.

Q. Why did you tell this civilian to get inside the shop?

A. I forget about saying that.

Q. You didn't want them to have a chance to follow you, isn't that correct?

A. No, I wouldn't say that.

Q. What would you say?

A. I told her I would come back and see her husband about this money.

Q. You knew that you weren't supposed to change francs into American money didn't you?

A. Well, there are a lot of soldiers do.

Q. Do you know of any reason this civilian would have for saying you had a revolver, or grabbing him by the throat and shoving him inside the store?

A. No.

Q. So you consider that you were justified under the circumstances for anything that you did in the store, is that correct?

A. I don't understand.

Q. I mean you consider that inasmuch as you were engaged in illegal trade that the only way you could see to get your money back was by using force?

A. Yes with her husband because when he gave me than money, he said it was genuine money.

Q. How do you know the francs were genuine?

A. They had the water-mark on them.

Q. Are you an expert on currency?

A. No, but I have had a little experience with it.

Q. Now you don't know whether this American money was false or not do you?

A. No, not until the American soldier told me.

Q. And as far as you were concerned you took his word from him?

A. Yes.

Q. You didn't take it to a bank?

A. I had heard other soldiers talking about counterfeit money, so I thought I would change it back into Belgian francs.

Q. Then you figured if you gave her a scare that she may give you the money back?

A. Well I told her I wanted my money back, I got in the car and went away.

Q. Only when she wouldn't give you the money back, you naturally would get very angry, is that true?

A. No it didn't bother me at all, I told her I would come back and see her husband about it.

Q. Well now, you don't deny that you took hold of her arm do you?

A. Yes sir.

Q. Why would she go out and complain to a "passer by" if she had nothing to fear?

A. Maybe she thought I was going to take something in the shop to cover up for the thousand francs.

Q. What reason would she have for thinking that?

A. I wouldn't go when she told me.

Q. What did you do?

A. I told her I wanted a thousand francs.

Q. You didn't threaten her in any way at all?

A. No sir.

Q. Why did you go out?

A. Because I was AWL and if the police had come I would have been picked up and I wanted to go back to the unit and give myself up. I was going back the Tuesday coming.

Q. When were you coming back to see her husband?

A. Her husband was coming back on Monday and I was coming back to see him. I have witnesses to swear I bought the money there and they are in camp, one is an officer and the other is a Bdr and they are in camp now.

Q. You say you did your dealings with her husband?

A. Yes sir.

COURT

Q. How long had you had this bill before you were told it was counterfeit?

A. I had it for quite a while sir.

Q. And how long before you went to recover your francs?

A. Well I heard it as a rumour and so decided to take it back.

Q. This date the 1st Sep, is that the date you first tried to recover it?

A. Yes sir.

Q. And you got part payment back for it that day?

A. Yes sir.

Q. She took it upon herself to give you 5,000 but not 6,000 francs?

A. Yes sir.

PRESIDENT

Q. You did get 5,000 francs back?

A. Yes sir. I can go and get 5,000 francs now, my girl friend can tell you that I have sold American money at that jewelery shop.

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH R.P. 83 (B).

THE WITNESS RESUMES HIS SEAT

THE DEFENCE HAS NO FURTHER WITNESSES

THE DEFENCE IS CLOSED

THE PROSECUTOR MAKES A CLOSING ADDRESS:

Mr President and Members of the Court, there has been considerable emphasis in alleged inconsistency between statements by the complainant, to her second statement made on the supplementary summary of evidence and her statement to-day. The whole inconsistency that has been stressed is the question of whether she called out the name of this man Emilius Dubaer or her husband when the bell rang, but the whole thing is quite clear from what she said to-day. First when the bell rang she called out that it was her husband, then when she went out to the front door, she called to this many who was passing. There may be a few minor variations as to unimportant details between various statements but I submit that under the stress of a situation like that, the witness could not remember all the details perfectly that happened and we have it too that the difficulties arising taking evidence through an interpreter, it is impossible to be sure what the witness means. In any event, there are no variations from essential points in her evidence. First that the accused grabbed her arm and pulled her into the back room, then that he pushed her on to the chair, threw her on the floor, threatened her with a revolver and got on top of her, all of which, or any one of which constitutes an assault. In addition to that the evidence is clear on the point that he undone his trousers and took out his penus and combined with the fact that he got on top of her. I would submit that these facts show and can show nothing else but an intent of his part to ravish her. She had tried to get away from him when he held her by the arm and again when she got out of the chair, he had threatened her with the revolver, all of which shows he had intended to ravish her inspite of the resistance on her part. This evidence substantiates the charge against the accused and it is corroborated by the evidence of the civilian Emilius Dubaer who was passing by at the time and was called by her and told that she had been assaulted and saw the accused come out with a revolver in his pocket. He also gives evidence that after the accused went to the car, he came back and told him to get inside and forced him to go inside by grabbing him by the throat all of which confirms that the accused didn't want to be followed and confirms that he was armed at the time and there has been no suggestion why the civilian should state this if he was not. Then the consistency of the behavior of the complainant is shown by the fact that she complained to the Cdn Military Police of an attempt to rape her within a period of an hour or so after this happened and then later as soon as she saw her husband. The accused naturally enough denies everything that has been stated against him and accuses these people of dealing in American money which is or which can be regarded as a story which might be cooked up in order to discredit them and to help him. However even if the Court does accept his statement that they were dealing in money and he did have some trouble about money, I would submit that there was an assault, then it may have been prompted by some disagreement between them. She wouldn't go and summon a civilian to come in without some reason and under the circumstances assuming that what the accused said did happen, I would submit that being armed, in all probability he did assault this woman, even though from the feeling of temporary anger. In any event, inspite of his denying that he had a revolver there is the evidence of the civilian who has nothing to do with

the case whatsoever and there is also his evidence that the accused grabbed him and shoved him in the shop. Under these circumstances, I would submit that the Court must find the accused guilty of the charge and in any event that the evidence shows beyond any reasonable doubt that there was at least an assault.

THE DEFENDING OFFICER MAKES A CLOSING ADDRESS:

I would like to draw the attention of the Court to what my friend the Prosecutor so lightly refers to as facts. Facts are circumstances known to have happened, which have been proved beyond all "reasonable doubt", by either eye witnesses or unbroken circumstancial evidence. The Prosecution refers to the statements made by this Mme Boelaerts as facts but I would ask the Court to agree with me that they are not acceptable as facts but only as the witness before this Court and any weight which is to be placed upon these facts must be placed on the word of this witness if considerable credibility is to be given to them. In the first place, it is not for the accused to prove himself innocent, the accused is not guilty, it is the job for the Prosecution to prove beyond all reasonable doubt that the accused and none other than the accused is guilty of this offence. The Prosecution has also alluded to clear evidence. I would ask the Court to remember the evidence, I don't think anything was any more unclear than the evidence heard to-day. I want to take the Court back to the evidence given by our only witness as to the facts alleged to have taken place in that back room. First in a Summary of Evidence she stated that when she came out of the back room that she found a customer waiting in the shop. To-day in front of this Court she stated that he was walking past which naturally prompted the question -"Who rang the bell?" The answer, after having been given time to think was that a kid rang the bell and asked her for something which she can't remember now. The witness himself states that he stood immediately in front of the door, that he stood there for approximately five minutes and no one could have come out of the shop without him seeing them and he saw no child. Is it presumed by the Prosecution that the child is still in the shop? Then we must consider that this woman went to the police and gave a statment and according to the Police Inspector he was amazed at her calmness. At approximately eight o'clock at night, several hours after the incident, she went to her husband in hysterics and screaming. I am not a medical man but I imagine if a woman is going to have hysterics after such an event as this, she is very likely to be that way very shortly after the incident. The Police Inspector stated that he was most surprised at this woman, the complainant, who complained of assault and attempted rape, should be so calm. I ask the Court to consider whether any natural normal woman would be assaulted with intent to ravish, go to civilian police station and be calm and then to a Cdn Provost station and amaze the inspector by her calmness, then go to her husband in a state of hysterics and screaming. We also have the interpreters mistakes. I would ask the Court to believe that all these mistakes are not the fault of the interpreter but as an easy way for this witness to cover up lies. There have been several allusions to a revolver but no evidence has been given inspite of these two people saying he had one and he didn't have a revolver when he was arrested and we also have several conflicting reports about the use of this revolver. May I say that the accused must have been about the busiest man I have ever seen or heard of. According to the evidence of Mme Boelaerts the accused pushed her in a chair and pointed a revolver at her. She stood up and he threw her to the floor, lay flat on top of her with his revolver in one hand, took his penus out with the other and somehow while lying flat on top of her managed to show his penus to her. He certainly must have been a very busy man.

Still she somehow managed to struggle away from him. Emilius Dubaer, the civilian witness, states that he saw a revolver in the pocket of the accused but in one of the three statements she stated that the accused pointed the revolver at Dubaer, but he doesn't say so. As regards consistency of evidence, the accused has told, considered everyway, a much more consistent story of the purchase of a hundred dollar American bill. He found or thought he found that it was counterfeit. He went to this jewelery shop wishing to exchange the American bill for the 6,000 Belgian francs which he had paid for it. He states that the woman gave him 5,000 francs leaving a balance of 1,000 francs. Mme Boelaerts admitted in the Court to-day about him asking about a 1,000 francs but she didn't know why. Now I ask you gentlemen, would any man have come out of that back room demanding a 1,000 francs if he had just attempted to ravish this woman. There is consistency in this story as it is corroborated by Emilius Dubaer that the accused was aking for 1,000 francs but there is no consistency in the story of what took place in the back room and events which took place after they emerged from this back room. It has been stated before that the main basis for any charge of assault should be medical evidence. There has been no medical testimony adduced in front of this Court, nor was there any proof that any force or violence was used on Mme Dubaer. As regards the question of why the woman should say she was assaulted if she wasn't. It is the oldest trick known - the easiest thing for a woman to do is to yell "rape" if she wants to get rid of a man. Due to the fact that this woman was aware of the fact that the accused was a Cdn soldier dressed in civilian clothes, it made it all the easier for her to get rid of him in this way. After the inconsistency in this woman's evidence the Court is being asked to convict the accused on the unsubstantiated, uncorroborated evidence of this woman who deliberately lies while on oath in front of this Court. The Prosecution says the evidence is quite clear, personally I doubt it. It is the contention of the Defence that not only has the Prosecution failed to prove intent, but they have failed to prove any assault whatsoever. It is considered that the points of what happened in the back room according to the testimony of Mme Boelaerts are not consistent and the story of the accused about the American money is consistent. I have tried to bring this out in cross-examination and in summing up I think they are sufficient to prove that this woman lies and I would say this Court cannot convict this man on the unsubstantiated, uncorroborated evidence of this woman who lies while on oath in front of this Court.

THE JUDGE ADVOCATE SUMS UP:

Mr President and Members of the Court, I wish to point out that it is part of my duty as Judge Advocate to sum up the evidence and advise the Court on the law. While the evidence is conflicting, I do not think it necessary for me to sum it up. I wish to remind the Court that the Court is the sole judge of the facts and anything I say now or may have previously said indicating my personal views as to the facts should be entirely disregarded. The Court and the Court alone is the sole judge of the facts. The accused is charged under Army Act Sec 41:- "When on Active Service, Committing a Civil Offence, That is to say, Assault with intent to Commit Felony, Contrary to Section 38 of the Offences Against The Person Act, 1861, in that he, in the Field, in Ghent, Belgium, on or about 1 Sep 45, assaulted Mme Marthe Boelaerts, with intent to ravish her." To constitute the offence of Assault with intent to ravish, there must be in addition to the assault, evidence of the intention to have carnal knowledge notwithstanding her resistance. An "assault" is a movement which attempts or threatens the unlawful application of force to another person without his consent; if force is actually applied it constitutes a "battery" which

is included in the term "assault". The use of force however slight, is sufficient to justify a conviction for assault, if exercised with the intention to cause, or with the knowledge that it is likely to cause injury, fear, or annoyance to the other person. Not only the actual use of such force, but any act or gesture which causes the other person to apprehend that force will be used, is sufficient to constitute the offence of assault. Thus, shaking a fist in a man's face or pointing a pistol at him may be assaults. Therefore this charge has two elements. There must be an assault as I have defined it together with an intention to have carnal knowledge notwithstanding her resistance. If the Court finds that there was an assault but there was not the intention of having carnal knowledge, then the accused may be found not guilty of the offence as charged but guilty of common assault. With regard to corroboration, though corroboration of the evidence of the Prosecutrix is not essential, it is in practice required and I therefore warn the Court against the danger of acting upon the uncorroborated testimony of the Prosecutrix and in this regard I advise the Court that "recent complaint" cannot be regarded as corroboration. The corroboration is independent testimony which confirms in some material particular not only the evidence that the crime has been committed but also that the accused committed it. The evidence was allowed in two witnesses of "recent complaint" as I warned the Court at that time and I wish to remind them that, that evidence is not to be considered as evidence of the facts complained of but only as evidence of the consistency of the conduct of the Prosecutrix with her evidence given at trial. As the Defending Officer has pointed out the onus is on the Prosecution, it is not for the accused to prove himself innocent, it is for the Prosecution to prove he is guilty. The Prosecution must therefore, prove all the elements of the charge to the satisfaction of the Court. It is also my duty to point out to the Court that the accussed is entitled to the benefit of any reasonable doubt. I say a reasonable doubt, that is some doubt which is based on the facts before the Court and not some doubt which is purely immaginary. If the Court has a reasonable doubt after hearing and weighing the evidence then the accused is entitled to the benefit of that doubt. On the charge the Court may find the accused "guilty as charged" or "not guilty as charged but guilty of Common Assault" or "not guilty". That is all I wish to say unless the Court or the Prosecutor or Defending Officer require explanation on any question that I may have overlooked. Are there any further questions?

THE PRESIDENT, THE PROSECUTOR AND THE DEFENDING OFFICER DO NOT REQUIRE ANY FURTHER ADVICE FROM THE JUDGE ADVOCATE.

THE COURT IS CLOSED FOR CONSIDERATION OF THE FINDINGS

THE COURT IS REOPENED AND THE ACCUSED IS AGAIN BROUGHT BEFORE IT.

THE COURT ANNOUNCES THAT THE ACCUSED IS FOUND "NOT GUILTY" OF THE SECOND CHARGE.

THE COURT PROCEEDS WITH THE TRIAL ON THE FIRST CHARGE
(see proceedings recorded on CFA 96)

"E1."

FIRST WITNESS FOR THE DEFENCE AS TO CHARACTER) B.136643 Pte Moses HAVELIN, RCASC, 13 Bn, 2 CBRG, att Cdn Sec HQ Brussels Grn., being duly sworn, is examined by the Defending Officer:

Q. What type of work were you doing up until 6 Aug 45 the day you went absent without leave?

A. I was scheduled to go back to Canada.

Q. Did you want to go back to Canada?

A. No sir, I wanted to go COF.

Q. Why?

A. I didn't want to go back for a while, for two weeks we weren't doing anything and I volunteered to go into the Provost Corps and I waited two or three days and no word came and so I went to the girl friends and intended to stay for a few days but started drinking cognac and always intended to go back but got drunk instead. I was going to go back on the following Tuesday.

Q. Did you have any trouble at home?

A. Yes.

Q. What type of trouble?

A. In the line of divorce.

THE DEFENCE HAS NO FURTHER WITNESSES AS TO CHARACTER

Summary of Evidence
in case of

B 136648 Pte Hawkins M
13 Bn C.B.R att. Edn. Sec. - HQ. Brussels Gen.

EXHIBIT "A"
J. Baillargeon
Pres

Charge (1) D. W. L

(2) attempted Rape

Reg Section 70 Ch. under 4 Letter or call.

1st. Witness cpl. L 55214 Cpl. Songster H.A.
4 Sec. 2 Edn. L. of C. Pers. Corp.

having been duly sworn, states:

I have known the accused for some months. As a result of information received I proceeded on 4 Sept 45 to Bavegem in Belgium - and arrested the accused as he was unable to produce us from a authority to be away from his unit. I escorted him to our HQ - there. At that time he was dressed in light shirt - and Jacket.

H.A. Songster.

2nd Witness Mde. Boelens - Maurice - Hemel St. No 6 Ghent

having been duly sworn states by means of the interpreter.

I know the accused very well as a customer - for over six months. On Saturday 1st. Sept. 45 at 1700 hrs approx he came into my shop and asked for my husband. but he was not home I know that he had a watch being repaired - as I gave it to him. He paid me for the repair job. I could recognize the watch.

A customer then came into the shop and the soldier waited until the customer left. He then grabbed me by the arm. I tried to pull away but could not. He then forced me through the door into the next room. He pushed me into a easy chair. He then pointed a revolver at me. I jumped up and he threw me on the floor and I got on top of me. He lifted up my clothing - opened his trousers and I saw his penis. him ~~which~~ take his penis out.

When the shop bell rang. - I called out "My husband" - and the soldier jumped up I jumped up and ran into the shop. The soldier followed me into the shop. - Said "You owe me 600 fcs" ~~I went to the door~~ Another customer was in the shop. His name is "Emile". The soldier then pulled out his revolver. I ran out the door to get help and when I came back in two or three minutes the soldier was walking to his car. Emile was at the door.

I saw ~~the~~ soldier again at Lenfels Barracks. when the military police (Camden) took me to their HQ. There were four or five soldiers in the yard. I am certain that I pointed out the accused. I am certain that this soldier ~~pointed~~ is the one who assaulted me. ~~stood~~ pictured

Examined by Mr Barker & Cross Examined by Mr Watkins.

(over)

3rd. Witness M. DUBAER Emilius
St Pietersplein 28 Ghent.

having been duly sworn states by means of the
Flemish interpreter.

I first saw the accused on Saturday afternoon
about three or four weeks ago at about 17.15 hrs in the shop
of M. Boelaerts - 14 Meire Straat, Ghent. He was
coming out of the back room into the shop. He
said to Madame in Flemish "You have to pay me
me 1000 frs". The accused went to a German
car then came back and said in Flemish
"Quick". He grabbed me by the throat and
pushed me back into the shop. He had a
revolver in his hand. He then went out
and drove off.

I am positive that the soldier (accused)
is the same soldier that threatened me.

Question by
Q. what time did you say? you arrived.
A. at about 1640 to 1645 hrs.

Dubaer

Q. How was I dressed.
A. Civilian trousers - Polo Pullover - Hat.

Q. Do you wish to make any statement or do you wish to call any one on
behalf of any charge or give evidence unless you wish to do so you are not
whether you say or any evidence you may give will be taken down in
writing and may be given in evidence.

A. I have nothing to say.
Answer seen and signed.

I certify that the foregoing Statement was taken down by me in the presence of the accused and
was taken down by me in the presence of the accused and R.P. 4(1)(b)(c)
R) 4 (2) does not apply.
no one.

Preliminary summary of Evidence in the case of B-136643 Pte Hawkins Moses (RCASC) 13 CBRBn 2 CBRB - attached to 14th Lond Inf Bde & Amanda Hawkins a soldier of the 14th Army Overseas.

Charges (1) Absence without leave
(2) Attempted Rape

Prepared in pursuance of the commanding officer's order to take down the summary Evidence

1/ The Part II Order Extract page 99/3 4/45 RCASC/1 (A5e) 90 of 45. from Part II Order # 221 of 26 Sept 45 produced as documentary evidence, was read over to the accused marked as Exhibit "A". signed by me & attached hereto. [illegible] officer attached to 14th Lond Inf Bde

2/ The certificate of apprehension under Army Act Sect 163 (11) (5) produced as documentary evidence, was read over to the accused marked exhibit "B" signed by me and attached hereto.

[illegible] officer attached to 14th Lond Inf Bde.

Witness

K-42006 T/Cpl LAMOUREUX H.A. (Can Provost Corps) on the strength of 14 Q 2 Can Inf Bde Provost Corp. having been duly sworn states

Pass K-42006 T/Cpl Lamoureux H.A. of 14 Q 2 Can Inf Bde Provost Corp, at 1400 hrs 26 Sept 45 an identification parade was held at ~~14 Q Section 14 Q 2 Can Inf Bde Provost Corps~~ I was present with Mlle Bolduc when she identified the accused whom I now recognize

A customer then came into the shop and the soldier waited until the customer left. He then grabbed me by the arm. I tried to pull away but could not. He then forced me through the door into the next room. He pushed me into a easy chair. He then pointed a revolver at me. I jumped up and he threw me on the floor and I got on top of me. He lifted up my clothing - opened his trousers and I saw his penis. him ~~exhibit~~ take his penis out.

When the shop bell rang - I called out "My husband" - and the soldier jumped up I jumped up and ran into the shop. The soldier followed me into the shop - said "You owe me 1,00 fr" ~~I went to the door~~ Another customer was in the shop. His name is "Emile". The soldier then pulled out his revolver. I ran out the door to get help and when I came back in two minutes the soldier was walking to his car - Emile was at the door.

I saw ~~the~~ soldier again at Lenfolie Barracks - when the military police (Camelots) took me to their HQ. There were four or five soldiers in the yard. I am certain that I pointed out the accused. I am certain that this soldier ~~pointed~~ is the one who assaulted me. ~~attempt~~ attempted

Initials

second declaration & I can examine the matters.

(over)

Q. ~~[illegible]~~

Q. Did you give me a watch

A. Yes. You had two watches then - a Gold one and a ~~[illegible]~~ Nickle one to be repaired. I gave him the Nickle one.

Q. Why did ~~[illegible]~~ I ask you for 10000 frs.

A. I do not know.

3 ind. Wilson

M. DE BAER Emilius
St Pietersplein 28 Ghent.

having been duly sworn states by means of the
Flemish interpreter.

I first saw the accused on Saturday afternoon
about three o'clock when I was at about 17 yds in the shop
of M. Boelaerts - 14 Hunnel Street, Ghent. He was
coming out of the back room into the shop. He
said to me in Flemish "You have to pay me 1000 frs".
He then went out
and came back and said in Flemish
to me "Quick". He grabbed me by the throat and
pushed me back into the shop. He had a
revolver in his hand. He then went out
and drove off.

I am positive that this soldier (accused)
is the same soldier that threatened me.

Questions by

Q. what time did you say you arrived.
A. at about 16.40 to 16.45 hrs.

Q. How were I dressed.
A. Civilian trousers - Polo shirt - tie.

Q. Do you wish to make any statement as to your conduct at all. You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence.
A. I have nothing to say.

Answer read to deponent.

I certify that the foregoing Sworn Statement was taken down by me in the presence of the accused and was read over to him and that he (1) (2) has been cautioned.

Lt. Col. A.A.G. (1) (2)

Supplementary summary of Evidence in the case of B-136643 Pte Moses A Hamilton (RCASC) 13 CBRBn 2 CBRG - attached to 16th Can Sct Regt (Queens Own Rifles of Canada) Hamilton as soldier of the 16th Army Overseas.

Charges (1) Absence without leave
(2) Attempted Rape

Evidence taken on the commanding officer's direction as to the supplementary evidence to be taken under oath

1 The Part II Order Extract from 99/3 4/4 RCASC/1 (ASC) dated 45. of 26 Sept 45 produced as documentary evidence, was read over to the accused marked as Exhibit "A" signed by me & attached hereto.

2 The certificate of apprehension under Army Act Sect 163 (1) (5) produced as documentary evidence, was read over to the accused marked as Exhibit "B" signed by me and attached hereto.

Witness

K-42006 L/Cpl LAMOUREUX H.A. (Can Provost Corps) on the strength of 14 Q 2 Can Sct Provost Corp. having been duly sworn states

Pass K-42006 L/Cpl Lamoureux H.A. of 14 Q 2 Can Sct Provost Corp, at 1400 hrs 26 Sept 45 on identification parade was held at 14 Q 2 Can Sct Provost Corp and I was present with Mde Bedard when she identified the accused whom I now recognize

as the woman who had assaulted her she identified him by pointing him out when she stood in front of him There were 5 or 6 men on this parade all dressed in uniform.

RP 43(b) complied with

The accused declines to cross examine the witness

signed A Lamoureux
L/Cpl LAMOUREUX H.A.

The accused having been cautioned as follows Do you wish to make any statement or give any evidence on oath You are not obliged to say anything or give any evidence unless you wish to do so but what ever you do say or any evidence you may give will be taken down in writing & may be used in evidence
declines to give evidence & reserves his defence.

I Certify that the foregoing supplementary summary of evidence consisting of one page was taken down in writing by me in the presence of the accused and RP 4 (c)(d)(e)(f) and (g) have been complied with
16 Oct 45

J A McCarthy Capt
Officer detailed to take summary of evidence

PART II ORDER EXTRACT FORM

TO:

99/24/X RCASC/1 (X5e)

9 Oct 45 19

EXTRACTS FROM: Unit X4 List RCASC

Part II Order No. 221 dated 26 Sep 45

ABSENT WITHOUT LEAVE

AWL from 0800 hrs 6 Aug 45 Still absent 0800 hrs 14 Aug 45(8th day) (X 4 List 1st Bn)

B136643 Pte HAVELIN M

Exhibit "A"

The following documents are attached / [illegible] on attached [illegible]

Certified to be a true extract from the regimental books and documents in my custody.

Officer i/c Records
Cdn. Sec. 2 Echn. HQ [illegible] Gp

for Officer in Charge
Canadian Section, GHQ, 2nd Echelon

Originating Clerk's Initials

ECH—6
60/P & S/1276 (5757)

Exhibit "B"

CERTIFICATE UNDER ARMY ACT SECTION 167 (1) (J)

Certified that No. B-136643 Rank Pte Name HAVELIN, M.
of the (RCASC) 13 Bn 2 CBRO Regt, was apprehended by L-55214
Rank CPL Name SANGSTER, H.A. of the 9 Sec 2 Cdn L of C Pro Coy
Ghent, Belgium at 2031 hrs. hrs. on the 4th
day of September/45 as an absentee without leave.

He was wearing Civilian Clothes at the time of his arrest.

H.A. Sangster Cpl.
(H.A. Sangster) N.C.O. i/c
Canadian Provost Corps
No. 9 Sec. 2 Cdn L of C Provost Coy

Place Ghent, Belgium

Date 10 Sep 45

Supplementary Summary of Evidence in the case of B-136643, Pte Moses HAUGLIN, RCASC 13 CBR Bn 2 CBAG attached to Can Sec H.Q. Rumaala Garrison, a soldier of the Can Army Overseas.

Charges (1) Absence without leave
(2) Attempted rape.

By direction of the commanding officer this evidence is taken under oath

Second Witness Madame Marthe BOELAERTS, 6 Henri Maast, Ghent

I certify that in my opinion due to the exigencies of the service and loss of time involved this witness is not readily procurable. A written statement of her evidence, signed by her was read over to the accused marked exhibit "C" signed by me and attached hereto.

The accused does not require the attendance of this witness for the purpose of Cross examination

J. A. Warty Capt
Officer detailed to take S of E.

Fifth Witness Mr Francis BOELAERT (husband of Mme BOELAERT) 6 Overboorts Straat Ghent.

I certify that in my opinion due to the exigencies of the service and loss of time involved this witness is not readily procurable And a written statement of his evidence, signed by him was read over to the accused, marked exhibit "D" signed by me and attached hereto.

The accused does not require the attendance of this witness for the purpose of cross examination

J. A. Warty Capt
Officer detailed to take S of E

BBB

Sgt Watkins No 155 Inspector Edmonds.
No 1 Police Station Kent
D/C BLEEKER.
attached to Provost Corps Kent.

I certify that in my opinion due to the exigencies of the service and hrs of leave involved this witness is not readily procurable, and a written statement of his evidence, signed by him was read over to the accused, marked exhibit "E" signed by me and attached hereto.

Judge Advocate Legal Officer detailed to take 1 p.

The accused do not require the attendance of this witness for the purpose of Cross examination

The accused having been cautioned as follows. Do you wish to make any statement or give any evidence on oath? You are not obliged to say anything or give any evidence unless you wish to do so, but anything you say or any evidence you may give will be taken down in writing and may be used in evidence. The Accused to give any evidence & reasons in defence does not wish to call any witness on his behalf at this time

I certify that the foregoing supplement and summary of evidence consisting of pages was taken down by me in the presence of the accused, and that R P 4 (C) 101 (E) (F) & 151 have been complied with.

Judge Advocate Legal Officer detailed to take 8 of 2

Evidence in the case of B-136643
to Moses HAVELIN RCASC 13 BBRCan.
2 C BRG. attached to Can Ler 149 Brussels Hosp.

Mde. Marthe Boelaert Flemish Aliens No 6
Affirmed having been duly sworn & states.

At about 1700 hrs. 1st inst I was
a soldier entered my shop. He pushed me
into the next room. He put me on the floor
and attempted to have sexual intercourse with
me. ~~Emile de Raem~~ the first time I resisted.
~~my husband entered the room~~
the soldier got up off of me, I called to Emile de Raem the soldier
at Emile de Raem. I pointed the pistol
I ran out to the
neighbours I found ~~Mr~~ Mr Rombaut I
told him that the soldier had assaulted me.
Mr Rombaut took his bicycle & went away
to get the police. When they returned I went
with them to the police station where I
laid a complaint to the police that the
soldier had attempted to have sexual intercourse
with me at the point of a pistol I also
went to the Can Provost with the police & complained to them
about what the Can soldier had tried
to do. After going to the Can Provost
I went to my husband in the country
on the same day. I told my husband
what the soldier had tried to do namely
He put me down on the floor & at the point of me
pistol at me. Lifted up my dress &
took out his penis, and then he was
interrupted.

R.P. 121(c) complied with. M Boelaert

Sworn Mde Boelaert M.

(2)

Mrs Francina STAYAERT (husband of Mrs Belaert) of 6 Overboorts Straat Ghent having been duly sworn states.

On last 1 Sept 44 I was in Drongen at approximately 2000 hrs my wife came in the house in a screaming she told me she had been assaulted by a Canadian she told me that the soldier had thrown her onto the easy chair and then threw her on the ground took out his pistol lifted her dress and took out his penis & got on top of her, but that he was interrupted & she ran away when he got off of her. On Nov 3 last I came to the Provost office to find out what they had done about it.

RP 43 (6) complied with

signed Mrs F STAYAERT

Exhibit "D"

No 181 Inspector Edmund DE BLEEKER. No 1
Police Section Staff attached to Provost Corps
Section having been duly sworn states

At approx. 1700 hrs. 1 Sept 45. Rude
Mr. BOULAERTS. came into the Provost
office with some civilian policemen. He
complained to me that a Canadian soldier
had assaulted her at her shop. He had
put her on the floor taken out his penis
and attempted to rape her. I informed
the Provost Sgt who dispatched a detail
to the shop.
RP 83 (c) complied with.

signed H. de Bleeker
166.

Taken down in writing
and sworn before me this
26 day of October 45
Jas Beatty Capt

Exhibit "E"
Jas Beatty
Capt

Summary of Evidence in the case of B-136643 Pte HAVELIN M. RCASC, 13 CDR Bn, 2 CDRC, attached to Cdn Sec HQ Brussels Garrison, a soldier of the Canadian Army Overseas.

Charges (1) Absence without leave
(2) Attempted Rape

By direction of the CO the evidence is taken on oath.

FIRST WITNESS L-55214 Cpl SANGSTER H.A. 9 Sec 2 Cdn L of C Pro Coy, having been duly sworn states:-

I have known the accused for some months. As a result of information received I proceeded on 4 Sep 45 to Heveren, Lier (on road between Ghent and Courtrai) Belgium and arrested the accused at approximately 2030 hrs as he was unable to produce a pass or authority to be away from his unit. I escorted him to our HQ in Ghent. At that time he was dressed in light shorts and jacket.

The accused declines to cross-examine this witness.

(Sgd) "H A SANGSTER"

SECOND WITNESS Mde BOELAERTS Marthe Heuvel Straat No 6 GHENT, having been duly sworn states by means of the interpreter:-

I know the accused very well as a customer for over six months. On Saturday, 1st Sep 45 at 1700 hrs approximately, he came into my shop and asked for my husband but he was not home. I knew that he (the accused) had a watch being repaired, so I gave it to him. He paid me for the repair job. I could recognize the watch. A customer then came into the shop and the soldier waited until the customer left. He then grabbed me by the arm. I tried to pull away but could not. He then passed me through the door into the next room. He pushed me into an easy chair. He then pointed a revolver at me. I jumped up and he threw me on the floor and ✱ got on top of me. He lifted up my clothing, opened his trousers and I saw him take his penis out. Then the shop bell rang. I called out "My husband" and the soldier jumped up. I jumped up and ran into the shop. The soldier followed me into the shop - said "You owe me 1,000 francs". Another customer was in the shop. His name is "Emile". The soldier then pulled out his revolver. I ran out the door to get help and when I came back in two or three minutes the soldier was walking to his car. Emile was at the door. I saw the soldier again at Leopold Barracks when the military police (Canadian) took me to their HQ. There were four or five soldiers in the yard. I am certain that I pointed out the accused. I am certain that this soldier is the one who assaulted me.

Questioned by Accused

Q. Did you give me a watch?

A. Yes, you had two watches then, a gold one and a nickle one to be repaired. I gave him the nickle one.

Q. Why did I ask you for 1000 francs?

A. I do not know.

(Sgd) "M BOELAERTS"

[redacted] M. DUBAER Emilius St Pielersplein 28 GHENT, having been duly sworn states by means of the official interpreter:-

I first saw the accused one Saturday afternoon about three or four weeks ago at about 1700 hrs in the shop of M. Boelaerts, Heuvel Straat, GHENT. He was coming out of the back room into the shop. He said to Madame in Flemish "You have to give me 1,000 francs". The accused went to a civilian car then came back and said in Flemish to go "Inside". He grabbed me by the throat and pushed me back into the shop. He had a revolver in his hand. He then went out and drove off. I am positive that the soldier (accused) is the same soldier that threatened me.

QUESTIONED BY ACCUSED

Q. What time did you say you arrived?

A. At about 1640 to 1645 hrs.

Q. How was I dressed?

A. Civilian trousers - Khaki shirt and tie.

(Sgd) "DUBAER"

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

A. I have nothing to say.

Accused reserves his defence.

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

Dated in the Field
20 Sep 45

"HOW DAIF" Capt
Officer detailed to take Summary of Evidence

Supplementary Summary of Evidence in the case of R-134643 Pte Hanna HAVELIN, RCASC, 13 C B R Bn, 2 C B R C, attached to Cdn Sec HQ Brussels Garrison, a soldier of the Canadian Army Overseas.

Charges (1) Absence without leave
(2) Attempted Rape

By order of the CO the evidence is taken on oath

Documentary Evidence:

1. The Part II Order Extract Form 99/34/x RCASC/1 (A&o) 9 Oct 45 from Part II Order #221 of 26 Sep 45 produced as documentary evidence, was read over to the accused, marked Exhibit "A", signed by me and attached hereto.

J W VARTY, Capt
Offr detailed to
take Summary of
Evidence

2. The certificate of apprehension under Army Act Sec 163(1)(5) produced as documentary evidence, was read over to the accused, marked Exhibit "B", signed by me and attached hereto.

J W VARTY, Capt
Offr detailed to take
Summary of Evidence

FOURTH WITNESS K-42006 L/Cpl LAMOUREUX, H A (Cdn Provost Corp) on strength of HQ 2 Cdn L of C Provost Coy, having been duly sworn states:-

I am K-42006 L/Cpl LAMOUREUX H A, of HQ 2 Cdn L of C Provost Coy. At 1400 hrs 8 Sep 45 an identification parade was held at the guard room Leopold Barracks I was present with Mlle ROELANDTS when she identified the accused when I now recognize as the soldier who had assaulted her. She identified him by pointing him out when she stood in front of him. There were 5 or 6 men on this parade all dressed in uniform.

R P 83(b) complied with

The accused declines to cross-examine this witness.

(signed)"H A Lamoureux"

The accused having been cautioned as follows

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

Declined to give evidence and reserves his defence.

I certify that the foregoing Supplementary Summary of Evidence consisting of one page was taken down by me in the presence of the accused and RP 4 (a) (b) (c) (f) and (g) have been complied with.

Dated in the Field
16 Oct 45

"J W VARTY" Capt
Offr detailed to take Summary of Evidence

PART II ORDER EXTRACT FORM

TO:

99/34/x RCASC/1 (A5e)

9 Oct 45

EXTRACT FROM: Unit x4 List RCASC

Part II order No 221 dated 26 Sep 45

ABSENT WITHOUT LEAVE

AWL from 0800 hrs 6 Aug 45 Still absent 0800 hrs 14 Aug 45 (8th day)
(X 4 List 13 Bn)

B136643 Pte HAVELIN M

The following documents are

Certified to be a true extract from the regimental books and documents in my custody.

(signed) "H N FOSTER" Capt
Officer EO Records
Cdn Sec 2 Exh HQ 21 A Gp for
Officer in Charge
Canadian Section, GHQ 2 Echelon

Originating Clerk's Initials.....

EXHIBIT "A" "Jas W VARTY"

CERTIFICATE UNDER ARMY ACT SECTION 163(1)(1)

Certified that No B.136446 Rank Pte Name Havelin, M
of the (RCASC) 13 Bn 2 CBRD Regt, was apprehended by No L.55214
Rank Cpl Name Sangster, MQ of 9 Sec 2 Cdn L of C Provost
Coy Detachment, Ghent at 2031 hrs, on the 4th
day of September 45 as an absentee without leave.
He was wearing ~~Military Uniform~~ CIVILIAN CLOTHES at the time of his Arrest.

Place Ghent, Belgium

Date 10 Sep 45

"C Newman" Sgt. N C O i/c
9 Section, 2 Cdn L of C
Provost Coy
Canadian Provost Corps.

EXHIBIT "B" JAG WAHTT

Supplementary Summary of Evidence in the case of B-136643 Pte Moses HAVELIN, RCASC, 13 CHR Bn, 2 CHRO, attached to Cdn Sec HQ Brussels Garrison, a soldier of the Cdn Army Overseas.

Charge: (1) Absence without leave
(2) Attempted rape

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

SECOND WITNESS — Madame Marthe BOELAERTS, 6 Heuvel Straat, Ghent

I certify that in my opinion due to the exigencies of the service and loss of time involved, this witness is not readily procurable. A written statement of her evidence, signed by her was read over to the accused marked exhibit "C", signed by me and attached hereto

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

"J W VARTY" Capt
Officer detailed to take Summary of Evidence

FIFTH WITNESS — M. Francis STEYAERT (husband of Mme Boelaert) 6 Overboorts Straat, Ghent.

I certify that in my opinion, due to the exigencies of the service and loss of time involved, this witness is not readily procurable and a written statement of his evidence, signed by him was read over to the accused, marked Exhibit "D" signed by me, and attached hereto.

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

"JW VARTY" Capt
Officer detailed to take Summary of Evidence

SIXTH WITNESS — No 155 Inspector Edmond DE BLEEKER, No 1 Police Station Ghent, att 1 Cdn Provost Corps Ghent.

I certify that in my opinion, due to the exigencies of the service and loss of time involved, this witness is not readily procurable, and a written statement of his evidence, signed by him, was read over to the accused, signed by me, marked Exhibit "E", and attached hereto.

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

"J W VARTY" CAPT
Officer detailed to take Summary of Evidence

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

Declines to give any evidence and reserves his defence. Does not wish to call any witness on his behalf at this time.

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

In the Field
Oct 45

(Jas W Varty) Capt

Officer detailed to take Summary of Evidence

Evidence in the case of R-136643 Pte Moses HAVELIN RCASC, 13 CBR Bn
2 CBRG Attached to Cdn Sec H Q Brussels Garrison.

Mde. MARTHA BOELAERTS, Heuvel Streat No 6 Ghent, having been duly sworn states:

At approximately 1700 hrs, 1st Sep 45, a soldier entered my shop. He pushed me into the next room. He put me on the floor and attempted to have sexual intercourse with me. The front door bell rang, I called Emile de Baier. The soldier got up off of me, pointed the pistol at Emile de Baere. I ran out to the neighbours. I found M. Rombaert I told him that the soldier had assaulted me. M. Rombaert took his bycicle and went away to get the police. When they returned I went with them to the police station where I laid a complaint to the police that the soldier had attempted to have sexual intercourse with me at the point of a pistol. I also went to the Cdn Provost with the police, I complained to them about what the Cdn soldier had tried to do. After going to the Cdn Provst I went to my husband in the country on the same day. I told my husband what the soldier had tried to do, namely, he put me down on the floor, got on top of me, pointed a pistol at me, lifted up my dress and took out his penus, and then he was interrupted.

RP 83(e) complied with.

"M BOELAERT"

Certified true copy of Exh "C"

M. Franciscus STEYAERT (husband of Mde Boelaert) of 6 Overboorts Straat Ghent, having been duly sworn, states:

On Sat, 1 Sep 45, I was in Drongen. At approximately 2000 hrs my wife came in to the house screaming. She told me she had been assaulted by a Canadian. She told me that the soldier had thrown her to the easy chair and then threw her on the ground, took out his pistol, lifted her dress and took out his penis and got on top of her but that he was interrupted and she ran away when he got off of her. On Monday 3 Sep 45, I can to the Provost office to find out what they had done about it.

mp STEYAERT

RP 83(e) complied with

Certified true copy of Exh "D"

No. 155 Inspector Edmund DE BIEKER, No 1 Police Section, Ghent, att to Cdn Provost Corps, Ghent, having been duly sworn, states:

At approx 1700 hrs, 1 Sep 45, Mde. M Boelaerts came into the Provost office with some civilian policeman. She complained to me that a Canadian soldier had assaulted her at her shop. He had put her on the floor, taken out his penis and attempted to rape her. I informed the Provost Sgt who dispatched a detail to the shop.

HP 83 (e) complied with "E DE BIEKER 155 "

Taken down in writing by me this 26 day of Oct 45 "JAS W VARTY" CAPT

Certified true copy of Exh "E".

LIST OF WITNESSES

PROSECUTION L-95214 Cpl SANGSTER HA — 9 Sec 2 Cdn L of C Pro Coy
Mde Boelaerts Marthe, — Heuvel Straat No 6 Ghent
M. DUBAER Emilius — St Pietersplein 26 Ghent
K-42006 L cpl LAMOUREUX HA — C Pro C on str of HQ 2 L of C Pro Coy
M. Francis STEYAERT (Husband of Mme Boelaert) 6 Overboerts Straat, Ghent
No 155 Inspector Edmond De BLEECKER, No 1 Police Station Ghent, att 1 C Pro C Ghent

DEFENCE NIL

LIST OF EXHIBITS

Part 2 Order Extract from Ord No 221 d/26 Sep 45	"A"
Furnish Certificate of Apprehension dated 10 Sep 45	"B"
Statement of evidence of Madame Marthe BOELAERTS	"C"
Statement of evidence of M. Francis STEYAERT	"D"
Statement of evidence of Insp. Edmond de BLEECKER	"E"

I, the undersigned, acknowledge having received one copy of the Summary of Evidence, two Supplementary Summaries, and the Charge Sheet, free of charge on 4 Dec 45

B-130543 Pte Moses HAMLIN

I, the undersigned, request the services of an officer to represent me at my trial by FGCM

I desire the services of Thompson A. if he is available

4 Dec 45

B-130543 Pte Moses HAMLIN
R.

No. 8136643 Name HAVELIN, Moses Sqn, Battery, or Company 5.6" AM Ellerslie Coast Bty. 13 CBRRa Corps RCASC Date of enlistment GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 10/T22/138 (2413)

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

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY SHEET					
				"Nil" Entries					
				Original MFM 6 not available.					

[signature] Capt
Offr having custody of Regimental Books and Documents

(PTO)

21 B
Army Emergency Corps

ARMY FORM B. 296 (WAR.)

Statement as to Character and Particulars of Service of Accused.

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

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-136643	Pte	HAVELIN, Moses	RCASC, 13 C B R Bn, 2 CBRG

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

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

For No MFM 6 available times.

For times.

For times.

For times.

Date of first entry in Field Conduct Sheet No MFM 6 available

Date of last entry in Field Conduct Sheet No MFM 6 available

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

*Strike out if not applicable.

*3. The accused at the present time is under sentence for

beginning on the day of

4. The accused has been awaiting trial on the present charges for Nil days in civil custody ; and for 69 days days in military custody, *i.e.*, Nil days in open arrest, 69 days days in close arrest ; of which Nil days were spent in hospital.

5. The present age of the accused is 26 yrs

6. The date of his attestation / calling up for military service is 7 Dec 43

7. The service which the accused is allowed to reckon is

8. The accused is in possession of** CVSM and Clasp 1939-45 Star.

**Strike the military decorations (if any) held by accused.

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

Date of Promotion.

In the substantive rank of

In the war substantive rank of

In the acting rank of

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

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

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NO MFH 6 AVAILABLE		

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

Signed this 10th day of Nov 1945

Mobadine Capt

PLEA IN MITIGATION of PUNISHMENT

It is not my intention at this time to take up the time of the Court. It is once again the old story of trouble at home and this soldier finds himself on repat and he doesn't want to go at the present time. He is doing nothing and so decides to take a holiday. This soldier has been in Europe since July 44 served continuously with the 6th Infantry Brigade 2nd Div, front line transport and during that time had no crimes, then temporarily went on the rocks. I would draw the attention of the Court to the fact that he has spent 67 days in custody. During that 67 days he was certainly suffering mental anxiety over the second charge. With further regard to the offence, I would point out that it took place after the cessation of hostilities when all of us felt we were super cargo and didn't have an awful lot to do. For these reasons, I would ask the Court to be lenient.

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

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

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

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

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

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

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans GIVE EVIDENCE AS WITNESS. Do you intend to call witnesses on your behalf ?
Ans NO SIR. ~~Are they witnesses as to character only ? Ans~~
(1. RP 113. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

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

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which ~~dated~~ and signed by him and the JA, ~~if any~~.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused MML p 60, 737-739. already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. When accused Confirming Offr see KR Can 567. 2. RP 50. As to release from arrest by As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused: B-136643 Pte Hosea HAVELIN RCASC, 13 Bn, 2 C B R G, att Cdn Sec HQ Brussels Garrison

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15 (1)	GUILTY	GUILTY	
2nd	AA 41	NOT GUILTY	NOT GUILTY	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 463 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

~~and present sentence for~~ beginning on (date) (1).

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

Time in confinement awaiting present trial—a total of 67 days, of which Nil days were spent in hospital.(1)

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

Sentence Awarded by the Court:

To undergo detention for sixty (60) days

(Sgd) G.M. Ennis Capt (Judge Advocate, if any.) 10 Nov 45 (Date awarded.) (Sgd) C Paillargeon Major (President.) (RP 45, 50.)

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

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

Date (Sgd) Commanding

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

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

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

Confirmed

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

Date 20 Nov 45 (Sgd) W.H. Simmons Brigadier. COMD ARMY TROOPS AREA. Commanding FIRST CDN. ARMY Confirming Officer.

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

Accused.	Date.	Signature of APMr.
B-136643 Pte HAVELIN H	28 Nov 45	A.K. Ellis Capt

Published in Cdn Sec HQ Brussels Garrison CR X9 11s ~~93 4/29~~ Nov 45 DAPM, Cdn Sec. HQ BRUSSELS GARRISON

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4C·23
PTE HAVELIN M

SCHEDULE.

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

Accused: B136643 Pte. Hourlier M. 6 C.I.B. Can. Recce

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	Except that the offence was committed at 2200 hrs and not 1930 hrs.
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 54, RP 44; findings on alternative charges v.e. MML p 403 fn 4 para 2, RP 44; special findings see RP 44 and MML p 755, and in lieu of kit see RP 44 fn 6.)

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

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

Time in confinement awaiting present trial—a total of 11 days, of which 0 days were spent in hospital.(1)

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

Sentence Awarded by the Court: To suffer Field Punishment for ninety (90) days and to forfeit all ordinary pay for a period of ninety (90) days.

(Sgd) Ernest Keble Bowyer-Smyth Judge-Advocate, if any. 7 Oct 44 Date awarded.

(Sgd) J. M. P. Sauvé President. (AP 45, 51) Maj

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

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

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

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

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

(Sgd) [illegible] Lieut-General

Date 8 Oct 44 Commanding 6 Can Inf Bde

Confirming Officer.

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

Accused.	Date.	Signature of Offr.
B136643 Pte Hourlier M	16 Oct 44	[illegible] Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 28 OCT 1944 JAG BRANCH GHQ

RECORDED AT CMHQ IN AB 160 4C-23

FIELD GENERAL COURT-MARTIAL

CFA(d) (In lieu of AFA2) 4/38B

Convened by Order of Lt Col Guy Simonds Comd 6 C I B dated 5 Oct 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B136643	Pte.	Moses Hourlier		6 C I B Coy Recce

PROCEEDINGS REVIEWED 30 Oct 44 W C Stitch Capt REVIEWING OFFICER, JAG BRANCH, GHQ

PROCEEDINGS REVIEWED JAG BRANCH GHQ 21 Army Gp Date 24 NOV 1944

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 7 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 6. Citations do NOT include all relevant fns' RQs. For guidance on procedure where a variation in this form arises, see form for GCMs in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

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

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

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

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

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

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

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

The shorthand writer is sworn.(1)

(1. RP 92. Delete, if none employed.)

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

Ans No objection.(2)

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

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

President	Maj	J. M. P. Sauvé	Fus MR
Member	Capt	W. A. Adams	S Sask R
Member	Lt	R. S. Graham	1 Fd Pk Coy RCE
Judge-Advocate	Capt	E. K. McDougall	HQ 2 Can Inf Div
Prosecutor	Capt	W. D. S. Carelton	6 C I B Coy Recce
Defending Offr	Capt	J. F. Fay	4 C I B Coy Recce

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB 160 Ref - Vol I Fol 116

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fill here Locks, Sheets of Record.

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

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

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

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

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

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

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

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Services(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "Y" and Ex "MFM 6" respectively.(3) Counsel for accused asks for something to be done in connection with Conduct Sheet.
(*1. MFB 325 or AFB 294. 2. MFM 6. 3. RP 46, KR Con 580. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans I have Nothing.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 322, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5)c MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET.

The accused No.B-136643 Pte. Moses HAVELIN 6 Cdn Inf Bde Coy. R.C.A.S.C., a soldier of the Canadian Army Overseas is charged with.,

First Charge. Sec 41 Army Act.

When on Active Service commiting a civil offence that is to say receiving stolen property contrary to Sec 33(1) of the Larceny Act 1916.

in that he,

in the field on 28Sep 44 in the city of Antwerp, Belgium, about 1930 hrs did receive 500 Francs the property of Mr.Leopold Andres, Fourbes Street, in the city of Antwerp, knowing the same to haven been stolen.

Second Charge. Sec 15 (1) A Army Act.

When on Active Service absenting himself without leave.

in that he,

in the field on 24 Sept 44 absented himself without leave from 6 C.I.B.Coy lines from 1245 hrs until 1830 hrs 24 Sep 44 Absent 7 Hrs 45 Mins.

.....
W.M.Arnold Major.
O.C.6 C.I.B.Coy RCASC

Int the Field
1 Oct 44

To be tried by Field General Court Martial

(E.G. Gauvreau) Lt-Col
A/Comd 6 Cdn Inf Bde

In the Field
5 Oct 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFAD) 40/PAS/11697 (2965)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 67(B).

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B136643	PTE.	—	MOSES	HAVELIN	6 C.I.B Coy R.C.A.S.C.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 OCT 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

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

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

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

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

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

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

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

PRESIDENT.

Rank.		Name.	Unit.
MAJ	J.M.P.	SAUVE	FUS M.R.

(Must be named. RP 106.)

MEMBERS.

Rank.		Name.	Unit.
CAPT	~~W.D.~~ H.A.	ADAMS	S. SASK R.
LT	R.S.	GRAHAM	1 Fd Pk Coy RCE

(Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

Rank.		Name.	Unit.
LT	M.L.	BORROWMAN	7 Fd Coy RCE

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

JUDGE-ADVOCATE.

Rank.		Name.	Unit.
CAPT	E.K.	McDOUGALL	HQ 2 Cdn Inf Div

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

On Active Service in the Fd

in BELGIUM (Country.)

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

Date 5 OCT 44

Commanding 6 CDN INF BDE

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

Pres

6 Cdn Inf Bde Coy RCASC

Cdn Army (Overseas)

7 Oct 44

To Whom it may concern:

This is to certify that I have this date examined B 136643 Pte Havelin, M and find him to be free from any contageous diseases and fit to undergo trial by Court - Martial.

R.T. Ohlhaber Capt

(Medical Officer)

1st Class Hist. Lt. S. E. Britton 6 C I B Coy RCASC sworn deposes:

I am Adjutant No 6 C I B Coy RCASC. I administer Pte [illegible] of which Pte is a member. His conduct & work here. Has been with us over 20 Mo & has always been trustworthy & good worker. At no time prior to now have we had any trouble at all with him.

No Cross X
Cont - Nil.

Britton

Pte fully admitted the story. He is young & has never been in trouble before. He had drinks & was in bad company. Lt. Britton spoke well for him. He, Lt Rec. told nothing beside.

Asks for leniency of Court.

M17062

Exhibit

Lt. Pres. Wit. Sgt. Ford, RP Aust. Coy
duly sworn, deposes:-

ON 2. Sep 44 I proceeded to unit of Rec whom I recognise. I cautioned the Rec "You are not obliged to say or state anything but anything you do say or state will be taken down in writing and may be used as evidence." The Rec. fully understood this & signed a statement to this effect. No threat or inducement of any kind was made or offered to the Rec. He made the statement entirely voluntarily.

(The Def. Off. states he has no objection to the statement going in evidence)

The statement reads as follows:- Original statement attached to proceedings as Exh. A. read aloud by the witness.

The statement was signed by the Rec in my presence.

I went to 6 C.I.B. Coy as on 23 Sep I was detailed to investigate a complaint from Mr L. Andries. I checked up my work before 6 C.I.B. Coys. I acted as a result of an identification parade of a man Thompson, whose name appears in the Rec's voluntary statement

No Cross X. No 1

Court I was at the Thompson identification parade & Thompson was positively identified by Mme Mlle Westerlinck.

83(6) complied with

Prosecutor Pte Witt, duly sworn, Mlle Lisette Westerlinck, Cafe Arcadia Antwerp. deposes

My own then owns Arcadia cafe. I was in cafe on the night of 22 Sep. Mr Andries came in to the

~~Cafe hardly ever about ——~~. Mr. Andries came to the cafe about 2000 hours. He bought some gin. He stayed till about 2150. He left then came back about 10 minutes later with his face all cut. About 2140 some Cdn soldiers came in. First 2 Cdns + then 3 Cdns. The Accused here was one of the two that came. After Mr. Andries left the Rec left with the other soldiers he had come in with

Cross X Andries came the first time about 2000 hrs. He stayed the whole evening. left possibly 10 mins. to 10. He came back later that night, about 10 past 10 possibly. I am pretty sure of the times I didn't see Andries before 8 o'clock. I am positive I saw the Rec in the cafe with another soldier that night. He did not have any Cdn there

N. Re X

Count - The Rec. was not drunk. Mr. Andries had drunk too much but he walked pretty steadily. The Rec talked to Andries + they ~~both~~ drank together Andries bought the drinks.

83(b) complained with

3 Pers. Lieut. Mr. L. Andries, Pembroke St, Portsmouth duly sworn, deposes

The President of the Court acts as Interpreter.

On 22 Sept. I was in the Cafe Bonaloes. I am 45 years old That night I bought drinks for Cdn. soldiers. I think the Rec. here was one of them. I am sure he was. After the drinks with the soldiers, I paid the bill with a 1000 fr. note + then left the cafe. After leaving the cafe I started for home. The two soldiers followed me, one on my right + one on the left. The one on my left tried to slip his hand into my pocket to get

my wallet. I said what do you want to be
said money. The one who said this was about 5'11".
It was not the Acc who did this. It was the other
who was taller who was on my left.

I suggested going to a cafe & said I'd give them
some there. A little further on the one on my left
again tried to get my wallet. I held on to it.
Then I felt two blows, one on the left side of the jaw & one
behind the left ear. I thought it was the one on
the left hitting me. ~~He~~ I was stunned & thought I was
losing consciousness. When I looked I saw the assailants
running away & my wallet was gone. I had 3000
francs in my wallet.

Then I went back to the Arsenal cafe
& Mme of the cafe cleaned me up & dressed my
wounds. I then went to the police, stopping on
the way at the DR. who put some stitches in both
wounds.

I am positive the Acc was on my right.

Cross Ex. I went to the cafe about 6 o'clock. I
stayed there all evening drinking all the time. I
left cafe about 10 o'clock. I was assaulted
shortly after leaving - about 200 metres from
the cafe. The man on my left looks like that man (pointing
to the court orderly) I think he is the man. The
Acc. (pointing) was on my right. I had drunk
some wine feeling pretty good. When I left home
that night I had had 3000 francs ~~in my wallet~~ with
and some smaller notes. I drank for about 2 hrs &
was buying drinks. I bought the Acc a drink as I
was at the bar when they entered. The Acc stayed
at the bar & didn't order one so I bought one for
him.

No Re Ex -

Court. -- Nil

Def. 4

Rec. duly sworn deposes: -

On 22 I went out with Pte. Thompson left camp at about 1600. We went to Antwerp. Went to the cafe Alaska. Had a couple of beers. Thompson danced. The girls put me out. I can't dance, but they put me to dance to me in the party. I was feeling the beer a little when I left. We then went to the Arsenal. Thompson bought a drink for himself & the barmaid. I didn't have any as I don't drink much. Then Ardries called me a bloody fool & I had a drink with him. Then he left. We left too & spotted Ardries. Thompson said "Lets follow him" & off the way. He caught the old man, asked him the road & then asked for money. Then there was a scuffle & Thompson said lets go. I was after him & asked what he'd done. He said "Lets get out I've got the old man's purse." Further along he handed me 40 or 50 francs - I didn't count it. Stopping to have a leak on a bridge he threw away the purse I think. I was with Thompson all evening. He didn't ask me to lend him money nor did I ask him. Thompson was a stranger to me up to that night. He seemed to have lots of money. I didn't know he was low in funds.

I never discussed with T. the possibility of clipping Ardries. I just didn't think when he gave me the money. I didn't know where it was but it might have been Ardries. I'd never been out with T. before.

Cross X - Nil

Court - I feel sure T. must have been aware why I was at the Arsenal as he had spent some. Even after he handed me the money I was sure it was Mr. Ardries. I didn't know where it was. I didn't see where it was. ~~When~~ T. had the money in a wallet. I knew it might have been Ardries but I

EMMM

assist sure. T. brought drinks from a millet during the evening. He gave me 100 francs notes. I didn't ask him why he gave me the money. I didn't ask if it was Andrieu. I thought T. was straight. He had me all balled up. I've never run a out with a fellow like that. I don't think Andrieu had 3000 francs on the next day T. asked me for some of the money back. When I borrow money I never ask a few times. The next day I asked where it had come from & he told me. I gave him back 200 & kept 300. I knew then it had been stolen.

Pros. Clos. Address Acc has admitted the whole charge. I will say no more.

Chas. Addl & Def. 00 Charge sheet says 1930 hours This has not been proved. Andrieu recognised the Court Ordery on the Acc's comparison. The charge has not been proved. the time is wrong.

JA sums up See next page

SMM

Mr. Pres & Gentlemen.

This Rec stands before you charged with a serious civil Offence and a further purely military Offence. You have heard the evidence and I do not wish, as it is my duty, to discuss the facts with you. You are sole judges of the facts. I wish only to discuss briefly the civil Offence of receiving stolen property.

While the charge is a serious one, the proof of it is sufficiently straightforward. You must first decide that the property which the Rec is charged with receiving ~~has~~ has been obtained in any way whatsoever under circs. which amount ~~to larceny~~ ~~under the misdemeanour~~ larceny. In ascertaining this you must then decide whether or not the goods were received by the accused soldier and here there must be some proof of possession. Whether or not the Rec was in possession is a question of fact to be determined by you as members of the Court. Possession merely means that the Rec had control of the money in question — for legal purposes with a charge of this nature the possession need not be actual manual possession. Finally it must be proved that the Rec, at the time he received the money, knew it to be stolen. If all these elements exist you are entitled, and it is your duty, to find the Rec guilty.

With the 2nd charge — no advice from me is necessary. All of you as retired Officers have had sufficient experience with charges of this type & as a plea of guilty given we will deal with it later.

You have heard the legal evidence & you must now make your decision. I ask you to consider it well. Here this charge involves an Offence against a civilian & thus concerns the security in reserve. I feel it my privilege & duty to bring charge & in doing so I am reminded of the under British justice which we cherish in all its phases — we say every man is innocent until the contrary is proved beyond a reasonable doubt. Now such a doubt, a real & substantial doubt exists in your minds you are bound by law to give the benefit of that doubt to the Accused

~~[redacted]~~ One further point. The Rec. raised the plea that the time set out in the charge sheet was not the time the Offence occurred. In this case the actual time is not vital and if you find the Rec. guilty of the charge the ~~error~~ apparent error in time can be remedied by a special finding.

A Jurm

Summary of Wvidence in the case of B-136643 Pte.Havelin,Moses
6 Cdn Inf Bde Cou R.C.A.S.C.

The Accused is warned of his rights.
Thr Commanding Officer directs that the Evidence be taken on Oath.

First Witness for the Prosecution..Lieut.G.E.Britton. Having been duly sworn states. I am Adj of 6 C.I.B.Coy and in that capacity I received the following statements from the Cdn Provost Corps and I indroduce them as exhibits (A.B.C.D.E.)

The accused declines to cross-examine.

G.E.Britton
.....
(G.E .Britton)Lieut.

Second Witness for the Prosecution, M-17082 Sjt.Ford R.P. Cdn Provost Coy The statement attached porported to be signed by the witness has been read to the accused and due to the cost and loss of time I consider that the attendance of the witness at this summary is not necessary.
Exhibit.(A)

W.D.S.Careless Capt.
.....
(W.D.S.Careless Capt.
Officer taking summary.

I do not require the attendance of the above witness for cross-examination

M.Havelin
.....
M.Havelin

Third Witness for the Prosecution.L.Andries Antwerp. The statement attached porported to be signed by the witness has been read to the accused and due to the cost and loss of time I consider that the attendance of the witness for cross-examination is not necessary.
Exhibit (B)

W.D.S.Careless Capt
.....
(W.D.S.Careless)Capt
Officer taking Summary

I do not reguire the attendance of this witness for cross-examination.

M.Havelin
.....
M.Havelin.

Fourth Witness for the Prosecution. A.Westerlinch Antwerp. The statement attached porported to be signed by the witness has been read to the accused and due to the cost and loss of time I consider that the attendance of the witness for cross-examination is not necessary.
Exhibit (C)

W.D.S.Careless Capt
.....
W.D.S.Careless Capt
Officer taking Summary

I do not require the attendance of this witness for cross-examination

M.Havelin
.....
M.Havelin.

Fifth Witness for the Prosecution. L.Westerlinch Antwerp. The statement popported to be signed by the witness has been read to the accused and due to the cost and loss of time I consider that the attendance of the witness for cross-examination is not necessary. Exhibit D

W.D.S.Careless Capt
.....
W.D.S.Careless Capt.

I do not require the attendance of this witness for cross-examination.

M.Havelin
.....

Supplementary Summary of evidence in the case of B-136648 Pte. Moses HAVELIN 6 Cdn Inf Bde Coy RCASC.

The accused is warned of his rights.
The Officer Commanding directs that the evidence be taken on Oath.

First Witness for the Prosecution.B-86575 Sjt.Woods E. 6 C.I.B.COY having been duly states. On 24 Sep 44 at approx I looked for Pte Havelin?M for kitchen duty. I looked all over the lines and could not find him. I did not see him again until 1830 hrs 24 Sep 44 when he reported to me. I placed him in close arrest for being A.W.L.

The accused declines to cross-examine this witness.

E.Woods.....
E.Woods Sjt.

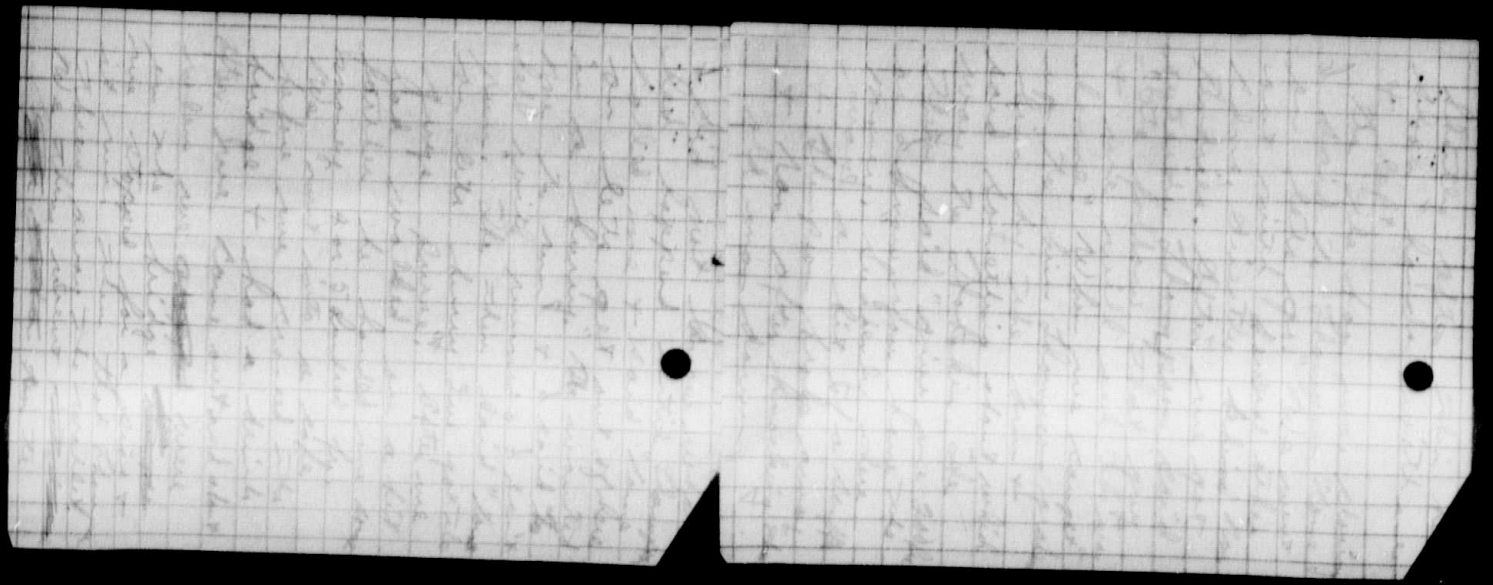
Certified that R.P. 4 C.D.E.&.F. have been complied with.

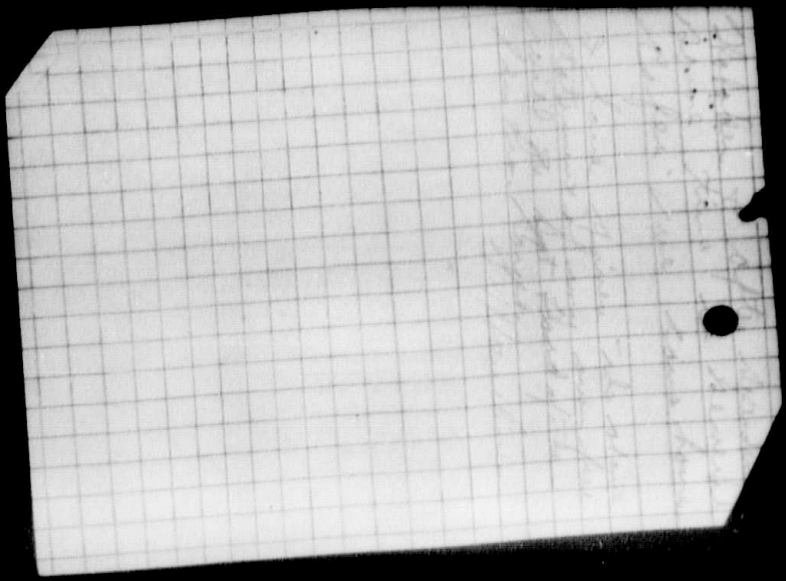
The accused declines to make a statement at this time.

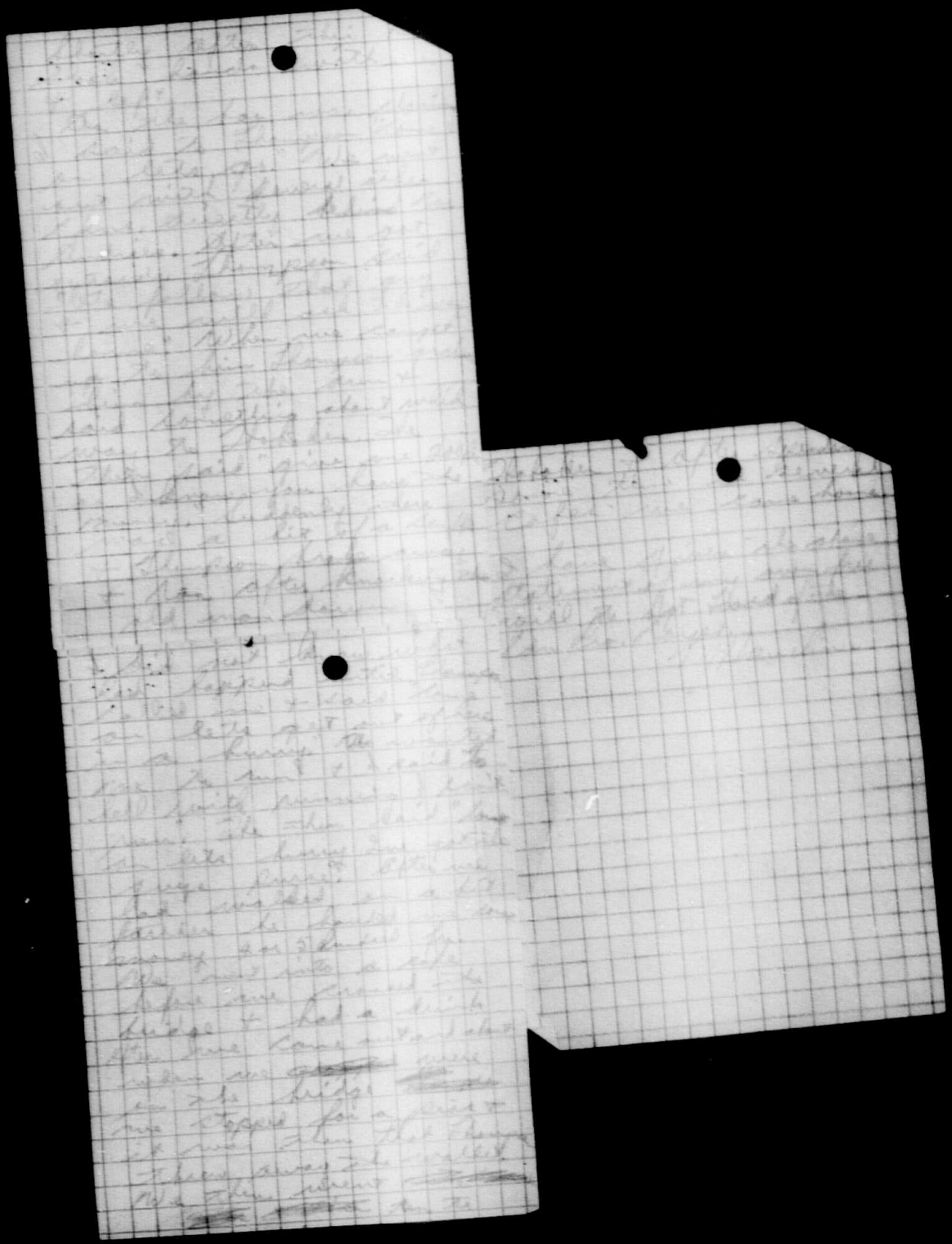
Wield.
1 Sep. 44

W.D.S. Careless Capt.
Officer taking summary.

Annual
File







Field, 25 Sep 44.

STATEMENT OF EVIDENCE (R.P. 4e)

You are not obliged to say or state anything but anything you do say or state will be taken down in writing and will be used as evidence.

I have read the above caution, I wish to give evidence on oath, and to show that I understand it I sign my name thereto.

(signed) M. Havelin

"I am B136643 Pte M. Havelin, 6 Bde Coy RCASC. On the night of 22 Sep 44 Pte Thompson and myself went out drinking. We went to ANTWERP about 1930 hrs, we went to several Cafes and finally about 2130 hrs we came to the Cafe AESELMC. There were several Cdns and several civilians in the bar. Thompson went to the bar and ordered two beers, one for himself and one for the girl behind the bar, I did not want any as I was a bit drunk and felt that if I drank beer I would be sick. I sat down at a table about ten or twelve feet from the bar, in a few minutes, Mr. Andries came over and asked if I would have a drink, I said "Yes" so he went up to the bar and bought two cognacs. I did not notice what size of a bill he paid for the drink with. Shortly after this he shook hands with me and left, as the bar was closing I said to Thompson, "Come on, let's go". We went out with several other Cdns directly behind Mr. Andries. After we got outside, Thompson said, "Let's follow that guy and we will ask the way home". When we caught up to him, Thompson grabbed him by the arm and said something about which way to Hoboken. He then said, "give me 200 francs as I know you have the money", suddenly there was a bit of a scuffle and Thompson broke away and ran after knocking the old man down. I did not know what had happened until Thompson called me and said "come on, let's get out of here in a hurry". He wanted me to run and I said, "to Hell with running, I can't run" he then said, "come on let's hurry, I got the guy's purse". After we had walked on a bit further, he handed me some money, 400 or 500 francs. We went into a cafe before we crossed the bridge, and had a drink. After we came out and about when we were on the bridge, we stopped for a piss and it was then when Thompson threw away the wallet. We then went on to Hoboken and after spending some time in several cafes we came home.

I have given the above statement to Capt Careless of my own free will.

M. Havelin
(M. Havelin)

Pte Havelin requests the assignment of an Offr to defend him in his F.G.C.M.
Certified that R.P. 4 C.D.E.F.& G have been complied with

In the Field
26 Sep 44

A.A. Beaulieu Capt
(Officer detailed to take the summary)

CANADIAN PROVOST CORPS

FILE: 3-0-0

No. 2 Company 2 Cdn Inf Div 2 Cdn Corps

Field 26 Sep 44

Re: Alleged Robbery With Violence of Mr L ANDRIES, Antwerp
B28395 Pte THOMPSON W H, RCASC, 6 CIB HQ
B136643 Pte HAVELIN, M, 6 CIB Coy RCASC, 2 Cdn Inf Div

Exhibit "A"

File Refs:

Ref the a/m I have to report that on 23 Sep 44 I was detailed by Lt Anderson, Offr i/c Antwerp Detachment 2 Cdn Provost Coy, to investigate a complaint from one L. Andries that he had been assaulted and robbed by two soldiers of the Cdn Army.

2. From information received I formed the opinion that the soldiers responsible for the robbery were RCASC personnel of 2 Cdn Inf Div and accordingly concentrated my investigation on RCASC Units within the Division. OC 2 Cdn Inf Div Tps Coy RCASC Major Ledford informed me that two men who answered the description of the robbers had been seen on two occasions in a Hoboken Cafe when they were in possession of and spending, a considerable amount of money. Mr Landries had alleged that 3000 Belgian francs and certain papers had been stolen from him.

3. After further enquiries I arranged an identification parade of personnel of 6 Cdn Inf Bde Coy Echelon and on this parade Pte THOMPSON was identified by Mr L. Andries as one of the two robbers. A further positive identification of THOMPSON was made by Mdme and Mlle WESTERLINCK of the Cafe ANSELMO in Antwerp.

4. It was then ascertained that Pte HAVELIN had accompanied Pte THOMPSON at the time of the alleged robbery and a search of the Unit revealed him to be AWL. On 25 Sep 44 after having received information that HAVELIN had returned to his Unit and was in custody, I proceeded to the Unit and questioned the accused and obtained from him a voluntary statement which is appended hereto together with copies of statements from all witnesses. Pte THOMPSON refused to make any statement.

5. During the course of the assault and robbery Mr. Andries received injuries to his face which necessitated 5 stitches to close the wounds. In addition to the loss of money he also suffered the loss of all his Identity documents.

6. Charges of Robbery with Violence have been preferred against the a/m soldiers and forwarded this date to the Units concerned together with copies of all available evidence.

L. P. Ford.

M17082 Sjt FORD R P
2 Cdn Provost Coy, 2 Cdn Inf Div.

ANTWERP, 24th Sep 44.

Exhibit "B"

STATEMENT OF EVIDENCE

You are not obliged to say or state anything but anything you do say or state will be taken down in writing and will be used as evidence.

I have read the above caution, and to show that I understand it I sign my name thereto.

Signed (L. Andries)

"I am Mr. Leopold Andries of Pourbus St., No. 3 ANTWERP. On the night of 22 Sep 44 I was in the Cafe ANSELMO at approx 2130 hrs, two Cdn came in, one, the tall one went up to the bar and ordered two beers, one for himself and one for the Mlle behind the bar, the short fellow had none. I then asked if they would have a drink with me, and they said yes, so I bought two drinks for them. Shortly after that I went out to go home. The two fellows came out directly behind me and as I was approx 50 metres up the Ave, they came up on either side of me and tried to take my wallet, I then asked what they wanted, and they said money, I said I have no money. The tall one then said we know you have money, we saw it. They then tried a second time before they struck me. They then struck me several times and I was knocked nearly unconscious. When I came to, I saw them run away and I found my wallet gone which contained 3000 francs and all my papers. I then returned to the Cafe ANSELMO where the Madame washed me and I started home again. I was met by two members of the White Brigade and taken to the Belgium Police, I was told to report to the Town Major, which I did the next day.

On the 24th Sep 44, Sjt Ford of the Cdn Provost Corps met me at 1500 hrs and took me out to 6 Bde Coy, RCASC, and I was almost certain that I recognized one of the men who had attacked me. I was not certain but I was sure that I had saw the man Pte Thompson W H before. We then came back to the Cafe ANSELMO and the Madame and the Mlle identified Pte Thompson as the man who I had bought the drink for.

I have given this statement of my own free will and it was written for me by Sjt Ford.

(Signed) L. Andries.

CERTIFIED TRUE COPY

O.C. 2 PROVOST COY.
2 CDN INF. DIV.

ANTWERP, 25th Sep 44

Exhibit "C"

STATEMENT OF EVIDENCE

You are not obliged to say or state anything but anything you do say or state will be taken down in writing and will be used as evidence.

I have read the above caution, and to show that I understand it I sign my name thereto.

(Signed) A. Westerlinch

"I am Madame A. Westerlinch owner of the Cafe ANSELMO. On Friday, 22 Sep 44, two Cdns came in my Cafe at approx 2130 hrs, Mr. L. Andries was already in the Cafe. The tall fellow bought two beers, one for the Mlle. and one for himself, the short fellow had no beer. After a few minutes Mr. Andriesasked the Cdns if they would have a drink with him, they said yes, he changed a 1000 franc note and bought two drinks. Shortly after he left the Cafe, after Mr. Andries went out, the short fellow said to the tall one, "Come on we will go", they then followed him. In approx 10 minutes, Mr. Andries came back, and he was badly cut and bleeding from the face. I washed him up and he left for the doctor. On the 24 Sep 44, Sjt Ford of the Cdn Provost Corps came and he brought with his Pte Thompson and three other Cdns, I positively identified Pte Thompson as the tall fellow who Mr. Andries bought the drink for.

I have given the above Statement to Sjt Ford of the Cdn Provost Corps and it was written by him.

(signed) A. Westerlinch

Exhibit "D"

ANTWERP, 24th Sep 44.

STATEMENT OF EVIDENCE

You are not obliged to say or state anything but anything you do say or state will be taken down in writing and will be used as evidence.

I have read the above caution, and to show that I understand it I sign my name thereto.

(signed) L. Westerlinch

"I am Mlle. Lisette Westerlinch of the Cafe ANSELMO, Antwerp. On Friday, 22th Sep 44, Mr. Andries came in our Cafe at approx 2000 hrs. At about 2140 hrs two Cdns came in the bar and ordered two beers. The tall one, ordered one for meand one for himself, the small fellow had none. Mr. Andries then asked the small Cdn if he would have a drink, and he said, "Yes", so he bought two drinks, one for himself and one for the small Cdn, to pay for the drinks, he changed a 1000 franc note. Shortly after this Mr. Andries went out. The short Cdn said, "Come on boy, we must go", and they followed Mr. Andries out. In about 10 minutes, Mr. Andries came back, he was badly cut on the face and bleeding. My aunt then washed Mr. Andries face and he left for the doctor. On 24th Sep 44, Sjt Ford of the Cdn Provost Corps came to the Cafe and with him were four Cdns. I positivelly identified Pte Thompson as the man who was in the Cafe and I had the beer with.

(signed) L. Westerlingh

CERTIFIED TRUE COPY

CAPT.
O.C. 1 PROVOST COY.
3 CDN INF. DIV.

Field, 25 Sep 44

STATEMENT OF EVIDENCE

You are not obliged to say or state anything but anything you do say or state will be taken down in writing and will be used as evidence.

I have read the above caution, and to show that I understand it I sign my name thereto.

(signed) M. Havelin

"I am B136643 Pte M. Havelin, 6 Bde Coy, RCASC. On the night of 22 Sep 44, Pte Thompson and myself went out drinking. We went to ANTWERP about 1930 hrs, we went to several Cafes and finally about 2130 hrs, we came to the Cafe ANSELMO. There were several Cdns and several civilians in the bar. Thompson went to the bar and ordered two beers, one for himself and one for the girl behind the bar, I did not want any as I was a bit drunk and I felt that if I drank beer I would be sick. I sat down at a table about 10 or 12 feet from the bar, in a few minutes, Mr. Andries came over and asked if I would have a drink, I said, "Yes", so he went up to the bar and bought two cognacs. I did not notice what size of bill he paid for the drink with. Shortly after this he shook hands with me and left, as the bar was closing I said to Thompson, "Come on let's go". We went out with several other Cdns directly behind Mr. Andries. After we got outside, Thompson said, "lets follow that guy and we will asks the way home". When we caught up to him, Thompson grabed him by the arm and said something about which way to Hoboken. He then said, "give me 200 francs as I know you have the money", suddenly there was a bit of a scuffle and Thompson broke away and ran after knocking the old man down. I did not know what had happened until Thompson called me and said, "come on, let's get out of here in a hurry". He wanted me to run and I said, "to hell with running, I can't run", he then said, "come on let's hurry, I got the guy's purse". After we had walked on a bit further, he handed me some money, 400 or 500 francs. We went into a Cafe before we crossed the bridge, and had a drink. After we came out and about when we were on the bridge, we stopped for a piss and it was then when Thompson threw away the wallet. We then went on to Hoboken and after spending some time in several Cafes we came home.

I have given the above statement to Sjt Ford of my own free will.

(signed) M. Havelin

CERTIFIED TRUE COPY

CAPT.
O.C. 2 PROVOST COY.
2 CDN INF. DIV.

(Substitute for A.F.B. 296)
or A.F.B. 355

STATEMENT OF CHARACTER AND PARTICULARS OF
SERVICE OF THE ACCUSED

No B136643 RANK Pte Moses HAVELIN UNIT 6 Cdn Inf Bde Coy, RCASC

AGE 25 MARRIED OR SINGLE Married NO. OF DEPENDENTS 2 (two)

DATE OF ATTESTATION 7 Dec 42

NO OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL _____ MILITARY 11 HOSPITAL _____ TOTAL 11

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

NIL

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

No AFM 6 available

(Officer i/c Records)

6 Cdn Inf Bde Coy RCASC Unit

Dated at Field

This 7th day of Sep 1944

(To be dated and signed as at date of trial)

5 V-82

6 fn. Havens, J.E.

SCHEDULE.

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

Accused : B62092 Cfn HAVERS, J.E. - 2 Cdn Repat Dep

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

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

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

Time in confinement awaiting present trial—a total of 17 days, of which NIL days were spent in hospital.(2)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296. 2. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo 4 elections force periods of forty (40) days.

(Sgd) ..... 7 NOV 45 .....

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

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

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

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

Commanding

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 33, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

Confirmed

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

Date 9 Nov 45 (Sgd) E.H. Connelly Brig

Commanding 13 Group CRU

Confirming Officer.

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

Accused. Date. Signature of Offr.

B.62092 Cfn HAVERS, J.E. 12 NOV 45 [signature]

D.O. #136 d/15 Nov 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5V-82

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/P & B/Tedn (6144) 4/388

RECEIVED 27 Nov 45

Convened by Order of Brig A.B. Connelly, CBE Comd "B" Gp, CRU dated 3 Nov 45

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

ACCUSED.

Number. (AG B branch only)	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B62092	Cfn	James Edward	HAVERS	2 Cdn Repat Dep

PROCEEDINGS REVIEWED 22 NOV 45 L/J Brodie maj DEPUTY JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the 3rd in (country) ENGLAND on (date(s)) 7 NOV 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for seals and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

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

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

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1700 hours trial commences.

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

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

A5. President to accused : ~~Do you object to~~ As interpreter I Ans.

~~The interpreter is sworn.~~(1) Do you object to MAJOR MC KIMMON As the shorthand writer I Ans NO OBJN. The shorthand writer is sworn.(1)

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ? Ans NO OBJN.(2)

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

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

President	Lt-Col	D.L. Redman, VD	HQ CRU
Member	Captain	R. MURRAY	3 Cdn Repat Dep
Member	Lieutenant	R.G. COTTON	3 Cdn Repat Dep
~~Judge-Advocate~~			
Prosecutor	LIEUT.	R G BANGAY	2 C REP DEP
Defending Offr	LIEUT.	G S MURRAY	2 C REP DEP

Questions by President : Is the Prosecutor a lawyer ? Ans NO. Is the Defending Offr a lawyer ? Ans NO (1)

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

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

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

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

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

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

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

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

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

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 112(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

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

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its provisn, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas AO* 309, 1323, *MML p* 90, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 98(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B.62092 Cfn James Edward HAVERS on the strength of "A" Wing, No. 2 Cdn Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with

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

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

at In the Field on 5 Sep 45 did absent himself without leave from 2359 hrs 5 Sep 45 until 1515 hrs 19 Oct 45 (Total time absent 43 days, 15 hours, 16 minutes).

W.T. Ibbott

(W.T. Ibbott) Colonel
Commanding
2 Cdn Repat Depot

In the Field
30 Oct 45

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

A.B. Connelly

IN THE FIELD
3 NOV 45

(A.B. Connelly) Brig
Comd "B" Gp
Cdn Repat Units

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B62092	Cfn		James Edward	HAVERS	2 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 3 NOV 45 endorsed by me, (~~or by an offr of my staff (or me)~~), "To be tried by Field General Court-Martial".

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

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

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

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

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

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

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D.L. Redman, VD	HQ Cdn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by CO	3 Cdn Repat Dep
Lieutenant	to be detailed by CO	3 Cdn Repat Dep

~~WAITING MEMBER.~~

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

~~JUDGE-ADVOCATE.~~

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

On Active Service in the Fd

in ENGLAND
(Country.)

Dat 3 Nov 45

(A.B. Connelly)
(Signed personally. RP 105 fn 2.)

Brig
(Rank.)

Commanding "B" Gp, Cdn Repat Units

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

MEDICAL OFFICER'S CERTIFICATE

I certify that B62092 Gnr. Haven J. E. of No.2 Cdn Repat Depot is # fit to undergo trial by Court Martial.

Insert "Fit"or "Unfit"

[illegible] [illegible] Capt
Medical Officer

Case of B-62092 Cfn. HAVERS, J.E. RCEME on strength P.E., 2 Cdn Repat Dep

PLEA IN MITIGATION OF SENTENCE

1. Regimental particulars - Enlisted 9 Sep 41 as rft for Ontario Tank Regt Following Basic Training the accused was sent to Hamilton Trades school to be trained as Motor Mechanic. Transfered to RCOC Aug 42. Came overseas 19 Dec 42, employed in his trade at Base Wksp, Bordon. In May 43 he became RCEME personnel with change of that time; his category was lowered to S4, and in July 44 he was sent to 22 Special Employment Coy. From Sep 44 he was employed as general duty with the Cdn Army Show, returning to Wksp in July 45 to work in Expense Stores. Stayed with workshop until it closed in Sep 45; was sent to 2 Repat. He understood he was there for repatriation but was posted to P.E. in Transport department. Obtained a pass shortly after arrival.

2. Provocation - Accused was fed up when he found out he was posted to P.E. His point score was 137. He had seen others with lower score and less time overseas go home ahead of him. He had been separated from his wife and two children for over three years. Went to London on his leave. Had about forty pounds to spend. When pass expired he decided to stay another day. Each time he started to come back he became involved in drinking and changed his mind. Eventually he began his return to camp, but was picked up by Provost on his way to the train.

3. Military Conduct record - Over a period of three years accused has been an average soldier. Since 1942 he has had five AWL charges, the longest of which was an absence of 21 hrs 45 min, and three Neglect to Obey (Sec 11) for which maximum punishment was 14 days CB. He has no civil offences to his charge.

4. Detention awaiting trial - Accused has spent about 20 days in close arrest, and has worked the same amount as men undergoing detention sentences.

5. Gratuities and effect upon dependents - Longer period of sentence results in larger loss in gratuity to the accused and has a greater effect on the suffering of his dependants, wife and two children.

6. Civil Occupation - Mill hand - Cdn National Carbon Toronto, Ontario. qpw

E-3

Respectfully submitted in mitigation of sentence,

7 Nov 45

G.S. Murray, Lieut.
Defending Officer.

Summary of Evidence in the case of B.62092 Cfn Havers, J.E., RCEME, on the P.E. strength of "A" Wing, No 2 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas.

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

1st Witness for the Prosecution

Captain E.A.D. Simons of the Royal Canadian Army Service Corps, on strength of "A" Wing, No. 2 Canadian Repatriation Depot, an officer of the Canadian Army Overseas, having been duly sworn states:-

I am Captain E.A.D. Simons, and I am employed as Adjutant at "A" Wing, No 2 Cdn Repatriation Depot. Pursuant to Overseas RO 5352, I present the following documents relating to the accused, B.62092 Cfn Havers, J.E., whom I now recognize, which have been read over and shown to the accused and which are marked as Exhibits "A", "B", and "C" and "D".

Exhibit "A" - Certified True Copy of the Declaration of a Court of Inquiry held on 1 Oct 45, which show that the accused, B.62092 Cfn Havers, J.E. absented himself without leave from 2359 hrs 5 Sep 45.

Exhibit "B" - Certificate in accordance with the Army Act Section 163 (1) (jj) which shows that the accused was arrested at BATTERSEA by the Canadian Provost Corps at 1515 hrs 19 Oct 45.

Exhibit "C" - An Extract from "A" Wing, No 2 Cdn Repat Depot Part II Daily Order No. 100 "A" dated 26 Sep 45 which shows (a) B.62092 Cfn Havers as being absent from 2359 hrs 5 Sep 45. (b) B.62092 Cfn Havers, J.E. as being absent from 2359 hrs 5 Sep 45 on this his eigth day posting.

Exhibit "D" - An Extract from "A" Wing, No. 2 Cdn Repat Depot Part II Daily Order No. 104 "A" dated 2 Oct 45 which shows that B.62092 Cfn Havers, J.E. as being absent from 2359 hrs 5 Sep 45 on this his 21 day posting.

E.A.D. Simons Capt

(E.A.D. Simons) Capt
Adjutant "A" Wing
No 2 Cdn Repat Depot

The accused declines to cross-examine this witness.

My

The accused was cauthoned as follows:-

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

The accused declines to make a statement or to give evidence on oath.

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

R G Bangay Lt

(R.G. Bangay) Lieut
Officer detailed to
take the Summary of
Evidence

In the Field
1 Nov 45

EXA

Exhibit A

RECORD of the Declaration of a Court of Inquiry assembled at

on the 1st day of October 19 45, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B.62092 Cfn Havers, J.E.

DECLARATION

The Court declare that No. B.62092 Cfn Havers, J.E.

illegally absented himself without leave from No 2 Cdn Repat Depot

at 2359 hrs on the 5th day of September 1945,

that he is still so absent, and that on the 1st of Oct 1945, he was deficient, and

that he is still deficient of the following articles :—

ARTICLES	Qcab	Cdn Price	Appraised VALUE		ARTICLES	Qcab	Cdn Price	Appraised VALUE	
Anklets, web		99		74	Brushes Hair		34		22
Battledress Blouse 2@6.50	1	300	9	72	Brushes Shaving		37		28
Battledress Trsers 2@6.55	1	310	9	82	Brushes Clothes		48		36
Berets Khaki		120		93	Brushes button		26		20
Boots, Ankle 2@5.82	1	164	8	72	Brushes polishing shoe		28		20
Drawers CellShort 2@.43		86		64	Brushes tooth		11		08
Drawers woollen 2@1.40		280	2	08	Combs, Hair		04		03
Gloves knitted		47		34	Knives, Table		15		11
Greatcoats	1	155	8	66	Forks, Table		07		06
Jerseys, pullover		179	1	34	Spoons, dessert		09		06
Shirts flannel W/C2@2.40		480	3	60	Holdalls		19		14
Vests woollen 2@1.20		240	1	78	Housewives		17		12
Socks worsted prs 3@.46		138	1	02	Razors, safety set		06		04
Ties Black		18		14	Towels, hand 2@.34		68		50
Badges Cap		09		07	Overalls Comb	2	52	1	88
Bags kit universal		102		76	Vests cotton 2@.41		82		60
Braces, Prs		32		23	Att Brace 2@.17		34		24
Brasses cleaning		04		03	Belts waist W.E.		65		46

B.A.D. SIMONS, Capt President

R.G. Bangay Lieut Member

Member

Signed at in the field

this 3rd day of Oct 19 45

Signature of Commanding Officer (W.T. Ibbott) COLONEL

Certified true copy

Signature of Officer having custody of original record

3/60B MFB 375-AFB 115 60/P&S/392 (6610)

Exhibit "B" P.48

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 43.

I certify that No. B-62092 Rank. Cfn. Name Havers, J.E.

Unit No. 2 Cdn. Repat Depot was arrested at Battersea. (Place)

at 1515 (Hour) on 19-Oct.45. (Date) and that at the time of his arrest, he was wearing (Military Uniform) or (XXXXXXXXXXXXXXX) Provost Marshal, Assistant Provost Marshal, or other officer of the Commanding officer of the portion of His Majesty's Forces or the officer, Warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army) into whose custody the above named person was taken on arrest. (Strike out part inapplicable.)

(R.P.Harrison) Capt.
D.A.P.M. C.M.H.Q.

London

20-Oct.45.

6 Sidelet "C" 1948

Last Order
No 99 "A"
d/25 Sep 45

PART II ORDER
No 2 Canadian Repatriation Depot
Issued By
A/Lt-Col G.C. Howitt
A/Commanding Officer

This Order
No 100 "A"
d/26 Sep 45

PERMANENT ESTABLISHMENT

SECTION "A"

2. OTHER RANKS

6. ABSENT WITHOUT LEAVE

(a)	B-62092	CFN	Havers,	JE	AWL wef 2359 hrs 5 Sep 45.
(b)	B-62092	CFN	Havers,	JE	AWL wef 2359 hrs 5 Sep 45. Still Absent 2359 hrs 13 Sep 45. (8th day)

W.G. White Major
for(G. C. HOWITT) A/LT-COL
A/OFFICER COMMANDING
NO 2 CDN REPAT DEPOT

Certified true extract from the Original document held in my custody.

T. Robottom
(T. Robottom) Major
Records Officer
No 2 Cdn Repat Depot

Exhibit A

RECORD of the Declaration of a Court of Inquiry assembled at

on the 1st day of October 19 45, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B.62092 Cfn Havers, J.E.

DECLARATION

The Court declare that No. B.62092 Cfn Havers, J.E.

illegally absented himself without leave from No 7 Cdn Repat Depot

at 2359 hrs on the 5th day of September 1945,

that he is still so absent, and that on the 1st of Oct 1945, he was deficient, and

that he is still deficient of the following articles :—

ARTICLES	Vocab	Cdn Price	Appraised VALUE	ARTICLES	Vocab	Cdn Price	Appraised VALUE
Anklets, web	99		74	Brushes Hair	34		22
Battledress Blouse 2@6.50	1300	9	72	Brushes Shaving	37		28
Battledress Trsers 2@6.55	1310	9	82	Brushes Clothes	48		36
Berets Khaki	120		93	Brushes button	26		20
Boots, Ankle 2@5.82	1164	8	72	Brushes polishing shoe	28		20
Drawers Cell/Short 2@.43	86		64	Brushes tooth	11		08
Drawers woollen 2@1.40	280	2	08	Combs, Hair	04		03
Gloves knitted	147		34	Knives, Table	15		11
Greatcoats	1155	8	66	Forks, Table	07		06
Jerseys, pullover	179	1	34	Spoons, dessert	09		06
Shirts flannel W/C2@2.40	480	3	60	Holdalls	19		14
Vests woollen 2@1.20	240	1	78	Housewives	17		12
Socks worsted prs 3@.46	138	1	02	Razors, safety set	06		04
Ties Black	18		14	Towels, hand 2@.34	68		50
Badges Cap	09		07	Overalls Comb	2 52	1	88
Bags kit universal	102		76	Vests cotton 2@.41	82		60
Braces, Prs	32		23	Att Brace 2@.17	34		24
Brasses cleaning	04		03	Belts waist W.E.	65		48

E.A.D. SIMONS, Capt — President

R.G. Bangay Lieut — Member

Signed at in the field — Member

this 3rd day of Oct 19 45

Signature of Commanding Officer (W.T. Ibbott) COLONEL

Certified true copy

Signature of Officer having custody of original record

3/608 MFB 375—AFB 115 60/P&S/392 (6415)

CONTINUED

ARTICLES	Vocab Price	Cdn	Appraised Value	
Bottles water		82		61
Carriers Waterbottle		37		28
Braces WE 2@.30		60		44
Haversack, WE	1	79	1	34
Packs, WE	1	84	1	38
Straps, Shoulder haversack 2@.32		64		46
Straps web supp.2@.13		26		20
Tins mess		32		23
Mugs drinking enamel		17		12
Capes, A.G.	2	76	2	07
Knives, Clasp		86		64
Helmest Steel	3	61	2	68
Capts Comfort		34		25
TOTAL	$89	64	$66	92

Letter "B" R.A.F.

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 45.

I certify that No. B-62092 Rank. Cfn. Name Havers, J.E.

of No. 2 Cdn. Repat Depot was arrested at Battersea. (Place)

at 1515 (Hour) on 19-Oct.45. (Date) and that at the time of his arrest he was wearing (Military Uniform) or (xxxxxxxxxxxxxxx) Signature of Provost Marshal, Assistant Provost Marshal, or other officer of the Commanding officer of the portion of His Majesty's Forces or the Officer, Warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army) into whose custody the above named person was taken on arrest. (Strike out part inapplicable.)

(R.P.Harrison) Capt.

London D.A.P.M. C.M.H.Q.

20-Oct.45.

6 to folder "C" PWB

Last Order
No 99 "A"
d/25 Sep 45

PART II ORDER
No 2 Canadian Repatriation Depot
Issued By
A/Lt-Col G.C. Howitt
A/Commanding Officer

This Order
No 100 "A"
d/26 Sep 45

PERMANENT ESTABLISHMENT

SECTION "A"

2. OTHER RANKS

6. ABSENT WITHOUT LEAVE

(a) B-62092 CPN Havers, JE AWL wef 2359 hrs 5 Sep 45.

(b) B-62092 CPN Havers, JE AWL wef 2359 hrs 5 Sep 45. Still Absent 2359 hrs 13 Sep 45. (8th day)

W.G. White Major
for (G. C. HOWITT) A/LT-COL
A/OFFICER COMMANDING
NO 2 CDN REPAT DEPOT

Certified true extract from the Original document held in my custody.

T. Robottom
(T. Robottom) Major
Records Officer
No 2 Cdn Repat Depot

Last Order
No 103 "A"
d/1 Oct 45

PART II ORDER
No. 2 Canadian Repatriation Depot
Issued By
LT-COL. C.G. HOWITT
A/OFFICER COMMANDING

This Order
No 104 "A"
d/2 Oct 45

PERMANENT ESTABLISHMENT

SECTION "A"

2. OTHER RANKS

8. ABSENT WITHOUT LEAVE

(a) B 62092 CFN HAVERS JE AWL wef 2359 hrs 5 Sep 45, still Absent 2359 hrs 26 Sep 45. (21st day)

for (C. G. HOWITT) W.G. White Major
A/OFFICER COMMANDING A/Lt-Col
No 2 Cdn Repat Depot

Certified true extract from the original document held in my custody.

T. Robottom
(T. Robottom) Major
Records Officer
No 2 Cdn Repat Depot

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B.62092	Pte	Havers, J.E.	No. 2 Cdn Repat Depot

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

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

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

† See para. 427, K.R., 1940.

* The numbers herein stated should correspond with the entries in the conduct sheets, provision being given to the penal services officer in each entry, and to any recognised special acts of gallantry or distinguished conduct.

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

	* Within last 12 months.		*Since Enlistment.	
For A.A.Sec.15(1)	one	times	five	times.
For A.A.Sec.11	three	times	three	times.
For		times		times.
For		times		times.
For		times		times.

[redacted]

2. The accused has not been previously convicted. [redacted]

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

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

5. The present age of the accused according to his [redacted] attestation paper is 38

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 9 Sep 41

7. [redacted]

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs 1 mo 20 dys service.

9. [redacted]

10. [redacted] or is in possession of or entitled to (*state any military decoration or reward*) CVSM and clasp: Defence Medal

11. [redacted]

12. [redacted]

(*21,000) W1.24596/1750 20,000 10/42 A.R.E.W.Ltd. Gp.698
(24004) W1.25674/1499 12,000 2.43

EX B

RN

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

No. B.62092 Rank Pte Name Havers, J.E. of 2 Cdn Repat Depot Regiment (or as the case may be).

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

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

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

Signed this 23rd day of November, 1945

R.G. Bangay Lt.
for
"A" Wing, 2 Cdn Repat Depot

13. [illegible]

In the rank of , years, ____

In the rank of , years ____

In the rank of , years, ____

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

Date of Promotion.

M.F.M. 6
(A.F.B. 122)
40/P&B/136 (2537)

No. B.62092 Name HAVERS, J.E. Sqn., Battery, or Company — Corps R.C.C.C. Date of enlistment 9 Sep 41 G.C. Badges — Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A — No. and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No. 1 — Signature O.C. Company, etc. G.W. Inglis Capt — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Hamilton	6-4-42	Pte		AA15 AWL from 0600 to 2230 hrs 6-4-42	Cpl Russell	5 days CB	9-4-42	Major J West	
Hamilton	7-7-42	Pte		AA15 AWL from 2230 hrs 1-7-42 until 2230 hrs 6-7-42	Documentary	Reprimanded	7-7-42	Lieut R. Lapaie	
Bordon, Eng	3-4-44	Pte		AA15 AWL from 0200 to 0900 hrs 3-4-44	Documentary	Forf 1 days pay 149(2)	3-4-44	Col G.A. Secord	Forf 1 days pay FR&I 149 (1)(a)
Field	23 Oct 44	Pte		WOAS AA Sec 15(1) AWL from 2230 hrs 22 Oct to 1535 hrs 23 Oct 44 (Absent 17 hrs 5 mins) Open arrest	D.81771 Sgt Rowe, A.V. B.22976 Cpl O'Brien, SH	Forf 3 days pay FR&I 149 (2)	24 Oct 44	MP Bourque Capt	Forf 1 days pay FR&I 149 (1)(a)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4 Jun 45	Pte	Nil	WOAS: A.A.Sec.11:- Neg to obey Part I Order, failed to turn in pass on return off pass.	(DOC) RP's	6 days C.B.	5 June 45	G.Rennie, Capt	
Field	30 Jul 45	Pte	Nil	WOAS. AASec.15(1) AWL 21 hrs 45 mins	Documentary	3 days F.P.	31-7-45	G.D.King, Col	1 days pay FR&I 149(1)(a)
Field	11 Aug 45	Pte	Nil	WOAS.AA.Sec 11. Neg to obey 1CBW/RCEME Order, failed to report for Spec. Pic. Parade.		14 days C.B. on both charges	13 Aug 45	A.T.Field Col.	
Field	12 Aug 45	Pte	Nil	A.A.Sec.11. Neg to obey 1 CBW/RCEME Order.	Documentary				

"CERTIFIED TRUE COPY"

(H.J.Armstrong) Captain
Adjutant - "A" Wing - 2 Cdn Repat Depot

LIST OF EXHIBITS IN THE CASE OF B.62092 Cfn Havers, J.E.

FOR THE PROSECUTION

1.	Exhibit "A"	-	Certified true copy of Declaration of Court of Inquiry held on 1 Oct 45.
2.	Exhibit "B"	-	Certificate in accordance with Army Act Sec 168 (1)(jj).
3.	Exhibit "C"	-	Extract from No 2 Cdn Repat Depot Part II Order No. 100"A" dated 28 Sep 45 showing AWL and eighth day AWL.
4.	Exhibit "D"	-	Extract from No 2 Cdn Repat Depot Part II Order No. 104"A" dated 2 Oct 45 which shows 21st day AWL.

FOR THE DEFENCE

NIL

LIST OF WITNESSES IN THE CASE OF
R.62092 Cfn Favers, J.E.

FOR THE PROSECUTION

"A" Wing
2 Cdn Repat Depot

1. Capt E.A.D. Simons

FOR THE DEFENCE

NIL

I acknowledge having duly received a copy of the Charge Sheet and copy of the Summary of Evidence and List of Witnesses and Exhibits at

1515 hrs 1 Oct 45 Date.

I consent to the use of the Summary of Evidence in connection with the charge pending against me and agree to dispense with the witnesses giving their evidence orally.

J E Havers

M/32092 Cpl Havers, J.E.

Date 1 Oct 45

I, B.62092 Cfn Havers, J.E. do desire ~~do not desire~~ the services of

an officer to defend me at my trial by Court Martial.

I desire the services of Lt. G. L. Murray if this

officer is available.

J. E. Havers

B.62092 Cfn Havers, J.E.

5J-63

Lynn Humboldt N.R.

SCHEDULE.

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

Accused: C 14387 SJGMN DONALD ROGER HAWBOLDT 2 Sdn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 41	NOT GUILTY	GUILTY	
2nd AA 40 (ALTERNATIVE)	NOT GUILTY	NOT GUILTY.	
3rd			
4th			
5th			
6th			

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

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

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

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

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

Sentence Awarded by the Court:

To be imprisoned with hard labour for eighteen months and to be discharged with ignominy from His Majesty's Service.

(Sgd) [illegible] Judge Advocate. 8 May 45. Date awarded. (Sgd) [illegible] President. (RP 45, 50.)

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

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

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

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

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

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

Confirmed

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

Date 10 May 45 (Sgd) J.M. Rockingham Brig

Commanding 9 Cdn Inf Bde

Confirming Officer.

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

Accused.	Date.	Signature of Offr.
C14387 Sgjmn Donald Roger Hawbolt	13 May 45	[illegible]

2 Sec 3 Sdn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECEIVED 4 JUN 1945 JAG BRANCH C.M.H.Q.

RECORD AT CMHQ IN AB 160 5/1-63

FIELD GENERAL COURT-MARTIAL

(Page (1a) (1aa) (1b) PAR) 40/P 2(b) (1)(a) (1)(aa) (1)(b) (1)(c) (1)(d) (1)(e) (1)(f) (1)(g) (1)(h) (1)(i) (1)(j) (1)(k) (1)(l) (1)(m) (1)(n) (1)(o) (1)(p) (1)(q) (1)(r) (1)(s) (1)(t) (1)(u) (1)(v) (1)(w) (1)(x) (1)(y) (1)(z) (1)(aa) (1)(bb) (1)(cc) (1)(dd) (1)(ee) (1)(ff) (1)(gg) (1)(hh) (1)(ii) (1)(jj) (1)(kk) (1)(ll) (1)(mm) (1)(nn) (1)(oo) (1)(pp) (1)(qq) (1)(rr) (1)(ss) (1)(tt) (1)(uu) (1)(vv) (1)(ww) (1)(xx) (1)(yy) (1)(zz) (1)(aaa) (1)(bbb) (1)(ccc) (1)(ddd) (1)(eee) (1)(fff) (1)(ggg) (1)(hhh) (1)(iii) (1)(jjj) (1)(kkk) (1)(lll) (1)(mmm) (1)(nnn) (1)(ooo) (1)(ppp) (1)(qqq) (1)(rrr) (1)(sss) (1)(ttt) (1)(uuu) (1)(vvv) (1)(www) (1)(xxx) (1)(yyy) (1)(zzz) (1)(aaaa) (1)(bbbb) (1)(cccc) (1)(dddd) (1)(eeee) (1)(ffff) (1)(gggg) (1)(hhhh) (1)(iiii) (1)(jjjj) (1)(kkkk) (1)(llll) (1)(mmmm) (1)(nnnn) (1)(oooo) (1)(pppp) (1)(qqqq) (1)(rrrr) (1)(ssss) (1)(tttt) (1)(uuuu) (1)(vvvv) (1)(wwww) (1)(xxxx) (1)(yyyy) (1)(zzzz) (1)(aaaaa) (1)(bbbbb) (1)(ccccc) (1)(ddddd) (1)(eeeee) (1)(fffff) 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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record. 3

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

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

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

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

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

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

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

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

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

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the FIRST charge(s), being subject to confirmation, will be promulgated later.(1) ~~He then (tentatively) announces that the accused is found Not Guilty on all charges and, in the event of (confirmation), that the proceedings are accordingly terminated. Para 1 of the Schedule is (also) varied.~~
(*1. AA 54(7) (6), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

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

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas NO 309, 1323, MML p 60, 111-159. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFICER'S CERTIFICATE

I certify that No C-147387 Sigmn Donald Roger HAMBOLDE, "L" Sec 3 Cdn Inf Div Sigs RCCS, is fit to undergo trial by Field General Court Martial

In the Field
8 May 45

Signature of the Medical Officer
R.C.A.M.C.

4/4a.

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-14387	Sigmn		Donald Roger	HAMBOLDT "L"	Sec 3 Cdn Inf Div Sigs, att HQ 9 Cdn Inf Bde

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on 6 May 45 (*date*) endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

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

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

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

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

PRESIDENT.

Major (Rank.)	J E ANDERSON *(Must be named. RP 106.)*	HLI of C (Unit.)

MEMBERS.

Captain	J F PALMER	SD & G Highrs
Lieutenant (Rank.)	H S MacGILLIVRAY *(Named or detailed. RP 106.)*	Nyk NS Highrs (Unit.)

WAITING MEMBER.

Lieutenant (Rank.)	C L LIPTON *(Named or detailed, if any. RP 106.)*	6 Cdn Fd Regt (Unit.) Sec

JUDGE-ADVOCATE.

MAJOR (Rank.)	E D BULL *(Must be named, if any. RP 106.)*	DJA - 9 Cdn Inf Div (Unit.)

On Active Service in the Fd

in GERMANY (Country.)

J M Rockingham (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(J M Rockingham) Brig

Dat 6 May 45

Commanding 9 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 96 (In lieu of AFA 3) 40,000 6/1697 (E143)

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

CHARGE SHEET

The accused, C-14387 Signr Donald Roger HAWBOLDT, "A" Sec 3 Cdn Inf Div Sigs, att HQ 9 Cdn Inf Bde, a soldier of the Canadian Army Overseas is charged with

FIRST CHARGE

Section 41

Army Act

WHILST ON ACTIVE SERVICE, when in a place not within HIS MAJESTY'S DOMINIONS, committing a civil offence, that is to say, RAPE,

in that he,

in the field, in GERMANY, on the first day of MAY 1945, had carnal knowledge of TALMA BUSCH without her consent.

SECOND CHARGE

Section 40

Army Act

(Alternate)

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the field, in GERMANY, on the night of 1 May 45, fraternized with TALMA BUSCH, an inhabitant of GERMANY, not his wife, by having sexual intercourse with the said Talma Busch.

W R Meredith

(W R Meredith) Maj
CO HQ 9 Cdn Inf Bde

In the Field
3 May 45

OPINION OF THE ENTIRE COMMAND

To be tried by Field General Court Martial.

J M Rockingham

(J M Rockingham) Brig
Comd 9 Cdn Inf Bde

In the Field
6 May 45

Appd under N.P. Con see

First witness for the prosecution. M62276 Cpl Lewis R.R. C Pro C. 13 Pro Coy. having been duly sworn, is examined by the Prosecutor:- At approximately 2110 hrs on 1 May 1945, L/Cpl Nussey and myself were returning to our billets in the town of Lier, Germany, when we were stopped by a soldier. There was an elderly lady with the Soldier. She was crying and seemed very hysterical. I gathered she wished us to enter a house. L/Cpl Nussey and myself went into the house pointed out by the lady and we entered the bedroom, and found the accused here present and a woman lying on the bed having sexual intercourse. There was also another old lady sitting in a chair along side the bed crying. The accused was partly undressed, so I ordered him to get up and get dressed. The accused smelled strongly of alcohol. I placed him under arrest & took him to my billets. On instructions from an officer, Lt. Reed, I took the accused to his billets where 6th Cdn Inf. Bde. & turned him over to Capt. Gillespie. I did not actually see organ of accused penetrating organ of woman. The accused was going thro the usual motions that a man does when having sexual intercourse with a woman. The bed had no bed clothes on it. There were articles on bed. The woman was lying on the edge, & the accused was lying in between her legs. The woman was totally naked. The accused had his tunic and trousers off. The accused's rear quarters were moving upwards and downwards.

XX. - I noticed woman. She was laying there crying. She was not fighting. She was neither resisting nor cooperating.

Court - The accused was pretty unsteady on his feet.

J:A. 2.

The womans legs were bent up at the knees on each side of the ~~woman's~~ accused's body. I did not notice womans clothes at all. The room was fairly dim until we opened door. The woman was crying and sobbing. I didn't notice her arms. I would have seen them if they had been around accused. The accused's right arm was around the woman under her back. I didnt notice condition of accused's organs when he stood up. The accused had no underwear on, & was naked from the waist down. The other lady was just sitting in chair crying. When we and accused went out of room the woman on the bed was still lying there. The two women were crying when I entered room. I noticed it right away when I entered room. I noticed no marks or bruises on body of woman. The accused had no arms on his person when I searched him. I think I could recognize the two women in the room if I saw them again.

The prosecutor asked permission of Court to put one further question to witness. Permission is granted. The prosecutor has Fraulein Talea Busboom and Frau Martha Busboom brought into Courtroom.

The Court at request of prosecutor:-

Do you recognize anybody in this Courtroom, other than the Accused, as being persons mentioned in your evidence as being in the room in question.

Ans. Yes. I do not recognize those ~~persons~~ women.

Q. Off. You found accused engaged in sexual intercourse?

Ans. Yes.

Q. You dont know whether woman wanted to or did not want to?

Ans. No, sir, I do not.

R.P. 63 (b) complied with.

The witness withdraws

Second witness for prosecution. B103208 L/Cpl Lewis. N.W. 13 Bde. Coy. C Pns C. being duly sworn, is examined by the Prosecutor:- Cpl. Lewis, the last witness and myself were returning town billet in Fleer Germany at 2110 hrs on 1 May 45, when we were by a house, and a soldier waved at us. We stopped and we had a conversation with the soldier. There was a German woman with the soldier. As a result of the conversation, Cpl Lewis & I went into a civy house which was pointed out to us. We went through a kitchen & through a closed door to a bedroom. There on the bed was a German woman naked with the accused on top of her. Beside the bed on a chair sat an old lady crying. I ordered accused to get up at once & he told me to go out & shut the door. Then Cpl. Lewis ordered him to get up which he did on recognizing who we were. He got up and put on his pants, & we took him out to the Jeep we took him back to our sec. HQ. I would not swear what exactly what the accused was doing, except that he was on top of her. She was lying down and he was kneeling between her legs. The woman was partly lying on bed with her legs apart. The accused was not moving that I saw. He turned around when I opened door. I went in first. I recognize the old lady here (Frau Martha Busboom) as the woman in the room. The other woman (Frau Talea Busboom) is the same build as the woman on the bed, but I can't swear it is the one. The reason I recognize the old lady is she is the first person I saw when I entered the room, and her face was turned towards mine and was sobbing bitterly. The only thing I can say about the woman on the bed is that she was crying & that she was stark naked, & that she was a very big woman.

XX. I was first in room. There was no fornication taking place when I entered room. It was impossible

fornication to take place in the position they were when I entered room. (Witness illustrates position of woman). I saw nothing to indicate woman didn't want to take part. I didn't see woman's clothes. I didn't notice whether or not accused had an erection. I wouldn't swear he put on his pants. At that time his penis must have been down, or I would have noticed. The accused was strongly under influence of liquor. I have been drunk, it interferes strongly with fornication.

Re-examn.

Court. When I went into room, I saw old lady first & saw him on cheeks. Then I looked over to bed, immediately after glancing at old lady. Cpl. Lewis was right behind me. I would have obstructed Cpl. Lewis' view when I first came into the room. Cpl Lewis came right up beside me immediately after I got into room. When I first saw accused he was on bed kneeling on his knees & two arms (illustrating to court position of accused). When I first went into room, I opened door. The room was sort of dark. I don't think he recognized me when I entered room. I think his eyes focused when Cpl Lewis came in - he recognized us then, I guess. We were in room for about 2 minutes before he got up. He didn't move, except to turn his head to us. He just stayed there.

J.A.

If Cpl Lewis says that when we entered room the accused was having sexual intercourse with woman, he is wrong. My impression is that to say someone is having sexual intercourse you have to see the penis in the womb - I never saw that. From the position of the bodies, there was about a foot between bodies - the bodies were not touching. The woman's legs were spread, but they were not touching his. The woman's knees were bended up. Their positions

were such that he could have been getting off her & she was trying to get up. I did not notice any bruises or injuries to the woman's body. Her face was puffed up - it was very red - she appeared as if she were crying. I did not notice any change on her when accd entered. There was definitely no signs of being startled. She did not get up. She just lay on the bed as she was before & made no effort to cover herself. We left her just like that. Accused was definitely naked up to thighs. I wouldn't swear definitely, but I don't think he had any underwear on.

Def. Offr (with permission of court).

The expression of the woman could very definitely have been due to exertion. Accd had his boots on. The facial expression might have been the result of intercourse. Accused pulled pants on over his boots, so he couldn't have been wearing underwear when he came in.

R. P83 (b) complied with
This witness withdraws

Third witness for the Prosecution. Fraulein Talia Busboom, 23 Groningerstrasse, Leer, Germany, being duly sworn, is examined by the Prosecutor, through the interpreter -

I am Talia Busboom. I live 23 Groningerstrasse in Leer in Germany. I am a German citizen. I am not married. It was in the evening about half past eight on 1 May 45, a soldier entered my house and went to the bedroom. When he was in my room he lay me on the bed, took off my pants and raped me. When I started crying he hit me in my face. He used me for half an hour and then I thought he would go away, but told me to undress myself. And then again for half an hour he used me. And then the neighbours wife entered our house and had a conversation with me. Then the wife shut the door and about 15 minutes later two soldiers entered the room with pistols and they took the soldier with them. I recognize the soldier without the hat (pointing to accused) as the man who raped me. The accused actually had sexual intercourse with me, his organ actually penetrated mine. I did not try to fight him off. I did not fight him off because we did not know where to go. I was frightened. When the wife of the neighbour entered the house, I screamed, I was not allowed to and I am called. The soldier did not force me but hit me in my face. I did not want soldier to have sexual intercourse with me. The reason I permitted him to have sexual intercourse with me is that I was crying and he hit me in the face.

XX. I am willing to have a medical examination.

The Def Offr makes a motion to the Court for an adjournment in order that a medical examination submitted to the witness and prosecutrix be held. Such is necessary in the interests of justice + favours accused in view of nature of defence.

The prosecution agrees to the request of the Def Offr and to the adjournment.

The Court allows the adjournment.

At 1430 hrs 8 May 1945, the Court adjourns.

At 1545 hrs 8 May 1945, the Court reassembles, present the same members as when adjourned.

The witness resumes the stand.

XX - cont.

The acc. came in at 8.30 P.M. I looked at the clock. I was talking with my mother because that sister should pay us a visit and I looked at clock. When the accused came in the house, he was talking in English. I don't understand English, but I only understood "Bedroom" + that I had to go into bedroom. ~~I had to bedroom~~. The soldier was behind me and pulled me into the bedroom. I was afraid and he hit me in my face. I could not resist because he hit me. I could not resist. My mother wanted to help me but it was impossible. I don't know if I'm stronger than the soldier. My mother came in sleeping room at same time. She had to go too. My mother was sitting on chair beside bed. My mother was not in bedroom before soldier came. We were both in kitchen. The soldier pulled me into room + my mother too. We were both pulled into room and he hit me in the face. It is not true I went into room without being forced. He raped me the whole time. My mother had to sit on the chair. My mother had to go to bed. My mother did not go into bed. She sat on chair until wife of neighbor. He touched my mother under her clothing and said this is also alright. My mother is 73 years old. I was laying on my bed. First I had my clothes on. I thought soldier would go but he told me to undress myself. He pulled off my pants and other clothing. I didn't take off my clothing. He pulled also my breast. I only took my

coat off. I had all my clothing on, but all was opened because the soldier had touched me several times. He told me to pull off all my clothing and I only pulled off my coat. The soldier pulled off the other clothing. My clothing was not torn. Only my garter was torn. The soldier had sexual intercourse as soon as he came into bedroom. I did not take off my pants then, the soldier did. The soldier did not go out. Then I was naked and the soldier too. The first time he took off my pants, ½ half hour later he told me to take off clothes during half hour he touched my heart & was then behind me and again in front of me. Then he put his penis in my mouth. This was before he took off my clothes. This was lasting I think it was half an hour. 4th.

The first time before I was undressed was half an hour & afterwards for half an hour.

Remember giving evidence at summary. It is not correct when I said accused stayed one hour after undressing. He stayed ½ hr first & then ½ hr after undressing me. The accused slapped me in my face and my lips were bleed & then he placed his fingers before his mouth. Only my lips were dark, but nothing you can see now. I saw two soldiers come to take soldier away, one with pistol. I only saw when I was on my bed 2 soldiers. I never saw 3 soldiers. The wife of my neighbor went for a soldier.

No re-exam.

Court. When the two soldiers came into room, one put his pistol on soldier. But they were not talking. At the moment the two soldiers entered room the accused was actually having sexual intercourse with me. I can't tell you if accused was drunk as I did not smell it, but it is possible that he had some spirits.

J.A.

I could not show him away when he was on bed with me. When my mother was in kitchen and he me found into bedroom, then is was possible that my mother run for help and the soldier wanted to lock the door, but he could not find key. The accused forced himself between my legs. I was afraid of accused because I could not understand him. That is only reason I was afraid. He was unarmed. I could not resist. I don't know what the accused would have done to me if I had resisted. ~~The soldiers had been in Leer~~ The first night the soldiers were in Leer I heard about them being raping women, and I was afraid.

R. P & 3(b) complied with
the witness withdrew.

Fourth witness for the Prosecution. Major C.S. Jarnes, D.A.C.C.S. R.C.A.M.C. being duly sworn testified by prosecutor:-

I am a medical doctor a specialist at 2 C.C.S. On 8 May 45, I examined Talea Buuboom. She had written, externally and a vaginal examination. There is no external evidence of any violence. There was a very slight amount of bleeding at posterior part of vulva, in region of fourchette. The mucous membrane of vagina was healthy. The hymen was not intact. The cervix of the uterus was normal palpation, showed no evidence of pregnancy. In any event this would not have anything to do with any thing recent, i.e. the condition of the cervix.

XX

Hymen could be intact with women of that age Taga proposition, it would not be intact.

no R.C. exam

Court

If hymen had been ruptured in last few days it would not necessarily show damage.

J.A.

I would conclude that there had been a recent tear in the hymen by the slight bleeding evidence in vulva. It could have taken place 6 days ago, but that is a matter of speculation only. If injury had been slight, the amount of post bleeding 8 days later. I would not expect the tear to be R.P.83 (b). Complied with.

The witness withdrawn.

still bleeding after a week, unless it was a serious tear. There was an obvious tear, but it wasn't very marked. I would think that such a tear would have been healed in a week, i.e. it shouldn't show evidence of bleeding in that time.

Court I couldn't tell whether or not woman had had sexual intercourse the day before yesterday.

RP83(b). Complied with.

The witness withdrawn.

The fourth witness for the Prosecution Frau Martha Busboom, 23 Groningerhaase, Leer, Germany, being duly sworn, is examined by the prosecutor:-

I am Martha Busboom, the mother of Talea Busboom. We live in 23 Groningerhaase, in Leer, Germany. I recognize the accused (pointing him out). He came in my house and immediately to the room. He raped my daughter. When I started crying, I asked him to go away, he hit us in our face. My daughter was in bed & we could do nothing. I saw accused rape my daughter because I had to hold her legs. He was laying in bed with my daughter & her legs were in the air & I had to hold her legs. The soldier touched me under my clothing. He wanted me to go to bed too, but my daughter told him that I was 73 yrs. I saw again of accused with daughter. I saw it happen several times. My daughter had told him do it because he forced her. Immediately when he entered bedroom he layed my daughter on the bed. He undressed my daughter & then he undressed himself. My daughter did not struggle, she could do nothing.

No XX.

J.A.

The soldier told me to hold my daughter's legs. I did not hold them. I refused to do so. I did not run for help, because I could not go out of room. He wanted to lock door but he could not find key. The room was too small when the door was closed, it was impossible to go out.

Note! In bedroom, the curtain plate she did not hold the legs of her daughter as above.

R.P 83(b) complied with

The witness withdraws.

The prosecution is closed.

Closing address of Prosecutor

Just to make one point before the Court, & that is that Lalla Busboom was frightened & that sexual intercourse induced by fear is Rape. It has been established that there was a Rape here.

Closing address by Defending Offr.

The acc has been charged with Rape & a Alto, in the alternative, puts an extension of AA40.
I would like to divide evidence in 2 parts —
① The 2 provosts and ② the two German women.

① The provost gave a lot of evidence of what happened afterwards, but little to assist the evidence to support charge. Suggest Cpl Lewis should not be believed. Suggest L/Cpl Finney the more reliable of the two & ask him to be believed. If the other witnesses are to be believed they only took an hour, & more likely Finney more accurate. All they can say is they averted the accused. It shows opportunity but nothing more. ② The charge of rape must therefore fall solely on evidence of the complainant. She must be corroborative. I suggest the evidence of the provost is not corroborative in law. The evidence of the two civilian witnesses has been coloured, exaggerated, distorted. The complainant has been inconsistent in times. The woman is strong & could not be forced with sexual intercourse with the man. She is a strong horse.
The alternative suggestion is cooperation. Only one person could undress the woman & that is the big strong woman. I suggest there

was nothing but cooperation. Prosecution recognize
this & suggest submission by fear. That fear must
be induced in victim by accused. Vague fears
in a person's mind are not enough to say a
seduction is rape. Then is no force. There
witnesses evaded the question of face down
& again. The slapping of the face is the only
thing connects in force. Evidence absolutely
failing to show force or fear. For the accused
probably drunk, exploring around, he's in the
house. his having his arms, he's understood a
fact, (nobody knows). He makes advances, the
woman does not resist, & in his befuddled condition
he doesn't realize she is afraid. This is not rape.
There must be a real fear induced by this
accused before rape. I submit this is not a rape.

Summing up by J.A.

(1) Function of J.A to sum up & function bodrise on matters of law — Ct in final analysis judges of law but should not disregard advice of J.A except for most cogent reasons — Ct sole judges of facts in case. Ct should ignore and expressed opinions of J.A on the facts, they must decide the facts themselves

(2) Accused charged with Rape & alternatively, "fraternization"

(3) "Rape" defined as:-
"The unlawful carnal knowledge of a woman without her consent by force, fear or fraud"

(4) Elements necessary of proof:-
(a) Carnal knowledge - penetration to slightest degree sufficient; emission of seed not necessary — proof complete on proof of penetration.
(b) Without Consent - Question of fact — act must be "against her will" — not "against her will" if she consented - actual consent is being voluntary — Submission extorted by force, or duress or fear of immediate bodily harm is NOT consent. If fear present but not induced by accused or not known to accused, charges not proved by evidence of accused should acquit. Degree of fear & force

(5) Ct must decide if in evidence Carnal knowledge & if so, whether it was with Consent of woman or was done against her will by force, duress or fear.

(6) If Ct finds Carnal knowledge, but consent, MUST acquit.

(7) However if no Consent, but no penetration ie "Carnal knowledge", and acc endeavored to have carnal knowledge without consent — Ct can find "attempted rape". Also possible finding of "indecent assault explained — "assault & indecent assault" defined and discussed.

(8) Corroboration not essential in law but evidence of woman should be corroborated before Pltf convicts. Pltf's responsibility in this case in advising that Ch must have corroboration of complainant before convicting, because the issue is one of consent or otherwise. In such cases the necessity for corroboration is more evident.

(9) Corroboration defined — must be corroborative both as to commission of the offence and that accused committed it. The evidence must come from other than the complainant or an accomplice — evidence must be corroborative in one or more material circumstances or particulars — that is — something very material & tied up with the fact that the crime accused and that accused was one who did it — Mere opportunity to commit the crime is not enough corroboration normally.

(10) For Court to decide whether or not evidence of woman is corroborated in one or more material particulars — As for Pltf I can say there is evidence before Ch which Ch could say was corroborative. As to commission of offence — there is evidence of prowess for what it is worth — facial expression of woman and her attitude, condition of the mother, the actions and condition of accused at the time they entered — there is some medical evidence of a not very valuable nature that there was some injury on the vicinity of the hymen, etc. As to accused being the person — there was a crime, there is ample corroboration from the same witnesses that he was present, and from the woman at the time, and after the alleged offence — these matters could be corroborative, but for Ch to decide if they are corroborative.

(11) Short summary of evidence of witnesses.

(12) Discussion of alternative charges. If accused guilty of [illegible] charge or any lesser finding [illegible]

(8) Corroboration not essential in law but evidence of woman should be corroborated before Ct convicts. Glube responsibility in this case in advising that Ct must have corroboration of complainant before convicting, because the issue is one of consent or evidence. In such cases the necessity for corroboration is more evident.

(9) Corroboration defined — must be corroboration both as to commission of the offence and that accused committed it. The evidence must come from other than the complainant or an accomplice — evidence must be corroborated in one or more material circumstances or particulars — that is — something very material & tied up with the fact that the crime occured and that accused was one who did it — Mere opportunity to commit the crime is not enough corroboration normally.

(10) For Court to decide whether or not evidence of woman is corroborated in one or more material particulars — as JA. I can say there is evidence before Ct which Ct could say was corroborative. As to commission of offence — there is evidence of mother for what it is worth — evidence of 3 provost of what they saw in the facial expression of woman and her attitude, the condition of the mother, the actions and condition of accused at the time they entered — there is some medical evidence of a not very valuable nature that there was some injury in the vicinity of the hymen, etc. As to accused being the person if there was a crime, there is ample corroboration from the same witnesses that he was present, undressed on the woman at the time, after the alleged offence. — These matters could be corroborative, but for Court to decide if they are corroborative.

(11) Short summary of evidence of witnesses.

(12) Discussion of alternative charges. If accused guilty of first charge or any lesser finding as

mentioned before, must be found Not guilty of 2nd (alternative) charge. If not Guilty of 1st charge then consideration of 2nd charge.

(13) What second charge of fraternization means. necessary elements of proof and to Cts satisfaction:-
(a) accused had sexual intercourse with woman in Germany
(b) the woman was an inhabitant of Germany of her free will and a German citizen.
(c) That such act amounts to "fraternization"
(d) That "fraternization" is conduct contrary to BOTH good order and military discipline

(14) Use of general military knowledge and common sense in interpretation of what is & is not fraternization etc.

(15) Credibility of witnesses - right of Court to accept or reject evidence of witnesses in whole or part.

(16) Important part of Summing up — burden of proof — presumption of innocence — "golden thread in British jurisprudence" — necessary to prove guilt beyond a "reasonable doubt" - "reasonable doubt" defined - business man test — if convinced of innocence of accused OR have "reasonable doubt" of guilt, Ct MUST acquit.

(17) Ct must decide case on evidence before it alone, — etc

(18) Pres. President, am there any further matter or which you wish me to advise the Ct? Ans. No, I don't think so.

(19) Mr. Prosecutor, am there any further matter or which you wish me to advise the Ct? Ans. No Sir.

(20) Mr. Defending Officer, am there any further matter on which you wish me to advise the Ct? Ans. No, Sir — except there a definition of "Fraternization" in some order?

(21) J.A. — yes, but the order is not before this Ct & cannot be produced to the Court.

Statement in mitigation of Punishment by Def. Offr.

The offence for which you must meet out punishment is the 2nd most serious offence in law. Theory of punishment is first, to punish the wrongdoer, secondly, to act as a deterrent for the community & thirdly, to stop or satisfy the desire for revenge. Our theory is an "eye for eye". In Canada we take a stunt view of sexual cases, & we exploit savage perverties. However, circumstances can change this position. It is a different case in Canada, where considerable care is taken to protect womanhood from violence. Seriousness of rape vary with the character of the complaint. Most cases don't come to court, unless it is a bad case. Offences of this character are regarded in England less serious than in Canada. There is no offence of rape in Germany. It is a natural custom of the people. They tried to hinder the American Army by charges of rape. There is no change of conscience on the woman. They are available to the Nazis & SS people. It is their course of conduct and their total duty to submit to intercourse and be helpable. I ask you to forget the revenge, an eye for an eye theory. He has to be punished, but only for the sake of discipline in the army, & not to protect these women or to satisfy "eye for eye" theory.

This man has been in the Army a considerable time. He is married with a child & expecting another. He is a Canadian & his behavior is best of all the armies - the victorious, conquering armies. Deplorable, it is true, but the circumstances are not the same as in the civil rape. Remember this Soldier has done a job for Canada, done it well & on the eve of going home. This is the rape of the moment, drunk with fighting, killing and raping. & remember this woman is a Nazi, only too willing to frame our soldiers.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused,

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

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C14387	Sigmn	HAMPOLDT Donald Roger	"L" Sec 3 Cdn Inf Div Sigs

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

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

For Conduct to the Prejudice etc ... 3 times.
For A/L ... 2 times.
For Disobeying a lawful comd ... 1 times.
For ... times.

Date of first entry in Field Conduct Sheet 9 Jul 43

Date of last entry in Field Conduct Sheet 16 Feb 45

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

*Strike out if not applicable.

*3. THE ACCUSED IS FURTHER CHARGED WITH ... BELONGING TO THE ... ARMY.

4. The accused has been awaiting trial on the present charges for - days in civil custody; and for 6 days in military custody, *i.e.*, - days in open arrest, 6 days in close arrest; of which - days were spent in hospital.

5. The present age of the accused is ...

6. The date of his attestation is 27 Jun 40

7. The service which the accused is allowed to reckon is 4 yrs 10 mos 8 days

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

8. The accused is in possession of CVSM with clasp

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

	Date of Promotion.
In the substantive rank of ...	...
In the war substantive rank of ...	...
In the acting rank of ...	...

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

(27053) W1.24930/0404 24,000 7/44 A.& E.W.Ltd. Gp.698 Form B.296(War).

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

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
Magistrates Court Camberly Hants Eng	14 Sep 44	Theft of bicycle	Fined £2-0-0	

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

Signed this 7 day of May 1945

(J A DAVIDSON) Lt
Offr having custody of regtl documents

Exhibit "B"

No. 2-14387 Name HAWSOLYT Donald Roger | Sqn., Battery, or Company | Corps RCCS | Date of enlistment 27-6-40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 A.F.H. 7702

Date of last entry in Company Conduct Sheet 13-1-42 | No. and date of last drunk 31-8-41 (1) | Period not reckoning towards freedom from extra fine N/A | Sheet No. One | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order threatening with trial	By whom awarded	Remarks
				Sheet destroyed 27 Jun 42 on completion of 2 yrs service.					
Field 9	Jul 43	Sigan		AA Sec 40 Acting in a manner unbecoming a soldier by accosting women.	Sgt Brickwood	7 days pay AA Sec 40 (2) 10 days CB	10 Jul 43	Maj N H Grant	
Field 3	Sep 43	Sigan		(1) AA 15 (1) AWL 30 min (2) AA 40 Found lying on the floor of the Nurse's Residence AA Sec 9. (2)	L/Cpl Hill Sgt Robertson Cpl Atkinson	28 days Detn 28 days	7 Sep 43	Maj NH Grant	
Field	15 Dec 43	Sigan		Disobeying a lawful command given by his superior officer.	Lt Pacquin Maj Grant Lt Pennington	28 days Detn	15 Dec 43	Maj N H Grant	
Field	14 May 44	Sigan		AA Sec 40 Behaving in an unsoldierly	Sgt Grant Pte Slater	7 days CB	15 May 44	Maj A L Russell	

(P T O)

Place	Date of offence	Rank	Corps of division-ions	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	12 Sep 44	Sigman		Civil Offence. Stealing one bicycle value £2-0-0 the property of some person unknown in CAMBERLEY AA Sec 15 (1) ALW 1 day, 11 hrs, 15 mins	Pleaded Guilty Cpl Moore C T L/Cpl Poile, K E	Fined £2-0-0 7 days CB	14 Sep 44	CAMBERLEY Magistrate	
Field	7 Oct 44	Sigman		AA Sec 19. Asleep on sst whilst under influence of liquor.		28 days forf of pay	9 Oct 44	Maj A Gillingham Condr HQ I of C	Forf 2 days pay
Field (Extract)	10-2-45	Sigman							

CERTIFIED TRUE COPY

J Davidson

(J A DAVIDSON) Lt
210 "L" Sec 3 Gen Inf Div Sigs
In the Field Offr having custody of regtl documents
7 May 45

SUMMARY OF EVIDENCE in the case of

C-14387 Signn HAWBOLDT, D. R., "L" Sec,
3 Cdn Inf Div Sigs, att HQ 9 Cdn Inf Bde.

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

FIRST WITNESS
FOR THE PROSECUTION

M-62276 Cpl LEWIS, R.R., Canadian Provost Corps (13 Coy), having been duly sworn, states:

"At approximately 2110 hrs, 1 May 1945, L/Cpl NURSEY and I were returning to our billets in the town of LEER when were flagged down by a soldier who stated that there was some trouble in a house. An old lady outside was crying hysterically. On entering the house we found the accused having sexual intercourse with a woman. She was lying on a bed crying. There was also another elderly lady sitting in a chair by the bed. She was also crying. The women on the bed had no clothes on. The accused had his trousers removed. I ordered the accused to put on his trousers, and placed him under close arrest and took him to my billets. The accused smelled strongly of liquor. On instructions from Lt REED I took the accused to "A" Ech HQ 9 Cdn Inf Bde where I turned him over to Capt GILLESPIE, to whom I explained that the accused was under close arrest, and the nature of his offence."

(M-62276 Cpl LEWIS R R)
Canadian Provost Corps (13 Coy)

The accused declines to cross-examine the witness.

SECOND WITNESS
FOR THE PROSECUTION

B-103208 L/Cpl NURSEY, N.W., Canadian Provost Corps (13 Coy), having been duly sworn, states:

"At approximately 2110 hrs,(I looked at my watch at that time), while returning to my billets with Cpl LEWIS we were stopped by a soldier. Standing beside him was an old lady who was crying. Cpl LEWIS and I both went into the bedroom of the house where I noticed two persons on the bed, in a state of complete nudity. One was a woman lying down. The other was the accused, who was on top of her. Sitting beside them on a chair was a very old lady, crying. I at once ordered the soldier to get up which he did not do immediately. All he said to me was "Close the door". Then Cpl LEWIS ordered him to get up, which he did, after noticing who we were. After getting up and putting on his pants he was told to go outside and get into the jeep. Then I told the woman to get dressed. Whereupon we left and took the accused to our billets, where Lt REED ordered us to take him to his unit, "A" Ech 9 Cdn Inf Bde, and turn him over to the highest ranking officer present. We did so, Cpl LEWIS turning the accused over to Capt Gillespie, under close arrest. After leaving "A" Ech 9 Cdn Inf Bde we returned to the civilian house where we tried to interview the GERMAN residents, but owing to language difficulties we could make very little of their story, and they cried a great deal. So we left, and returned to our billets, where Cpl LEWIS made out the report.

(B-103208 L/Cpl NURSEY N W)
Canadian Provost Corps (13 Coy)

The accused declines to cross-examine the witness.

THIRD WITNESS
FOR THE PROSECUTION

Miss (Fraulein) Talea BUSBOOM, of 23 Groningerstrasse, LEER.

The witness was duly sworn -" I swear, by God, that I tell the full truth.

"On 1 May 1945, at half past eight in the evening an unarmed soldier entered the kitchen, and then forced me to go into the sleeping room, together with my mother. Then I had to lay down in the bed and I was "disgraced" by the soldier, that is he forced me to have sexual intercouse with him. Half an hour later the soldier forced me to take off my clothes, and he also took off his clothes, and stayed one hour more in the room. During this hour he forced me to have sexual intercouse with him. When I cried he slapped my face and mouth - I was unable to understand what he said. A neighbor then opened the door of the sleeping room, and then a quarter of an hour later three soldiers entered and freed me, and took the soldier away."

Talea BUSBOOM

I certify that the above evidence is an accurate translation from the GERMAN in which it was originally given.

Interpreter (GERMAN citizen) working with the Town Major of LEER.

The accused declines to cross-examine the witness.

FOURTH WITNESS
FOR THE PROSECUTION

Mrs (Frau) Martha BUSBOOM, of 23 Groningerstrasse, LEER.

The witness was duly sworn - "I swear by God, that I tell the full truth.

"On 1 May 1945, at about half-past eight a soldier entered the kitchen and forced my daughter and myself to go in to the sleeping room, and threw me into a chair, and my daughter on the bed. He then had sexual intercouse by force with my daughter. In the meantime I was sitting on the chair, and when my daughter opposed the soldier or made any remarks he slapped her on the face. He pulled the clothes off my daughter and he bit her on the breast - it did not bleed. He pulled me towards the bed, but when I said I was 73 years old he left me alone. The soldier's underclothes had blood on them. Then a neighbor came in to ask for something. When she saw the scene she closed the door and went away. About half-an hour later two or three soldier (I cannot remember how many) came, and took the soldier away.

I certify that the above evidence is an accurate translation from the GERMAN in which it was originally given.

Interpreter (GERMAN Citizen) working with the Town Major of LEER

The accused declines to cross-examine the witness.

The accused was caution as follows:-

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

The accused declined to make any statement or give evidence.

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

(J A DAVIDSON) Lt
"E" Sec Sigs, 3 Cdn Inf Div
Att Hq 9 Cdn Inf Bde

In the Field
3 May 45

Summary of Evidence in the case of
C-14387 Sapper Hawboldt, D. R., "L" Sec, Signals 3 Cdn Inf Div.,
att. H.Q. 9 Cdn Inf Bde.

The commanding officer directs that the evidence be taken on oath.

First Witness for Prosecution: M-62276 Cpl. Lewis, R.W., Canadian Provost Corps (13 Coy) having been duly sworn states.

At approximately 2110 hrs 1 May 1945 L/Cpl Murray and I were returning to our billets in the Town of Lueneburg when we were flagged down by a soldier who stated that there was some trouble in a house. An old lady outside was crying hysterically. On entering the house we found the accused having sexual intercourse with a woman. She was lying on a bed crying. There was also another elderly lady sitting in a chair by the bed. She was also crying. The woman on the bed had no clothes on. The accused had his trousers removed. I ordered the ~~soldier~~ accused to put on his trousers, and placed him under close arrest and took him to my billets. The accused smelled strongly of liquor. On instructions from Lieut Reed I took the accused to "A" Echelon HQ 9 Cdn Inf Bde where I turned him over to Capt Billings, ~~the~~ and explained that the accused was under close arrest, and the nature of his offence.

R.W. Lewis, Cpl.

The accused declines to ~~question~~ cross-examine the witness.

~~Second~~ Witness for Prosecution

B-103208 L/Cpl. Nursey, N. W., Canadian Provost Corps (12 Coy) having been duly sworn states:

At about 2110 hrs. (I looked at my watch at that time) while returning to my billets with Capt. Lewis we were stopped by a soldier ~~who said that a woman was being raped inside a house~~. Standing beside him was an old lady who was crying. Capt. Lewis and I both went into the bedroom of the house where I noticed two persons on the bed, in a state of complete nudity. One was a woman lying down. The other was the accused, who was on top of her. Sitting beside them on a chair was a very old lady, crying. Capt. Lewis ordered the soldier to get up which he did not do immediately. All he said to me was "Close the door." Then Capt. Lewis ordered him to get up, which he did, after noticing who we were. After getting up and putting on his pants he was told to go outside and get into the jeep. Then I told the woman to get dressed. Whereupon we left and took the accused to our billets, where Lieut. Reid ordered us to take him to his unit, "A" Echn 9 Cdn Inf Bde, and turn him over to the highest ranking officer present. We did so, Capt. Lewis turning the accused over to Offr. Pellegrin, under close arrest. After leaving "A" Echn 9 Cdn Inf Bde we returned to the civilian house where we tried to interview the German residents, but owing to language difficulties we could make very little of their story, and ~~they~~ they cried a great deal. So we left, and returned to our billets, where Capt. Lewis made out the report.

N. W. Nursey L/Cpl.

The accused declines to cross examine the witness.

Third Witness for Prosecution

Miss (Fraulein) Talea Busboom, of 23 Bronigerstrasse, Leer.

The witness was duly sworn - "I swear, by God, that I tell the full truth."

On 1st May 1945 at half-past eight in the evening an unarmed soldier entered the kitchen, and then forced me to go into the sleeping room, together with my mother. Then I had to lay down in the bed and I was 'disgraced' by the soldier, that is he forced me to have sexual intercourse with him. Half-an-hour later the soldier forced me to take off my clothes, and he also took off his clothes, and stayed one hour more in the room. During this hour he forced me to have sexual intercourse with him. When I cried he clapped my face and mouth - I was unable to understand what he said. A neighbor then opened the door of the sleeping room, and then a quarter of an hour later three soldiers entered and freed me, and took the soldier away.

Talea Busboom.

I certify that the above evidence is an accurate translation from the German in which it was originally given.

[illegible] Interpreter (German citizen) working with the Town Major of Leer.

The accused declines to cross examine the witness.

Fourth Witness for Prosecution — Mrs. (Frau) Martha Bjerboom, of 23 Brongerstrasse, Oder.

The witness was duly sworn – "I swear by God that I tell the full truth."

On 1st May 1945 at about half past eight a soldier entered the kitchen and forced my daughter and myself to go in to the sleeping room, and threw me into a chair, and my daughter on the bed. He then had sexual intercourse by force with my daughter. In the meantime I was sitting on the chair, and when my daughter opposed the soldier or made any remarks he slapped her on the face. He pulled the clothes off my daughter, and he hit her on the breast — it did not bleed. He pulled me towards the bed, but when I said I was 73 years old he left me alone. The soldier's underclothes had blood on them. Then a neighbor came in to ask for something. When she saw the scene she closed the door and went away. About half an hour later, two or three soldiers (I cannot remember how many) came, and took the soldier away.

"Mrs. (or Frau) Bjerboom"

I certify that the above evidence is an accurate translation from the German in which it was originally given.

[illegible] Lassow
Interpreter (German citizen) working with the British Military Court, Oder.

The accused declines to cross examine the witness.

The accused was cautioned as follows:-

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

The accused declined to make any statement or give evidence.

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

J. Henderson, Lieut.
"K" Svc. Signals Staff Sgt Clerk
att 9 Cdn Inf Bde.

In the field.
3rd May 1945.

List of Witnesses for the prosecution.

M-622/6 Cpl Lewis, R.W. 13 Coy, Canadian Provost Corps.
B-103208 L/Cpl Nursey, N.W. 13 Coy, Canadian Provost Corps.
Fraulein Talea Busboom, 23 Groningerstrasse, Leer, Germany.
Frau Martha Busboom, 23 Groningerstrasse, Leer, Germany.

I desire that an officer be appointed to defend me at my court-martial.

C14887 D. A. Kaufbolde

4L-95

Gov. Hawes A. J.

SCHEDULE.

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

Accused: F 16506 GNR HAWES A.J.

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

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

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

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

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

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

Sentence Awarded by the Court:

90 days detention

(Sgd) _____ 21 Dec 1944 (Sgd) T McNaughton Maj

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

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

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

Date _____ (Sgd) _____ Commanding _____

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

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

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

I confirm the above findings but mitigate the sentence by 30 days, accused to serve 60 days detention, and confirm the sentence so mitigated

~~I direct that the sentence be carried into execution forthwith. Date of commencement of detention [1]: X Date~~
~~[1]. AA 57 X Delete if not applicable~~

(Sgd) D.K. Todd
(D.K. Todd) Lt-Col.
Date 26 Dec 44 T/Commanding 1 Cdn Army Group RA
Confirming Officer.

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

Accused. Date. Signature of Offr.

F 16506 Gnr HAWES A.J. 27 Dec. 1944 J Harrington Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160. UL-95

(CF AFB 131 (Pts 1 of AFA 33) C.F.P.R. 7658 (2064))

FIELD GENERAL COURT-MARTIAL

Convened by Order of LT Col D K TODD A/Comd 1 Cdn ARMY RA dated 18 Dec 1944

ACCUSED.

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

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F16506	GUNNER	ALLEN JOSEPH	HAWES	1 Cdn Mad Dep

PROCEEDINGS REVIEWED D. Crerar Lieut-Gen
20 Jan 45
REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 21 Dec 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2G-42

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

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

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

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

A3. The Court is opened. The accused is (are) brought before the Court. At 0925 hours trial commences.

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

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

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

A5. President to accused: ~~Do you object to~~ as interpreter? Ans ~~the interpreter sworn.~~(1) Do you object to LT FARQUHARSON as shorthand writer? Ans No. The shorthand writer is sworn.(1)

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

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

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

President	MAJOR	E.M.D.	MCNAUGHTON	5 Cdn Med Dpt RCA
Member	Capt	M.C.	BUCKWELL	1 Cdn Med Dpt RCA
Member	LT	K.J.	HANDY	2 Cdn Med Dpt RCA
Judge-Advocate				
Prosecutor	LT	C.E.	BRISBIN	1 Cdn Med Dpt RCA
Defending Offr	LT	J.D.	MACDONALD	1 Cdn Med Dpt RCA

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

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

A8. The accused F16506 GNR HAWES A.J. before arraignment make(s) ~~(make)~~ No plea.(1)

~~NOT GUILTY but to the CHARGE~~

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C2/128

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT

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

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

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

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

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

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

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

3. As to responsibility of President to accused see RP 50, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

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

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

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

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

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans Yes Ex 4 Do you intend to call witnesses on your behalf?
Ans No ~~Are they witnesses as to character only?~~ Ans .....
(1. *RP 136.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

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

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans No (defending offr gives plea of mitigation) Offer 3 (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 7/10/
(1. *When several accused tried separately see RP 38(E). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

71.

CHARGE SHEET.

The accused, No F-16506 Gunner HAWES Allen Joseph, 2nd Medium Battery, 1 Canadian Medium Regiment RCA a soldier of the Canadian Army, is charged with:-

FIRST CHARGE
A.A. 10(3)

WHEN ON ACTIVE SERVICE, RESISTING AN ESCORT WHOSE DUTY IT WAS TO APPREHEND HIM

in that he

in the Field in Italy, on 19 Nov44, after being involved in a fight with other soldiers and when being apprehended by Lieut W.J. Blanchard, 105 Provost Coy, CMP British Army, resisted the escort by struggling.

SECOND CHARGE.
A.A. 9(2)

WHEN ON ACTIVE SERVICE USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

in that he

in the Field in Italy on 19 Nov 44, when being placed under arrest by Lieut W.J. Blanchard, 105 Provost Coy CMP British Army, his superior officer, said to him "Fuck off you limey bastard" or words to that effect.

(T.L. Sounness) Major RCA
A/Comdr - 1 Canadian Medium Regiment.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(D.K. Todd) Lt-Col.
T/Comd 1 Cdn Army Group RA

In the Field
18 Dec 44

FIELD GENERAL COURT-MARTIAL

CFA93 (In lieu of AFA81) 40/P&R/1027 (2883)

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.16506	GUNNER		ALLEN JOSEPH,	HAWES	1 Cdn Medium Regt RCA

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 16 Dec 44 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

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

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

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

~~I am unable to appoint (a) member(s) of the Court, (by) their Presidential rank(s) as stated hereto~~

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

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

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E.M.D. McNaughton	5 Cdn Med Regt RCA

MEMBERS.

Capt to be detailed by C.O. 1 Cdn Medium Regt RCA

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Lieut	to be detailed by C.O. 2 Cdn Medium Regt RCA	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	to be detailed by C.O. 2 Cdn Medium Regt RCA	

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in FIELD (Country.)

Date 16 Dec 44

D.K. Todd (Signed personally. RP 105 fn 2.)

(D.K. Todd)

Lt-Col. (Rank.)

T/Commanding 1 Cdn Army Group RA

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

M E D I C A L C E R T I F I C A T E

This is to certify that I, Capt N.S. Bowers, RCAMC Medical Officer 1 Cdn Medium Regiment have medically examined F-16506 Gnr Hawes A.J. 2nd Medium Battery 1 Canadian Medium Regiment on the 21st day of December 1944 and find him fit to be tried by Field General Court Martial.

Capt (N.S. Bowers) RCAMC
Medical Officer,
1 Canadian Medium Regiment.

PROCEEDINGS OF THE COURT

in the case of

F16506 Gnr. Hawes, A.J.
2nd Medium Battery,
1st Cdn Medium Regiment R.C.A., C.M.F.

FIRST WITNESS 5341295 L/Cpl. Griffin, B. Sec 105 Provost Coy., attached 21 Tank Brigad, having beenduly sworn states:

I am 5341295 L/Cpl. Griffin B. of Sec 105 Provost Coy., attached 21 Tank Brigade. At Riccione on 19 Nov 44 at about 1610 hrs I was on duty on the Viale Trento Trieste when I saw three Canadian soldiers fighting. I ordered them to disperse but they failed to comply with my order. One of the soldiers who I later knew to be Gnr. Hawes said "fuck off". At that stage Lieut Blanchard appeared on the scene and asked me what the trouble was. I explained to him and he ordered the soldiers to disperse. They failed to do so. Gnr. Hawes said "fuck off you limey bastards". Lieut Blanchard left for police assistance and returned accompanied by Sgt Sandiford, L/Cpl Bowes, L/Cpl Love and L/Cpl Alborough. Lieut Blanchard then told the three soldiers that they were under close arrest and ordered them to get into the police jeep. At that stage I returned to my duty. I do not know anything that occurred after this regarding said soldiers.

SECOND WITNESS 197443 Lieut Blanchard W.J., 105 Provost Coy., attached 21 Tank Brigade, an officer on active service, having been duly sworn states:-

I am 197443 Lieut Blanchard W.J., 105 Provost Coy., attached 21 Tank Brigade, an officer on active service. On the 19 Nov 44 at about 1615 hrs I was on duty on the Viale Trento Trieste where I saw a fight taking place between Gnr Billings and Gnr. McKay of the 5 Cdn Med Regt RCA. I noticed L/Cpl. Griffing endeavoring to separate the two mentioned chaps. I asked L/Cpl Griffin what the trouble was about. He told me he was endeavoring to stop the fight and had ordered them todisperse and they had failed to do so. At this stage Gnr. Hawes stared to struggle with Gnr. Billings. I ordered them to disperse. They stopped fighting and the reply from Gnr Hawes was "fuck off you limey Bastards". I then instructed L/Cpl. Griffin to watch the three accused and I went to the police billet for assistance. I returned with Sgt Sandiford, L/Cpl Love, L/Cpl Bowes and L/Cpl Kershaw. I approached the three accused and told them I was a police officer and ordered them to get into the police jeep. Gnr Billings attempted to strike me. A struggle took place. The three soldiers were finally put in the jeep. Then Gnr McKay attempted to strike me. They were violent the whole time. The topic of conversation was limey basturds. I instructed L/Cpl Alborough who at this time arrived on the scene to drive the jeep to the 1 Cdn Div Provost station in Riccione. As they were being driven away they continued to struggle. I followed a few minutes later to 1 Cdn Div Provost station Riccione and instructed them to hold the three accused under close arrest and that charges would follow

SECOND WITNESS (Contid)

Questions by the Defense

Q.1 Had Gnr Hawes been drinking in your opinion?
A.1 Yes he had been drinking.

Q.2 Was he in your opinion drunk?
A.2 I would not say he was drunk. He was able to walk and talk coherently.

Q.3 Would you say he was under the influence of liquor in his actions and speech?
A.3 Yes I conformed the impression he had been drinking

Q.4 What in your opinion are the signs that a man is drunk?

President

Questions as to the sobriety or degree of sobriety of the accused are irrevelant to the charges in question. K.R. states drunkenness is no excuse. Further the witness is not qualified to express any more than an opinion as to the state of sobriety of the accused.

Defense

In the opinion of the defense the state of sobriety is revelant to this case. I refer you to Ch III para 47 of M.M.L. in which it states that "Offences arising from drunkenness should not be the subject of a number of serious charges when in reality the true offenc is drunkenness and the Offencesarising from it may be aggravations of that charge". Further in Ch VII para 9 it states that a man must have the intent of committing an offence.

It is the contention of the defence that the accused was drunk at the time of the incident. The defence suggest that the evidence given by the witnesses in the Summary is sufficient to show this and it is hoped to bring this out in the questions.

President Allowed.

THIRD WITNESS C75818 A/Cpl. Pickerill I.W. No.1 Provost Coy., a soldier on active service, having been duly sworn states:

I am C75818 S/Cpl. Pickerill, I.W. No.1 Provost Coy., On the 19 Nov 44 I was acting Orderly Sgt at our enquiry office in Riccione. At approximately 1600 hrs a jeep drove up containing 3 C.M.Ps and 3 Canadian soldiers. A L/Cpl of the C.M.Ps asked for our Regimental Sergeant-Major. I got the Sgt-Major and asked the 3 Cdn soldiers to step into the enquiry office. The stand-to party was then called on duty and I was relieved for my supper. The condition of these three soldiers showed they had been drinking, but they were not in my estimation drunk. Sgt. Shantz took the names, numbers and regiment of the three soldiers and one of those I now recognize as Gnr. Hawes.

FOURTH WITNESS 7586557 Sgt. Sandiford W.B. Sec. 105 Provost Coy., attached 21 Tank Brigad having been duly sworn states:

I am 7586557 Sgt.Sandiford W.B. Sec. 105 Provost Coy., attached 21 Tank Brigade. On the 19 Nov 44 at about 1620 hours I was informed by Lieut Blanchard that there were three Canadian soldiers causing a disturbance by fighting in the Viale Trento Trieste. I accompained Lieut Blanchard with L/Cpl Love, L/Cpl Kershaw and L/Cpl Bowes. On arrival Lieut Blanchard informed the 3 soldiers that he was a police officer and that they were under arrest also to ge t into the police car. They failed to comply and became very violent. After we had been on the scene about two minutes Lieut Blanchard and I had a struggle with Gnr. Hawes eventually placing him in the police Car. At this stage Gnr. Hawes asked Lieut Blanchard if he was English and he replied "yes". Gnr. Hawes replied "you limey bastard" and continued to try to break arrest. All three were eventually convsyed to 1 Cdn Div Provost Coy. where they were handed over to the guard.

Questions by the Def

Q.1 In your opinion was Gnr Hawes under the influence of liquor?
A.1 Yes. He appeared to have been drinking and there was a bottle of liquor in the group on whose person I do not know.

Q.2 Was the accused drunk?
A.2 No.

FIFTH WITNESS A3300 Sgt. Shantz, M.L. No.1 Provost Coy., a soldier on active service having been duly sworn states:

I am A3300 Sgt. Shantz, M.L. No.1 Provost Coy., At approximately 1900 hrs 19 Nov 44 I was informed that the C.M.P. had placed a number of Canadian soldiers under close arrest and had escorted them to the Orderly Sergeants Room, No.1 Provost Coy1, Riccione. On arriving in the Orderly Sergeants room I proceeded to take the particulars of the soldiers present and their units were notified. It was evident that the ~~xxx~~ three present including Gnr Hawes had been drinking as they were incoherent in speech and unsteady on their feet.

Questions by the defence

Q.1. Was the accused drunk?
A.1 No.

Q.2 What on your opinion are the symptoms of drunkenness?
A.2 Incoherence and unsteadiness.

SIXTH WITNESS G19466 L/Cpl Draper R.N., 1 Provost Coy., a soldier on active service having been duly sworn states:

I am G19466 L/Cpl. Draper R.N., 1 Provost Coy., On the 19 Nov 44 as stand-to (which is a duty party standing by on call to the Orderly Sergeant) I reported to the Orderly Sergeant Room at approximately 1745 hrs. During my presence the three Canadian soldiers including one whom I now recognize as Gnr Hawes created little or no distubance. In my estimation the three Canadian soldiers had been drinking as I smelled it on their breath while speaking with them. This statement incorporates all that I know about Gnr Hawes.

SIXTH WITNESS (Cont'd) Questions by the defence 4/11/71

Q.1 Was the accused drunk?
A.1 No but he had been drinking.

Q.2 What in you opinion are the symptoms of drunkenness?
A.2 When a person cannot stand up

8 & 11

Statement of the accused.

I was drunk at the time and do not recollect committing any of the alleged offences.

A. D. Hamm

Thos Longfellow
Wog

A. D. Hamm

4x 3

PLEA IN MITIGATION IN THE CASE OF
F.16506 Gnr HAINES, A.J. 21 Nov 44

THE PRESIDENT & MEMBERS OF THE COURT

SIRS:

Before closing the Court to consider sentence, the defendant wishes to have the following facts presented before you in order that the true nature of his offense may be shown. It has not been the desire of the defense to prolong this trial by a plea of Not Guilty, but rather endeavor to bring out the fact that these offenses were committed while the accused was under the influence of liquor, and consequently, these said offenses are minimized in their gravity by the lack of intention. The defense submits that the proper charge on which to try the accused would be that of "Drunkeness", and the charges which are the subject of this D.C.C.M. treated as an aggravation of this offense, and, if pressed at all, be laid under the provisions of [illegible] Sec 40. (See M.M.L. Ch III Para. 47 Page 25).

The evidence of the witnesses has shown, that at the time, the accused was indeed drunk, and as a result of this state, was rendered incapable of forming the specific intent essential to constitute the Crime as charged under these sections, namely. [illegible] 8(2) & 10(3). (See M.M.L. Ch VII Para 9 Page 106).

Further to the above it is hoped that the Court will take into account the past record and good behaviour of the accused. While he is only 22 years of age he has more than 5 years service in the army, having enlisted on 9 Sept 1939. During this time he has been a very good soldier. At one time holding the rank of Bdr, and in all has only 5 crimes on his Conduct Sheet. Of these five crimes, three are minor offenses committed in Canada and two, offenses of a similar trivial character which happened when he first arrived in Italy and was unfamiliar with the existing circumstances here. Since joining this unit he has been employed as an ammunition number and has preformed his duties in a satisfactory manner, and has not been the subject of any disciplinary measures. His Conduct Sheet bears no previous record of drunkenness. In civil life he was employed as a lumberman prior to enlistment and has never been in a Civil Court on any offenses.

Having regard to these facts it is hoped that the Court will find the accused Not Guilty as charged. If in the interest of discipline it in necessary that he be punished to some degree it is felt that justice would be served if the sentence awarded was based on the minor charge of drunkenness.

Respectfully submitted,

J Macdonald

(J.D. MacDonald) Lieut., RCA

The Manufacturers

Ex 2 A11

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F-16506	Gnr	HAWES Allen Joseph	1 Canadian Medium Regiment

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

Note.—At a trial by field general court martial this summary may be compiled from the field book sheet. The conduct sheet(s) mentioned should be produced in court with this statement and not entered in the proceedings.

† See para. 617, K.R., 1940.

* The numbers inserted should correspond with the letter (a) or (b) in the standard sheets, given in the army orders referable to each entry, and to any recognised system of good (or distinguished conduct).

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

	* Within last 12 months.		*Since Enlistment.	
For AA Sec 11	2	times.	2	times.
For AA Sec 15(1)	1	times.	4	times.
For AA Sec 10(4)		times.	1	times.
For		times.		times.
For		times.		times.

[redacted]

2. [redacted]

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

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and Not Clear days in military custody, making a total of Not Clear days, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 22 years.

6. The date of his attestation specified in his record of service is 9 Sep 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N.A.

8. The accused is entitled to deferred pay or gratuity in respect of N.A. service.

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

10. The accused is in possession of no military decoration or military award [redacted]

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

12. (*In the case of an officer.*) The accused holds in the army the rank of N.A. dated and in his regiment (or corps or department) the rank of N.A. dated N.A.

(P22947) W4.31788/2877 10,000 10/42 A.&E.W.Ltd. Gp.698

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

No. F16505 Rank Gnr Name Hawes A.J. of 1 Can Med. Regiment (or as the case may be).

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

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

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

Signed this 12th day of December 1944

(J.H. Harrington) Capt RCA
Adj - 1 Canadian Medium Regiment.

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

Date of Promotion.

In the rank of , years, .

In the rank of N.A. , years .

In the rank of , years, .

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

M.F.M. 6
(A.F. B.122)
46/P & /8136 (2965)

No. F16506 Name HAWES, A.J. Sqn., Battery, or Company — Corps R.C.A. — Date of enlistment 9 Sep 39 — G.C. Badges — Service or Proficiency Pay NA

Date of last entry in Company Conduct Sheet NA — No. and date of last drunk NA — Period not reckoning towards freedom from extra fine NIL — Sheet No. 2 — Signature O.C. Company, etc. A.L. Thomas Captain — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				Sheet Destroyed 9 Sep 41 Auth R.O. #393					
Field	22 Sep41	Gnr		AWL 47 hrs 30 mins.	Sgt Watts.	168 hrs det	24 Sep 41	Major N.M. McLeod	Forfs 2 day pay FR&I.
Field	30 Jan 42	Gnr		1. Breaking out of barracks. 2. AWL From 0630 hrs 30 Jan 42 until 0930 hrs 6 Feb 42. (Absent 7 days 3 hrs)	L/Sgt Roberts L/Sgt Scallion	168 hrs det 14 days Ord pay.	6 Feb 42	Major FJB Corbett	Forfs 8 days pay FR&I.
Field	18 Jul 43	Bdr		1. AWL from 1400 hrs 18 Jul 43 until 1230 hrs 24 Jul 43. (Absent 5 days 22 hrs 30 mins) Sec 15(1) 29 Dec 41	L/Sgt. Meister Sgt Williams (Doc)	Admonished	29 Jul 43	Major FJB Corbett	Forfs 11 days pay.
				A.A. Close arrest till 0900 hrs					(FFO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	10 Mar 44	Gnr		A.A. Sec 11 Out after curfew in possession of liquor.	Doc	168 hrs det	14 Mar 44	Lt-Col JC Vining	7 days pay FR&I 149 (1) (b)
Field	5 Apr 44	Gnr		1. A.A. Sec 15(1) AWL from 2100 hrs 4 Apr 44 until 0200 hrs 5 Apr 44. (Absent 5 hrs) 2. A.A. Sec 11. Found in civilian home after curfew.	Doc.	14 days FP & 14 days pay. FR&I 149(2)	6 Apr 44	Major LdH Randall	

THIS IS TO CERTIFY THAT THE ABOVE ENTRIES ARE CERTIFIED TRUE COPIES FROM RECORDS IN MY POSSESSION.

(J.H. Harrington) Capt RCA
Adjutant 1 Canadian Medium Regiment

SUMMARY OF EVIDENCE

Summary of Evidence in the case of:

F16506 Gnr. Hawes A.J.
2nd Medium Battery RCA
1st Cdn Medium Regiment RCA C.M.F.

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

First Witness for the Prosecution

5341295 L/Cpl Griffin B., Sec 105 Provost Coy., attached 21 Tank Brigade, having been duly sworn states:

I am 5341295 L/Cpl Griffin B. of Sec 105 Provost Coy., attached 21 Tank Brigade. At Riccione on 19 Nob 44 at about 1610 hrs I was on duty on the Viale Trento Trieste when I saw three Canadian soldiers fighting. I ordered them to disperse but they failed to comply with my order. One of the soldiers who I later knew to be Gnr.Hawes said "fuck off". At that stage Lieut Blanchard appeared on the scene and asked me what the trouble was. I explained to him and he ordered the soldiers to disperse. They failed to do so. Gnr Hawes said "fuck off you limey bastards". Lieut Blanchard left for police assistance and returned accompanied by Sgt Sandiford, L/Cpl Bowes, L/Cpl Love and L/Cpl Alborough. Lieut Blanchard then told the three soldiers that they were under close arrest and ordered them to get into the police jeep. At that stage I returned to my duty. I do not know anything that occurred after this regarding said soldiers.

Question by the Accused:

Q.1 In your opinion on the day and date was I drunk?
A.1 No.
Q.2 How did you identify me that night?
A.2 I was later given the particulars and description of the three soldiers arrested and by that was able to identify Gnr Hawes. These particulars were furnished by 1 Cdn Div Provost in Riccione through Lieut Blanchard.

Questions by Officer taking summary of Evidence.

Q.1 Had the soldiers been drinking?
A.1 Yes. I would say they had been drinking previously.

B Griffin

(Signed) 5341295 L/Cpl Griffin B.

Second Witness for The Prosecution

197443 Lieut Blanchard W.J., 105 Provost Coy., attached 21 Tank Brigade, an officer on active service, having been duly sworn states:

I am 197443 Lieut Blanchard W.J., 105 Provost Coy., attached 21 Tank Brigade, an officer on active service. On the 19 Nov 44 at about 1615 hrs I was on duty on the Viale Trento Trieste where I saw a fight taking place between Gnr Billings and Gnr McKay of the 5 Cdn Med Regt RCA. I noticed L/Cpl Griffin endeavoring to separate the two mentioned chaps. I asked L/Cpl Griffin what the trouble was about.

He told me he was endeavoring to stop the fight and had ordered them to disperse and they had failed to do so. At this stage Gnr Hawes started to struggle with Gnr Billings. I ordered them to disperse. They stopped fighting and the reply from Gnr Hawes was "fuck off you limey bastards". I then instructed L/Cpl Griffin to watch the three accused and I went to the police billet for assistance. I returned with Sgt Sandiford, L/Cpl Love, L/Cpl Bowes and L/Cpl Kershaw. I approached the three accused and told them I was a police officer and ordered them to get into the police jeep. Gnr Billings attempted to strike me. A struggle took place. The three soldiers were finally put in the jeep. Then Gnr McKay attempted to strike me. They were violent the whole time. The topic of conversation was limey bastards. I instructed L/Cpl Alborough who at this time arrived on the scene to drive the jeep to the 1 Cdn Div Provost station in Riccione. As they were being driven away they continued to struggle. I followed a few minutes later to 1 Cdn Div Provost station Riccione and instructed them to hold the three accused under close arrest and that charges would follow.

Questions by officer taking summary of Evidence.

Q.1 Had Gnr Hawes been drinking in your opinion?
A.1 Yes he had been drinking.
Q.2 Was he in your opinion drunk?
A.2 I would not say he was drunk. He was able to walk and talk coherently.
Q.3 Would you say he was under the influence of liquor in his actions and speech?
A.3 Yes I conformed the impression he had been drinking.

Questions by the accused.

Q.1 Sir , how could you identify me as Gnr Hawes?
A.1 I identified you by your build, your complexion and the fact that your uniform was comparatively free from mud in comparison to the other two accused. The three accused were the only soldiers handed over to by us to the Cdn Provost that day. As I was unable at the time of handing the three soldiers over to the Cdn Provost to obtain their particulars as they were still violent, the particulars of the three were obtained by me the following morning. Before submitting charges I wanted to be certain in my own mind which of the two had attempted to strike me. So the morning they were handed over I went to 5 Cdn Med Regt RCA where I saw Gnr Billings and Gnr McKay and positively identified them as the two soldiers who had attempted to strike me. I then proceeded to 1 Cdn Med Regt RCA where I saw Gnr Hawes and identified him as the third soldier turned over by me to the 1 Cdn Div Provost.
Q.2 Was there any liquor taken from me that night?
A.2 I do remember seeing one bottle of liquor but I am not certain whihh of the accused it came from.

W.J. Blanchard

(Signed) W.J. Blanchard, Lieut.
C.M. Police.

Third Witness for the Prosecution

C75818 A/Cpl Pickerill I.W. No.1 Provost Coy., a soldier on active service, having been duly sworn states:

I am C75818 A/Cpl Pickerill I.W. No.1 Provost Coy., On the 19 Nov 44 I was acting Orderly Sgt at our enquiry office in Riccione. At approximately 1600 hrs a jeep drove up containing 3 C.M.P.s and 3 Canadian soldiers.

A L/Cpl of the C.M.P.s asked for our Regimental Sergeant-Major. I got the Sgt-Major and asked the 3 Cdn soldiers to step into the enquiry office. The stand-to party was then called on duty and I was relieved for my supper. The condition of these three soldiers showed they had been drinking, but they were not in my estimation drunk. Sgt. Shantz took the names, numbers and regiment of the three soldiers and one of those I now recognize as Gnr Hawes.

The accused declines to question this witness.

(Signed) W.I.W. Pickerill.

Fourth Witness for the Prosecution

A3300 Sgt. Shantz, M.L. No.1 Provost Coy., as soldier on active service having been duly sworn states:

I am A3300 Sgt. Shantz M.L. No.1 Provost Coy. At approximately 1900 hrs 19 Nov 44 I was informed that the C.M.P. had placed a number of Canadian soldiers under close arrest and had escorted them to the Orderly Sergeants Room, No.1 Provost Coy., Riccione. On arriving in the Orderly Sergeants room I proceeded to take the particulars of the soldiers present and their units were notified. It was evident that the three present including Gnr Hawes had been drinking as they were incoherent in speech and unsteady on their feet.

Questions by officer taking summary of Evidence.

Q.1. Was Gnr Hawes belligerent, or did he show signs of violence in your presence?
A.1. No.
Q.2. Did Gnr Hawes use profane or language unbecoming to a soldier in your presence.
A.2. No.

THE accused declines to question this witness.

(Signed) Sgt. Shantz M.L.

Fifth Witness for the Prosecution

7586557 Sgt Sandiford W.B. Sec. 105 Provost Coy., attached 21 Tank Brigade having been duly sworn states:

I am 7586557 Sgt Sandiford W.B. Sec 105 Provost Coy., attached 21 Tank Brigade. On the 19 Nov 44 at about 1620 hours I was informed by Lieut Blanchard that there were three Canadian soldiers causing a disturbance by fighting in the Vale Trento Trieste. I accompanied Lieut Blanchard with L/Cpl Love, L/Cpl Kershaw and L/Cpl Bowes. On arrival Lieut Blanchard informed the 3 soldiers that he was a police officer and that they were under arrest also to get into the police car. They failed to comply and became very violent. After we had been on the scene about two minutes Lieut Blanchard and I had a struggle with Gnr Hawes eventually placing him in the police car. At this stage Gnr Hawes asked Lieut Blanchard if he was English and he replied "yes". Gnr Hawes replied "you limey bastard" and continued to try to break arrest. All three were eventually conveyed to 1 Cdn Div Provost Coy. where they were handed over to the guard.

Questions by officer taking summary of Evidence.

Q.1. In your opinion was Gnr Hawes under the influence of liquor?

A.1. Yes. They appeared to have been drinking and there was a bottle of liquor in the group on whose person I do not know.

Q.2. Did Gnr Hawes strike either yourself or Lieut Blanchard during the struggle getting into the police car?
A.2. No. He didn't strike either of us. It was just a struggle as he didn't intend to get into the jeep.

The accused declines to cross examine this witness.

(Signed) Sgt. Sandiford W.B.
C.M. Police.

Sixth Witness for the Prosecution

G19466 L/Cpl Draper R.N., 1 Provost Coy., a soldier on active service having been duly sworn states:

I am G19466 L/Cpl Draper R.N., 1 Provost Coy., On the 19 Nov 44 as stand-to (which is a duty party standing by on call to the Orderly Sergeant) I reported to the Orderly Sergeant Room at approximately 1745 hours. During my presence the three Canadian soldiers including one whom I now recognize as Gnr Hawes, created little or no disturbance. In my estimation the three Canadian soldiers had been drinking as I smelled it on their breath while speaking with them. This statement incorporates all that I know about Gnr Hawes.

The accused declines to question this witness.

(Signed) L/Cpl Draper, R.N.

The accused was asked the following question:
"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."
The accused answered as follows: " I have nothing to say."

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

(J.C. Braithwaite) Lieut RCA
Officer taking Summary of Evidence.

In the Field
Dated 10 Dec 44.

5 S-28
Sgt. Hawes, B.F.
B. 04261

SCHEDULE.

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

Accused: B.54261 Sgt HAWES Bruce Howard, 3 Cdn Mil Pris & Det Bks

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Sec 40 AA	NOT GUILTY	GUILTY	except that he did NOT
2nd	Sec 19 AA	GUILTY	GUILTY	strike c 1172 C.S.M. AMYOTT W.F.
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 86, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 752, and in loss of kit see RP 44 fn 6.)

At present under sentence/or ..... beginning on (date) ..... (1)

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

Time in confinement awaiting present trial—a total of 2 days, of which NIL days were spent in hospital.(1)

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

Sentence Awarded by the Court:

To be severely Reprimanded and to forfeit all ordinary Pay for a period of Thirty (30) days.

(Sgd) ..... Judge-Advocate, if any. 24 Aug 45 Date awarded. (Sgd) ..... President. (RP 45, 50.)

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

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

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

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

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

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

Confirmed

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

(Sgd) D.C. Spry

Date 28 Aug 45 Commanding (DC SPRY) MAJ-GEN COMD-CDN RFT UNITS. Confirming Officer.

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

Accused. B-54261 Sgt Hawes, B.H.

Date. 29 Aug 45

Signature of Offr

A.C. Bitteller Capt. (The Prisoner's) Adjutant No 3 Cdn Mil Prison & Detn Bks.

Part II Order #71 dated 31 Aug 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED SEP 1945 JAG BRANCH C.M.H.Q.

CONFIRMED AT CMHQ IN AB 160 54-27

CFAAR (to lieu of AF A5) 40-1 N 8-1908 (45-07)

FIELD GENERAL COURT-MARTIAL 4/38B

By Order of MAJ-GEN D.C. SPRY DSO Comd Cdn Rft Units dated 22 Aug 45

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B.54261	Sgt	Bruce Howard	HAWES	3 Cdn Mil Pris & Det Bks

PROCEEDINGS REVIEWED

D. Supple Capt. 18/9

The Adjutant General

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

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date) 24 AUG 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Cautions do NOT include all relevant from RDs. For guidance on procedure when a sentence in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to explanations or preceding para number herein. See back of Convening Order, CF A65, for units and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Instrs". As to general provisions for conducting the trial see AA 22, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

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

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

A3. The Court is opened. The accused is (a/~~n~~) brought before the Court. At 1330 hours trial commences.

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

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

~~A5. President to accused: Do you object to~~ ~~the interpreter~~ ~~Capt~~ ~~PZ 5126~~ ~~SGT A.H. SINCLAIR~~ ~~as shorthand writer? Ans NO~~

~~The interpreter is sworn.~~(1) Do you object to SGT A.H. SINCLAIR as shorthand writer? Ans NO

The shorthand writer is sworn.(1)

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

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

Ans NO, SIR(2)

(1. RP 110. 2. If no objection, waiting member returns. RP 68(B). If objection, see procedure AA 31, RP 25, 71, 98, MML p 742.)

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

President	LT-COL	D.L. FERMAN VD	HQ CRU
Member	CAPT	W.H. MARSHALL	2 CGRU
Member	LT	P.S. ADDIS	2 CGRU
~~Judge Advocate~~			
Prosecutor	LT	J.E. SIMKINS	3 Cdn M.P.D. HQ
Defending Offr	LT	C.H. CLANSON	164 RU

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

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

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

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or on to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

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

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A65 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

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

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

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

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

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

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NJ BTE ATT
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 80(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

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

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

D9. The ~~accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~ 5 above

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO - SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 27(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

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

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty.* *RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by MML p* 60, 737-759. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*) *Convening Offr see KR Can* 567.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B 54261 Sgt. Bruce Howard HAWES Canadian Provost Corps, No.3 Canadian Military Prison and Detention Barracks, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Sec. 40
ARMY ACT

When on Active Service,

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,

in the Field, in England, at approximately 0630 hours 12 August 45, struck C 11721 CSM AMYOTT, W.F., Canadian Provost Corps, No.3 Canadian Military Prison and Detention Barracks, in the face saying, "You Provost bastard, you made your way from a Corporal to a CSM, you no good son of a bitch", or words to that effect.

SECOND CHARGE
Sec. 19
ARMY ACT

When on Active Service,

DRUNKENNESS

in that he,

in the Field, in England, at approximately 0030 hours 12 August 45, was drunk.

(N. Cooper OBE) A/Lt.Col.
Commandant
No.3 C.M.P. & D.B.

In the field
17 Aug 45.

To be tried by Field General Court-Martial.

(D.C. Spry) Major-Gen.
Commander
Cdn. Rft. Units.

In the Field
22 Aug 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 103(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(8).

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.54261	Sgt		Bruce Howard	HAMES	3 Cdn Mil Pris & Det Bks

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 Aug 45 endorsed by me, ~~(the name of each of the accused)~~, " To be tried by Field General Court-Martial ".

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

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

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

~~[I direct that] to appoint (a) [the Offr] as President, (b) a Fd Offr as President, for the reasons [stated]~~

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

~~[I appoint] [detail] as [Judge Advocate] [Assistant Judge Advocate]~~

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

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt-Col	D.L. Redman VD		HQ CHU

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by OC		2 CGHU
Lieut	To be detailed by OC		2 CGHU
	~~[JUDGE ADVOCATE]~~		
	~~[ASSISTANT JUDGE ADVOCATE]~~		

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

On Active Service in the Fd

in England (Country.)

Dat 22 Aug 45

(Signed personally. RP 105 fn 2.)

(D.C. Spry) Maj-Gen
Commanding Cdn Rft Units
Convening Officer.

Maj-Gen (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

MEDICAL OFFICER'S REPORT

I certify that No. B54261 Sgt Hawes B. H.
of C. Pro C. is in a good state of health,
and fit to undergo Trial by Court martial.

H Nicolson Capt
Medical Officer

Station Field

Date 24 Aug 42

M. F. B. 246

TRANSCRIPT BY: P26126 SGT AH SINCLAIR

TRIAL OF

B.54261 Sgt HAWES BH 3 Cdn Mil Pris & Det Bks

TRIAL OF ACCUSED ON FIRST CHARGE

PROSECUTION

FIRST WITNESS

Capt EO SNELGROVE, having been duly sworn, states:

I recognize the accused and on 12 Aug 45 at approx 0030 hrs I was leaving the dance at the Sgts Mess with my lady friend after the dance and as we were passing out of the Mess I noticed a disturbance near the rear entrance of the Bar. I left my lady friend and went to see what the trouble was and I found the accused creating a disturbance, struggling and using very violent language; he was being held by 2-3 Sgts who were trying to quieten him down. I spoke to the accused and asked him what the trouble was but he paid no attention to me and I then ordered him to quieten down and stop using the profane language, but he just ignored me. I called CSM Amyot, the senior NCO present, over, and ordered him to place the accused under close arrest and put him in the compound. I then went back to where the ladies were waiting at the tpt, they could hear the language from where they were standing, and I saw Amyot go into the small crowd that had gathered and then the accused became more violent and more profane than ever. At this time I heard him say something along the lines of "you black bastard, you go from a Cpl to a CSM, you no good son-of-a-bitch" or words to that effect. The tpt arrived shortly after that and I left to take the ladies away from there.

Q. Did he recognize you at all?
A. Yes, he referred to me as the Ord Offr; I doubt if he knew me though by name, but he recognized me.

CROSS-EXAMINED

Q. Where was Amyot when you called him?
A. He wasn't in the crowd, he was on the edge of it sort of.

Q. You don't know if he had been taking part in the fracas?
A. Not when I came along.

Q. Did you at any time see the accused strike CSM Amyot?
A. No.

Q. What did you see Amyot do?
A. I didn't see anything except the accused half breaking away from his escort.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(3)

SECOND WITNESS

Capt EA FARQUHAR, having been duly sworn, states:

On the night of 12 Aug 45 at approx 0015 hrs at the conclusion of the dance at the Sgts Mess, on leaving the bldg I heard a commotion and abusive language at the far end of the bldg outside. I approached and discovered a gp of at least 6 people who were in the midst of an argument. It was still going on and as there were ladies present leaving the dance I took it upon myself to stop the use of this language. I discovered a Sgt, whom I now recognize to be the accused, as being the one using it; I next noticed CSM Amyot as being present and I approached him and demanded an explanation of what was going on.

and as the accused wouldn't go to his quarters I ordered Amyot the CSM to have the accused placed in custody. This was done but with a considerable amount of difficulty and the last I saw of the gp including the escorts and the accused was as they passed through the gate of the camp on the way to the compound.

Q. What were the words used?
A. The word bastard was referred to frequently, and various parts of the word fornification.

CROSS-EXAMINED

Q. Are you absolutely positive it was the accused who was doing all the struggling and swearing?
A. It was dark, but there was a searchlight from a truck about 20 yds away and that was the way I was able to identify the group and I don't recall having heard any other person swearing than the accused.

Q. Were you the first or second to order the CSM to put the accused in arrest?
A. I learned later, the second one. The CSM was standing back some 5 yds from the gp when I arrived.

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

THIRD WITNESS

C.11721 CSM (WO II) AMYOTT WF, having been duly sworn, states:

At 0030 hrs on 12 Aug I was ordered by Capt Snelgrove to place the accused whom I now recognize, under arrest. I ordered S/Sgt McLuckie to escort him to the compound, and in ordering this arrest the accused stepped out and he said "you Provost son of a bitch, you rotten bastard, you made your way from a Cpl to a CSM", and then he made a pass at me and struck me on the side of the face; the skin broke on the right side of my mouth. He also cut the inside of my mouth; I've false teeth and have been unable to wear them since. The 2 escorts then dragged him and carried him, and he was swearing and tearing, trying to pull away from them. They got him as far as the East compound gate when I saw he was breaking away from his escort, and I then ordered two other men standing close, to assist the accused's escort to get him to the Gd Room. After when we got him near the septic tank and the escorts were carrying him I stepped close to him and he hit out at me with one foot, knocking me to the ground. After we got him into the Gd Room and into the cell, he still cursed and swore and started pushing his bed around the cell. Sgt Boyer was on duty at the time IC of the shift and I gave him an order to take the bed out of the cell as I was afraid of him starting to break the window or break down the cell door. I did he said again the cell to see if everything was alright and as I then stepped into "you Provost son of a bitch, you bastard", and struck me on the shoulder. In order to get the door closed I pushed him back from the door so that I could shut it, and then I went over and reported the incident to the Orderly Offr.

CROSS-EXAMINED

Q. Sgt-Maj Amyott, I can't see a thing the matter with your face here today, but as I look at the accused's I see greater evidence of him having been struck, and in this melee I don't think you can be sure just who hit you, if anyone did?
A. Yes, I can be sure who hit me alright, Sir.

Q. I would like to hear exactly what you did to the accused, before Capt Snelgrove ordered you to place him under arrest, did you touch the accused at all?
A. No, I had been approx 12 feet from him, and was taking no part in the argument at all. As his own rank was there and

his own rank had hold of him, it is the custom in the Mess when the same rank is taking care of the aggressor, a senior rank doesn't interfere.

Q. At no time did you strike or hold him?
A. No, when he went to make a second pass at me I took his arm and used it to try to hold him as a policeman would do.

Q. I would like to know what happened to him inside the compound?
A. I can't tell you; once I was knocked on my back into the rd by the kick I got from him I was not with him or his escort for about 100 yds.

Q. You saw him go into the cell?
A. Yes.

Q. There seems to be no satisfactory explanation coming from you who was the last to see him as to what happened to him?
A. I've told the Court under oath that I didn't strike this man, Sir, I used restraint on him only on one arm.

Q. Did anyone else see the accused strike you?
A. Sgt Longville, his escort here today at his trial.

Q. Before entering the compound did you see what condition his eye was in?
A. No, I noticed blood on his face; in fact there was blood on my tunic.

Q. What time did you go over to the Ord Offr?
A. About 1.30, but I was talking to the switchboard operator as to where he was for awhile as he wasn't in, then I went to see if the RSM was in, and he wasn't in either, and then I went to "A" compound.

Q. What time were you at the Gd Room with the accused?
A. About 1 o'clock, Sir.

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

FOURTH WITNESS

C.56649 Sgt McALLISTER, WE, having been duly sworn, states:

On 12 Aug about 1215 hrs I was standing in the door of the Bar when the accused whom I now recognize, came up and said that some Pro had taken his girl and he was doing some swearing. I told him to keep quiet, and then I told him to go away. He said I was sticking up for my Pro friend, and he grabbed hold of me and we were more or less hanging on to one another when S/Sgt Smith took hold of him and then there were some more came along and took him outside. After that I stayed in the door a few mins and then went back and shut the door.

Q. How much of a struggle was it?
A. It was more or less of a clinch, Sir.

Q. Did either of the other 2 Sgts have much of a time taking him outside?
A. No, they picked him up and took him out.

CROSS-EXAMINED

Q. Then it was not really difficult to get him outside?
A. No.

Q. If he had been carried to his quarters then at the time all this would not have come up?
A. No, Sir.

Q. Did you close the door immediately when you went inside?

A. No, Sir, I stood and watched a few mins what was going on?

Q. When did Capt Snelgrove arrive?
A. Not till after when he was outside. I remember Capt Snelgrove coming there at the time he was outside, and there was someone holding on to the accused at the time outside. CSM Amyott was there. The last I saw was CSM Amyott choking the accused and the accused's head going back.

Q. Was that before or after Capt Snelgrove arrived?
A. To the best of my knowledge, before, Sir.

Q. And then you went in after that?
A. Yes.

Q. Did you at any time see the accused strike Amyott?
A. No.

Q. Did you see the accused next morning?
A. Yes, at the breakfast table; both eyes were badly swoollen, his face was swoollen and he was having a hard job to eat, his throat was sore, and he was in bad shape all around.

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

FIFTH WITNESS

H.99002 S/Sgt McLUCKIE A, having been duly sworn, states:

At approx 0030 hrs on 12 Aug I left the lounge at the Sgts Mess and went to the back of the bar to see that everything was alright and in order as I am the Bar President and on going behind the Bar I saw S/Sgt McAllister and the accused, whom I now recognize, pushing each other around behind the counter and then I ordered the accused to leave. He didn't pay any attention to me so we had to forcibly eject him. At the time it appeared he had been drinking as he was staggering around a quite a bit and from the way he was talking. Sgt McAllister and myself had to take him by the arm and remove him forcibly to the door as he had no business being there. I then turned in back to the Bar again. About 5 mins later I heard a commotion going on outside and I put my head out to see what was going on. There were 3-4 people milling around approx 5 feet away from me and just then CSM Amyott came along and I believe he started to talk to the accused, and there was a bit of a discussion going on, and then Amyott turned to me and ordered me to put the accused under arrest and take him to the Gd Room. Myself and Sgt Longville, then decided to move the accused from there but he was too strong and we couldn't budge him hardly, and so with the help of CSM Amyott we moved him. I heard one particular word that the accused said "a black son of a bitch".

Q. Did you see him strike the CSM?
A. No.

Q. Then what happened?
A. We took him towards the East Gate and the entrance to the compound.

CROSS-EXAMINED

Q. Is there any doubt in your mind that it was the accused that was doing the swearing?
A. No doubt at all, Sir.

Q. When you and Sgt McAllister took the accused out did you have any difficulty in getting him out?
A. Not particularly, Sir.

Q. Did you see Amyott lay his hands on the accused?
A. No, Sir.

Q. When you left the Gd Room was the accused suffering from any serious injury?

A. No, Sir.

Q. Did you notice any blood or anything like that?

A. No.

Q. What was his condition a couple of days later?

A. He looked as if he had been struck or walked into something; he had bruises and so on.

QUESTIONS BY THE COURT:

Q. Did the CSM order Sgt Longville and yourself to escort the accused to the Gd Room?

A. Yes.

Q. Did you both take hold of him?

A. Yes.

Q. Did he break away from you then?

A. Yes.

Q. Did he strike Amyott in the face then at that time?

A. I didn't see that, Sir.

Q. Would you have seen it if he had of?

A. Yes.

Q. Are you prepared to say that he didn't strike Amyott the CSM, in the face after he broke away from you and Longville?

A. Yes, I'm prepared to say he didn't, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH R of E 83(B)

THE PROSECUTION IS CLOSED

SUBMISSION BY THE DEF OFFR OF NO PRIMA FACIE CASE

I move that the first charge be dismissed because the Prosecution have failed to make a prima face case for the following reasons: They haven't shown definitely at all that CSM Amyott was struck in the face; there being only 1 witness to that that he was and there being 1 witness for the accused that he was not. I also submit that there is evidence that the CSM incensed the accused by grabbing him by the throat before he was put under arrest and that being incensed led to all the further trouble.

REPLY TO THIS SUBMISSION BY PROSECUTOR

THE PROSECUTOR DID NOT REPLY

THE COURT IS CLOSED TO CONSIDER THE SUBMISSION

THE COURT IS REOPENED AND THE PRESIDENT ANNOUNCES THAT THE SUBMISSION BY THE DEF OFFR IS DISSALLOWED.

- DEFENCE -

FIRST WITNESS

The ACCUSED, having been duly sworn, states:

Sir, I went to the dance with a couple of fellows and we started drinking. One of the fellows wasn't feeling so good and I was more or less drinking his drinks as well as my own and it was working pretty hard on me, as I wasn't used to drinking gin. Then I remember that there was an announcement that the Bar would remain open until 12 o'clock. I started for the Bar, I don't remember if someone held me up on the way or not, but when I got to the Bar it was closed down, so I went to the rear and asked for a drink and then I blacked out and I don't remember anything more until I woke up in the cell Sun morning. I looked around then, not knowing where I was. I was all undressed lying on a bed and I didn't know what was going on. I rapped on the door, nobody came, and then I let a yell out of me and a Sgt Jones came and opened the door and told me I had better go and get washed. Just then I started to put on my clothes and I noticed I was awful stiff in my arms and legs and my ribs and arms ached. I went in the washroom and I didn't like what I saw in the mirror there. One eye was sealed right over, my throat was all swoollen up, I couldn't drink water even. That was all there was to it I guess. I went to breakfast then, I presumed I was on a drunken charge, but I found out later it was for striking a senior offr and I presumed I had struck a commissioned offr, but later I found out it was the CSM.

CROSS-EXAMINED

Q. You remember walking around from the dance to the back of the bar?
A. I can't say I remember it very well, Sir. I went to the bar and then I started out the side door, and then I remembered I was around to the back door, but after that I don't remember what went on at all. Everything went blank all of a sudden.

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

SECOND WITNESS

G.28904 Sgt JONES CW, having been duly sworn, states:

On the night of 12 Aug 45 I was on shift in the compound from 12.30 to a quarter to eight in the morning. At approx 1 o'clock in Hut 3 I heard a commotion coming down the rd, but I wasn't aware of what was going on, as it was just a mixed bunch of voices.

Q. Did you see the accused then?
A. Not that night, but next morning I escorted him to the washroom. Both of his eyes were puffed out and the left side of his jaw was swoollen and he complained of lacerations at the bottom part of his lips. He also complained to me that he was sore all over.

NO CROSS-EXAMINATION

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

THE DEFENCE IS CLOSED

STATEMENT BY THE DEF OFFR ON THE FINDING

I repeat the reasons I gave on my submission, Sir, and I would add that there seems to be a doubt, a definite doubt, as to the Sgt-Maj's evidence, who said that he never laid hands on him, that he simply pushed him away, and yet S/Sgt McAllister says that he saw him choking him, and yet no one saw the accused strike the CSM?
It would certainly appear that the accused was very badly beaten up and witnesses for both the Prosecution and Defence have testified to. I'm pointing out that the accused has not had fair treatment, and I ask the Court to acquit him on the first charge.

STATEMENT BY THE PROSECUTOR ON THE FINDING

The evidence brought out by the Prosecution shows that the CSM was standing back and was endeavouring his best to get two men of the accused's rank to put the accused to bed or quieten him down. The CSM says he was struck in the face, and S/Sgt McAllister standing 18 feet away or so said that the accused was being choked - I submit that from that distance it was difficult for him to see just what was going on, whether he was being choked or whether he was being pushed away. The Defence would have us or try to make us believe that the CSM comes out and walks over to the accused and incenses him into a thoroughly mad person - such was not the case - and I ask that the accused be found guilty of the charge.

THE COURT IS CLOSED TO CONSIDER ITS FINDING

THE COURT IS REOPENED

PLEA IN MITIGATION

The accused has been with the SPF since '42 and has seen fighting in Italy up to Anzio and also in the south of France, landing there in Aug 44 and returning to England in Jan 45 and has been with a crackerjack of a unit and his MFM 6 shows that he has been an excellent man, has been through a tough fight and has not broken, has been promoted to Sgt and his record is very good, it is excellent. In making any sentence I think the Court should take cognaizance of that, and that there was definitely provocation of him getting so unruly and also of the fact that he recd a beating up more than was necessary in carrying him to the compound. He has been with the Pro Corps about a month, and they have had no cause to complain about him up until this time. His wife lives in the U.S.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B.54261 Sgt. HAWES, B.H., Canadian Provost Corps, No 3 Canadian Military Prison and Detention Barracks, a soldier of the Canadian Army Overseas.

FIRST WITNESS FOR THE PROSECUTION — Capt. E.O. Snelgrove, Canadian Provost Corps No 3 Canadian Military Prison and Detention Barracks, and officer of the Canadian Army Overseas, having been duly sworn States:

At approx 0030 hrs to 0045 hrs, Sunday Aug 12th, I was leaving the Sgts Mess after the dance. As I came around the end of the building I noticed a disturbance taking place, just a few yards away from the rear entrance or the bar. I left the lady I was accompanying and went to see what the trouble was. Sgt Hawes, whom I now recognize as the accused, was being held by two or three sergeants. They were trying to quiet him down. He was using profane language and struggling violently. I asked him what the trouble was. He didn't answer but kept on struggling and shouting. Two or three times I ordered him to quiet down and stop using profane language as there were several lady guests from the dance waiting for transport to take them home. He half broke away from the Sgts holding him and moved over towards the bar entrance away from me. In order to hold him the sergeants had to step in and surround him. He was struggling more violently then ever and swearing more lustily then before. Therefore I called CSM Amyott and ordered him to place Sgt. Hawes under close arrest and put him in the Guard Room. I then returned to the ladies who were still waiting. I saw CSM Amyott go into the crowd who had surrounded Sgt. Hawes to carry out my order. Sgt. Hawes then became very loud and profane, saying, "You black bastard, go from a corporal to a Sgt. Major, you are no fucking good, just a plain miserable bastard". He went on in this manner. Then they started to take him to the Compound Guard house. At that time transport arrived for the ladies and we left.

Q. Did Sgt. Hawes recognize you?

A. Yes, he referred to me as the Orderly Officer.

E.O. Snelgrove Lt. Capt
(E.O. Snelgrove)

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS.

B.H. Hawes Sgt.
(B.54261 B.H. Hawes)

SECOND WITNESS FOR THE PROSECUTION — Capt. E.A. Farquhar, Royal Canadian Army Pay Corps, attached to No 3 Canadian Military Prison and Detention Barracks, as an officer of the Canadian Army Overseas.

Having been duly sworn states:

At approx 0015 hrs, 12 Aug 45, on leaving the Sergeants Mess at the conclusion of the dance I heard loud and abusive language outside and around the corner of the building. On approaching the scene, I saw a group of at least six people in the midst of what seemed to be an argument. I approached them to discover the nature of the disturbance and to stop the use of the profane language as there were ladies still near by in the process of leaving the dance. On arrival I saw a Sgt whom I now recognize as the accused, using profane language including, fucking and sun-of-a-bitch.

P.T.O.

CSM Amyott was present and as he was the senior Warrant Officer in sight I demanded an explanation and then ordered him to provide an escort to remove the accused from that place and the proximity of the ladies who were still about. As the accused would not obey the order to go to his quarters and resisted the escort violently I then ordered the CSM to remove him in custody. This was done with considerable effort and the last I saw of this incident was the group consisting of Sgt. Longville and at least two others the accused and CSM Amyott entering the compound via the East Gate.

(E.A. Farquhar) Capt.,

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS.

B.H. Hawes Sgt.
(B.54261 B.H. Hawes)

THIRD WITNESS FOR THE PROSECUTION — C.11721 CSM Amyott, W.F., Canadian Provost Corps No 3 Canadian Military Prison and Detention Barracks, a soldier of the Canadi an Army Overseas, having been duly sworn, states:

At approx 0050 hrs, 12 Aug 45, at the Sgts Mess, 3 Canadian Military Prison & Detention Barracks, I was ordered by Capt. Snelgrove to put Sgt. Hawes, whom I now recognize as the accused, under close arrest. When I approached him after ordering Sgt. Longville and S/Sgt. McLuckie to escort him to the Guard Room, he broke away from the escort and struck me in the face with his fist. He also used abusive language saying, "You Provost Bastard, you made your way from a corporal to a CSM, you no good son-of-a bitch." In taking him to the Guard Room he struggled so hard that I had to order two more N.C.O's to help, namely, L/Cpl. Celentino and Cpl. Henry. He was placed in a cell in "C" Compound Guard Room. He then began to throw the bed around. I ordered the bed to be removed from the cell. After this was done I stepped to the door of the cell to see if he was alright. He struck me again and swore at me calling me a "Provost Son-of-a-bitch". I left the guard room and reported the incident to the Orderly Officer.

W.F. Amyott CSM.
(C.11721 CSM W.F. Amyott)

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS.

B.H. Hawes Sgt.
(B.54261 B.H. Hawes)

FOURTH WITNESS FOR THE PROSECUTION — C.56649 A/Sgt. McAllister, W.E., Canadian Provost Corps, No 3 Canadian Military Prison and Detention Barracks, a soldier of the Canadian Army Overseas, having been duly sworn states:

At approx 0015 hrs, 12 Aug 45, I was on duty in the Bar of the Sgts Mess. The bar was closed and I was passing out ladies hand bags. Sgt. Hawes, whom I now recognize as the accused, came to the rear door of the bar and told me that some Provost had taken his girl. He was swearing profusively. I told him to go away, he said I was sticking up for my Provost friends. I then ordered him to go away. He jumped onto the door-step and I pushed him out. He came back in again and grabbed me and we both fell to the floor. A struggle ensued and S/Sgt Smith, P.P., came in and we held him and tried to reason with him. S/Sgt. McLuckie arrived with Sgt. Longville and some others and together we removed him. There was a struggle outside the door, I went inside and closed the door.

W E McAllister Sgt.
(C.86649 A/Sgt. McAllister, W.E.)

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS.

B H. Hawes Sgt.
(B.54261 B.H. Hawes)

FIFTH WITNESS FOR THE PROSECUTION — H.99002 S/Sgt. McLuckie, A., Canadian Provost Corps No 5 Canadian Military Prison and Detention Barracks, a soldier of the Canadian Army Overseas, having been duly sworn states:

At approx 0030 hrs, 12 Aug 45, I came out of the lounge of the Sgts Mess and went around to the door behind the bar to see that everything was alright, this being my duty as Bar President. On entering the bar I found Sgt. Hawes, whom I now recognize as the accused, struggling with Sgt. McAllister, the bar keeper. I intervened and ordered the accused to leave. He refused and Sgt. McAllister and myself forcibly removed him. I closed the bar door for about five minutes. Later on hearing a comotion outside I opened the door again and went over to see what the trouble was. I saw Sgt. Hawes with three or four people, whom I couldn't recognize, struggling. Sgt. Hawes was struggling violently and saying, "You black son-of-a-bitch". It appeared to me that they were trying to take Sgt. Hawes away. I saw CSM Amyott and on his order I with Sgt. Longville and CSM Amyott took the accused along the road to the East Gate. We were joined by Cpl. Henry and L/Cpl Celentino and took the accused to the Guard Room of "C" Compound, I then left.

A McLuckie S/Sgt.
(H.99002 A. McLuckie)

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS:

B H Hawes Sgt.
(B.54261 B.H. Hawes)

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

THE ACCUSED DECLINES TO MAKE A STATEMENT AND WISHES TO RESERVE HIS DEFENCE.

B H Hawes Sgt.
(B.H. Hawes) B 54261

CERTIFIED THAT RULES OF PROCEDURE 4 (c), (d), (e) and (f) HAVE BEEN COMPLIED WITH.

Field.
17 Aug 45

J Simkins Lieut.
(J.E. Simkins)
OFFICER DETAILED TO TAKE THE SUMMARY

STATEMENT OF THE ACCUSED AS TO WHETHER HE DESIRES TO HAVE AN OFFICER ASSIGNED BY THE CONVENING OFFICER TO REPRESENT HIM AT THE TRIAL.

Yes Sir, I wish an Officer from No.1 CITR to be assigned to represent me at the trial.

B H Hawes Sgt.
(B.H. Hawes) B 54261

LIST OF WITNESSES FOR THE PROSECUTION:

Capt. E.O. Snelgrove	Cdn Pro Corps, No.3 Cdn Mil Prison & Detention Barracks.
Capt. E.A. Farguhar	R.C.A.P.C. attached to No.3 Cdn Mil Prison & Detention Bks.
C 11721 CSM Amyott, W.F.,	Cdn Pro Corps, No.3 Cdn Mil Prison & Detention Barracks.
C 56649 Sgt. McAllister, W.E.,	Cdn Pro Corps, No.3 Cdn Mil Prison & Detention Barracks.
H 99002 S/Sgt. McLuckie, A.,	Cdn Pro Corps, No.3 Cdn Mil Prison & Detention Barracks.

LIST OF WITNESSES FOR THE DEFENCE:

Nil

LIST OF EXHIBITS:

Nil

J Simkins Lieut.
(J.E. Simkins)
OFFICER DETAILED TO TAKE THE SUMMARY

Field
17 Aug 45

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

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

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B.54261	Sgt.	Hawes, B.H.	No 3 Cdn Mil Pris & Det Bks.

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

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

For _____ _____ times.

For _____ _____ times.

For N/A _____ times.

For _____ _____ times.

Date of first entry in Field Conduct Sheet Nil

Date of last entry in Field Conduct Sheet Nil

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

*Strike out if not applicable.

A.B. *~~The accused has undergoing imprisonment, detention, or forfeiture of pay for a total period of _____ days, commencing on the _____ day of _____~~

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for Nil days in military custody, *i.e.*, nil days in open arrest, 2 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 24 years

6. The date of the accused's attestation is 5/5/42

A.B. ~~The accused has undergoing imprisonment, detention, or forfeiture of pay for a total period of _____ days, commencing on the _____ day of _____~~

7. The service which the accused is allowed to reckon is 2 years 2 months

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

8. The accused is in possession of† GWM & Clasp

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date— 2 years, 2 months

	Date of Promotion.
In the substantive rank of Nil	
In the war substantive rank of Sgt.	26 Sept 43
In the acting rank of Sgt	26 Jun 43

E & B

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

(*28072) Wt.20721/3701 $2,000 9-44 A.& E.W.Ltd. Gp.698

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

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

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

Signed this 24th day of Aug. 45.

A.A.J. Britton Capt.
Officer I/C Books and Records.
No.3 Can Mil Pris & Detn Brks.

3/17 MFM 6

No. B.54261 Name HAWES, Bruce, Howard | Sqn, Battery, or Company | Corps Parachute | Date of enlistment 5.5.42 | GC Badges Nil | Service or Proficiency Pay Nil (AFB 122) | Character

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 1-5-44, last entry 24-9-43, cases of drunkenness, Nil.					

CERTIFIED TRUE COPY OF MFM 6 IN MY POSSESSION.

H.J. Fitzallen Capt.
(H.J. Fitzallen) Adjutant,
Officer i/c Books and Records,
No.3 Cdn Mil Pris & Detn Brks.

(PTO)

NNN-47

PIE HAWES L.C.

SCHEDULE.

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

Accused: F-45296 Pte Haines, L.C. 2 Cdn Corps Sig Coy (PBI&H)

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

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 785, and in loss of kit see RP 44 fn 6.)

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

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

Time in confinement awaiting present trial—a total of 9 days, of which 0 days were spent in hospital.(1)

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

Sentence Awarded by the Court:

~~To undergo detention for~~

To suffer field punishment for sixty days and to forfeit all ordinary pay for a period of sixty days and to be put under stoppage of pay until he has made good the sum of £ 3.14.0 on account of the cost of detention of this unit.

(Sgd) London H Jenkyns 25 May 44 (Sgd) Peter Craig
Judge-Advocate, if any. Date awarded. President. (RP 45, 50)

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

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

Date (Sgd) Commanding

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

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

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

Confirmed.

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

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

(Sgd) [illegible]

Date 26 May 44 Commanding ~~[illegible]~~ Lt-Col Comd R.C.A.S.C. 2 Cdn Corps & 1 Cdn Tps Confirming Officer

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

Accused.	Date.	Signature of Offr.
F 45296 Pte Haines L.C.	31 May 44	E R Collins Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, NW-47

RECEIVED 1 JUN 1944

PROCEEDINGS REVIEWED

FIELD GENERAL COURT-MARTIAL

CPA88 (In lieu of AA43, 40 P & R 1940) (26644)

Convened by Order of Lt-Col G D Ross-Smith Comd RCASC 2 Cdn C Tps dated 24 May 44

ACCUSED.

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

Number. (a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-45296 Pte		Leland Courtney	Haines	L.C. 2 Cdn Corps Sig Coy (PBI&H)

PROCEEDINGS REVIEWED

J C Campbell Maj

REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS REVIEWED Date 2 JUN 1944 Sec. GHQ 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 25 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 62-70, 73, 74, 94, 102, 119, 132.)

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

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

A3. The Court is opened. The accused is ~~duly~~ brought before the Court. At 1130 hours trial commences.

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

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

(1. KR Can 557. 2. ~~RP 44(B), RP 60 fn 1.~~ For effect see KR Can 563(c). Delete, if not applicable.)

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

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

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

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

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

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

Ans No Sir. (2)

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

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

President	Major	G. W. Craig	HQ RCASC 2 Cdn C Tps
Member	Capt	E.J. Moran	2 Cdn MAC RCASC
Member	Lt.	J.L. Laughton	2 Cdn C Tps Coy RCASC
Judge-Advocate	Capt	G.H. Jenkyns	HQ. 2 Cdn Corps
Prosecutor	Lt.	S.R. Charters	2 Cdn Corps Sig Coy (PBI&H)
Defending Offr	Lt.	M.F. Quinan	2 Cdn Corps Sig Coy (PBI&H)

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

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

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

(1. "If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

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

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

A10. The Court ~~is closed~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 13 + E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

(In here Loose Sheets of Record.)

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

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

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

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

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

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

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

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

E2. The Prosecutor produces Statement[s] as to Character and Particulars of Service(1), and certified true copy [redacted] of Conduct Sheet[s], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(1) (g) (h), and (ii) they purport to refer to (a) soldier[s] having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)
(*1. MFB 355 or MFB 296. 2. MML p 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 77(b). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 44-50, 69, 118, 119(A), KR Con 328, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 60(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused F.45296 Pte LELAND COURTNEY HAWES, 2 Cdn Corps Def Coy (PEILH) a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Army Act
Sec 15(1)

When on Active Service absenting himself without leave

in that he

in the Field absented himself without leave from his unit from 1300 hrs 4 May 44 until surrendered himself to the Cdn Provost Coy at Glasgow at 0015 hrs, 16 May 44 thereby incurring expense to the public for his return to his unit in the sum of £3.19.0 (absent 11 days, 11 hours, 11 mins.

In the field
24 May 44

.....
(E. R. Collins) Major
O/C 2 Cdn Corps Def Coy (PEILH)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
24 May 44

.....
Comd R.C.A.S.C. 2 Cdn Corps Tps

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA2)
40/FMS/1097 (S868)

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptnt, A/R or A/Apptnt.	Full Christian Names.	Surname.	Unit.
F.45296	Pte		Leland Courtney HAINS		2 Cdn Corps Def Coy (PRI.M)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above, the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 24 May 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

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

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

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

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G. R. Drain	HQ ACASC 2 Cdn Inf Bde

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	E. E. Doran	2 Cdn (A) ACASC
Lieut	E. C. Lewiston	2 Cdn Inf Bde ACASC

WAITING MEMBER.

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

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Captain	G. R. Fergus	HQ No 2 Cdn Corps

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.)

Lt Col (Rank.)

Date 24 May 44

Commanding 2 Cdn Corps Tps

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

E-3.

Plea in Mitigation of Punishment

By Lieut. M.F. Quinn, Defending Officer, in the case of F45296 Pte. L.C. Hawes:

Mr. President and Members of the Court, on behalf of the accused Pte. Hawes, I will offer a few words with a view to your mitigation of the sentence. He has been Overseas for 7 months and in that time his Field Conduct Sheet has been clean. The accused spent 2 months in the R.U. before being sent to 2 Cdn Corps Def Coy as Special Incr. While with the 2 Cdn Corps Def Coy he was under the impression that he would be sent back to the R.U. and he wanted to be with a Field Unit. If he were with the R.U. he could get on a draft to Italy to rejoin his comrades. He has shown his willingness to help the War effort by supporting the Last Victory Loan.

I submit this short statement on behalf of the accused and ask that you take it into consideration before passing sentence on him.

M. F. Quinn Lieut
25 May 44

I, the undersigned Medical Officer, have on this, the 25 May 44 examined F.45296 Pte HAWES, L.C. and have found him in good health and physically fit. I am fully aware that he is to be tried by courts-martial on this, the, 25 May 44.

"This is exhibit A referred to in the summary of evidence in the case of F.45296 Pte HAWES, L.C. taken before me this 20th May of May 1944".

E.T.McKnight Lieut

.....E.T.McKnight Lieut.....

(Signature of officer taking summary)

"This is exhibit B referred to in the summary of evidence in the case of F.45296 Pte HAWES, L.C. taken before me this 20th day of May 1944".

E.T.McKnight Lieut

.....E.T.McKnight Lieut.....

(Signature of officer taking summary)

CHARGE

Army Form B 252
(See King's Regulations)

Defence Coy.,
2 Cdn. Corps.

Regiment
Battery
Squadron
Troop or
Company

CHARGE against No. F.45296 Rank Pte.

Name HAMES, L.C.

Place GLASGOW Date of Offence 16 May 44.

OFFENCE W.C.A.S. was A.W.L. until surrendering.

[signature]

[illegible] SCOTTISH DETACHMENT
CDN. PROVOST CORPS

Names of Witnesses:—

Cpl. L.S. Myland Cdn. Provost Corps.

L/C. G.A. Kirton Cdn. Provost Corps.

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

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

30186 Wt.W5/1374-19[illegible] 2,000,000 10/42 P. & H., Ltd. G607/47

Statement or **EVIDENCE** in the case of:
F.45296 Pte. Hawes, L.C.
No. 2 Cdn. Corps Def. Coy.

Sir,

At Glasgow at about 0015 hrs. 16 May 44, acting on information received in company with L/Cpl. Kirton I proceed to QUEEN ST. STN., where the a/m soldier surrendered himself to me as an absentee from his unit.

I placed him under arrest and conducted him to Central Police Stn., and placed him in custody pending arrival of escort.

Glasgow
16 May 44. .....Cpl.
(L.12065 L.S. Hyland)
No. 2 Det., No. 6 (Area) Prov. Coy., Cdn. Provost Corps.

Sir,

I have read over and corroborate the above statement.

Glasgow
16 May 44. .....L/Cpl.
(B.153625 G.A. Kirton)
No. 2 Det., No. 6 (Area) Prov. Co
Cdn. Provost Corps.

REMARKS

CERTIFICATE UNDER THE ARMY ACT, SECTION 183 (1) (d)

I, ...(D.P.M. Evans) Lieut., Officer i/c Scot. Det's..... certify that

Reg. No. 5.5279.. Rank .Pte.. Name .Hawes, L.C.....

REGIMENT .....No. 2 Con. Corps Pro. Coy.....

UNIT .....

STATIONED AT .....

Surrendered himself to Pte. 13095. Rank..Cpl.. Name..Wyland, L.S.....

of the No. 2 Detachment..No. 2 (Corps) Provost Coy.. Can. Provost Corps.

on the .1st.. day of ...May.....194 , at 0015..... hours .....

.....AS AN ABSENTEE WITHOUT LEAVE .....

at the time of his surrender he was wearing (Military Uniform) ~~Civilian Clothes~~

(Signature of Provost-Marshall, Assistant Provost-Marshall or other officer of the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken or surrendered.
(Strike out part inapplicable)'

.....Lieut.
Officer i/c ~~Detachment~~ Provost Coy.
Scottish Detachments.

Glasgow
1st May 44.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No F45296 Rank Pte. Name Hawes, L.C. Unit 2 Corps Int Coy.

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

Date	Particulars (½ portion)	Amount		
18 May 44	Escorts return fare from LONDON To Glasgow	1	10	10
	Prisoners single fare to LONDON From Glasgow	1	10	10
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares (½ portion)		5	6
	Total £	3	7	2.

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

R. D. Stinson Lt/Cdr.

Officer Issuing Railway Warrant and Expense monies R. D. STINSON
No. 6 Provost Company, Canadian Provost Corps (Overseas) OFFICER - D.P.M's BR. C.M.H.Q.

C.M.H.Q. 1000-55

"This is exhibit C referred to in the summary of evidence in the case of F.45296 Pte HAWES, L.C. taken before me this 20th day of May 1944".

E. J. McKnight Lt.
(Signature of officer taking summary)

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. 545276 Rank Pte Name Hawes L.C. Unit 2 Can. Mtl. Coy.

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

Date	Particulars (½ Portion)	Amount		
8 May 44	Escorts return fare from LONDON To Dawes		5	11
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Dawes		5	11
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		11	10

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

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

CAPT
J. STINSON
OFFICER - D.P.M's BR.
C. M. H. Q.

C.M.H.Q. 1000/55
4G/P & E/483

EXHIBIT 'A'

Summary of evidence in the case of F.45296 Pte HAWES, L.C. 2 Cdn Corps Def Coy (PEILH) Cdn Army Overseas, charged with absent without leave 4 May 44 until 16 May 44.

The C.O. does not direct nor does the accused demand that the evidence be taken on oath.

FIRST WITNESS

F.59783 Cpl CALLAGHAN, E.J. No 2 Ground Def Platoon, 2 Cdn Corps Def Coy (PEILH).

I was and still am Cpl in 2 Ground Def Platoon, 2 Cdn Corps Def Coy (PEILH) and I recognize the accused as one of the members of the Platoon. On 4 May 44 I was duty N.C.O. At 1300 hrs I went to warn the man for duty. Pte Hawes who was to have reported back at 1300 hrs, failed to answer his name. I informed Sgt Boychuk that the accused was absent. I turned an absentee report to that effect. Ididn't see him again until he was brought in to camp under escort 18 May 44.

The accused declines to cross examine this witness.

E.J. Callaghan
Signature of witness

SECOND WITNESS

M.11156 Sgt BOYCHUK, S.M. No 2 Ground Def Platoon, 2 Cdn Corps Def Coy (PEILH).

I was and still am Sgt of No 2 Ground Def Platoon and I recognize the accused as one of the members of my platoon. He was given a twenty-four hour pass from 1300 hrs, 3 May 44. I called the roll on all parades subsequent to 4 May 44 and the accused was not present on any of them. I did not see him again until brought in to camp under escort 18 May 44.

The accused declines to cross examine this witness.

S.M. Boychuk
Signature of witness

THIRD WITNESS

L.12065 Cpl MYLAND, L.S. No 2 Det (No 6 (Area) Provost Coy, Cdn Provost Corps.

Document purporting to be signed statement of the evidence of L.12065 Cpl MYLAND, L.S., No 2 Det (No 6 (Area) Provost Coy, was read over to the accused marked exhibit A and att hereto.

I certify that in my opinion owing to the exigencies of the service, incl the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured.

E.J. McKnight Lt
Signature of officer taking summary

FOURTH WITNESS

Lieut R.D.M. Evans, Officer i/c Scottish Detachment Cdn Provost Corps.

Document purporting to be signed statement of the evidence of Lieut R.D.M. Evans, Officer i/c Scottish Detachment Cdn Provost Corps was read over to the accused marked exhibit B and att hereto.

I certify that in my opinion owing to the exigencies of the services, incl the time and expense involved, the tendance of this witness at the taking of the summary of evidence cannot readily be procured.

E.F. McKnight Lt.
.....
Signature of officer taking summary

FIFTH WITNESS

Lieut R.J. Stinson, Adm Officer D.P.M. Br CMHQ.

Document purporting to be signed statement of the evidence of Lieut R.J. Stinson, Adm Officer DPM Br CMHQ, was read over to the accused marked exhibit C and att hereto.

I certify that in my opinion owing to the exigencies of the service, incl the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured.

E.F. McKnight Lt.
.....
Signature of officer taking summary

The accused was warned as follows:

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

The accused F.45296 Pte HAWES, L.C. 2 Cdn Corps Def Coy (PEILH) states that he has nothing to say at this time.

L.C. Hawes
.....
Signature of accused

LIST OF WITNESSES

FOR PROSECUTION

1. F.59783 Cpl CALLAGHAN, E.J., No 2 Ground Def Platoon , 2 Cdn Corps Def Coy (PEILH).

2. M.11156 Sgt BOYCHUK, S.M., No 2 Ground Def Platoon, 2 Cdn Corps Def Coy (PEILH).

3. L.12065 Cpl MYLAND, L.S. No 2 Det (No 6 (Area) Provost Coy, Cdn Provost Corps.

4. Lieut R.D.M. Evans, Officer i/c Scottish Detachment Cdn Provost Corps.

5. Lieut R.J. Stinson, Adm Officer D.P.M. BR. CMHQ.

FOR DEFENCE

NIL

LIST OF EXHIBITS

1. AFB 252 signed by L.12065 Cpl MYLAND, L.S., No 2 Detachment (No 6(Area) Provost Coy,Cdn Provost Corps.

2. Certificate under the Army Act Sec 163(1)(J) signed by Lieut R.D.M. Evans, Officer i/c Scottish Det Cdn Provost Coy.

3. Expense Vouchers (2) signed by Lieut R.J. Stinson Admin Officer DPM's Br., CMHQ.

REQUEST BY ACCUSED

I desire the Convening offr to detail an offr to rep me at my forthcoming trial by FIELD GENERAL court-martial.

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

L C Hamel

.....

Signature of accused

2 Cdn Corps Def Coy (PEILH) No 1 Sheet destroyed 2o-1-41

NF.45296 Name HAWES, L.C. | Sqn, Battery, or Company: Corps | Date of enlistment: 20-7-40 OC | Badges | Service or Proficiency Pay | Character

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

MFM 6 (AFB 122) 40/PAM/156 (1438)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Halifax	2-7-41	Pte		AWL 2200 hrs 20 0100 hrs 6-7-41	CSM Lynch	7 days C.B.	7-7-41	Maj MacDonald	4 Days pa
Halifax	18-7-41	"		AWL 0745 18-7 to 29-7-41-11 days	" "	14 days Det.	31-7-41	Col Guilford	25 days pa
Halifax	26-8-41	"		AWL 2200-26-8 to 2250-26-8-41	Cpl MacNeill	3 days C.B.	27-8-41	Maj MacDonald	Pay
Dartmouth	20-11-41	"		AWL 0800-17-11to-2100-19-41	Cpl Porter	7 days C.B.	20-11-41	Capt. MacDougall	3 days
Dartmouth	10-6-42	"		Conduct to Prej., etc., leaving post.	Document	28 days Det	11-6-42	J.A.A.	
CAPO #2	7-9-43	"		Failing to appear on parade	Sgt Fry	admonished	7-9-43	F.R. Allen	LT
CAPO #2	7-9-43	"		AWL 2359-22-9-43-1600-23-9-43	Cpl Levy	admonished	24-9-43	Capt Kennedy	1 days pay
Debert	24-9-43	"		AWL 1300 hrs-20-11-43 -- 2200 hrs 21-11-43	Sgt Fry	7 days C.B.	22-11-43	Maj MacNeil	Forf 2 days pay.

Certified a true copy from the Regimental Books in my custody.

H.L. MacPherson Capt
Adjt 2 Cdn Corps Def Coy (PEILH)

EXHIBIT 'B'

Army Form B.290.

Statement as to Character and Particulars of Service of Accused.

Number F.45296 Rank Pte Name HAWES, L.C. Regiment (or as the case may be) 2 Cdn Corps Def Coy (PEIL

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

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not admitted to the proceedings.

† See secs. 577, K.R., 1940.

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

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

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec 15(1) AWL	times	6 times
For A.A. Sec 40 Conduct to the Prejudice, etc.	times	2 times
For	times	times
For	times	times
For	times	times

[redacted]

or

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

2. The accused has not been previously convicted, or

[redacted]

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

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 9 days in military custody, making a total of 9 days, of which 0 days were spent in hospital. (Ret'd to Unit 18 May 44)

5. The present age of the accused according to his record of service [redacted] is

6. The date of his [redacted] attestation specified in his record of service [redacted] is 23 Jul 40

[redacted]

10. The accused is in possession of [redacted]

[redacted]

(*[illegible]) Wt.30246/892 70,000 12/40 A.&E.W. Ltd Gp.499
(17843) Wt.44421/1567 35,000 4/41

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

No. ____ Rank ____ Name ____ of ____ Regiment (or as the case may be)

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

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

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

Signed this 24th day of May 44

H. L. MacPherson Capt

---

13 *The accused has served as a non-commissioned officer continuously without reduction, to the present date.*

Date of Promotion

In the rank of ____ years, ____

In the rank of ____ years ____

In the rank of ____ years, ____

(Insert any matter in any of the above paragraphs caused to stand from the regimental books the paragraph must be struck through and initialled in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.)

COUNTER NUMBER 163590

HOUR 19.30

OPERATOR'S INITIALS L.B.

RELIEVING OPERATOR GmB

VV-115
RFN HAWKE R.R.

VII-115

Correspondence to be PINNED here.

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this TENTH day of OCTOBER, 1943.

Whereas it appears to me, the undersigned, an officer in Command of EIGHTH CANADIAN INFANTRY BRIGADE, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

*Omit if not applicable.

* ~~If I am directed to appoint as~~
~~President a Field Officer of not less than the Second~~
~~Senior Field Officer present~~
~~the following officers are detailed~~

Proceedings Reviewed
Reviewing Officer

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

President.

Rank.	Name.	Regiment.
Major	G.L. Taschereau	R de Chaud

Members.

Rank.	Name.	Regiment.
Capt	W.C. Baird	8 Cdn Inf Bde Sp Gp (CHofO)
Lieut	B.A. Oulton	N Shore R
Lieut	W.D. Stewart	8 C R of C

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

*Signed (K.G. BLACKADER) Brigadier
Commanding 8 Cdn Inf Bde
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-64478 Rfn Ronald Robert HAWKE, 1st Bn The Queen's Own Rifles of Canada	1st Charge Sec 15(1) Army Act — ABSENCE WITHOUT LEAVE — A.A. Sec 15 (1)	Guilty	Guilty 12 Oct 43 To be reduced to the ranks. To undergo detention for forty (40) days.	I do not see fit to alter the finding and sentence as varied. RL

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

(Signed) K.L. Blackader Brig (Signed) F.O. Jamieson Maj
Commanding 8 Cdn Inf Bde — Convening Officer (e) — F.G.C.M. — President.

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

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

B. Certificate of President as to proceedings.

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

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

*Omit if not applicable.

were duly sworn.

Signed this 12th day of Oct 1943

F.O. Jamieson Maj
President of the Court Martial.

C. Certificate re case of death sentences.

*See footnote (b) on page 702 M.M.L. 1929.

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

Signed this ____ day of ____ 19__

President of the Court Martial.

D. Confirmation.

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

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

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

RL

Signed this 23rd day of Oct 1943.

K.L. Blackader Brig
Confirming Officer.

Promulgated and extracts taken in the case of B64478 Rfn Hawke, RR

(a) (Dated) 25 Oct 43 (Signed) R.L. Brockbank Lt Capt
~~Promulgated and extracts taken in the case of~~ B 64478 Rfn Hawke, R.R.
~~(Dated) 12 Nov 43~~ (Signed) ~~R.L. Brockbank Capt a/Adj 8 Cdn Inf Bde~~

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

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

THE QUEEN'S OWN RIFLES OF CANADA

A.A.F.W. Ltd. Gp.593

On advice of the A.D.J.A. 3 Cdn Inf Div that the variation of sentence in the minute of confirmation has the effect of increasing the degree of punishment, I now confirm the finding and sentence of the Court.

9 Nov 43

(K. G.) BLACKADER Brig.
3 Cdn Inf Bde.

JAG BRANCH - REVIEW RECORD

Accused

B64478 Pfmn Hawke RR

100R of C

Remarks	Date
Trial in (Country) Eng.	12 Oct 43
Charges Sec 15 (1)	
Sentence 40 days F.P.	12 Oct 43
Rec'd from CR at JAG Branch	2 Dec 43
To EPL for (pre)(post) rev	2 Dec 43
Recommendations by [illegible]	
(1) Pass and record	
(2) Ltr on irregularities.	
(3) Quash charge(s).	
(4)	
Ret'd to JAG Rev 1 by [illegible]	[illegible]
Passed to	
Passed to	
To AG 5 for	
Ret'd from AG 5 to JAG Rev 1	
Instrs by JAG Rev 1 on disposal	
Record & file	4 Dec 43
Instrs completed by	

"B"2

G.S. Proceedings
Plea F.G.C.M.

C H A R G E S H E E T

The accused B64478 Rfn. Ronald Robert HAWKE, 1st Bn. The Queen's Own Rifles of Canada, a soldier of the Canadian Army Overseas is charged with:

1st Charge
Sec 15 (1)
Army Act

ABSENCE WITHOUT LEAVE

in that he

in the field, having been warned for scheme "PIRATE", did absent himself without leave from 2359 hrs. 2 Oct '43 to 1505 hrs 3 Oct '43 (Total time absent 15 hrs and 6 minutes)

S.M. Lett

(S.M. LETT) MAJOR
T/Comd 1st Bn The Q.O.R. of C.

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

9 Oct 43

W.J. Blackader Brig
8 Cdn Inf Bde

MEDICAL OFFICER'S REPORT

I certify that No. B64478 Rfn. HAWKE, R.R.
of 1st Bn Q.O.R. of C. in a good state of health,
and fit to undergo Trial by Court martial.

A. Kirsch Capt
Medical Officer
(A.KIRSCH) - Captain RCAMC

Station In the Field

Date 12 October, 1943.

M. F. B. 246

A

Army Form A 9.

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

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

Proceedings of a full General Court-Martial held at in the field

on the 12th day of October 19 43 by order of

Brig. A.C. Blackender

Commanding 8 Cdn Inf Bde

dated the 10 day of October 19 43

President.

J.F. Lascelles Maj

R. de Chaud

Members.

H.C. Baird Capt

8 Cdn Inf Bde Gp (CHQ)

B.H. Ouston Lieut

W. SHORE. R.

, Judge Advocate.

Trial of* No. B-64478 Rfn Kinnaird Robert Hawke, 1st Bn. A.O.R. of C.

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

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

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

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

The accused is brought before the Court.

Prosecutor,† Capt H.K. Walbank A.O.R. of C

~~Counsel‡ or~~ defending officer† Capt H.E. Ouston A.O.R. of C.

At 0900 o'clock the Trial commences.

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

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

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

No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. Wt.W10659/P.28. 20,000 pds. 5/43. K. & H., Ltd. G667/11. Forms A 9/55.

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Q 1 Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

A 1 Guilty *Answer.*

~~Q 2 Are you guilty or not guilty of the second charge against you, which you have heard read?~~ *Question.*

~~A 2~~ *Answer.*

~~Q 3 Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

~~A 3~~ *Answer.*

~~Q 4 Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

~~A 4~~ *Answer.*

The accused having pleaded Guilty to the First charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*~~The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.~~]

The accused No B67775 Pte Ronald Robert Hawke, 1st Bn. A.I.F. is found guilty of the first charge

†The summary (or abstract) of evidence is read, marked "J" signed by the President, and attached to the proceedings.

Question to the accused. 3 Do you wish to make any statement in mitigation of punishment?

Answer. 3 The accused in mitigation of punishment ~~says~~:—

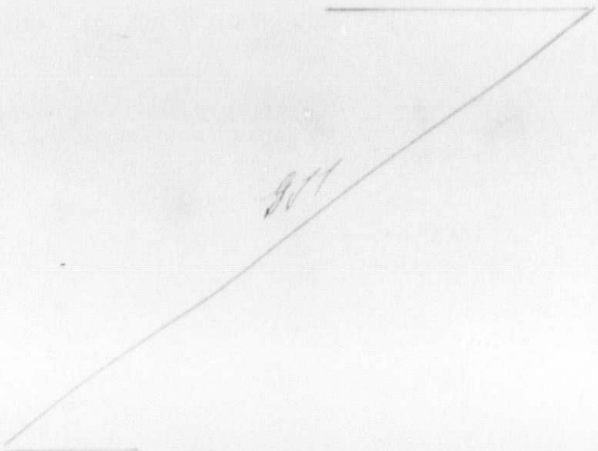
[~~or~~ hands in a written statement, which is read, marked "K", signed by the President, and attached to the proceedings.]

GTC.

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.



Q4 Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

A4 No Sir.

Answer.

Evidence as to character.



E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

The Court find that the accused

G.S.

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*~~The Court being re-opened, the accused is again brought before it.~~

Capt R. Woodland A.O.R. of C. is duly sworn.

Question by the President. 5 Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes I produce W.O. B 357

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked "A" signed by the President, and annexed to the proceedings.

Question by the President. 6 Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question. 7 Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question. 8 Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

~~Cross-examined by the accused.~~ The Defending Officer declined to cross-examine

(Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any additional punishment, or an action is that is to be awarded by the Court the prosecutor would call the attention of the Court to the fact, and the Court should enquire into the nature and amount of that additional punishment.)

Question to the accused. 9 Do you wish to address the Court? *Answer.* No Sir.

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused Pte B-67475 Sentence.
R/m Ronald Robert Hawke
1st B.n A. O.R. of 6 to suffer
field punishment for 40 days F.P. 40 days.

Signed in the field this 12th day
of October 1943.

G. L. Cressman Maj
R. de Chastel.

"K" 12 Oct 43

Summary of plea for defence.

G. J. Jess Capt
Pres F.G.C. de

From the evidence of the witnesses Pte Reid and Pte Carmichael it is shown that Pte Hamlet made an honest effort to get back to camp from his leave. The evidence proves that he got off the train at Eastleigh and was waiting to get on the first trucks. Owing to the huge number of men he was obliged to wait for two of the trucks to return. The accused admits he was drunk at the time and after waiting he started to walk home a distance of 8½ miles. He got lost and spent the night in a field waking up in the morning he walked back to camp. I believe from the evidence Pte Hamlet made a real effort to get back to his own lines.

W E Pitt Capt
1 Bn Queens Own Rifles Canada

STATEMENT OF MAJOR S.C. HEYES 4 Oct. '43

I am Major S.C. Heyes, 1st Bn The Queen's own Rifles of Canada and have been Company Cmdr of "A" Coy from Apr '43 to 4 Oct '43. The o/m personnel are all on the strength of "A" Coy. I personally warned all ranks of "A" Coy prior to any of them going on 48 hr leave 28 Sep '43 on instructions of the Officer Commanding 1st Bn the Q.O.R. of C. that:-

An important exercise was due to take place shortly and that returning late from their 48 hr leave on the 30th Sep '43 would not be tolerated and would be classed as wilful desertion. A Court martial for this offence would be automatic.

I further explained to all ranks of "A" Coy. that a special concession had been granted to the 1st Bn the Q.O.R. of C. and that any absent without leave personnel on the 30th of Sep might jeopardize other 48 hr leaves within the Bn.

The o/m personnel were all warned by me.

B-40585 Pte. Porter J.O.
B-34470 " Hanna, W.H.
B-15809 " Berry, E.
B-9119 " Donaldson, R.G.

(S.C. HEYES) MAJOR
Comd "A" Coy 1st Bn the Q.O.R. of C.

(J)

Summary of Evidence
in the case of
B 64478 Rfn Hawke R.R.
1st Bn. The Queens Own Rifles
of Canada.

G.H.Q. Case 1943
Pte F.G.C.M.

The Commanding Officer directs that the evidence be taken on Oath.

First Witness for Prosecution

B 64303 Sgt Browne J.S. 1st Bn The Queens Own Rifles of Canada, A.F. having been duly sworn states: I was company Orderly Sgt. on the 2nd of October 1943. at 2359 hrs on the 2nd of October Rfn Hawke R.R did not turn in his pass at the Company Orderly Room. He was absent at the reveille check at 0630 hrs 3rd of October 1943.

The accused declines to cross-examine this witness.

J.H.Browne Sgt
B64303

Second Witness for prosecution

B 66059 R/Sgt Dalzell G.E., 1st Bn The Queens Own Rifles of Canada, A.F. having been duly sworn states: I am Company Clerk of A Coy 1st Bn The Queens Own Rifles of Canada. I was on duty on the afternoon of 3rd October 1943. at 1505 hrs Rfn Hawke turned in his pass to

me at the Coy Drawing Room.

The accused declines to cross-examine this witness.

G. E. Watzels 2/Cpl.
B66059

Third Witness for prosecution

Maj. S.C. Hayes, 1st Bn the Queens Own Rifles of Canada A.F.

I certify that in my opinion the attendance of this witness is, owing to this officer being employed on special duty, not procurable, and written statement of his evidence, signed by him, has been read to the witness and is attached hereto as Exhibit "A"

Capt.
1st Bn The Queens Own Rifles of Canada.

I do not require the attendance of this witness for the purpose of cross-examination.

A. E. Hawke
Rifleman B64478

The accused was cautioned as follows.-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused declined to make any statement or to give evidence.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of evidence consisting of three pages was taken down by me in the presence of the accused and that Rules of procedure 44 (C), (D), (E) and (F) have been complied with

Dudley Camp
5 October 1963

[signature] Capt
1st Bn The Queens Own Rifles
of Canada

Old Sheet destroyed 20-10-41

No. Name Sqn., Battery, or Company Corps D.T.C. Date of enlistment 20-4-41 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. One Signature O.C. Company, etc. D.T.C. Character

M.F.M. 6

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
In the Field	23-10-41	Bdr.		A.A.24(2) Neglect of his clothing and kit in that he was absent on parade in that he was deficient in his Respirator (Complete) the same having been stolen from his quarters		1 Days C.B. Forfeit 1/- per week until Respirator is paid for	2-2-42	Lt.-Col. [illegible]	
In the Field	10-11-41	Pte.		Neglecting to obey an order in that he at 1115 hrs was in A.T.S. Canteen A.C.I. 1/Cpl Mathewson	Cpl Quinn	4 Days C.B.	6-10-42	Capt. J.H. Hall	
In the Field	13-11-41	Pte.		A.A.40(1)A.W. from 0800 hrs 13 Nov 41 to 0800 hrs 16 Nov 41 Then 2 Days 20 Hrs.	Sgt Alexander, N.S.	3 Days C.B.	17-11-41	Lt-Col J.A. [illegible]	4 Days F & Deduction of pay F.O. A.I. 140(1)(a)

(P.T.O.)

Place	Date of offence	Rank	Cases of Drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 Jan 43	Rfn.		A.11(1)(a)T. From 07 hours 1 Jan 43 to 0800 hrs 1 Jan 43 (13 hrs)	Sgt Varner	3 days C.B. 6 days FW	2 Jan 43	J.O. Springs	I.R. 2a1.
				Forfeits 1 days pay under P.R.A.I. 141(1)(a)					
Field	19 Jan 43	Rfn.		A.40 Conduct to the prejudice of discipline in that he refused to accept an equipment accessory articles that were issue to him at inspection carried out by Lt. Wolf on 19th.	Pte Sutherland	7 days C.B.	22 Jan 43	J.O.S. Springs	I.R. 2a1.
In the Field	31 Jan	Rfn.		A.15 A.W. from defaulters parade at 1800 hrs 31 Jan 43 in that he while under open arrest from 1800 hrs 2 Feb to 0800 hrs (3 days) An additional from 1600 hrs 31 Jan to 2400 hrs 31 Jan 43 (120 days 4 hrs)	Sgt Robb, G. Sgt Porter Sgt Brown, J. Sgt Wilson, M.	14 days F.D.	6 Feb 43	J.O.S. Springs	Forfeits 14 days pay under P.R.A.I. 141(1)(a)

M.F.M. 6

No. [illegible] Name [illegible], R.R. Sqn., Battery, or Company [illegible] Corps C.I.C. Date of enlistment [illegible]-41 G.C. Badges [illegible] Service or Proficiency Pay [illegible]

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	24 Aug 43	Rfn.		A.15(1)A.A. from 2359 hrs 24 Aug 43 to 0111 hrs 27 Aug 43. (2 days, 32hrs 12 min inclusive)	Cpl. Collins, W.A.	10 days C.B. 28 days pay	26 Aug 43	J.O. Tpr. Forbiss Lt.-Col.	F.S. 93 pay Fdl 149(1)(a)

CERTIFIED TRUE COPY

R.R. Rickshaw

Lt. for C.O., R. of O.

(P.T.O.)

"L"
Statement as to Char. & Particulars of Service of Accused
for F.G.C.M.

M.F.B. 355
22M—5-41 (573-3)
H.Q. 1772-39-620
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B64478	Rfn.	R.R. HAWKE	1st Bn Q.O.R. of C.

1. The following is a fair and true summary of the entries in the [redacted] Regimental and Squadron, Battery [redacted] or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, [redacted] of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For AWL AA 15(1)	Six	times	Six	times
For AA 11	No	times	One	times
For AA 24 (2)	No	times	One	times
For		times		times

Number of instances of gallantry or distinguished conduct

or,

[redacted]

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

[redacted] by a court-martial or a civil court, [redacted]

3. The accused is not under sentence at the present time.

or,

[redacted]

4. The accused has been in confinement awaiting trial on the present charges, for No days in civil custody, and No days in [redacted] military custody, making a total of No days in custody, of which No days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 21 yrs. 3 mos.

6. The date of his [redacted] attestation specified in his [redacted] attestation paper 28 Apr '41

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no [redacted] military decoration, or [redacted] military reward [redacted] State any [redacted] military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N/A dated , and in his regiment (or corps), the rank of

dated .

12. ~~[illegible]~~ present date?

Date of promotion.

In the rank of years.

In the rank of years.

~~[illegible]~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~[illegible]~~

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number B64478 Rank Pfn. Unit

Name HAWKE, R.R. of 1st Bn The Q.O.R. of C. Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Fifth day of Oct. '43 R Rutherford Lt Adjt 42nd R/C

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

5 U-113

Pte. Hawke, L.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-64478 Pte Ronald Robert HAWKE - CIC - 11 Can Repat Dep

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st ~~AA Sec 5(1)~~	NOT GUILTY	GUILTY	
2nd ~~AA Sec 22~~	NOT GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of One Hundred and Twenty (120) Days.

(Sgd) ..... 15 Oct/45 (Sgd) [signature] President. (RP 45, 50.)

Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~Recommend that the accused be not committed to prison or detention barracks for further offences.~~ (1)

(1. AA 57A. Delete if not used.)

Date 20 Oct 45 (Sgd) [signature]

Commanding

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B64478 Pte Ronald Robert Hawke	22 Oct 45	[signature] Coad Offr 11 Cnd Repat Depot

11 CMD Part II Order No 78 d/24 Oct 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 150 as 54-113

RECEIVED NOV 1945 CD BRANCH

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFAN) 40.1 & B.1098 (6/44) 4/38B

Convened by Order of Brigadier K G Blackader DSC, MO, ED Comd D Gp CMD dated 18 Oct 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-64478	Pte	Ronald Robert	HAWKE	CIC 11 Can Repat DeP

PROCEEDINGS REVIEWED

1 Nov 45 L.F. Grody Maj

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ..... on (date(s)) 15 Oct/45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmm RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and notes on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1140 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to~~ M 6915-8 PTE as interpreter? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to RIMASTADRA as shorthand writer? Ans NO-SIR

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO-SIR

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs~~ under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L. KERMAN	HQCMD
Member	CAPT	E.G. GRANT	11 C. REP. D
Member	LT	R.G. WENSLEY	11 C. REPAT D
~~Judge-Advocate~~	LT	J.T. BEAULAC	11 C. REP D
Prosecutor	LT	W. DU BOSE	11 C. REP. D
Defending Offr			

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO(1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 1.)

A8. The accused ..... before arraignment make(s) (no) ~~(a)~~ plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~was~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 37(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO - SIR .(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE - ATI
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not ~~establish a prima facie case~~ against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge(s)~~.(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. GIVE EVIDENCE Do you intend to call witnesses on your behalf ? Ans. NO - SIR . Are they witnesses as to character only ? Ans.....
(1. *RP 113.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOTE ATI
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.~~(1)
Or ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO - SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 16 and Ex C respectively.(3)
(1. *AFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. SAME AS BEFORE NOTE - ATI
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No. B.64478 Private Ronald Robert HAWKE, Canadian Infantry Corps, 11 Canadian Repatriation Depot, C.A.O., is charged with:

FIRST CHARGE
Sec.8(1) Army Act

WHEN ON ACTIVE SERVICE STRIKING HIS SUPERIOR OFFICER BEING IN THE EXECUTION OF HIS OFFICE.

In that he, in London, about 2250 hours, 6 Oct 45, while in arrest, struck in the face, No. C.38693 Lance Corporal CHRISTINK, O.N., Canadian Provost Corps, No. 6 (Area) Canadian Provost Company, then on duty in the vicinity.

SECOND CHARGE
Sec. 22 Army Act

WHEN IN ARREST ATTEMPTING TO ESCAPE.

In that he, in London about 2250 hours, 6 Oct 45 when in arrest, broke away from his escort No. C.38693 Lance Corporal CHRISTINK, O.N., Canadian Provost Corps, No. 6 (Area) Canadian Provost Company, and attempted to escape.

Colonel
(J.D.MORIN) ED
Officer Commanding
11 Canadian Repatriation Depot

In the Field,
17 Oct, 1945

To be tried by Field General Court Martial.

(K G Blackader) Brig
Comd D Gp CRU

IN THE FIELD
18 Oct 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-64475	Pte		Ronald Robert	HAWKE	CIC 11 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 18 Oct 45 endorsed by me, ~~for by an offr of my staff for that~~ " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. I ~~am unable to appoint~~ (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereof the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
LT COL	D L REDMAN, VD	HQ CMU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by Comd	10 Can Repat Dep
Lieutenant	to be detailed by Comd	11 Cdn Repat Dep

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

Date 18 Oct 45

K G Bladrader.
(Signed personally. RP 105 fn 2.)

Brigadier
(Rank.)

(K G Bladrader)
Commanding D Gp CMU
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAAO (To item of AFAS 40/P & S/1891 (4001))

(See overleaf for costs and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

18 Oct, 1945.

I certify that No. B.64478 Private Ronald Robert HAWKE, 11 Canadian Repatriation Depot is in good state of helath and is fit to undergo trial by Court Martial.

B. S. Berwick

.....Capt.
RCAMC 11 Cdn. Repat. Depot.

TRIAL OF

B.64478 Pte HAWKE RR ---------- 11 CDN REPAT DEP

PROSECUTION

FIRST WITNESS

No.C.38693 L/Cpl. CHRISTINK, ON, No. 6 (Area) Cdn Prov. Coy, sworn, states:-

Q. Will you produce your Part I Paybook and show us when you were appointed L/Cpl?

Witness shows to the Court the MBM I Part I wherein the court saw that he was appointed L/Cpl on the 30 Jan 45.

Q. Have you been a L/Cpl ever since?
A. Yes sir.

Will you tell the court in your own words the happenings on the evening of 6 Oct 45.

On the 6 Oct 45 at 2250 hours in company with L/Cpl BERUBE we stopped a soldier and asked to see his leave pass. I recognize the accused as that soldier. He said that he didn't have one and that he had gone to London just for the day. I asked him if he had a return ticket. He couldn't show one to me. I placed him in Close Arrest and took him towards our truck about three blocks away, on the way we went about two blocks actually and then all at once he struck me in the face with his fist. He made a slight cut on my lip. He then bolted about two or three steps. We re-arrested him and force was needed to take him in the truck. He seemed to be in his right mind while he was talking to me, there was no evidence of his being drunk, I didn't smell anything.

CROSS-EXAMINED

Q. Would you tell me with which hand the accused struck you?
A. Sir, he was walking on my left and he swung around and hit me on the right hand side of my face with his hand, I do not know sir.

Q. Do you think in your opinion that Pte Hawke would have been capable of carrying on Guard duty as a sentry with a rifle?
A. Yes sir, he looked sober.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS

No.D.146538 L/Cpl BERUBE AE, No. 6 (Area) Cdn Prov. Coy sworn, states:-

Q. Are you No. D.146538 L/Cpl BERUBE AE, No. 6 (Area) Cdn Prov.Coy?
A. Yes sir.

Cpl. Will you tell the court in your own words the happenings on the night of the 6 Oct 45.

On the 6 of Oct 45 I was on duty with L/Cpl. Christink on Coventry St. at about 2250 hrs. We saw Pte Hawke, whom I now recognize as the accused and he looked suspicious and we went over and asked him for his pass. He could not produce it. He told us he was in London just for the day and we asked him for his train ticket to see if he had a return ticket. He didn't produce it either, so we placed him under arrest and we walked up to our truck with him, We went actually up about two blocks, when we got to Piccadilly Circus he swung and hit my friend L/Cpl. Christink with his fist in the face and he took about 3 or 4 paces to go away we we re-arrested him again and escorted him to Store St. barracks.

SECOND WITNESS (CONTINUED)

CROSS-EXAMINATION

Q. Can you answer why the accused looked suspicious?
A. Well we looked at him and he started walking fast away from us.

Q. Were you with L/Cpl. Christink side by side with the accused?
A. Yes sir.

Q. Could you tell with which hand the accused struck L/Cpl Christink?
A. I was walking on the left hand side of the accused.

Q. Which hand did he strike Cpl Christink?
A. I couldn't swear to that as L/Cpl Christink was on the right hand side.

Q. Do you think in your opinion that Pte Hawke would have been capable of carrying on duty of the guard as a sentry with a rifle?
A. Yes sir.

Q. Did you smell his breath of anything?
A. I did not smell his breath, but he respected our rank and was sober.

QUESTION BY THE COURT

Q. Did the blow have any effect on Christink's face?
A. The blow split his lip on the inside.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

PROSECUTION IS CLOSED

WITNESS FOR THE DEF.

FIRST WITNESS

The Accused No. B.64478 Pte HAWKE, R.R., 11 Repat Dep, Sworn, states:-

STATEMENT BY THE DEF OFFR

First I would like to state that there is different types of drunkenness. A man might be drunk and not struggle, but to a complete stranger he might appear perfectly sober, and as the corporal said answer his questions normally and still be quite drunk.

WITNESS

I was drunk, I met a couple of my chaps from the regiment on Repat leave and I very definitely drank 8 gins and 3 whiskeys and I couldn't say how much more. I definitely was drunk. The first I remember of the provost at all was when my hands were put behind my back. My right arm was hurting me, when I was picked up I don't remember.

QUESTIONS BY THE COURT

Q. Do you remember going to the police station?
A. Yes sir.

Q. Do you remember hitting the policeman?
A. No sir.

Q. If you were that drunk that you don't remember, how could you remember arriving at the station a few minutes later?
A. As I said the first recollection I had was when my hands were forced behind my back and then there was about ten or twelve people gathered around me and I knew there was some trouble.

FIRST WITNESS (CONTINUED)

Q. And the little twist of your arm sobered you up?
A. It was not a little twist.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B)

ADDRESS BY THE PROS OFFR TO THE COURT

Sir, at this time the prosecution just would like to bring to the attention of the court of the evidence that has been given by two competent NCO's who are continually on patrol duty in London area and have had experience in determining whether or not a man under arrest was drunk. Since there is no evidence but the man's own statement to prove otherwise. I ask that the court bear this in mind in reaching a decision.

ADDRESS BY THE DEF OFFR TO THE COURT

The only point I would like to bring out is that Pte Hawke has no recollection of what happened, only that he had a twist of his arm and neither of the two witnesses can say for sure whether he was sober or not, they say they think he was sober they are not sure.

COURT IS CLOSED TO CONSIDER THE EVIDENCE

COURT IS RE-OPENED

PLEA IN MITIGATION BY THE DEFENDING OFFICER (ATTACHED)

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

Plea of Mitigation

C/o B-64478 Sgm Hawke R.R.

Gentlemen,

Re Hawke enlisted in the C.A. in Toronto in April 1941 - 3 months later was sent overseas here, where he has served since. In 1944 Feb. he was wounded and was categorized "4". Upon promised to be returned to Canada. He was kept on fatigue duty since. His own unit, his friends, all were sent overseas from here. He 'loafed' here, moved around, which resulted in having from lose interest or love of soldiering. As has always shown in the army. He felt that a more valuable and important job he could of accomplished back home

4/71 CFA 170 PLEASE WRITE ON BOTH SIDES

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

thank he did here all the time.

Pte Hawke has no record whatsoever in the civilian police records which proves that he has a good character.

At 5 years old he enlisted in the army as an orphan, he lost his only brother in the merchant navy during this present war.

On the 6th of October last two of his best friends on Pilot Stream are on leave in London. A celebration like we and here all celebrations, legion are showed resulting in a state of drunkness for Pte Hawke who does not remember anything of what happened. He was never charged with drunkness or with charges similar to that today. before

I do not try to escape the fact that Pte Hawke was has a few charges

PLEASE WRITE ON BOTH SIDES

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

listed on his M.F.H.-6- but we can
read all them, no offences against ~~not~~ but
[redacted]
of the A.A.
and minor one too. It has been due
more to lack of interest in the army which
has promised everything to him and given him
very little of which a volunteer expects.

Pte Hawkes has put in over of 121 as
due for repatriation these few coming months.
His intention is to carry on studies which
he had to leave before the war, due to his
social position being and status and also
in a financial situation which [illegible] he
permit him to carry on then a job without
He attended [illegible] 2 yrs
permit from ideal
program will permit him to
studies, he is 23 years old, not too
young to continue his education, therefore
taking in consideration all these facts
I hereby make application to the leniency
demand
of this court and trust you will judge

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

-4-

Pte Hawke the way your good will and your clear judgment sees fit

Pte Hawke will accept your sentence and also your advice like a son from his father, ~~whom he has called~~ who has advised he did not get all his life yet

Gordon Grant

Pending Spec

No 11 Can Repat Depot

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B.64478	Private	Ronald Robert HAWKE CIC, 11 Can Repat. Depot	

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	Absent Without Leave	15 times.
For	Losing by Neglect	1 times.
For	Neglecting to obey Camp Orders	1 times.
For	Army Act 40	1 times.

Date of first entry in Field Conduct Sheet 23 Jan, 1942.

Date of last entry in Field Conduct Sheet 16 Aug, 1945.

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

Strike out if not applicable.

XXXX

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F.G.C.M.	Field 2 Oct, 43.	Absent Without Leave	40 days Detn. Forf. 41 days pay.	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 18th day of October, 1945. (Capt & Asst Adjut)

Officer having custody of original rec.

No. B 64478 Name HAWKE R. | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 28/4/41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 127) 40/P&S/136 (7010)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous Sheet destroyed after completion on 6 Months Service.					
Field	23-1--42	Rfn		AA24(2) Neglect of his clothing & Regt'l necessities in that he was deficient his Respirator (Complete) the same having been stolen from his quarters.	Sgt Phillips	1 days CB Forf to make good the cost of Respirator.	2-2-42		
Field	2-10-42	Pte		Neglecting to obey camp orders in that he at 1115 hrs was in AIB Canteen. Sec 11 AA	Cpl Chute L/C McPherson	4 days C.B.	5-10-42		
Field	13-11-42	Rfn		AA15(1)AWL from 0800 hrs 13-11-42 to 0800 hrs 16-11-42. Abs: 3 days 30 mins.	CSM McIntosh Sgt Alexander	5 days Pay AA46(2) 7 days CB	17-11-42		4 days forf. of Pay

(P19)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1-1-43	Rfn		AA15(1)AWL from 0730 hrs 1-1-43 to 2230 hrs 1-1-43 (15 Hrs)	Sgt Warner	5 days C.B. Forf 1 days Pay FR&I 149(1)(a)	2-1-43		
Field	19-1-43	Rfn		AA40 Conduct to the prejudice,etc. in that he refused to accept on repayment necessary articles that were short in his kit. Inspection carried out by Lt Weir QM.	CQMS Sutherland	7 days C.B.	22-1-43		
Field	21-1-43	Rfn		AA15. AWL from defaulters parade at 1800 hrs 21-1-43.AA15(1)AWL while under open arrest from 2200 hrs 2-2-43 to 2200 hrs 5-2-43. Abs: 3 days.	Sgt Webber C Sgt Porter Sgt Browne J Sgt Willbey	14 days CB 28 days Pay	6-2-43		Forf 14 days Pay FR&I 149(1)(a)

No. B 64478 Name HAWKE RR | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/W&S/136 (7038)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24-7-43	Rfn	Nil	AA15(1)AWL from 2359 hrs 24-7-43 until 2030 hrs 27-7-43. Abs: 2 days 23 hrs 29 mins.	Cpl Collins F.A.	10 days C.B. 28 days Pay	28 Aug 43		Forfeits 3 days Pay FR&I149(1)(a)
Field	2-10-43	Rfn	Nil	Tried by FGCM 12-10-43. 1st Charge Sec 15(1)AA AWL from 2359 hrs 2-9-43 until 1505 hrs 3-10-43. Total Time: 15 hrs 6 mins. Finding Guilty. Sentence on 12-9-43 to undergo FP for forty (40) days. Confirmation: Sentence altered to read as follows by Brig. 6 Cdn Inf Bde & confirmed. To undergo detention 40 days Forfeiture on pay. 1 days AWL (1)(a)					

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order closing trial	By whom awarded	Remarks
				40 days Detention 149(1)(b) Total forfeiture 41 days Pay.					
Field	6 Apr 44	Pte		AASec15(1)AWL from 0800 hrs 6 Apr rr to 2100 hrs 6 Apr 44.Abs.13 hrs	Cpl Clarke Sgt Stark	CR Forf 7 RH days Pay	8 Apr 44	AB Smith Lt.Col.	Forf 1 days Pay
Field	30-6-44	Pte		AA15(1)AWL from 2300 hrs 30-6-44 till 2325 hrs 30-6-44 (25 mins)	Lt.OC Wrenshall	14 days C.B.	6 Jul 44	J.Gavan Power.Lt.Col.	
Field	14 Jul 44	Pte		AA15(1)WOAS AWL 1100 hrs 14 Jul 44 to 0830 hrs 17 Jul 44.(2 days 21 hrs 30 mins)	CSM Stark Sgt Boxwell	10 days Pay FR&I 149(2)	17 Jul 44	Lt.Col. AB Smith	Auto Forf 3 days Pay FR&I 149(1)(a)
Field	3 Sep 44	Rfn		AA15(1)WOAS AWL 2300 hrs 3 Sep 44 until 2345 hrs 3 Sep 44. Total absence: 45 mins.	B64283 CSM Muter J.F. C42754 Cpl Brown C.D.	5 days Pay FR&I 149(2)	4 Sep 44	CS Hadley Lt.Col.	Tot.Forf: 5 days Pay

No. B64478 Name HAWKE R.R. | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/F&S/136 (7010)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17 Sep 44	Rfn		AA15(1) WOAS AWL from 2300 hrs 17 Sep 44 until surrendering to "A" Wing Ord Room at 2310 hrs 18 Sep 44. Tot Abs: 1 day 10 mins.	B64283 CSM Muter JF B88842 Cpl Lalonde GA	14 days F.P. 14 days Pay FR&I 149(2)	19 Sep 44		Forf 2 days Pay FR&I 149(1)(a). Tot Forf: 16 days Pay
Field	17 Jan 45	Pte		AASec15(1)WOAS AWL from 2230 hrs 16 Jan 45 to 0330 hrs 17 Jan 45. Absent: 5 hours.	Documentary Sgt Cook FA	5 days C.B.	19 Jan 45	Maj. T.W. Cowley	
Burnham	27-10 -44	Rfn		WOAS Sec 15(1) AWL from 1915 hrs 27-10-44 to 2300 hrs 27-10-44. 3 hrs 45 mins.	Sgt Wells H	5 days Pay	28 Oct 44	Maj. J.A. McFadyen	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2 May 45	Pte		AASecL5(1)WOAS AWL from 1200 hrs 2 May 45 till returning at 1400 hrs 3 May 45. Abs: 1 day, 2 hrs.	Sgt Taylor	7 days FP, Forf 7 days Pay FR&I 149(1)(b)	7 May 45	Lt.Col. MacMillan	Forf 2 days Pay FR&I 149(1)(a)
Field	10 May 45	Pte		AA15(1)WOAS AWL whilst undergoing F.P. from 0615 hrs 10 May 45 to 2205 hrs 24 May 45. (14 dys 15 hrs 50 mins)	Sgt Stelarski W. Documentary	Forf 28 days Pay FR&I 149(2)	25 May 45	Lt.Col. MacMillan	Forf 15 days Pay FR&I 149(1)(a)
Field	5-7-45	Pte		AA15(1)AWL from 0800 hrs to 1125 hrs 5 Jul 45. (3 hrs 25 mins)	Sgt Middleton Sgt Taylor	4 days CB	6 Jul 45	Lt.K.G. Trelford	
Field	16 Aug 45	Pte		AA15(1)AWL from 0800 hrs 16 Aug 45 to 0110 hrs 2 Sep 45 when apprehended by Mil Author. at London. Abs.: 16 days 17 hrs 10 mins. Cost of App: £0-8-9.	Documentary	14 days FP 28 days Pay FR&I 149(1)(2)	4 Sep 45	JA Simpson Major	Auto Forf: 17 days Pay FR&I 149(1)(a). Cost of Appr.: £0-8-9.

Certified that this is a true copy of M.F.M. 6 as of 18 Oct 1945

.....(Capt & Asst Adjutant)

Officer having custody of Regt'l Records

SUMMARY OF EVIDENCE

In the case of No. B.64478 Private Ronald Robert HAWKE, Canadian Infantry Corps, 11 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas.

The Commanding Officer Directs that the evidence be taken on Oath.

FIRST WITNESS: Captain R.G. TAIT, CIC, 11 Canadian Repatriation Depot having been duly sworn states:

I am the assistant Regimental Adjutant, 11 Canadian Repatriation Depot. I produce the following document pursuant to Overseas R.O. 5352.

(a) Certificate of Apprehension.
EXHIBIT "A"

(The above document read over and shown to the accused, marked as indicated and attached hereto)

I recognize and identify the accused, No. B.64478 Private Ronald Robert HAWKE, 11 Canadian Repatriation Depot, as the person to whom this document relates.

R. G. Tait Capt.

The accused declined to cross-examine this witness.

SECOND WITNESS: No. C.38693 Lance Corporal CHRISTINK, O.N., No. 6 (Area) Canadian Provost Company, Canadian Provost Corps.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in the summary of evidence, as Exhibit "B". In my opinion the attendance of this witness cannot readily be procured owing to the exigencies of the service.

E.J. McCormick Capt.
(E.J. McCormick)

I, the undersigned accused do not require or demand the attendance of No. C.38693 Lance Corporal CHRISTINK, O.N., for cross-examination.

Ronald Hawke
(B.64478 Pte. HAWKE, R.R.)

THIRD WITNESS: No. D.146538 Lance Corporal BERUBE, A.E., No. 6 (Area) Canadian Provost Company, Canadian Provost Corps.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in the summary of evidence, as Exhibit "C". In my opinion the attendance of this witness cannot readily be procured owing to the exigencies of the service.

E.J. McCormick Capt.
(E.J. McCormick)

I, the undersigned accused do not require or demand the attendance of No. D.146538 Lance Corporal BERUBE, A.E., for cross-examination.

Ronald Hawke
(B.64478 Pte. HAWKE, R.R.)

Question to the accused:--

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by accused:--

I have nothing to say.

The accused declined to call any witnesses for the defence.

I certify that Rules of Procedure 4 (C) (D) (E) (F) and (G) have been complied with, and that the foregoing summary of evidence consisting of 2 pages was taken down by me in the presence of the accused on the 17th. October, 1945.

E.J. McCormick Capt.
(E.J. McCormick)
11 Cdn. Repat. Depot.
Officer detailed to take the summary of evidence

In the Field,
17th. October, 1945.

I certify that No. B-64478 Rank. Rfm. Name Hawke. R.R.

Unit No.11.Cdn. Repat. Depot. Was arrested at London (Place)

at 2250 (Hour) on 6-Oct.45 (date) and that at the time of his arrest, he was wearing (Military Uniform) or (~~civilian clothing~~) Signature of Provost Marshal, Assistant Provost Marshal, or other Officer of the Commanding officer of the portion of His Majesty's Forces or the officer, Warrant officer or non-commissioned Officer in charge of the detachment of the Canadian Provost Corps, Canadian Army) into whose custody the above named was taken on arrest. (Strike out part inapplicable.)

Exhibit "A"

London
7-Oct.45

Officer detailed to take the summary of evidence

Lieut. ~~XXXX~~.
D.A.P.M. C.M.H.Q.
(R.W.G.Willimont.)

Statement of **EVIDENCE** in the case of
B-64478 Rfm. Hawke. RR.
No.11.Cdn. Repat. Depot.

Sir;

At London at about 2250 hrs. 6-Oct.45 I was on patrol duty on COVENTRY STREET in company with L/Cpl. Berube A.E. where I saw the a/m soldier.

I approached him and requested to see his leave pass and M.B.M.l.pts. 1.2.or3. He could not produce a leave pass . He was A.W.L.

I placed him under arrest and in escorting him to our vehicle he struck me on the face and started to run. He was immediatly rearrested and escorted to NO.6.(Area) Cdn. Provost Company Detention Office where I turned him over to the N.C.O. i/c of Cells to be detained.

London
6-Oct.45 .....L/Cpl.
C-386931/Cpl. Christink.C.M
No.6.(Area)Cdn. Provost.Coy.

Sir;

I have read over and corroborate the above statement.

London
6-Oct.45 .....L/Cpl.

REMARKS
D-146538L/Cpl.Berube.A.E.
No.6.(Area)Cdn.Provost.Coy.

CHARGE

Army Form B 252
(See King's Regulations)

No.11.Cdn. Repat. Depot. Regiment
Battery / Squadron / Troop or / Company

CHARGE against No. B-64478 Rank Rfm.

Name Hawke R.R.

Place London Date of Offence 6-Oct.45

OFFENCE S.C.A.S. was (1) A.W.L. (2) Attempting to escape from military custody.

(3) Striking an N.C.O. of the Cdn. Provost Corps while in the execution of his duty.

Names of Witnesses:—

L/Cpl. Christink.C.N. No.6.(Area)Cdn.Prov. Coy.

L/Cpl.Berube. A.E. No.6.(Area) Cdn. Provost. Coy

Signature of O.C. Battery, Squadron, Troop or Company .....

Punishment Awarded .....

By whom Awarded .....

Adjutant.

P.7

1 3.44 (HQP) 2000

I, No. B.64478 Private Ronald Robert HAWKE, 11 Canadian Repatriation Depot, acknowledge that I have this day at 1600 hours been served with the following documents free of charge: (a) Copy of Summary of Evidence, and (b) Copy of Charge Sheet both in connection with my forthcoming trial by Field-General Court Martial.

In the Field,
17 Oct, 1945 Ronald Hawke Pte.

I, No. B.64478 Private Ronald Robert HAWKE, 11 Canadian Repatriation Depot, acknowledge that I have been informed that the convening officer may appoint or apply for the services of an officer holding legal qualifications to act as the prosecutor at my trial by Field-General Court Martial and I have been advised of my rights to retain counsel. I do not intend to retain the services of counsel but desire to have a defending officer assigned to represent me at my said trial. I desire the services of if he is available for this purpose. I waive the 7 days notice mentioned in Rule of Procedure 89 (B).

In the Field,
17 Oct, 1945 Ronald Hawke Pte

LIST OF EXHIBITS

See Summary of Evidence

LIST OF WITNESSES

For the Prosecution - See Summary of Evidence

For the Defence - NIL

STATE OF TRAINING OF ACCUSED

No. B.64478 Private Ronald Robert HAWKE, 11 Canadian Repatriation Depot is a fully trained soldier.

MEDICAL CATEGORY OF ACCUSED

No. B.64478 Private Ronald Robert HAWKE, 11 Canadian Repatriation Depot is Category "L2""H4""S3" and was born in 1922.

MM-67

A/CPL HAWKEN H.

A-37876 A/Cpl. Hawken, Henry,
Highland Light Infantry of Canada,
3 Cdn Infantry Reinforcement Unit.

MM-67

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this fourteenth day of July, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~and that it is not practicable to delay the trial for reference to a superior qualified officer;~~

E.W.H.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if applicable.

* ~~I am unable to appoint~~

~~*(1. Five Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

E.W.H.

~~for the following reasons, namely:—~~

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	A. S. Pettapiece	H.L.I.C.R.U.

Members.

Rank.	Name.	Regiment.
A Captain	to be detailed by O.C.	5 C.I.R.U.
A Lieutenant	to be detailed by O.C.	5 C.I.R.U.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed E.W. Hazlett Brigadier.

Commanding "D" Group, Cdn Reinf Units.

Convening Officer.

Witness A. S. Pettapiece, Major

SCHEDULE

Number, Rank (*a*) Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A-37876 A/Cpl. HAWKEN, Henry. H.L.I. of C. 3 C.I.R.U.	First Charge A.A. Sec.15(1) See Charge Sheet Attached	~~Guilty~~ Guilty	~~Guilty~~ Guilty ~~Sentence to undergo~~ detention for ninety (90) days. 16 July 43	Confirmed 17 July 43 Edwtaedenby Brig

~~Application to be asked of accused, if he pleads not guilty (R. of P. 30 (a)):—~~
~~"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"—~~
~~Answer (To be recorded on separate sheet if necessary).—~~

(Signed) Edwtaedenby Brigadier. (Signed) Arthur J. Pettapiece, Major

Commanding "D" Group, C.R.U.
Convening Officer (d) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 16th day of July 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

*Omit if not applicable.

1. The members of the Court
~~2. The witnesses~~
~~*(3. The Interpreter)~~
*(4. The officers under instruction)

were duly sworn.

Signed this 16th day of July 1943.

Arthur J. Pettapiece, Major.
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (i) on page 742 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~

Signed this 17 day of July 1943.

Edwtaedenby Brig
Confirming Officer.

Promulgated and extracts taken in the case of A 37876 A/Cpl. Hawken, Henry
(*a*) (Dated) 17/July/43 (Signed) D. Militia Staff (Seal)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[20704] W1 47533 242 25,000 7/42 A.& E. S. Ltd. Gp.698
[21745] W1 19088 1159 40,000 7-42

CHARGE SHEET

The accused, A-37876 A/Cpl. Hawken, Henry, Highland Light Infantry of Canada, reinforcement on the strength of 3rd Canadian Infantry Reinforcement Unit, a soldier in the Canadian Army Overseas is charged with:

FIRST CHARGE
A.A. SEC 15 (1) WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

IN THAT HE

In the Field, absented himself without leave from 0600 hours, 23 June 43, until surrendering himself to the Guard Room, 3 C.I.H.U. at 1835 hours, 11 July 43. Total time absent, 18 days, 12 hours and 35 minutes.

J.A. McIntosh

(J.A. McIntosh) Colonel,
Officer Commanding,
3 Cdn. Inf. Reinf. Unit.

Dated,
In the Field
13 July 43.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

E.W. Haldenby

(E.W. Haldenby) Brigadier.
Commander
"D" Group, Cdn Mft Units.

IN THE FIELD
14 July 43.

Arthur S. Bethune Major
President

16th July 43

Medical Officers Certificate.
K.R.(Con) para. 157

I certify that I have this morning examined No. A37576

Sgt Hawken H and in my opinion he is fit to
(rank) (name) unfit

undergo trial by Court Martial.

Station

Date.

(Sgd) Arthur S. Kittyford Maj
(Medical Officer)

amputation case

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Cowgrove, Ranvacks, Aldershot, Hants.
ON THE 16th DAY OF July 1943

The accused 3278276 Pte Gal Hawkes, H. ...Unit. 3 C I R H.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Maj. J.A.L. Rutgers, ...Unit H.Q. C.I.H.
Members Capt. J.F. Ayyott .....Unit. 5 C.I.R.H.
Lt. C.H. Seagfield .....Unit. 5 C.I.R.H.

The officers under instruction are duly sworn:-

Lt. D.R. Church .....Unit Regt. Gp. 1 C.I.R.H.
.....Unit.....
Prosecutor. Lt. A.R. Todd .....Unit. 3 C.I.R.H.
Defending Officer Lt. E.S. Pratt ...Unit. 3 C.I.R.H.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge ~~(s)~~ and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge ~~(s)~~. R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces ~~MFB 355~~ AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
~~(b) Calls witnesses as to character.~~
~~(c) Calls witnesses in mitigation of punishment.~~
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, ~~CHARACTER EVIDENCE~~ and ADDRESS OF ~~ACCUSED OR~~ HIS DEFENDING OFFICER

Attached hereto.

Arthur J. Rutgers
Maj.

July 16th 1918.

Sir:-

I joined the N.Y.N.G. about 3 yrs. ago. Before I enlisted I was legally separated from my wife. I have one child. My wife has been [illegible] Company of other men. I was told upon enlistment that I must support her. All this trouble has deeply bothered me, for some time, & I believe it is the cause of my trouble

Sir:

"

[illegible] Hunter #137176. Co. I.

16 July 1943.

Sir:-

On defence of Cpl Hanbury I would like to say that he has been Overseas 2 years with the Highland Light Infantry of Canada and joined the Army on 11 Dec 40.

He has been a very capable soldier as you can see by his M.F.R. 6 and has worked very hard first gaining his stripe and then the second. As a matter of fact he was to get his 3rd stripe during the period he went A.W.L.

Therefore Sir, I beg this Court to take into consideration Corporal Hanbury's good character and that he has tried to be an efficient soldier. Will you take into consideration his family troubles also considering the punishment, Sir

E. L. Rhodes Lieut.
No. 3 C.I.R.U.
Defending Officer.

EXHIBIT "A"

3 CANADIAN INFANTRY REINFORCEMENT UNIT
DAILY PART II ORDERS
issued by
A/COLONEL J.A. MCINTOSH D.S.O.
OFFICER COMMANDING

Last Order
No.118A
24 June 43

No. 119
25 June 43

---

8. ABSENT WITHOUT LEAVE

(a) A-37876 A/Cpl. Hawken H.H. — A.W.L. from 0600 hrs.
H.L.I. of C. — P.E. "H" Wing — 23 June 43

(W.E. Thorne) Capt.
Records Officer,
3 Cdn. Inf. Reinf. Unit.

EXHIBIT "B"

3 CANADIAN INFANTRY REINFORCEMENT UNIT
DAILY PART II ORDERS
issued by
A/COLONEL J.A. MCINTOSH D.S.O.
OFFICER COMMANDING

LAST ORDER
No. 132
10 July 43

No.133
12 July 43

16. ABSENT WITHOUT LEAVE

(b) The u/m surrendered from A.W.L. at times shown:

A-37876 A/Cpl. Hawken H.H. 1835 hours 11 July 43
H.L.I of C. P.E. "H" Wing

(W.E. Thorne) Capt.
Records Officer,
3 Can. Inf. Reinf. Unit.

SUMMARY OF EVIDENCE

in the case of

Regimental Number A-37876 A/Cpl. Hawken, Henry, Highland Light Infantry of Canada, Reinforcement on the strength of 3rd Canadian Infantry Reinforcement Unit, a soldier in the Canadian Army Overseas.

The evidence is taken on Oath by the direction of the Commanding Officer.

FIRST WITNESS PROSECUTION

Capt. W.E. Thorne, (C.S.M.C.) Records Officer 3 C.I.R.U. having been duly sworn states:

" I am Capt. W.E. Thorne, Records Officer 3 C.I.R.U. and as such have knowledge of all facts herein disposed to. I hereby produce a certified true extract from 3 C.I.R.U. Part II Orders No. 119 dated 25 June 43 and marked Exhibit "A" to this Summary of Evidence showing A-37876 A/Cpl. Hawken, H. (H.L.I of C.) to be absent from his quarters from 0600 hours 23 June 43. I further produce a certified true extract from 3 C.I.R.U. Part II Order No. 133 dated 12 July 43 and marked Exhibit "B" to this Summary Of Evidence showing A-37876 A/Cpl. Hawken H. (H.L.I of C.) to have returned from A.W.L. at 1835 hours 11 July 43.

(W.E. Thorne) Capt.
Records Officer
3 Cdn. Inf. Reinf. Unit.

The evidence is read to the witness.
The accused declines to cross-examine the witness.

The accused was cautioned as follows:-

Do you wish to make any statement or give any evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be used as evidence against you.

After the above caution the accused reserved his defence.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down in the presence and he ring of the accusedand that rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

(D.R. Todd) Lieut.
H.L.I. of C. 3 C.I.R.U.
Officer detailed to take the summary.

Dated, In the Field
13 July 43.

Arthur A. Bettauer Major

Company Conduct Sheet | 15 Apr 41 No. and date of last drunk | Corps H.L.I. of C. | Date of enlistment 11 Dec 40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/F.S./8138 (2965)

Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.

Character

Place	Date of offence	Rank	Dates of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19 Dec 41	Pte		A.A. 15 (1) A.W.L. from 2200 hrs 19 Dec 41 to 2100 hrs 21 Dec 41 (1 day 23 hrs)	Sgt Slidders	12 days pay 12 days F.P.	23 Dec 41	Major McPherson	2 dys pay A.F.
Field	6 Mar 43	A/Cpl		A.A. 15 (1) A.W.L. from 0100 hrs 6 Mar 43 to 1000 hrs 14 Mar 43	CSM Dunham Sgt Hare	reverted to L/Cpl	17 Mar 43	Lt Col H.F. Shantz	7 dys pay A.F. FRI 149 (1) (a)

Certified true copy of original
IN MY POSSESSION

H.L.I. of C. Lieut.

Adtn. A.P.M. Major

(P.T.O.)

M.F.M. 6
(A.F. B.122)
40/P & S/8136 (2965)

No. A37876 Name Hawken, H. | Sqn., Battery, or Company | Corps H.L.I. of C. | Date of enlistment 11 Dec 40 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet: 15 Apr 41 | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19 Dec 41	Pte		A.A. 15 (1) A.W.L. from 2200 hrs 19 Dec 41 to 2100 hrs 21 Dec 41 (1 day 23 hrs)	Sgt Slidders	12 days pay 12 days F.P.	23 Dec 41	Major McPherson	2 dys pay A.F.
Field	6 Mar 43	A/Cpl		A.A. 15 (1) A.W.L. from 0100 hrs 6 Mar 43 to 1000 hrs 14 Mar 43	CSM Dunham Sgt Hare	reverted to L/Cpl	17 Mar 43	Lt Col R.F. Shentz	7 dys pay A.F. FRI 149 (1) (a)

Certified true copy of original
IN MY POSSESSION

H. Hawken Lieut.

Arthur A. Pettypiece Major

(P.T.O.)

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A-57876	A/Cpl.	Hewken, Henry	Highland Light Infantry of Canada

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, K.R., 1940.

* The portion here stated should correspond with the number of entries in the conduct sheets, the sentences being given in the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTIONS.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec. 15 (1)	1 time	two times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of days of military confinement

Nil

There are no entries in the conduct sheet(s) of the accused.

The accused has not been tried by court martial.

A record of the award by a court martial of each punishment specified in section 47 of the Army Act, and of each case in which trial has been dispensed with, is set out in the schedule annexed to this statement.

3. The accused [illegible] beginning on the [illegible] day of [illegible]

4. The accused has been in confinement, awaiting trial on the present charges, for [illegible] days in civil custody, and two (2) 5 days in military custody, making a total of two (2) 5 days, of which nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 26 years 1 month

6. The date of his attestation specified in his attestation paper is 11 Dec.40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs, 7mons, 2days

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs. 7 mons, 2 days service.

9. The accused is entitled to reckon 2 yrs 7 mons, 2 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award [illegible]

11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of [illegible]

12. (In the case of an officer.) The accused holds in the army the rank of [illegible] dated [illegible] and in his regiment (or corps or department) the rank of [illegible] dated [illegible]

(*)15540) W1.30240/342 75,000 12/40 A.S.&W.Ltd. Gp.498

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. A-37876 Rank A/Cpl. Name HAWKEN, HENRY of H.L.I. of C. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charge upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody. M.F. 11.46

Signed this 25th/18th day of July 1942.

Records Officer,
8 Cdn. Inf. Reinf. Unit,
Canadian Army (Overseas).

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of Lance Sgt. years, Date of Promotion 17 Oct 41

In the rank of A/Corporal NJ years, 23 April 42

In the rank of years,

(Strike out if inapplicable. If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through except that in the case of a trial by field general court martial the information must be collected from such sources as are available and the paragraphs concerned amended accordingly.)

LIST OF WITNESSES

PROSECUTION:

Capt. W.E. Thorne (C.M.S.C.) Records Officer 3 C.I.R.U.

DEFENCE:

NIL.

LIST OF EXHIBITS

EXHIBIT "A" Certified true extract of 3 C.I.R.U. part II orders No. 119, dated 25 June 43 para 8 (a).

EXHIBIT "B" Certified true extract of 3 C.I.R.U. part II orders No. 133, dated 12 July 43 para 16 (b).

STATEMENT OF THE ACCUSED

I certify having received free of charge, a copy of the charge sheet, Summary of Evidence and List of Witnesses.

I do desire the services of an Officer to defend my at my forthcoming trial by Court Martial.

A-37876 A/Cpl Hawken H.H.
H.L.I. of C. 3 C.I.H.U.

SN-14

Tpr. Hawkins, A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : A 380 Tpr Hawkins A - 2 CACRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 12(1)(a)	GUILTY	NOT GUILTY	of Desertion but Guilty of absence without leave except that the absence commenced NOT at 2357 hrs 21 JAN/45 but at 0630 hrs 22 JAN/45
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 752, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court :

To undergo detention for period of six (6) months

(Sgd) ..... Judge-Advocate, if any. 27 JAN/45 Date awarded. ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(1), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 8, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 52, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Finding and sentence confirmed

I direct that the ~~accused be not committed to prison or detention barracks until further orders~~.(1) (1. AA 57A. Delete if not used.)

(Sgd) J Rutherford

Date 29 June 45 Commanding 2 Cdn C.R.U. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. 30 Jun 45 Signature of Offr.

A380 Tpr Hawkins, A.

Promulgated and extracts taken, D.H.Q. 30 Jun 45

(W. [illegible]) Capt A Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 9 JUL 1945 EXAMINED D.M.H.Q.

RECORDED AT CMHQ IN AB 156 ... 3 M - 79

FIELD GENERAL COURT-MARTIAL

CFAMR (In lieu of AFAR) 40/F & S/Legal (6144) 4/388

Convened by Order of Brig T J Rutherford, CBE, Comd "E" Gp CRU dated 26 Jun 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 380	Tpr	Albert	HAWKINS	2 CACRU

PROCEEDINGS REVIEWED 9 Jul 45 [illegible] Capt. REVIEWING OFFICER, JAG BRANCH D.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date of) 27 Jun 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs~~ under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Cautions do NOT include all relevant fns RPs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF A95, for seats and instrs on how to record addresses, evidence etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1)
The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 45, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1320 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to ..... as interpreter ? Ans .....~~
~~The Interpreter is sworn.~~(1) Do you object to C 76161 Sgt Beaucamp shorthand writer ? Ans NO.
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	LT-COL	D L REDMAN	HQ CRU
Member	CAPT	J G MIMMS	1 CDN REPAT DEP
Member	LIEUT	R E DIXON	4 CDN REPAT DEP
~~Judge Advocate~~			
Prosecutor	LIEUT	A B WANNAN	2 CACRU
Defending Offr	MAJOR	H HARRISON	2 CACRU

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing at Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO - SIR.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE-ATT
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. NO - SIR. Do you intend to call witnesses on your behalf? Ans. NO - SIR. Are they witnesses as to character only? Ans.
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf AA 95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 41, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

~~D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)~~
~~Or, The President announces that the accused is found Not Guilty on all charges, and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(1. *AA 54(7) (b), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans. NO - SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. BAD RECORD NOTE-ATT.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas AO 109, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(10), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

NO. 2 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT
CANADIAN ARMY ENGLAND

CHARGE SHEET

in the case of

A 380 Trooper Albert HAWKINS, of No 2 Canadian Armoured corps reinforcement unit, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 18(1)(a)
Army Act

WHILE ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he

at East Prith Barracks, Blackdown, Surrey, absented himself at 2359 hrs 21 Jun 45 and remained absent until apprehended by the civilian police at 1630 hrs 9 Jun 45 at No 2, Hillside Cottages, Updown Hill, Windlesham. (TOTAL TIME ABSENT: 156 days, 20 hrs, 31 minutes).

(R. J. Colwell) Colonel
Officer Commanding
No. 2 C.A.C.R.U.

Laurentide Barracks
Witley, Surrey
12 Jun 45

"TO BE TRIED BY FIELD GENERAL COURT MARTIAL"

(T J RUTHERFORD) Brig
Comd
"E" Gp CRU

In the Fd
26 Jun 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A 380	Tpr		Albert	HAWKINS	2 CACRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet ~~(s)~~ attached and on the (date) 25 Jun 45 endorsed by me, ~~he is in all respects unobjectionable~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to obtain the services of a competent qualified offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am advised to appoint X.C. (Asst Offr Judge Adv. Gen.) (Dy or Fd Offr as President) for the purpose I have stated above.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint a Judge Advocate as the Court is Out Station.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	D L Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by OC 1 Repat	1 Repat Dep
Lt	To be detailed by OC 4 Repat	4 Repat Dep

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 26 Jun 45

(Signed personally. RP 105 fn 2.)

(T J RUTHERFORD)

Brig (Rank.)

Commanding "E" Gp CRU

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA65 (to take place of APA2) 40/P & S/1067 (4601)

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
K.R. (Can) Form 557.

I certify that I have this morning examined A380 TPR
(No) (Rank)
HAWKINS A. of #2 C.A.P.C.B.U.
(Unit)
and in my opinion he is (fit) to undergo trial by Court Martial.
Unfit

Station FIELD
Date 27 JUNE 1945

Sgd. [signature]
(Medical Officer)

- TRIAL OF -

A-380 TPR HAWKINS A 2 C A C R U

- PROSECUTION -

FIRST WITNESS

LIEUT A B WAINMAN, 2 CACRU, sworn, states :-

I produce a certified true extract from 2 CACRU Daily Part Two Orders, dated 17 Feb 45, No 42, which relates to the accused.

(EXTRACT MARKED AND FILED EX 1 BY THE COURT)

I produce a certified true extract from 2 CACRU Daily Part Two Orders, dated14 Jun 45, No 138, which relates to the accused.

(EXTRACT MARKED AND FILED EX 2 BY THE COURT)

I produce here with a certificate of apprehension under AA163(1)(m), signed by the Officer i/c of Bagshot Police Station, which relates to the accused.

(CERTIFICATE OF APPREHENSION MARKED AND FILED EX 3 BY THE COURT)

THE DEF OFFR DECLINED TO CROSS-EXAMINE THE WITNESS

THE PROSECUTOR SAID HE HAD NO FURTHER EVIDENCE TO PRODUCE AT THIS POINT.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH R163(B)

THE PROSECUTION IS CLOSED

- DEFENCE -

THE DEF OFFR SAID THAT HE DID NOT INTEND TO HAVE THE ACCUSED GIVE EVIDENCE OR THAT HE WISHED TO CALL ANY WITNESSES BECAUSE THE PROSECUTION HAD FAILED TO PRODUCE ANY EVIDENCE OF AN INTENT TO DESERT ON THE PART OF THE ACCUSED

THE DEFENCE IS CLOSED

Plea for Mitigation

E-3
RM

If the court will bear with me I would like to submit a plea for mitigation of sentence in the case of Tpr. Hawkins.
At the outbreak of hostilities in Sept 39 this man enlisted with the 1st Hussars his hometown Regiment He served with that unit until April 43 when he was posted to what is now 2 CACRU for the purpose of going to Sicily with the 1st Can Army Tk Bde. While at CACRU he was medically examined and found to be an L4. He was then boarded to the 2 CA CRU Depot Battery during which time he had not only passed with the 1st Bde but could no longer return to his old regiment. Away from his regiment for the first time in 3 yrs and feeling that as a categorized man he had no duty left to work for he went AWOL for the first time on the 29 May 43.
Since the summer of 1943 Tpr Hawkins has received no mail from his wife in Canada and all his letters to her have been returned marked no such person at the address. While 2 CACRU he had been employed as a Fitter class B for some time and had repeatedly asked if he could not be trade tested for Fitter A qualification and was given no satisfactory reason as to why he could not. He also gave reasons for obtaining promotion which he felt had less right to it than he did. The worry of domestic troubles coupled with the feeling that he was not getting a square deal with the unit rendered his state of mind such that he failed to return from pass on the 21 Jan 44.
In summing up I would like to point out that this man had a good record while with his regiment and I can personally vouch for this being the regiment at the time and having the

Hawkins working with me in the same squadron. It was not until I left to Ft Hassan, that I realized that his wife had left him and was unhappy in her new surroundings that he went AWOL. Will the Court please take these facts into consideration when passing sentence.

NO. 2 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT

SUMMARY OF EVIDENCE

in the case of

A-380 Tpr Hawkins, A, of No 2 Canadian Armoured Corps Reinforcement Unit, a soldier of the Canadian Army Overseas taken at No 2 CACRU on 13 JUN 45.

The Commanding Officer directs that all evidence be taken on oath:-

FIRST WITNESS: L-2182 Cpl Gustin, S A R, No 2 Cdn Repat Depot "A" Wing, Blackdown, having been duly sworn, states:-

"On Saturday 9 Jun 45 I received a phone call from the civilian police at Bagshot to come and pick up a man. I sent two men in a jeep. They reported back here at 2039 hrs with Tpr Hawkins. He was turned over to a corporal of 2 CACRU on Sunday 10 Jun 45."

The accused declines to cross-examine the witness.

S A R Gustin L-2182

(S A R Gustin) Cpl L-2182
No 2 Cdn Repat Depot

The witness withdraws

SECOND WITNESS: B-97170 Sgt Kern, G E having been duly sworn, states:-

"On the 10 Jun 45 at approximately 1430 hrs, A-380 Tpr Hawkins, A was brought into the unit guard room under escort. As the accused had been absent from 21 Jan 1945 at 2359 hrs, I then placed the accused under close arrest."

The accused declines to cross-examine the witness.

G E Kern

(G E Kern) Sgt B-97170
No. 2 CACRU

The witness withdraws

THIRD WITNESS: Capt W R C Little, Adjutant No 2 CACRU, having been duly sworn, states:-

"I am Adjutant of No 2 CACRU. I produce certified true copy of extract from DO Part II No 42 dated 17 Feb 45 marked Exhibit "B" attached which shows the accused absent from 0630 hrs 22 Jan 45. I also produce certified true copy of extract from DO Part II No 138 dated 13 Jun 45 and marked exhibit "C" which shows the accused taken on strength from desertion.

A H

I also submit as Exhibit "A" Schedule "E" certificate in accordance with section 163(1)(m) of the Army Act.

The accused declines to cross-examine the witness.

W R C Little

(W R C Little) Capt A Adjt
No. 2 C.A.C.R.U.

The witness withdraws.

Question to the accused by officer taking down the Summary of Evidence.

Q.1 Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

Answer by the accused.

A.1 Nothing to say at this time, sir.

Certified Rule of Procedure No 4 (c)(d)(e) and (f) have been complied with.

Taken down by me at Laurentide Camp, Witley, Surrey in the presence and hearing of the accused this 13th day of June 1945.

Lt/Capt
(E Wolfe) Capt
No. 2 C.A.C.R.U.

CERTIFIED TRUE COPY OF NO 2 CACNU DAILY PART II ORDER DATED 17 FEB 45
No 42

14. STRENGTH DECREASE

(a) SOS as das wef 16 FEB 45, having been declared illegally absent by a Ct of Inq from 0630 hrs 20 JAN 45. Deficiencies in kit $20.25 (¾ value).

A-380 Tpr Hawkins, A. (VM A?V "P") Adm Basic

(W.R.C. Little) Capt & Adjt
No. 2 C.A.C.N.U.

E+I

CERTIFIED TRUE COPY NO 138 DAILY PART II ORDERS DATED 14 JUN 45

7. STRENGTH INCREASE

(a) TOS on app from des wef 2030 hrs 9 JUN 45. Posted to Adm Rfts.

A-380 Tpr Hawkins, A.

(W.R.S. Little) Capt & Adjt
No. 2 Cdn Armd Corps Rft Unit

Et 2

SCHEDULE "B"

Certificate in accordance with Section 133(1)(b) of the Army Act

I certify that the person whose description is given below was arrested

at No 2 Hillside Cottages Updown Hill Windlesham at 1830 hrs on the Ninth day of June 1945

At the time of arrest he was wearing (military uniform) or ~~(civilian clothes)~~.

Regimental particulars of officer or soldier referred to above.
(No A-380
(Rank Trooper
(Name Hawkins Albert
(Unit No.4 Depot

Description
(Age 27
(Height 5'6"
(Complexion Dark
(Hair Brown
(Eyes Blue
(Marks Nil

Signature of officer of police in charge of Police Station where the above named person was taken or placed in custody, on arrest.

In charge of Below Street Police Station

E-3
MM

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A-380	Trooper	HAWKINS, Albert	No 2 C.A.C.R.U.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be assigned to the proceedings. The numbers hereto stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness, or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Neglect to the Prejudice one times.

For Absence without leave one times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 15 Mar 43

Date of last entry in Field Conduct Sheet 24 Jun 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. [redacted] Nil

[redacted] Nil

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for Nil days in military custody, *i.e.*, Nil days in open arrest, 18 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 37 years

6. The date of his attestation is 20 Sep 39

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of; GVSM & Clasp

9. [redacted] Nil

[redacted] Nil

Date of Promotion.

[redacted] Nil

[redacted] Nil

[redacted] Nil

*Strike out if not applicable.

†State the military decorations (if any) held by accused.

EXB

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*21072) W1.20722/1701 25,000 9.44 A.& E.W. Ltd. Gp.A32

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 27th day of June 1945

(H. J. Colwell) Colonel
Officer Commanding 2 CACRU

No A-380 Name Tpr Hawkins A | Sqn, Battery, or Company | Corps CAC | Date of enlistment 24.9.39 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/128 (3438)

Date of last entry in Company Conduct Sheet: Nil | No and date of last drunk: Nil | Period not reckoning towards freedom from extra fine | Sheet No 3 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15 Mar 43	Tpr		Neglect to the prejudice AA 40 Neglected to clean rifle.	A614 SQMS Clarke J W	2 days CB	15 Mar 43	Capt D P Seabrook	
Field	29 May 43	Tpr		AA 15(1) WOAS:AWL 2200 hrs 29 May 43 to 2280 hrs 21 Jun 43. Absent 23 days 39 minutes.	S/Sgt Edgar Cpl Lowe FC pay AA Sec Cpl Wayman A	Forf 28 days 46(2)(c)	24 Jun 43	J H Perry Colonel	Forf 24 days pay FR&I 149(1)(a) Forf 28 days pay FR&I 149 (2)
Field	Dec 28 44			Voluntary Blood Donor	H M Lees Capt				

Certified True Copy

(W R Little) Capt & Adjt
No. 2 C.A.C.R.U.

Exc 149

(PTO)

STATEMENT IN ACCORDANCE WITH RULE OF PROCEDURE
14(B)

I, A-380 Tpr HAWKINS, Albert of No 2 CACRU desire to have an officer assigned to represent me at my trial by Court Martial.

If he is available, I desire the services of

A380 TPR Hawkins A

(A-380 Tpr Hawkins, A)
No 2 C.A.C.R.U.

Witley, Surrey
18 Jun 45

STATEMENT IN ACCORDANCE WITH RULE OF PROCEDURE
14(B)

I, A-380 Tpr HAWKINS, Albert of No 2 CACRU desire to have an officer assigned to represent me at my trial by Court Martial.

If he is available, I desire the services of

A380 TPR Hawkins A

(A-380 Tpr Hawkins, A)
No. 2 C.A.C.R.U.

Witley, Surrey
15 Jun 45

4N-120

Pte. Hawkins J.7.

52

(6)

RECORDED AT CMHQ IN AB 160

FIELD GENERAL COURT-MARTIAL

CPASC Thereby of AFAR(1) 40/P.S.C./16/Gen (R1443) 4/38B

Convened by Order dated 21 Feb 44 Comd 6 Inf Div

ACCUSED.

(At the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G 1602	Pte		John Francis Hawkins		12 Bn D.C.L.I.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) on (date(s)) 21 Feb 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provision for conducting the trial see AA 33, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1700 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

~~A5. President to accused: Do you object to as interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(5). If objection, see procedure AA 51, RP 25, 71, 18, 60(5), p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E P Key	
Member	Captain	J B Bridgeford	
Member	Captain	L B Van Ens	
Judge-Advocate			
Prosecutor	Major	A F Wilson	
Defending Offr	Captain	A E D Hampford	

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (3)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused before arraignment make(s) (no) ~~no~~ plea. (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 494 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2 F 5

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AFH 2 p 10

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G 1602 Pte John Francis Hawkins Prmnt Regt Duke of Cornwalls L.I. 12 Bn D.C.L.I.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 18(c) alternative	not guilty	guilty	
2nd	AA 40	not guilty	not guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At present under sentence for N / A beginning on (date) N / A (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which 2 6 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for two years and to be discharged with ignominy from His Majesty's service

(Sgd) — Judge-Advocate, if any. Date awarded: 21 Feb 44 (Sgd) E P Key President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

(Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back Finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.(1)~~ E Hub

(1. AA 57A. Delete if not used.)

(Sgd) E C Hulbert Maj Gen

Date Commanding Officer to Convene Instant Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G1602 Pte Hawkins, J.F.	5 Jan 45	C O'Neill Lt-Col. O.C., 12 Bn, 2 C.S.B.E. Group

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

I certify that there are no entries in the Conduct Sheet of the accused which have not been brought to his notice for the purpose of his making a statement in connection therewith if he so desires.

(Sgd) [illegible] Capt

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to less serious offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty to all charges use second alternative in para D6.) and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E2 of Record Form E.
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on .....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on .....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by comparing paragraphs D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fill here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D6.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....Do you intend to call witnesses on your behalf? Ans .....Are they witnesses as to character only? Ans .....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 80(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court as to (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (4), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans .....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. MFB 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(4), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 99, 108, 119(A), KR Con 308, 330, 563-566, Oversea RO 309, 2222, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(15), 68(7), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

21 Dec 44

To Commanding Officer

In view of the serious nature
and duration of the accused the court
unanimously recommends a
psychiatric examination.

E. L. Lee
myn
President

C 1602 Pte HAWKINS JF N.N.S.H.

8 Jan 45

Referred for assessment by M.O. who states that the court directs he have a psychiatric examination. Notes he is a shy timid lad. The m/n states his sentence of two years has just been promulgated. Charged and convicted of S.I.W. States he didn't have a good enough story and told the truth. Claims he is innocent. G.S.W. rifle was an accident left foot wound outer two toes. Claims he didn't know what an S.I.W. was and didn't understand the proceedings on charge. Felt he was bound to be convicted when it came to a F.G.C.M. Believed he would get a year for criminal negligence. He is mildly depressed. Chief worry is loss of money. He won't be able to buy a truck after the war his chief ambition in life. Does not express a great deal of resentment. Claims he knew of very few cases of S.I.W. among fellows. Had never thought of the act. Three others charged at the same time. Knows of only one man who ever "got away with it."

Has an unfavourable back ground and family history is positive for neuropathic traits. Father was a veteran of the last war, R.N. an unstable type - drank considerably - often left the family for periods of time. Mother had to work and was harsh and irritable. M/M is timid recessive insecure type, without many phobias. Never mixed well, little interested in sports, family moved about a great deal and his education was limited and interrupted. Lived in Scotland until age 7 or 8 then moved to Newfoundland. General knowledge quite limited and localized. Calculation is poor - "forgets ". Civilian employment limited - casual menial type - helper on truck. Has little mechanical knowledge.. Is a poor army adjuster. Borderline knowledge of basic subjects. Could do map reading, but memory poor etc. Compatability limited, few friends activities and interests of small scope. Drinks little. This is his only crime. E.R. fair. Is nervous of machine gun fire but not of shelling. Imagination and comprehension limited as is reason and ability informal testing. He is a dull mediocre immature passive and docile unimaginative type, basically recessive unaggressive with traits of shyness. Naive of outlook and judgement. Adjustment inadequate and indicative of inferiority. Handicapped by and reflects his background of unsecurity and mediocrity. He show mental retardation - mild borderline dull intelligence M 4 S 3. Impression mental retardation.

Sdg J.A.ARMSTRONG Maj

N.P. Specialist.

Certified true copy of original

(C.W.BUNTING) Capt
Adjutant
12 CBR Bn 2 CBR Gp.

CHARGE SHEET

The accused, C.1602 Pte John Francis HAWKINS, North Shore Regiment, on strength 12 Battalion 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 18(2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

in that he

In the Field, on 12 Sep 44, while with his regiment in the line, by discharging his rifle wilfully injured himself by shooting himself in the left foot with intent thereby to render himself unfit for service.

SECOND CHARGE
(Alternative)
Army Act
Sec 40.

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, on 12 Sep 44, while with his regiment in the line, so negligently handled his rifle as to shoot himself in the left foot thereby rendering himself unfit for service.

(A.O. Hood) Lt-Col
OC 12 Bn - 2 CBRG.

In the Field,
13 December 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(E.L.M. Burns) Maj-Gen
OIC
Cdn Sec GHQ 1 Ech - 21 A Gp.

In the Field,
18 December 1944.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G.1602	Pte		John Francis	HAWKINS	(MNSH) 12 Bn 2 CBRG

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 18 Dec 44 endorsed by me, ~~or by an offr of my unit acting~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~as it is impracticable to appoint (a) three Offrs to form the Court, (b) a 2d Offr as President, for the reasons I have already stated herein.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~I hereby appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E.P. LEE	Gen List-Cdn Sec GHQ 1 Ech - 21 A Gp

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	F.A. BAILLARGEON	Gen List-att Cdn Sec GHQ 1 Ech - 21 A Gp.
Capt	E.B. VAN DINE	RCASC - att Cdn Sec GHQ 1 Ech - 21 A Gp

~~RESERVE MEMBER.~~

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Dat 18 Dec 44

E.L.M. Burns (Signed personally. RP 105 fn 2.) Maj-Gen (Rank.)

(E.L.M. Burns)

Commanding Cdn Sec GHQ 1 Ech - 21 A Gp.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40-1 M 5/1697 (6643)

(See overleaf for oaths and notes for use on trial.)

Approved subject to my comments DJA

E L Burns Major President

Elkes
Major
Canada

MEDICAL CERTIFICATE

I certify that I have this morning examined G1002
Pte Hawkins J.R. and find him fit to undergo trial by
Court Martial.

D.P. Middleton, Maj.
Medical Officer.

Date 27 Dec 44

G-1602 Pte. John Francis HAWKINS
NNSH — 12 Bn 2 CIBRGp.

D2 — Prosecutors opening address:

There are no witnesses available as the casualties have been killed or evacuated.

First Witness for the Prosecution

D-3. Major J.P. Middlebro, 20 Can Gen Hosp RCAMC being duly sworn states: I examined the accused. On his left 4th toe is a well healed scar over the proximal joint of the toe due to a penetrating wound in a downward & outward direction. The joint is stiff but no disability in the function of the toe. This could have been caused by a weapon in the man's own hand. I could not tell how for the weapon was held away.

Cross-examined:

He is fit to go back to the line as far as his foot is concerned. He is A-1 as far as his foot is concerned.

RP 83(B) complied with.

Record Witness for the Prosecution

B-76047 S/Sgt Chester H.W., 3 C.S. C Pro Corps having been duly sworn states: I know the accused. I recognize the statement which I took from him. On 15

Dec 1944 I saw the accused at 8 CGH. I produced the statement to him. It is a statement taken on 19 Sep at 1 CG and witnessed by L/Cpl Paterson and Matthews C. Pro C. Signed by the accused. He said he had been cautioned before writing the statement.

Statement read to the Court, marked "Exhibit "A" and is attached herewith.

The defence has no objection to the admission of the statement. No cross-examination.

RP 83(B) complied with.

Third Witness for the Prosecution

B-938446 Cpl Norton, T.H. having been duly sworn states:

I am Cpl in No. 4 C Pro C. I recognize the accused. On 27 Sept. with Sgt. Watkinson I interviewed him. It was a voluntary statement. He was cautioned in the usual way. He stated that he did intend to shoot himself to get out of the line because the going was tough and he couldn't stand it any longer, but then when he did shoot himself it was accidental.

Statement under RP 16 received and marked "Exhibit "B". Copy having been served on Defence 21 December 1944

No Cross-examination.

RP 83(B) complied with.

III

Prosecutor submits NFB 371, signed by accused. Marked as Exhibit "C", attached herewith

D-6

First Witness for the Defence

The accused - G-16054 Pte Hawkins, J. F. NWSH, having been duly sworn states:

I was born at Minto, N.B., 4 June 1925. I enlisted 2 July 43. I came to U.K. 16 June 44, to France in July 44. I remember all the statements I made. The 1st one was made at the Unit. I was at the R.A.P. 2d just been wounded. (Exhibit "C"). The Regt was 10 Km from Boloegne. I was doing guard duty. It was 12 Sept.; about 1600 hrs. We were under shell fire, about 200-300 yds. away from where we were. The guard duty lasted 2 hrs. I was having a smoke and looked over and saw a rifle. I picked up the rifle to look at the sights. I was sitting on the outside of a trench. A fellow was sleeping beside me. I had it across my lap. It was a MARK III 1" Cdn rifle. Then I examined the sights and it went off.

The accused demonstrates the above. I am a Bren gunner. As far as I can remember my hand was around the trigger guard.

TO

I didn't want to give up my Bren gun. That is why I decided to shoot myself. But then I didn't have the nerve. The Officer said to me 3 weeks ~~before~~ this I can't find anyone to relieve you on the Bren so you'll have to hang on. I wanted to do this. I didn't want to be taken off the Bren but I wasn't worried. I don't exactly know how long I'd been in the line. I figure about a month and a half. We'd had a week rest and 36 hours. We'd been through Falaise and a few towns and some woods. The regt had engaged the enemy. We had taken pw's. I don't remember the town where we first went into action; this side of Caen. I had Basic and Advanced Trg in Canada and 2 weeks in England. I had been on exercises in Canada where live ammo was used. I have thrown grenades. I was found as 1st Class shot on Rifle and 1st Class on Bren; had fired 91 PPT and 2 "Masters". We'd had long marches; I wanted out. My wound is healed. I would like to go back as rifleman, not as Bren gunner. I went to Grade ~~VII~~ 7. I was 14. Before I went in the army I drove tank mostly.

I remember the wording of the other statements (Exhibit "L" + "M"). I decided to shoot myself because I heard others talking about it, making it look like an accident

and getting a break. I'd heard one here and there say it. Then I didn't blame the nerve. When it did happen it was an accident. There was nothing else on my mind when it happened. I told my Sgt I was tired and he said he'd look into it. A week before it happened. But I didn't get any rest. The Bren and mags were too heavy. I was No. 1 on the Bren. I've always been A category. I weigh 140. Never had any nervous disease. No brothers in the Army. My Father is in the V.G. of C. I still know it was accidental. I am positive. If I could get back to the Reg't I'd do good as a Rfmn. At the time of the accident I was tired out. Now I've had a rest I could go back.

Cross-examined:

I'm not nervous. I want to be a Rfmn. It wasn't my nerves I don't remember how I pulled the trigger. I didn't see much action as Bren gunner. I had 2 or 3 No 2's. Carried 2 mags in each pouch and the Bren. There was no pressure brought to bear on me when I made the statements ("Exhibits "A" "B" & "C"

RP 86(b) complied with

Prosecutors Closing Address:

All the evidence has been brought out in direct examination by my friend and it speaks for itself. It is not a question of law. He was discontented because of the type of work he had to do. The actual shooting is still unexplained. I do not feel it necessary to say more.

Closing Address by Defence:

I would remind the Court the accused joined the regt as sft. during heavy part of this campaign. On the fringe of Falaise. The NWSH had seen tough action. It was under these circumstances that, although, a 1st class shot on Brens he was made No. 1. It may be the case of the flea tickling the elephant with the crow bar. Just as effective as he would be under these circumstances. He saw action for 1½ months. Became downcast. Not uncommon in lads 18 & 19. Then Pl. Sgt did nothing about giving him a rest. He made a statement (Pros 3 to) then 2 more statements. So what? Would a reasonable man say that one could find intent on the strength of two statements

It is impossible to convict on such evidence. This is not intent for intent requires cool & calculated thought to establish prima facie case. I ask you to dismiss on the 1st charge. To be blameworthy on the 2nd charge? No. These lads are facing a new kind of warfare. Accordingly it will have to weighed if it is even negligence. The last thought. His willingness to serve as often. He is a cat. He will go back to his kept and prove himself to be a good soldier.

E 1. The accused states:
My father was in the Navy in the last war. He was born in Nfld. My Mother was born in Scotland. I assign $15.00 per month to my Mother. I have one sister. My conduct sheet is clean as far as Overseas is concerned.

Sgt
Instructor.

Statement of F.1602 Pte. Hawkins J. F. North Nova Scotia Regt, 3 Cdn Inf Div. taken at 2 Cdn. General Hospital, 19 Sept 44.

I have been cautioned by F/Sgt C B Mascall of the Cdn. Provost Corps that I am not obliged to say anything unless I wish to do so, but anything I do say will be taken down in writing and may be used as evidence.

I do know I understand this warning I sign my name herewith.

Sgd - (Hawkins) F

I am John Francis Hawkins, age 19, of the North (Nova Scotia Highlanders) Nova Scotia Regt. I came to France as a reinforcement and joined the regt. just before they went out of the line for a week's rest. I was in action with them from that time until the 12 Sept 44 when I received the injury to my foot. That date the outfit was on reserve and we were resting in trenches. One of the other lads, whose name I cannot remember, and myself had just come off guard and were sitting outside our trench. He was already asleep and I picked up his rifle to look at the sights. I held the rifle on my lap with the barrel pointing towards my left foot. I was playing with the sights with my left hand and my right hand held the rifle by the butt with

my finger on the trigger. I pulled the trigger and the gun discharged wounding me in the left foot. I do not know what made me pull the trigger unless it was that the pack which I was leaning up against slipped and made me jump.

I have read over the above statement and it is true.

Witnessed - [illegible]
B Coy Guard Coy

Sgd. J F Hawkins

Statement taken by A-56056 Pte C B Wands.
Cdn. Provost Corps, 7 Cdn. General Hospital, 17 Sept. 44
Witnessed by B-76047, S/Sgt. [illegible]

This is Exhibit 'A' referred to in the Summary of Evidence in the case of G.1602 Pte HAWKINS, J.F., taken before me this 13th day of December, 1944.

J R Bell Lt.
Officer taking Summary.

NOTICE OF INTENTION TO CALL A WITNESS WHOSE EVIDENCE IS NOT CONTAINED IN THE SUMMARY OF EVIDENCE (R.P. 76)

B.

To: Defending Officer
In the case of G.1602 Pte HAWKINS, J.F., NNSH

Take notice that in the trial by FGCM of the above named soldier that U.2015 Sgt Gatehouse, W.H., SIS, Cdn Provost Corps, will state that while being interviewed and under caution, Pte Hawkins stated "I did intend to shoot myself because the going was too tough and I couldn't stand it any longer but when I did shoot myself, it was accidental."

This will be corroborated by B.93846 Cpl NORTON, T.H., Cdn Provost Corps.

R Thiessen

Prosecutor.

REPORT ON WOUNDS OR OTHER INJURIES, EXCEPT ON WOUNDS RECEIVED IN ACTION

(Refer to Overseas R.O. 2022)

Casualties Section
Can. Sec. G.H.Q. 1 Ech. 21 Army Gp.

PART I

No. G.1602 Rank Pte. Name Hawkins, J.V.

Unit North Nova Scotia Highlanders was reported on the 13 Sept. 19 44

suffering from a compound fracture 4th toe left foot. Flesh wound at 5th toe.

The disability is of a MINOR nature, and in all probability will NOT interfere with his future efficiency as a soldier.

He Claims (Here insert "claims" or "does not claim") that he was in the performance of military duty at the time of the accident.

(If the soldier makes no claim that he was on duty at the time the certificate below (Part II) should be signed by him.)

STATION In the Field

DATE 13 Sept. 44

K.A. Campbell Capt
Medical Officer in charge

PART II CERTIFICATE TO BE SIGNED BY SOLDIER

I, ... hereby declare that the injury sustained by me on the ..... DID NOT occur while I was in the performance of military duty.

..... Soldier's Signature

STATION ..... Signature of Medical Officer

DATE .....

PART III

STATEMENT OF COMMANDING OFFICER:

(a) Was the individual in the performance of military duty? YES

(b) Nature of duty? Enemy Action Infantry

(c) Was it incurred in a game or other form of physical recreation organized with the approval of unit commander? NO

(d) If it was incurred on leave, was such leave with or without pay? NO

(e) Was anyone to blame? No

Whom? NA

(f) Did the injury occur on military premises and if so what part of such premises? NO

(g) Court of Inquiry (See Overseas R.O. 2022, paragraph 9)

(i) Has one been held? When? NO

(ii) Will one be held? When? There are no witnesses to the incident. No statement is attached hereto

(h) Disciplinary action taken (if any required) or other remarks Apparently due to negligent handling of weapon. Not available for disciplinary action at present

Forbes
(D.J. Forbes) Lt.-Col.
Cond North Nova Scotia Highlanders

Date 13 Sept. 44

M.F. B 37)
40/F & S/883 (3012)

See Part IV Overleaf

PART IV

STATEMENT OF INJURED PERSON:

(Short statement by injured person of the circumstances of the injury. Signed statements of witnesses, or of persons to whom the injured person may have mentioned his injury, to be attached.)

At approximately 1545 hours on 13 Sept. 44 shortly after coming off guard duty, I was sitting down having a smoke. Seeing a rifle beside me I picked it up and while looking over the sights and trigger, it discharged and the bullet passed through my left foot. I reported to the North Nova Scotia Highlanders R.A.P. immediately for treatment. It was not my own rifle.

Hawkins J T

I recommend that Pte Hawkins be returned to his Unit for disciplinary action.

(WN Wickwire), Major
DAAG 3 Cdn Inf Div
for and by the direction of
(D C Spry), Maj-Gen,
GOC 3 Cdn Inf Div

29 Sep 44

G.1692 Pte. Hawkins, J.F.

The marginally named was admitted to R.A.P. at 1545 hours 13 Sept 44 suffering from compound fracture of middle phalanx 4th toe left foot and flesh wound at end of 5th toe. The injury will probably not result in any disability at a later date. Hawkins claims the muzzle was about 8" from toe when fired. There is some blackening of skin around wound which may be due to powder burn. He further claims that gun accidently discharged while he was adjusting the sights of someone elses rifle. There were no witnesses.

K.A. Campbell Capt.

(K.A. Campbell) Capt.
Medical Officer
North Nova Scotia Highlanders.

13 Sept. 44

Casualties Section
Can. Sec. G.H.Q. 1 Echelon Army Cas.

No. 61602 Name HAWKINS | Sqn., Battery, or Company | Corps C I C | Date of enlistment 2 JUL 43 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/P & /B136 (2965)

Date of last entry in Company Conduct Sheet J P N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature O.C. Company, etc. | Character

Date	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks

Entered in regimental Conduct Sheet

Confined to be released from military custody

12 OCT 1944

(P.T.O.)

SUMMARY OF EVIDENCE

Summa ry of Evidence in the case of G.1602 Pte HAWKINS, J.F., NNSH, on strength 12 Bn 2 CBRG, charged with, when on active service wilfully injuring himself with intent thereby to render himself unfit for service (AA Sec 18(2)), alternative, when on active service neglect to the prejudice of good order and military discipline (AA Sec 40).

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS

Major G.M. Malone, 8 Cdn Gen Hospital RCAMC, sworn, states:

I, Major G.M. Malone, No.8 Cdn Gen Hospital, state that this day I have examined the accused and find a healed scar on the medial aspect of the fourth left toe, another scar on the volar aspect in the same toe and a small scar on the volar aspect of the fifth toe at the tip. These wounds are all healed well. There is a partial ankylosis of the distal phalangeal joints fourth left toe. In my opinion this should not interfere with his efficiency as a soldier. I consider him fit for duty. The wound could have been caused by a bullet.

The accused declines to cross-examine this witness.

G.M. Malone Major

Witness

SECOND WITNESS

B.76047 S/Sgt Chester, H.W., SIB, Cdn Provost Corps, Inc 'C' Cdn Sec GHQ 1 Ech, 21 A Gp, sworn, states:

I recognize the accused, G.1602 Pte Hawkins, J.F. To-day, 13 Dec 44, I saw the accused at No.8 Cdn Gen Hospital and showed him an original of a statement witnessed by L/Cpl Pederson, PA, and L/Cpl Bassell, CE. I asked him if this was a statement which he made on 19 Sep 44 to the two above named NCOs. He said yes. I asked him if he had been cautioned before making this statement and he agreed that he had been cautioned and signed a written caution so that he understood. I submit this statement. The accused was not under arrest at the time of making the statement

The accused declines to cross-examine this witness.

H.W. Chester

Witness.

The statement referred to in the evidence of the above witness is attached hereto as Exhibit 'A'.

The accused is cautioned as follows:

Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you do say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to say anything.

The accused does not call any witnesses.

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

J R Lee Lt.

In the Field,
Dec 44.

Officer detailed to take the Summary of Evidence.

No.7 Cdn. Gen. Hospital
B.L.A. 27 Sept. 44

Subject :- Re - G-1602 Pte. HAWKINS J.F.
North Nova Scotia Highrs., 3 Div.

1. On the 19 Sept. 44, the a/m soldier was interviewed at No.7 Canadian General Hospital by L/Cpls. PEDERSON and MASSELL respecting suspected S.I.W. - gunshot wound in the left foot. He made a written statement which, however, lacked detail.

2. On the 27 Sept. 44, at about 1000 hours, on instructions received from Lt. BARRE, and in company with B-93846 Cpl. NORTON T.H., I interviewed Pte. HAWKINS with a view to obtaining possible further information which might assist in the investigation of his case. I cautioned him that he was not obliged to make a futher statement unless he wished to do so, but that whatever he did say would be taken down in writing and could be given in evidence. He declined to make a further written statement, but while under caution said, quote," I did intend to shoot myself because the going was too tough and I couldn't stand it any longer, but when I did shoot myself, it was accidental."

3. Pte. HAWKINS appeared very reticent regarding the circumstances of the wounding and seemed unable or would not give further information which might assist in the investigation.

4. In the opinion of the writer this man could if he wished say much more about the incident than he has already done, but either for fear of consequence or timidity declines to do so.

.....Capt.
(U-2015 GAISHOUSE W.H.)
SIG? Cdn. Pro. Corps,
Att. No.7 Cdn. Gen. Hosp.

I was present when G-1602 Pte. HAWKINS was cautioned and corrocorate the above report.

.....Cpl.
(B-93846 NORTON T.H.)
4 Cdn. Pro. Coy.,
Att. No.7 Cdn. Gen. Hosp.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G 1602 Pte John Francis Hawkins Nth NS Highrs 12 Bn 2 C B R Gp

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 18 (2)	Not Guilty	Guilty	
	alternative			
2nd	AA 40	Not Guilty	Not Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of list see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting prosecut. trial—a total of 14 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for two years and to be discharged with ignominy from His Majestys Service.

(Sgd) [illegible] Judge-Advocate (if any). 27 Dec 44 Date awarded. (Sgd) E P Lee Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 127, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: AA 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 51A. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be kept in custody or released (detention, barrack arrest) until further ordered. (1. AA 57A. Delete if not used.)

(Sgd) E J BURNS MAJ GEN
Date Commanding Officer, Canadian Section GHQ 1 Echn
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
G/602 Pte HAWKINS JH	5 Jan 45	AO Hood LT-Col O.C., 12 Bn 2 C B R Gp

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CPA98 (To Item 9 of AFASY 40/P & S 1668 (4970)) 4/38B

Convened by Order of Maj-General Burns Comd Offr I/c Cdn Sec G H Q 1 Echn 21 Army Gp dated 19 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G.6102	Pte	Certified true copy B N Waugh Major D J A, Cdn Sec G H Q 1 Echn 21 Army Gp.	John Francis	HAWKINS	12 Bn 2 CB RG

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 27 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 16/57

A1. The President, Members, ~~auditor Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Cautions do NOT include all relevant fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 758. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and hints on how to record addresses, exhibits, etc., which must be hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1100 hours trial commenced.(1)

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(2).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to be [illegible] interpreter [illegible] shorthand writer [illegible] Prosecutor [illegible] Defending Offr [illegible] to evidence being given.~~

(1. RP 72. Delete, if norm employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 13, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E P	Lee	Gen List Cdn Sec GHQ 1 Echn 21 A Gp
Member	Capt	F A	Baillargeon	Gen List Cdn Sec GHQ 1 Echn 21 A Gp
Member	Capt	E P	Van Dine	RCASC att Cdn Sec GHQ 1 Echn 21 A Gp
Judge-Advocate				
Prosecutor	Major	R F	Wilson	Linc & Welld R Att Cdn Sec GHQ 1 Echn 21 A Gp
Defending Offr	Capt	WCD	Hungerford	RCASC att Cdn Sec GHQ 1 Echn 21 A Gp

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused before arraignment make(s) (no) ~~no~~ plea(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the witnesses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ except for election of accused's counsel not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President proceeds the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. D o C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A Vol 2 page 90

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 90, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 32(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

~~D4. The Prosecution is closed (1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s) (2). The Court is cleared, and considers the submission (3). The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans *Yes Sir I desire evidence myself on oath* Do you intend to call witnesses on your behalf? Ans *Yes Sir* Are they witnesses as to character only? Ans *not*
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the *first* charge is, being subject to confirmation, will be promulgated later.(1) ~~In the alternative that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated.~~
(*1. AA 54(2) (b), RP 45, 120(F). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans *Yes Sir to give evidence myself on oath.*
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor ~~states~~ *has not available and tenders* ~~the~~ copy ~~(ies)~~ of Conduct Sheet(s)(1), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex *A* and Ex ..... respectively.(2)
(*1. MFB 353 or MFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans *Yes Sir*
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

27 Dec 44

To Confirming Officer

In view of the obvious nervous condition of the accused the court respectively recommends a psychiatric examination.

sgd E P Lee Major
President

C 1602 Pte HAWKINS JF N.N.S.H.

8 Jan 45

Referred for assessment by M.O. who st ates that the court directs he have a psychiatric examination. Notes he is a shy timid lad. The m/n states his sentence of two years has just been promulgated. Charged and convicted of S.I.W. States he didn't have a good enough story and told the truth. Claims he is innocent. G S W frifle was an accident left foot wound outer two toes. Claims he didn't know what an S.I.W. was and didn't understand the proceedings or charge. Felt he was bound to be convicted when it came to a F.G.C.M. Believed he would get a year for criminal negligence. He is mildly depressed. Chief worry is loss of money. He won't be able to buy a truck after the war his chief ambition in life. Does not express a great deal of resentment. Claims he knew of very few cases of S.I.W. among fellows. Had never thought of the act. Three others charged at the same time. Knows of only one man who ever "got away with it".

Has an unfavourable back ground and family history is positive for neuropathic traits. Father was a veteran of the last war, R.N. an unstable type - dr ank considerably - often left the family for periods of time. Mother had to work and was harsh and irritable. M/M is timid recessive insecure type, without many phobias. Never mixed well, little interested in sports, family moved about a great deal and his education wa s limited and interrupted. Lived in Scotland until a ge 7 or 8 then moved to Newfoundland. General knowledge quite limited and localiz ed. Calculation is poor - "forgets". Civilian employment limited - causal menial type - helper on truck. Has little mechanical knowledge. Is apoor army adjuster. Borderline knowledge of basic subjects. Could do map reading, but memory poor etc. Compatability limited, few friends ativities and interests of small scope. Drinks little. This is his only crime. B.R. fair. Is nervous of machine gun fire but not of shelling. Imagination and comprehension limited as is reason and ability informal testing. He is a dull mediocre immature passive and docile unimaginative type, basically recessive unagressive with traits of shyness. Naive of outlook and fudgement. Adjustment inadequate and indicative of inferiority. Handicapped by and reflects his background of insecurity and mediocrity. He show mental retardation - mild borderline dull intelligence M 4 S 3. Impression mental retardation.

Sdg J.A. ARMSTRONG Maj

N.P. Specialist.

Certified true copy of original

(C.W.BUNTING) Capt
Adjutant
12 CBR Bn 2 CBR Gp.

CHARGE SHEET

The accused, G1602 Pte John Francis HAWKINS, North Novia Scotia Highlanders, on strength 12 Battalion 2 Canadian Base Reinforcement Group, a soldier of the C Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 18(2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

in that he

In the field, on 12 Sep 44, while with his regiment in the line, by discharging his rifle wilfully injured himself by shooting himself in the left foot with intent thereby to render himself unfit for service.

SECOND CHARGE
~~(Alternative)~~
Army Act
Sec 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, on 12 Sep 44, while with his regiment in the line, so negligently handled his rifle as to shoot himself in the left foot thereby rendering himself unfit for service.

In the Field
13 December 1944

signed
(A. U. Hogg). Lt-Col
O. C. 12 Bn 2 C B R Gp.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the field
18 December 1944

signed
(E.L.M. Burns) Maj-Gen
CIC
Cdn Sec GHQ 1 Echn - 21 A Gp

Elbee Reg
Lieutenant

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G.1602	Pte		John Francis	HAWKINS	(NNSH) 12 Fd Sec 2 C D R Gp

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 16 Dec 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate (Name) the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	
Major	E P Lee	Gen List Cdn Sec GHQ 1 Echn - 21 AG

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	
Capt	F A BAILLARGEON	Gen List Cdn Sec GHQ 1 Echn - 21 A Gp
Capt	E B VAN DINE	Gen List Cdn Sec GHQ 1 Echn - 21 A Gp
~~(Rank.)~~	~~WARNING MEMBER.~~	
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
~~(Rank.)~~	~~JUDGE-ADVOCATE.~~	
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium (Country.)

Date

signed (Signed personally. RP 105 fn 2.) (W.L.M. Burns) Maj-Gen (Rank.)

Commanding Cdn Sec GHQ 1 Echn - 21 A Gp.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (AFAAS (In lieu of AFAS) 40-P & R-1867 14931)

(See overleaf for oaths and notes for use on trial.)

E P Lee Maj
President

MEDICAL CERTIFICATE

I certify that I have this morning examined C 1602 Pte HAWKINS JF and find him fit to undergo trial by Court Martial.

signed
Major
Medical Officer.

Date 27 Dec 44

G.1602 Pte John Francis HAWKINS

NNSH - 12 Bn 2 CBRGp

D-5

Prosecutors opening address:

There are no witnesses available as the comrades have been killed or evacuated.

First Witness for the prosecution

Major J P Middlebro, 20 Cdn Gen Hosp RCAMC being duly sworn states:

I examined the accused on his left 4th toe is a well healed scar over the proxunal joint of the toe due to a penetrating wound in a downward and outward direction. The joint is stiff but no disability in the function of the toe. This could have been caused by a weapon in the mans own hand. I could not tell how far the weapon was held away.

Cross-examined:

He is fit to go back to the line as far as his foot is concerned. He is A-1 as far as his foot is concerned.

RP (83)E complied with.

Second Witness for the prosecution

B76047 S/Sgt Chester H W, Cdn Pro Corps having been duly sworn states:

I know the accused. I recognize the Statementwhich I took from him. On 15 Dec 44, I saw the accused at 5 Cdn Gen Hosp. I produced this statement to him. It is a statement taken on 19 Dec 44 at 7 C C and witnessed by L/Cpl Paterson and Mathews C Pro C, signed by the accused. He said he had been cautioned before he made the statement.

Statement read to the Court marked Exhibit "A" and is attached herewith.

The defence has no objection to the admission of the statement. No cross-examination.

RP 83 (B) complied with.

Third Witness for the prosecution

B93846 Cpl Morton T H, having been duly sworn states:

I am Cpl in No 4 C Pro C. I recognize the accused. On 27 Sept with Sgt Catehouse, I interviewed him, it was a voluntary statement. He was cautioned in the usual way He stated that he did intend to shoot himself to get out of the line because the going was tough and he couldn't stand it any longer; but then when he did shoot himself it was accidental.

Statement under RP 76 received and marked Exhibit "B" copy having been served on Defence 21 December 1944.

No cross-examination.

RP 83 (B) complied with.

Prosecution submits MFR 371, signed by the accused. Marked as Exhibit "C", attached herewith.

D-6
First Witness for the Defence

The accused G1602 Pte Hawkins JF, NNSH, having been duly sworn states:

I was born at Minto, N.B., 4 June 1925. I inlisted 2 July 43. I came to the U.K. 16 June 44; to France in July 44.

I remember all the statements I made. The one was made at the unit. I was at the RAP, I'd just been wounded. (Exhibit "C"). The regiment was 10 km from Boulogne. I was doing guard duty. It was 12 Sept; about 1600 hrs. We were under shell fire, about 200 - 300 yards away from where we were. The guard duty lasted about 2 hrs. I was having a smoke and looked over and saw a rifle. I picked up the rifle to have a look at the sights. I was sitting on the outside of a trench. A fellow was sleeping beside me. I laid it across my lap. It was a Mk IV 1 Cdn Rifle. Then I examined the sights and it went off.
The accused demonstrates the above.
I am a Bren gunner. As far as I can remember my hand was around the trigger guard. I didn't want to give up my Bren gun. That is why I decided to shoot myself. But then I didn't have the nerve. The officer said to me 3 weeks before this I can't find anyone to relieve you on the Bren so you'll have to hang on. I wanted to do this. I didn't want to be taken off the Bren but I wasn't worried. I don't exactly know how long I'd been in the line. I figure about a month and a half. We'd had about a weeks rest and a 36 hrs. We'd been through Falaise and a few towns and some MG. posts. The regt had engaged the enemy, we had taken PWs. I don't remember the town where we first went into action; this side of Caen. I had basic and advanced training in Canada and two weeks in England. I had been on exercises in Canada where live amn was used, I have thrown grenades, I was passed 1st class shot on rifle and 2nd class on Bren; had fired PIAT and 2" mortar. We'd had long marches; I wanted rest. My wound is healed. I would like to go back as rifleman, not as Bren gunner. I went to grade 7, I was 14. Before I went in the army I drove truck mostly. I remember the wording of the other statements (Exhibits "B" & "A"). I decided to shoot myself because I heard other talking about it, making it look like an accident and getting a break. I'd heard one here and there say it. Though I didn't have the nerve. When it did happen It was an accident. There was nothing else on my mind when it happened. I told my Sgt I was tired and he said he'd look into it.,a week before it happened. But I didn't get any rest. The Bren and mags were too heavy. I was No.1 on the Bren. Ive always been A category. I weigh 140. Never had any serious disease. No brothers in the army. My father is in the V.G. of C. I still know it was accidental. I am positive. If I could get back to the regiment I'd do good as a rfmn. At the time of the accident I was tired out. Now I've had a rest I could go back.

Cross-examined:

I'm not nar vous. I want to be a rfmn. It wasn't my nerves. I don't remember how I pulled the trigger. I didn't see much a ction as Bren gunner. I had 2 or 3 No. 2s. Carried 2 mags in each pouch and the bren. There was no pressure brought to bear on me when I made the statements (Exhibits "A" "B" & "C".

RP 83 (B) complied with.

Prosecutors closing address:

All the evidence has been brought out in direct examination by my friend and it speaks for itself. It is not a question of trg. He was discontented because of the type of work he had to do. The actual shooting is still unexplained. I do not think it necessary to say more.

~~Closing address by~~

Closing address by defence:

I would remind the Court the accused joined the regt as rft. during heavy part of this campaign. On the fringe of Falais. The NNSH had seen tough action. It was under those circumstances that, although 2nd class shot on the Bren he was made No. 1. It may be the case of the flea tickling the elephant with the crow bar. Just as effective as he would be under those circumstances He saw action for 18 months. He became downcast. Not uncommon in lads 18 or 19. His pl sjt did nothing about giving him a rest. He made a statement (AFD 371). Then 2 more statements. So what? Would a reasonable man say that one could find intent on the strength of his statements. It is impossible to convict on such evidence. He is not intact for intent requires cool & calculated thought to establish prima facie mens rei. I ask you to dismiss on the 1st charge. To be blame worthy on the second charge? No. These lads are facing a new kind of warfare. Accordingly it will have to weighed if it is even negligence. The last thought, his willingness to serve as rfmn. He is A cat. He will go back to his regiment and prove himself to be a good soldier.

E-1 The accused states:

My father was in the Navy in the last war. He was born in Nfld. My mother was born in Scotland. I assign 15.00 per month to my mother. I have one sister. My conduct sheet is clean as far as overseas is concerned.

Exhibit "A"

Statement of G1602 Pte Hawkins J F, North Shore Regiment 3 Cdn Inf Div, taken at 7 Cdn General Hospital, 19 Sept 44.

I have been cautioned by L/Cpl C E Mansell of the Cdn Provos t Corps that I am not obliged to say anything unless I wish to do so, but anything I do say will be taken down in writing and may be used as evidence. To show I understand this warning I sign my name herewith.

Sgd Hawkins JF

I am John Francis Hawkins, age 19, of the North Nova Scotia Highlanders. I came to France as a reinforcement and joined the regt just before they went out of the lines for a weeks rest. I was in action with them from that time until the 12th Sept 44 when I received the injury to my foot. That date the outfit was on reserve and we were resting in trenches. One of the other lads, whose name I cannot remember, and myself had just come off guard duty and were resting outside our trench. He was already asleep and I picked up his rifle to look at the sights. I held the rifle on my lap with the barrel pointing towards my left foot. I was playing with the sights with my left hand and my right hand held the rifle by the buttwith my finger on the trigger. I pulled the trigger and the gun discharged wounding me in the left foot. I do not know what made me pull the trigger unless it was that the pack which I was leaning up against slipped and made me jump.

I have read over the above statement and it is true.

Witnessed FM Pedesser 13 Cdn Pro Coy sgd JF Hawkins

Statement taken by A56056 L/Cpl CP Wassell, Cdn Provost Corps, 7 Cdn General Hospital, 19 Sept 44. Witnessed by B76047 S/Sgt RWB Best.

This is Exhibit "A" referred to in the Summary of Evidence in the case of G.1602 Pte HAWKINS, JF., taken before me this 13th day of December, 1944.

J B Barr Lt
Offr taking Summary

NOTICE OF INTENTION TO CALL A WITNESS WHOSE EVIDENCE IS NOT CONTAINED IN THE SUMMARY OF EVIDENCE (R.P. 76)

To. Defending Officer
In the case of C.1602 Pte HAWKINS, F.F., NNSH

Take notice that in the trial by FGCM of the above named soldier that U.2015 Sgt Gatehouse, W.H., SIS, Cdn Provost Corps, will state that while being interviewed and under caution, Pte Hawkins stated "I did intend to shoot myself because the going was too tough and I couldn'tt stand it any longer but when I did shoot myself, it was accidental."

This will be corroborated by B.93846Cpl MORTON, T.H., Cdn Provost Corps.

R F Willsace

Prosecutor

REPORT ON WOUNDS OR OTHER INJURIES, EXCEPT ON WOUNDS RECEIVED IN ACTION
(Refer to Overseas RO 2022)

PART I

No G1602 Rank Pte Name WATKINS J.F.

Unit North Nova Scotia Highlanders was reported on the 13 Sept 1944 suffering from compound fracture 4th toe left foot. Flesh wound at 5th toe.

The disability is of a Minor nature, and in all probability will not interfere with his future efficiency as a soldier.

He claims that he was in the performance of military duty at the time of the accident. (If the soldier makes no claim that he was on duty at the time the certificate below (Part II) should be signed by him)

Station in the field
Date 13 Sept 44 K Campbell Capt
Medical Officer in charge

PART II CERTIFICATE TO BE SIGNED BY SOLDIER

I,.....hereby declare that the injury sustained by me on the.....did not occur while I was in the performance of military duty .....
Soldiers signature
Station.....)signature
)of Medical
Date.....). Officer
)

PART III
STATEMENT OF COMMANDING OFFICER

(A) Was the individual in the performance of military duty? Yes

(B) Nature of duty front line defence

(C) Was it incurred in a game or other form of physical recreation organized with the approval of the unit commander? No

(D) If it was incurred on leave, was such leave with or without pay? No

(E) Was anyone to blame? No

(F) Did the injury occur on military premises and if so what part of such premises? No

(G) Court of Inquiry (See Overseas R.O. 2022 paragraph 9).
(i) Was one been held? When? No
(ii) Will one be held? When? There are no witnesses to the event MOs statement is attached hereto

(H) Disciplinary action taken (if any required) or other remarks. Apparently due to neglect handling of weapon. Not available for disciplinary action at present.

sgd DF Forbes Lt-Col
Date 13 Sept 44 Comd. North Nova Scotia Highlanders.

G.1602 Pte Hawkins JF

The marginally named was admitted to R.A.P. at 1545 hours 13 Sept 44 suffering from compound fracture of middle phalanx 4th toe left foot and flesh wound at end of 5th toe. The injury will probably not result in any disability at a later date. Hawkins claims the muzzle was about 8" from toe when fired. There is some blackening of skin around wound which may be due to powder burn. He further claims that gun accidently discharged while he was adjusting the sights of someone elses rifle. There were no witnesses

signed
(K.A. Campbell) Capt
Medical Officer
North Nova Scotia Highlanders

13 Sept 44

SUMMARY OF EVIDENCE

Summary of Evidence in the case of G.1602 Pte HAWKINS J.F., RNSW, on strength 12 Bn 2 CBRG, charged with, when on active service wilfully injuring himself with intent thereby to render himself unfit for service (AA Sec 15(2)), alternative, when on active service neglect to the prejudice of good order and military discipline (AA Sec 40).

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS Major G.M. Malone, 8 Cdn Gen Hospital RCAMC, sworn, states:

I, Major G.M. Malone, No. 8 Cdn Gen Hospital, state that this day I have examined the accused and find a healed scar on the medial aspect of the fourth left toe, another scar on the volar aspect in the same toe and a small scar on the volar aspect of the fifth toe at the tip. These wounds are all healed well. There is a partial ankylosis of the distal phalangeal joints fourth left toe. In my opinion this should not interfere with his efficiency as a soldier. I consider him fit for duty. The wound could have been caused by a bullet.

The accused ~~does not~~ declines to cross-examine this witness.

signed
G G Malone MAJOR
Witness

SECOND WITNESS B.76047 S/Sgt Chester, W.W., SIB, Cdn Provost Corps, Inc 'C' Cdn Sec GHQ 1 Echn, 21 A Gp, sworn, states:

I recognize the accused, G.1602 Pte Hawkins, J.F. To-day, 13 Dec 44, I saw the accused at no. 8 Cdn Gen Hospital and showed him an original of a statement witnessed by L/Cpl Pederson, PF, and L/Cpl Hassell, CB. I asked him if this was a statement which he made on 19 Sep 44 to the two above named NCOs. He said yes. I asked him if he had been cautioned before making this statement and he agreed that he had been cautioned and signed a written caution so that he understood. I submit this statement. The accused was not under arrest at the time of making this statement.

The accused declines to cross-examine this witness

sgd WW Chester
Witness

The statement referred to in the evidence of the above witness is attached hereto as Exhibit 'A'.

The accused is cautioned as follows:

Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you do say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to say anything.

The accused does not call any witnesses.

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

J B Barrie Lt
Officer detailed to take the Summary of evidence

In the field,
Dec 44.

No. 7 Cdn Gen. Hospital
27 Sept 44 B.L.A.

Subject :- Re - C-1602 Pte. HANKINS J.F.
North Nova Scotia Highrs., 3 Div.

1. On the 19 Sept. 44, the a/m soldier was interviewed at no. 7 Canadian General Hospital by 1/Cpls. PEDERSON and MASCELL respecting suspected S.I.W. - gunshot wound in the left foot. He made a written statement which, however, lacked detail.

2. On the 27 Sept. 44, at about 1000 hrs, on instructions received from Lt. EARLE, and in company with B-03846 Cpl. NORTON, T.N., I interviewed Pte. HANKINS with a view to obtaining possible further information which might assist in the investigation of his case. I cautioned him that he was not obliged to make a further statement unless he wished to do so, but that whatever he did say would be taken down in writing and could be given in evidence. He declined to make a further written statement, but while under caution said, quote, " I did intend to shoot myself because the going was too tough and I couldn't stand it any longer, but when I did shoot myself, it was accidental."

3. Pte. HANKINS appeared very reticent regarding the circumstances of the wounding and seemed unable or would not give further information which might assist in the investigation.

4. In the opinion of the writer this man could if he wished say much more about the incident than he has already done, but either for fear of consequence or timidity declines to do so.

sgd.(W2015 GATEHOUSE W.H.Sgt
S.I.B. Cdn Pro Corps
Att. No. 7 Cdn Gen Hospital.

I was present when C1602 Pte HANKINS was cautioned and corroborate the above report.

sgd.B03846..NORTON T.N...Cpl
4 Cdn Pro Coy
Att. No. 7 Cdn. Gen. Hospital

No G1602 Name HAWKINS | Sqn, Battery or Company | Corps G I C | Date of enlistment 2 Jul 43 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 136) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet J F N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Certified to be a true extract from the regimental books and documents in my custody.

12 Oct 44 signed Lt
Officer i/c Records
Cdn Sec GHQ 2nd Sch 21 A Gp

(PTO)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G 16602 Pte John Francis Hawkins Nth NS Highrs 12 Bn 2 C B R Gp

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 18 (2)	Not Guilty	Guilty	
2nd Alternative AA 40	Not Guilty	Not Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 722, and in lieu of AA see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for two years and to be discharged with ignominy from His Majestys Service.

(Sgd) ..... Judge-Advocate, if any. 27 Dec 44 Date awarded. (Sgd) E P Lee Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back Finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 33, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) E J BURNS MAJ-GEN

Date ..... Commanding Officer 1/c CANADIAN SECTION GHQ 1 ECH Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

61602 Pte HAWKINS J F 5 JAN 45 A O Hood Lt-Col

OC, 12 Bn, 2 C.B.R. Group

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4W 120

FIELD GENERAL COURT-MARTIAL

CPA900 (Revised for AFA37) 4/38B

Convened by Order of Maj-General Burns Offr i/c Cdn Sec Comd G.H.Q. 1 Ech 21 Army Gp dated 18 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G.6102	Pte		John Francis	HAWKINS	N NS Highrs 12 Bn 2 CB RG

certified true copy
D J A
Can Sec GHQ 2 Ech 21 Army Gp

PROCEEDED ON REVIEW BY D.J.A. Sec GHQ 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 27 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 18/57

A1. The President, Members, ~~waiting Members, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fmn ROs. For guidance on procedure when a variation in this form arises, see Fmn for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for cards and instrs on how to record addresses, evidence, etc., which terms are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-75, 77, 78, 94, 103, 119, 126.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1700 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. ~~President to accused: Do you object to an interpreter? Ans~~ ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO. Do you object to an shorthand writer? Ans~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E P	Lee	Gen List Cdn Sec GHQ 1 Ech 21 A Gp
Member	Capt	F A	Baillargeon	Gen List Cdn Sec GHQ 1 Ech 21 A Gp
Member	Capt	E B	Van Dine	RCASC att Cdn Sec GHQ 1 Ech 21 A Gp
Judge-Advocate				
Prosecutor	Major	R F	Willson	Linc & Welld R Att Cdn Sec GHQ 1 Ech 21 A Gp
Defending Offr	Capt	WCD	Hungerford RCASC a tt Cdn Sec GHQ 1 Ech 21 A Gp	

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~no~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

~~Copy in enclosure document~~

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form .....

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A Vol 2 page 90

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 37(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 and 7, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not charged the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(E). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex.....initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. ~~The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission(3). The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. *yes sir to give evidence myself on oath.* Do you intend to call witnesses on your behalf ? Ans. *No Sir.* Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1; 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I ~~of~~ of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding ~~is~~ of the Court on the *first* charge ~~is~~, being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans. *yes sir to give evidence myself on oath.*
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor ~~gives~~ *puts in* Statement(s) as to Character and Particulars of Service(1), ~~and~~ certified true copy (~~ies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. D and Ex.....respectively.(3) *D2*
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. *Yes Sir*
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 30. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

27 Dec 44

To Confirming Officer

In view of the obvious nervous condition of the accused the court respectively recommends a psychiatric examination.

sgd E P Lee Major
President

C 1602 Pte HAWKINS JF N.N.S.H.

8 Jan 45

Referred for assessment by M.O. who st ates that the court directs he have a psychiatric examination. Notes he is a shy timid lad. The m/n states his sentence of two years has just been promulgated. Charged and convicted of S.I.W. States he didn't have a good enough story and told the truth. Claims he is innocent. G S W frifle was an accident left foot wound outer two toes. Claims he didn't know what an S.I.W. was and didn't understand the proceedings or charge. Felt he was bound to be convicted when it came to a F.G.C.M. Believed he would get a year for criminal negligence. He is mildly depressed. Chief worry is loss of money. He won't be able to buy a truck after the war his chief ambition in life. Does not express a great deal of resentment. Claims he knew of very few cases of S.I.W. among fellows. Had never thought of the act. Three others charged at the same time. Knows of only one man who ever "got away with it".

Has an unfavourable back ground and family history is positive for neuropathic traits. Father was a veteran of the last war, R.N. an unstable type - dr ank considerably - often left the family for periods of time. Mother had to work and was harsh and irritable. M/N is timid recessive insecure type, without many phobias. Never mixed well, little interested in sports, family moved about a great deal and his education wa s limited and interrupted. Lived in Scotland until a ge 7 or 8 then moved to Newfoundland. General knowledge quite limited and localiz ed. Calculation is poor - "forgets". Civilian employment limited - causal menial type - helper on truck. Has little mechanical knowledge. Is apoor army adjuster. Borderline knowledge of basic subjects. Could do map reading, but memory poor etc. Compatability limited, few friends ativities and interests of small scope. Drinks little. This is his only crime. B.R. fair. Is nervous of machine gun fire but not of shelling. Imagination and comprehension limited as is reason and ability informal testing. He is a dull mediocre immature passive and docile unimaginative type, basically recessive unagressive with traits of shyness. Naive of outlook and fudgement. Adjustment inadequate and indicative of inferiority. Handicapped by and reflects his background of unsecurity and mediocrity, He show mental retardation - mild borderline dull intelligence M 4 S 3. Impression mental retardation.

Sdg J.A. ARMSTRONG Maj

N.P. Specialist.

Certified true copy of original

(C.W.BUNTING) Capt
~~Adjutant~~
12 CBR Bn 2 CBR Gp.

CHARGE SHEET

The accused, G1602 Pte John Francis HAWKINS, North Novia Scotia Highlanders, on strength 12 Battalion 2 Canadian Base Reinforcement Group, a soldier of the 2 Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 18(2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

in that he

In the field, on 12 Sep 44, while with his regiment in the line, by discharging his rifle wilfully infured himself by shooting himself in the left foot with intent thereby to render himself unfit for service.

SECOND CHARGE
(Alternative)
Army Act
Sec 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, on 12 Sep 44, while with his regiment in the line, so negligently handled his rifle as to shoot himself in the left foot thereby rendering himself unfit for service.

In the Field
13 December 1944

signed
(A. U. Hood). Lt-Col
O. C. 12 Bn 2 C B R Gp.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the field
18 December 1944

signed
(E.L.M. Burns) Maj-Gen
OIC
Cdn Sec GHQ 1 Ech - 21 A Gp

Allen May
President

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G.1602	Pte		John Francis	HAWKINS	(NNSH) 12 Bn 2 C B R Gp

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 1 Dec 44 endorsed by me, ~~(or by an offr of my staff for me),~~ " To be tried by Field General Court-Martial ". EPLP

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr~~ EPLee
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder~~ EPLee
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	
Major	E P Lee	Gen List Cdn Sec GHQ 1 Ech - 21 AG

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	
Capt	F A BAILLARGEON	Gen List Cdn Sec GHQ 1 Ech - 21 A Gp
Capt	E B VAN DINE	Gen List Cdn Sec GHQ 1 Ech - 21 A Gp
[redacted]		

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
~~JUDGE ADVOCATE~~		

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium (Country.)

Date 1 Dec 44

signed (Signed personally. RP 105 fn 2.)
(E.L.M. Burns)
Commanding Cdn Sec GHQ 1 Ech - 21 A Gp.
Convening Officer.

Maj-Gen (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA86 (1n 3en) of AFA3 10/F & S/1697 (4691)

(See overleaf for oaths and notes for use on trial.)

EPLee Maj
President

MEDICAL CERTIFICATE

I certify that I have this morning examined G 1602 Pte HAWKINS JF and find him fit to undergo trial by Court Martial.

signed
Major
Medical Officer.

Date 27 Dec 44

G.1602 Pte John Francis HAWKINS

NNSH - 12 En 2 CBRGp

D-5

Prosecutors opening address:

There are no witnesses available as the comrades have been killed or evacuated.

First Witness for the prosecution

Major J P Middlebro, 20 Cdn Gen Hosp RCAMC being duly sworn states:

I examined the accused on his left 4th toe is a well healed scar over the proxunal joint of the toe due to a penetrating wound in a downward and outward direction. The joint is stiff but no disability in the function of the toe. This could have been caused by a weapon in the mans own hand. I could not tell how for the weapon was held away.

Cross-examined:

He is fit to go back to the line as far as his foot is concerned. He is A-1 as far as his foot is concerned.

RP (83)B complied with.

Second Witness for the prosecution

B76047 S/Sgt Chester H [illegible], Cdn Pro Corps having been duly sworn states:

I know the accused. I recognize the Statementwhich I took from him. On 15 Dec 44, I saw the accused at 8 Cdn Gen Hosp. I produced this statement to him. It is a statement taken on 19 Dec 44 at 7 C C and witnessed by L/Cpl Paterson and Mathews C Pro C, signed by the accused. He said he had been cautioned before he made the statement.

Ctatement read to the Court marked Exhibit "A" and is attached herewith.

The defence has no objection to the admission of the statement. No cross-examination.

RP 83 (B) complied with.

Third Witness for the prosecution

B93846 Cpl Morton T H, having been duly sworn states:

I am Cpl in No 4 C Pro C. I recognize the accused. On 27 Sept with Sgt Catehouse, I interviewed him, it was a voluntary statement. He was cautioned in the usual way He stated that he did intend to shoot himself to get out of the line because the going was tough and he couldn't stand it any longer; but then when he did shoot himself it was accidental.

Statement under RP 76 received and marked Exhibit "B" copy having been served on Defence 21 December 1944.

No cross-examination.

RP 83 (B) complied with.

Prosecution submits MFB 371, signed by the accused. Marked as Exhibit "C", attached herewith.

D-6
First Witness for the Defence

The accused G1602 Pte Hawkins JF, NNSH, having been duly sworn states:

I was born at Minto, N.B., 4 June 1925. I inlisted 2 July 43. I came to the U.K. 16 June 44; to France in July 44.

I remember all the statements I made. The one was made at the unit, I was at the RAP, I'd just been wounded. (Exhibit "C"). The regiment was 10 km from Boulogne. I was doing guard duty. It was 12 Sept; about 1600 hrs. We were under shell fire, about 200 - 300 yards away from where we were. The guard duty lasted about 2 hrs. I was having a smoke and looked over and saw a rifle. I picked up the rifle to have a look at the sights. I was sitting on the outside of a trench. A fellow was sleeping beside me. I laid it across my lap. It was a Mk IV 1 Cdn Rifle. Then I examined the sights and it went off.
The accused demonstrates the above.
I am a Bren gunner. As far as I can remember my hand was around the trigger guard. I didn't want to give up my Bren gun. That is why I decided to shoot myself. But then I didn't have the nerve. The officer said to me 3 weeks before this I can't find anyone to relieve you on the Bren so you'll have to hang on. I wanted to do this. I didn't want to be taken off the Bren but I wasn't worried. I don't exactly know how long I'd been in the line. I figure about a month and a half. We'd had about a weeks rest and a 36 hrs. We'd been through Falaise and a few towns and some UC. nasts. The regt had engaged the enemy, we had taken PWs. I don't remember the town where we first went into action; this side of Caen. I had basic and advanced training in Canada and two weeks in England. I had been on exercises in Canada where live amn was used, I have thrown grenades, I was passed 1st class shot on rifle and 2nd class on Bren; had fired PIAT and 2" mortar. We'd had long marches; I wanted rest. My wound is healed. I would like to go back as rifleman, not as Bren gunner. I went to grade 7, I was 14. Before I went in the army I drove truck mostly . I remember the wording of the other statements (Exhibits "B" & "A"). I decided to shoot myself because I heard other talking about it, making it look like an accident and getting a break. I'd heard one here and there say it. Though I didn't have the nerve. When it did happen It was an accident. There was nothing else on my mind when it happened. I told my Sgt I was tired and he said he'd look into it.,a week before it happened. But I didn't get any rest. The Bren and mags were too heavy. I was No.1 on the Bren. Ive always been A category, I weigh 140, Never had any serious disease. No brothers in the army. My father is in the W.D. of C. I still know it was accidental. I am positive. If I could get back to the regiment I'd do good as a rfmn. At the time of the accident I was tired out. Now I've had a rest I could go back.

Cross-examined:

I'm not ner vous. I want to be a rfmn. It wasn't my nerves. I don't remember how I pulled the trigger. I didn't see much a ction as Bren gunner. I had 2 or 3 No. 2s. Carried 2 mags in each pouch and the bren. There was no pressure brought to bear on me when I made the statements (Exhibits "A" "B" & "C".

RP 83 (B) complied with.

Prosecutors closing address:

All the evidence has been brought out in direct examination by my friend and it speaks for itself. It is not a question of trg. He was discontented because of the type of work he had to do. The actual shooting is still unexplained. I do not think it necessary to say more.

~~Closing address by~~

Closing address by defence:

I would remind the Court the accused joined the regt as rft. during heavy part of this campaign. On the fringe of Falais. The NNSH had seen tough action. It was under those circumstances that, although 2nd class shot on the Bren he was made No. 1. It may be the case of the flea tickling the elephant with the crow bar. Just as effective as he would be under those circumstances He saw action for 1½ months. He became downcast. Not uncommon in lads 18 or 19. His pl sjt did nothing about giving him a rest. He made a statement (MFB 371). Then 2 more statements. So what? Would a reasonable man say that one could find intent on the strength of his statements. It is impossible to convict on such evidence. He is not intact for intent requires cool & calculated thought to establish prima facie mens rei. I ask you to dismiss on the 1st charge. To be blame worthy on the second charge? No. These lads are facing a new kind of warfare. Accordingly it will have to weighed if it is even negligence. The last thought, his willingness to serve as rfmn. He is A cat. He will go back to his regiment and prove himself to be a good soldier.

E-1 The accused states:

My father was in the Navy in the last war. He was born in Nfld. My mother was born in Scotland. I assign 15.00 per month to my mother. I have one sister. My conduct sheet is clean as far as overseas is concerned.

Exhibit "A"

Statement of G1602 Pte Hawkins J F, North Shore Regiment 3 Cdn Inf Div, taken at 7 Cdn General Hospital, 19 Sept 44.

I have been cautioned by L/Cpl C B Massell of the Cdn Provos t Corps that I am not obliged to say anything unless I wish to do so, but anything I do say will be taken down in writing and may be used as evidence. To show I understand this warning I sign my name herewith.

Sgd Hawkins JF

I am John Francis Hawkins, age 19, of the North Nova Scotia Highlanders. I came to France as a reinforcement and joined the regt just before they went out of the lines for a weeks rest. I was in action with them from that time until the 12th Sept 44 when I received the injury to my foot. That date the outfit was on reserve and we were resting in trenches. One of the other lads, whose name I cannot remember, and myself had just come off guard duty and were resting outside our trench. He was already asleep and I picked up his rifle to look at the sights. I held the rifle on my lap with the barrel pointing towards my left foot. I was playing with the sights with my left hand and my right hand held the rifle by the buttwith my finger on the trigger. I pulled the trigger and the gun discharged wounding me in the left foot. I do not know what made me pull the trigger unless it was that the pach which I was leaning up against slipped and made me jump.

I have read over the above statement and it is true.

Witnessed FM Pedesser 13 Cdn Pro Coy sgd JF Hawkins

Statement taken by A56056 L/Cpl CB Massell, Cdn Provost Corps, 7 Cdn General Hospital, 19 Sept 44. Witnessed by B76047 S/Sgt HWB Best.

This is Exhibit "A" referred to in the Summary of Evidence in the case of G.1602 Pte HAWKINS, JF.,taken before me this 13th day of December, 1944.

J B Barr Lt
Offr taking Summary

NOTICE OF INTENTION TO CALL A WITNESS WHOSE EVIDENCE IS NOT CONTAINED IN THE SUMMARY OF EVIDENCE (R.P. 76)

To. Defending Officer
In the case of G.1602 Pte HAWKINS, F.F., NSH

Take notice that in the trial by FGCM of the above named soldier that U.2015 Sgt Gatehouse, W.W., SIS, Cdn Provost Corps, will state that while being interviewed and under caution, Pte Hawkins stated "I did intend to shoot myself because the going was too tough and I couldn't stand it any longer but when I did shoot myself, it was accidental."

This will be corroborated by F.93846Cpl NORTON, T.W., Cdn Provost Corps.

R F Williams

Prosecutor

REPORT ON WOUNDS OR OTHER INJURIES, EXCEPT ON WOUNDS RECEIVED IN ACTION
(Refer to Overseas RO 2022)

PART I

No C1602 Rank Pte Name HAWKINS J.F.

Unit North Nova Scotia Highlanders was reported on the 13 Sept 1944 suffering from compound fracture 4th toe left foot. Flesh wound at 5thtoe.

The disability is of a Minor nature, and in all probability will not interfere with his future efficiency as a soldier.

He claims that he was in the performance of military duty at the time of the accident. (If the soldier makes no claim that he was on duty at the time the certificate below (Part II) should be signed by him)

Station in the field
Date 13 Sept 44

K Campbell Capt
.....
Medical Officer in charge

PART II CERTIFICATE TO BE SIGNED BY SOLDIER

I,.....hereby declare that the injury sustained by me on the.....did not occur while I was in the performance of military duty .....
soldiers signature
Station.....}signature
}of Medical
Date.....}. Officer
}

PART III
STATEMENT OF COMMANDING OFFICER

(A) Was the individual in the performance of military duty? Yes

(B) Nature of duty front line defence

(C) Was it incurred in a game or other form of physical recreation organized with the approval of the unit commander? No

(D) If it was incurred on leave, was such leave with or without pay? No

(E) Was anyone to blame? No

(F) Did the injury occur on military premises and if so what part of such premises? No

(G) Court of Inquiry (See Overseas R.O. 2022 paragraph 9).
(i) Has one been held? When? No
(ii) Will one be held? When? There are no witnesses to the event MOs statement is attached hereto

(H) Disciplinary action taken (if any required) or other remarks. Apparently due to neglect. handling of weapon. Not available for disciplinary action at present.

sgd DF Forbes Lt-Col
Comd.North Nova Scotia Highlanders.

Date 13 Sept 44

G.1602 Pte Hawkins JF

The marginally named was admitted to R.A.P. at 1545 hours 13 Sept 44 suffering from compound fracture of middle phalanx 4th toe left foot and flesh wound at end of 5th toe. The injury will probably not result in any disability at a later date. Hawkins claims the muzzle was about 8" from toe when fired. There is some blackening of skin around wound which may be due to powder burn. He further claims that gun accidently discharged while he was adjusting the sights of someone elses rifle. There were no witnesses

signed
(K.A. Campbell) Capt
Medical Officer
North Nova Scotia Highlanders

13 Sept 44

SUMMARY OF EVIDENCE

Summary of Evidence in the case of G.1602 Pte HAWKINS J.F., NNSH, on strength 12 Bn 2 CBRG, charged with, when on active service wilfully injuring himself with intent thereby to render himself unfit for service (AA Sec 18(2)), alternative, when on active service neglect to the prejudice of good order and military discipline (AA Sec 40).

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS Major G.M. Malone, 8 Cdn Gen Hospital RCAMC, sworn, states:

I, Major G.M. Malone, No. 8 Cdn Gen Hospital, state that this day I have examined the accused and find a healed scar on the medial aspect of the fourth left toe, another scar on the volar aspect in the same toe and a small scar on the volar aspect of the fifth toe at the tip. These wounds are all healed well. There is a partial ankylosis of the distal phalangeal joints fourth left toe. In my opinion this should not interfere with his efficiency as a soldier. I consider him fit for duty. The wound could have been caused by a bullet.

The accused ~~declines~~ declines to cross-examine this witness.

signed
G M Malone Major
Witness

SECOND WITNESS R.76047 S/Sgt Chester, H.W., SIS, Cdn Provost Corps, Inc 'C' Cdn Sec GHQ 1 Ech, 21 A Gp, sworn, states:

I recognize the accused, G.1602 Pte Hawkins, J.F. To-day, 13 Dec 44, I saw the accused at no. 8 Cdn Gen Hospital and showed him an original of a statement witnessed by L/Cpl Pederson, PM, and L/Cpl Bassell, CD. I asked him if this was a statesent which he made on 19 Sep 44 to the two above named NCOs. He said yes. I asked him if he had been cautioned before making this statement and he agreed that he had been cautioned and signed a written caution so that he unierstood. I submit this statement. The accused was not under arrest at the time of making this statement.

The accused declines to cross-examine this witness

sgd HW Chester
Witness

The statement referred to in the evidence of the above witness is attached hereto as Exhibit 'A'.

The accused is cautioned as follows:

Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you do say or any evidence you give will be taken fown in writing and may be given in evidence.

The accused declines to say anything.

The accused does not call any witnesses.

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

J B Barrie Lt
Officer detailed to take the Summar y of evidence

In the field,
Dec 44.

No. 7 Cdn Gen. Hospital
27 Sept 44 B.L.A.

Subject :- Re - G-1602 Pte. HAWKINS J.F.
North Nova Scotia Highrs., 3 Div.

1. On the 19 Sept. 44, the a/m soldier was interviewed at no. 7 Canadian General Hospital by 1/Cpls. PEDERSON and MASSELL respecting suspected S.I.W. - gunshot wound in the left foot. He made a written statement which, however, lacked detail.

2. On the 27 Sept. 44, at about 1000 hrs, on instructions received from Lt. BARRE, and in company with B-93846 Cpl. NORTON, T.H., I interviewed Pte. HAWKINS with a view to obtaining possible further information which might assist in the investigation of his case. I cautioned him that he was not obliged to make a further statement unless he wished to do so, but that whatever he did say would be taken down in writing and could be given in evidence. He declined to make a further written statement, but while under caution said, quote, " I did intend to shoot myself because the going was too tough and I couldn't stand it any longer, but when I did shoot myself, it was accidental."

3. Pte. HAWKINS appeared very reticent regarding the circumstances of the wounding and seemed unable or would not give further information which might assist in the investigation.

4. In the opinion of the writer this man could if he wished say much more about the incident than he has already done, but either for fear of consequence or timidity declines to do so.

sgd. [illegible] Capt
S.I.S. Cdn Pro Corps
Att. No. 7 Cdn Gen Hospital.

I was present when G1602 Pte HAWKINS was cautioned and corroborate the above report.

sgd. B93846 NORTON, T.H. Cpl
4 Cdn Pro Coy
Att. No. 7 Cdn. Gen. Hospital.

No G1602 Name HAWKINS | Sqn, Battery or Company | Corps C I C | Date of enlistment | 2 Jul 43 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40-7-45/136 (3438)

Date of last entry in Company Conduct Sheet | J F N/A | No and date of last drunk | N/A | Period not reckoning towards freedom from extra fine | N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Certified to be a true extract from the regimental books and documents in my custody.

12 Oct 44 signed Lt
Officer i/c Records
Cdn Sec GHQ 2nd Ech 21 A Gp

(9770)

A.A. 74

PTE HAWKINS R.

O. H. M. S.

M. F. B. 870

A-2-74

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this fifteenth day of March, 1943

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery, First Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

*[I am unable to appoint—

*[Three Officers to form the Court]

*[A Field Officer as President.]

for the following reasons, namely—]

* Omit if not applicable.

President.

Rank.	Name.	Regiment.
Maj	W. Hunt	2 Cdn Inf Bde Wksp

Members.

Rank.	Name.	Regiment.
Capt	C.E. Baker	9 Cdn Fd Amb
Capt	V.E. Aksim	A Sec 1 Cdn Div Sigs
Lieut	~~[illegible]~~ WAITING MEMBER G.N. MANNING	A Sec 1 Cdn ~~Div~~ Sigs

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

*Signed (A. Bruce Matthews) Brigadier,
Commanding CRA 1 Cdn Div.
Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
L 2178 Pte Ralph HAWKINS, Sask LI (MG)	1st Charge Sec 17 AA	Guilty	Guilty 30 days detention	I confirm the findings and sentence of the court
	2nd Charge Sec 40 AA	~~Guilty~~ withdrawn W.S.		

W. Stewart A/Maj
18 March 1943

W.H. Matthews Brig.
21 Mar 43.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) W.H. Matthews (Signed) W. Stewart A/Maj.
(A. Bruce Matthews) Brigadier, Commanding CRA 1 Can Div. President.
Convening Officer (*c*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 18th day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this 18th day of March 1943

W. Stewart A/Maj
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~

"W.H."

Signed this 21 day of Mar 1943.

W.H. Matthews Brigadier.
Confirming Officer.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Promulgated and extracts taken in the case of L 2178 Pte RALPH HAWKINS

(*a*) (Dated) MAR 23 1943 (Signed) A.D. Mullins Lt-Col

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B-2

CHARGE SHEET

The Accused, No. L-2178 Private HAWKINS, Ralph 1st Bn. Sask.L.I.(MG), a soldier of the Canadian Army Overseas, is charged with:-

First Charge
A. A. Sec. 17

WHEN CONCERNED IN THE CARE OF PUBLIC PROPERTY, STEALING THE SAME

in that he, in the field, on or about 10 MAR 43, being employed as a cook and being concerned in the care of one tin of plums and one tin of tea, public property; stole the same.

ALTERNATIVE
Second Charge
A.A. Sec. 40.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he, in the Field was found proceeding on leave, improperly in possession of the public property referred to in the First Charge.

11 MAR 43.

(A.W. Embury), Major,
A/C.O., Sask.L.I.(MG).

TO BE TRIED BY FIELD GENERAL COURT MARTIAL:

Date 15 Mar 43

Convening Officer.

MEDICAL OFFICER'S CERTIFICATE.

CERTIFIED that I have today examined - L2178 Pte. Hawkins, R., of the Sask.L.I.(MG) C.A.Overseas, and find him FIT/~~UNFIT~~ to undergo trial by Court Martial.

18 MAR 43.

W. Fowler Capt.
(W. Fowler), Capt RCAMC.,
R.M.O., Sask.L.I.(MG) C.A.O.

Jon Stewart Maj

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held at Bechet on the 18th day of March 19 43 by order of Brigadier A. B. Matthews Commanding CRA 1st Cdn Div. dated the 15th day of March 19 43

A/Maj. Wm S. Hunt President.

Members.

Capt. C. E. Baker
Capt. W. L. Thorne

, Judge Advocate.

Trial of* L 2175 Pte Ralph Hawkins

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that Capt C. E. Baker is not available to serve owing to absence on release, and Lt G. H. Manning , waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Lieut D. R. Wells.

Counsel‡ or defending officer† Lieut G. L. Bastedo

At 1320 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. no Wm Hunt

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
10M—8-41 (1319)
H.Q. 1772-89-224

B

The President, members and judge-advocate are duly sworn.

~~The following officers (under instruction) are duly sworn.~~

Charge-Sheet

Instruction. *If the accused has elected to be tried under Army Act, sec. 56 (8) the fact should be here recorded.*

The charge sheet is signed by the President, marked P 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

withdrawn by prosecutor *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to ~~the~~ first charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused L 2178 Pte Ralph Hawkins
is found guilty of when concerned in the case of public property, stealing same

*The summary (or abstract) of evidence is read, marked E, signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment ~~says~~.—

~~[or~~ hands in a written statement, which is read, marked G, signed by the President, and attached to the proceedings.]

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Cross-examined: [illegible] (continued).

2. In your association with Pat Hawkins, did you ever find him dishonest?

A. No sir

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused L 2178 Pte Ralph Hawkins
is found guilty of when concerned in the care of public property, stealing same

*The summary (or abstract) of evidence is read, marked E, signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment ~~says~~ —

[or hands in a written statement, which is read, marked G, signed by the President, and attached to the proceedings.]

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character? *Question to the accused.*

I wish to call witnesses *Answer.*

Evidence as to character.

I am, 21838, Pte Lahey, J., Pte Hawkins + ~~myself~~ I have known each other + worked together at Saskatoon, Sask, Dundurn and were together on a cooking course at Aldershot; and worked together in the kitchen at Borden. He possessed first-class in his course. In the group that we were working with he was always considered as a good cook and was respected as a good type of man. I have never known him to get into any trouble or do any wrong.

6 Qrs. ~~examined~~:

2. Previous to Pte Hawkins being arrested, what would you say his reputation in the Battalion was?

a - Previous to his arrest, I knew him as a man of good character.

2nd Witness

I am 41625 Corporal Shearer, W. I first met Pte Hawkins, at Camp in Steyning in 1942 where he served under me as a cook in the Sergeants Mess. I found him a very good cook and dependable. He worked under me again this winter in Scotland in a large kitchen where I found him still the same.

Q Same

2. From your statement, would you say if you had not always found Pte Hawkins a very obedient worker and a conscientious individual?

a Yes sir

2 ~~Corpl Shearer did you know that Pte Hawkins admitted taking a test of tea from the M.T.~~ not admitted by Hawk.

E

SUMMARY OF EVIDENCE in the case of L2178 Pte. HAWKINS, Ralph of the 1st Bn. Saskatoon Light Infantry (MG).

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness for the Prosecution.

L2475 Cpl. Anderson, D.K., "B" Coy, Sask.L.I.(MG) C.A.O. having been sworn states:-

I am L2475 Cpl. Anderson, D.K. Corporal Cook of "B" Company Sask.L.I.(MG).
On returning from exercise "PRESENT" on 22 FEB 43, I picked up Pte. Hawkins' pack with the intention of returning it to his quarters. The pack felt heavy. I lifted the flap and looked inside. I saw two tins of ration plums. Only one tin returned to the food stores. I suspected Pte. Hawkins of theft and reported the matter to CQMS Pickles.

D K Anderson Cpl.

The accused declined to question this witness.

Second Witness for the Prosecution.

L1473 CQMS Pickles, W.F., "B" Coy, Sask.L.I.(MG) having been sworn states:-

I am L1473 CQMS Pickles, W.F., Company Quartermaster Sergeant of "B" Coy, Sask.L.I.(MG).

Question - On what day was this case reported to you?

Answer: - It was reported to me on 10 MAR 43 and was also mentioned to me a couple of days before that by Cpl. Anderson. As a result of my conversation with Cpl. Anderson, I suspected that Pte. Hawkins had two tins of plums in his possession. On 10 MAR 43 when Pte. Hawkins was proceeding on leave, I informed Sgt. Moore of the Regimental Police of the information on the whole case and he detailed L/Cpl. Sharp and Pte. Cochrane to follow Hawkins from billets to the station and check his belongings to see if he had these rations with him. I produce one tin of tea, Marked Exhibit "C", and one tin of plums, marked Exhibit "D". These rations are Government property and correspond exactly with the rations found in Pte. Hawkins' possession.

W F Pickles

The accused declined to ~~xxx~~ cross-examine this witness.

Third Witness for the Prosecution

L1062 L/Cpl. Sharp, R.F.W., Sask.L.I.(MG) having been sworn states:-

I am L1062 L/Cpl. Sharp, R.F.W. of the Regimental Police, 1st Bn. Sask.L.I.(MG). At approximately 1600 hours on 10 MAR 43, Pte. Cochrane and I were detailed by Provost Sergeant Moore to apprehend L2178 Pte. Hawkins, R., who was proceeding on leave, before he reached the railway station and to check his kit for rations suspected of having been stolen. Pte. Cochrane and I apprehended Pte. Hawkins at approximately 1700 hrs. I produce one tin of plums marked Exhibit "A", and one tin of tea marked Exhibit "B" which were found in possession of Pte. Hawkins when we checked his kit at the time of arrest. These rations were removed from the small case carried by the accused conteining his kit, marked exhibit "H".

Sharp R.F.W. L/Cpl

The accused declines to cross-examine this witness.

Fourth Witness for the prosecution

L2084 Pte. Cochrane, T., 1st Bn. Sask.L.I.(MG) having been sworn states:-

I am L2084 Pte. Cochrane, T. of the Regimental Police of the Saskatoon Light Infantry (MG). At approximately 1600 hrs on 10 MAR 43 Provost Sgt. Moore detailed me to accompany L/Cpl. Sharp. We were detailed to apprehend L2178 Pte. Hawkins, R., who was proceeding on leave before he reached the station and to check his kit for Government rations suspected of being in his possession. L/Cpl. Sharp and I apprehended L2178 Pte. Hawkins, R. at approximately 1700 hrs. From the kit of Pte. Hawkins, Marked Exhibit "D", L/Cpl. Sharp produced Exhibits "A" and "B". The accused was placed under close arrest and returned to the guard room.

Cochrane T.

The accused declined to question this witness.

The accused, having been cautioned in accordance with Rules of Procedure 4(e) stated he wished to give evidence on oath.

First Witness for the Defence

L2178 Pte. Hawkins, Ralph, "B" Coy, Sask.L.I.(MG) having been sworn states:-

I am the accused, L2178 Pte. Hawkins, R. I am employed as cook in "B" Coy kitchen of the Sask.L.I.(MG). I had these rations in my possession as I was going on leave. I do not eat very much meat or potatoes as they cause a rash on me. I took these rations as it is very difficult to get fruit on the ration card as the points do not cover it. The tea that I had in my possession I brought with me from Combined Training Centre in Scotland.

R. Hawkins

I certify that R.P. 4 (A) (B) (C) (D) (E) and (F) have been complied with.

Date - 11 MAR 43.

J R Wells Lieut
(J.R. Wells), Lieut,
Sask.L.I.(MG) C.A.C.
Officer Taking Summary.

E

Finding

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

The Court find that the accused

Jm Hamilton

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Lieut S. R. Wells is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* yes documentary.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes

Question

Have you compared the contents of the above statement with the regimental books? *Answer.* yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* yes

Cross-examined by the accused.

not asked.

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* no

The Court is closed for the consideration of the sentence.

F

Sentence

The Court sentence the accused to thirty days detention. Sentence.

1st Lieut & Maj. Pres.

Capt Member

2d Lt Manning Asst Trans

G [illegible], L 2178 [illegible]
[illegible] to bring the following [illegible]
to note on making a plea for mitigation
I joined the army on January 1940
[illegible] served in Africa till July 7
[illegible] year as a Driver Dvr Wheeled
(Pg 241) general duties for part of
that time and have reason to believe
I served him well. During this period
I never appeared on [illegible]
[illegible] time during my [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
and upon [illegible] a [illegible]
and [illegible] that my knowledge
was considered an [illegible]
[illegible] and [illegible] the good
will of my fellow [illegible]
During this time I have been
[illegible] by [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible]

No. L2178 Name Hawkins, R. Sqn., Battery, or Company "HQ". Corps S.A.T.C. (WA) Date of enlistment 31.1.40 G.C. Badges Service or Proficiency Pay

M.F.M. 6
(A.F.B. 122)
175M.—7-41 (4212-20)
H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. J. E. Character Exemplary Conduct

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On 31-7-40 this soldier completed 6 mos. service. Previous sheet with no entry destroyed 16-1-41.									
				CERTIFIED THIS COPY OF CONDUCT SHEET OF L2178 Pte. HAWKINS, R. ex-"HQ", S.A.T.C. (WA).					
				11 MAR 41.	[signature]			Lt. [illegible], Capt. & Adjt. "HQ" S.A.T.C. (WA) C.S.O.	

(P.T.O.)

FF-120

SGN HAWLEY GA

FF-120

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this Second day of June *, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Div, on active service, that the person named in the annexed Schedule, being subject to Military Law, has committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

I hereby convene a Field General Court Martial to try the said person, and to consist of the Officers appointed or detailed hereunder.

~~*I am unable to appoint [illegible]~~
~~*(1. Three Officers to form the Court.)~~
~~*(2. A Field Officer as President.)~~
~~for the following reasons, namely:—~~

36

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	F J Argue	23 Cdn Fd Amb, RCAMC

Members.

Rank.	Name.	Regiment.
Capt	W Armstrong	3 Cdn Div Sp Bn (C H of O)
Capt	W K Carruthers	3 Cdn Div Sigs
Waiting Member Capt	H Henford	23 Cdn Fd Amb, RCAMC

*Signed (R F L Keller) Major-Gen
Commanding 3 Cdn Div
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C/64478 Signn George Arnold HAWLEY 3 Cdn Div Sigs	Army Act Sec 19	"Not Guilty"	"Guilty"	I confirm the Findings & Sentence of the Court. R.F.L.
	Army Act Sec 40 (alternative)	"Not Guilty"	Withdrawn	
	Army Act Sec 40	"Not Guilty"	Guilty	
	(See charge sheet att) Marked B2.		7 Days Detention F.J.A.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) R.F.L. Keller (R F L Keller) Major-Gen
Commanding 3 Cdn Div
Convening Officer (c)

(Signed) F.J. Argue (F J Argue) Major
23 Cdn Fd Amb, RCAMC
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 5 day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~ F.J.A.
~~4. The officers under instruction~~ F.J.A.

* Omit if not applicable.

were duly sworn.

Signed this 5 day of June 1943.

F.J. Argue Major
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (b) on page 702 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 F.J.A.

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further order.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 7th day of June 1943

R.F.L. Keller
R.F.L. Keller—Major-General
G.O.C. 3rd Cdn. Div.

Promulgated and extracts taken in the case of C.64478 Signn G.A. Hawley

(a) (Dated) 7 Jun 43 (Signed) WW Lockhart Lt Col.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

The accused elected by Court Martial under A.A. Sec 46 B

page 3.

B2 A. Jaigue major

3 CDN DIV SIGNALS
In the field,
29 May 43.

CHARGE SHEET

First Charge Sec 15 Army Act

The accused No. C-64478 Sigmn. George Arnold Hawley, 3 Cdn Div Signals, a soldier of the Canadian Army (Overseas) being on Active Service, is charged with:-

Drunkeness

in that he

in the field, on 24 May 43 at 1445 hours when on duty, was drunk.

(Alternative) Sec 40 Army Act

Conduct to the Prejudice of Good Order and Military Discipline:-

in that he

in the field, became unfit for duty by reason of previous indulgence in alcoholic stimulents on 24 May 43.

Second Charge Sec 40 Army Act

Conduct to the Prejudice of Good Order and Military Discipline:-

in that he

in the field, on 24 May 43, did drive W.D. vehicle # CL 4214237 hauling petrol for 3 Cdn Div Signals while under the influence of alcoholic stimulents.

Dated in the field this
29th day of May 43.

Lt-Col,
Officer Commanding,
3 Cdn Div Signals.

To be tried by Field General Court Martial.

1st June 1943.

Commanding 3 Cdn Div.

TRIAL OF C64478 Sgmn George Arnold Hawley, 3 Cdn Div Signals (A(OS))

PROSECUTOR: Capt. John Telfer Brodie, 3 Cdn Div Signals

COUNSEL: Lieut. George Edgar Broomhall, 3 Cdn Div Signals

The Court assembled at 1000 hrs 4 June 43 and adjourns for twenty four hours to give Defending Officer time to prepare his case.

The Court assembled at 1000 hrs 5 June 43.

CHALLENGE: R P 110(A) complied with. The accused ~~declined~~ does not object to the President or Members of the Court.

A A Sect 46(2): The Prosecutor informs the Court that the Accused has elected to be tried by this Court, instead of being dealt with summarily by his Commanding Officer.

PLEAD: Accused pleads: Not Guilty to First Charge.
Not Guilty to Alternative Charge.
Not Guilty to Second Charge.
R P 39(A) complied with.

PROSECUTION

~~Opening Address by Prosecutor is read to the Court marked "H", handed to the Court and marked "H"~~ signed by the President and attached hereto.

FIRST WITNESS FOR PROSECUTION ~~Statement~~ having been duly sworn states:

Sir, I am M 37147, A/RSM James Taylor, 3 Cdn Div Signals. At approx. 1445 hrs 24 May 43 I was in the company of RQMS Neiland in front of the O.M. Stores, 3 Cdn Div Sigs Bullet. Sgmn Hawley, whom I recognize as the accused came into the yard in front of the QM Stores. As he approached, RQMS Neiland and myself, the RQMS spoke to him, asking Sgmn Hawley "How much patrol did you draw" The Accused did not answer and continued

towards the QM Stores. RQMS Neeland again spoke to the accused asking the same question as before and still did not receive an answer. By this time the Accused was opposite RQMS Neeland who stepped in front of him in order to get the information which he required. He again asked the accused how much petrol he had drawn and did not receive an answer. The RQMS then held out his hand for some documents which the Accused had in his hand. The Accused gave the documents to the RQMS. RQMS Neeland then asked the Accused "Have you been drinking" The Accused did not reply. RQMS Neeland then turned to myself and asked me what my opinion of the Accused condition was. I spoke to Sgm. Hawley and asked him if he had been drinking. I did not receive an answer. I smelled liquor on the breath of the accused. I told RQMS Neeland to get an escort and march the Accused to the Guard Room and place him in close arrest on a charge of being under the influence of liquor whilst in charge of a WD Vehicle. At this time the Accused was standing facing me at a distance of about 3 feet. The RQMS detailed Sgt Jewell and two men who were in the vicinity to take charge of the Accused and march him to the Guard Room. The escort fell in, one on either side of the Accused and Sgt Jewell gave the command "Attention" The Accused did not respond to this command until after the elapse of several seconds. Sgt Jewell then gave the command "About Turn" The Accused did not respond to this command for a matter of several seconds. Sgt Jewell then gave the command "Quick March" and the leading man of the escort had taken four or five paces before the Accused responded to the command. As he marched towards the Guard Room he swayed and staggered. He was ~~drunk~~ definitely under the influence of liquor.

I have been doing disciplinary work in the Army for over five years,

Cross Examined by the Defending Officer.

Q. Were you and RQMS Neeland standing in the yard of the QM Stores when the Accused entered.

A. Yes

Q2 Were there other people in the yard at that time.
A There were several other people.
Q3 How would you define several
A More than two, Sir.
Q4 In your evidence you say "several records" elapsed before the Accused responded to the Order. Again how many would several be.
A More than two Sir.
Q5 Would you say that there could be some other cause besides the influence of liquor which might cause a man to stagger or sway.
A. There could be other causes, but as I had smelt liquor on the Accused breath I say it was from this.

No re-examination.

Questioned by the Court.

Q1. Did you have any suspicion of drunkeness as the Accused first walked across the QM yard?
A. No Sir
Q2 How does the Accused normally respond to a command.
A. In a normal manner.
Q3 How far away was the Accused when RSMS Neeland asked his first question
A. Approximately five or six paces Sir.

Rules of Procedure. 83 B is complied with.

The witness withdraws.

Second Witness — having been duly sworn states

For Prosecution

I Sir, I am M9044 RSMS Neeland, MW, 3 Can Div Sigs.

On the morning of the 24th of May 1943 Signn Hawley, the Accused left the billet area at approx 0900 hours and was not seen by me until 1245 hrs that afternoon. I was in the company of RSM Taylor when Signn Hawley walked in the QM yard. He was carrying in his hand a form (AN-F-ST 825 "Record of Issues of Petrol, Oil and Lubricants" I was desirous of obtaining this form for record purposes and when Signn Hawley was approx five or six feet from me I called him by name. He did not answer but continued on in the direction of the QM office. I called to him

again from a distance of two or three feet and he again did not answer but kept right on going. I moved over and intercepted Sgm. Hawley and obtained the document he was carrying. Sgm Hawley ~~stopped and w~~ When I went back to talk to the RSM, Sgm Hawley came over. I then asked him if he had been drinking and received no answer. I turned to RSM Taylor and asked his opinion as to the condition of Sgm Hawley. RSM Taylor spoke to Sgm Hawley and received no answer. RSM Taylor ordered me to serve an escort. ~~I~~ There were several Sgm present in the QM yard, also Sgt. Tindl. I called two men and Sgt Tindl and Sgm Hawley were marched to the Guard Room.

The document CAN-F-ST 825 is ~~now marked X signed by the Pres and attached hereto~~ the identical document that was taken from the accused, "(F)(6)".

This CAN-F-ST 825 is examined by the Court, marked "X" signed by the President and attached hereto.

Question by Prosecutor

Q1. How would Sgm. Hawley obtain CAN-F-ST 825.

A. He would obtain that form from the unit issuing patrol.

Q2. Does he get that slip after having proceeded from here to there, and having drawn the patrol.

A. Yes Sir

Q.3 Is Sgm Hawley the driver of the patrol lorry.

A. Yes Sir,

Q4. ~~Did~~ Is he ~~g~~ this time was accompanied

A. Yes Sir.

Cross Examined by Defending Officer

Q1. In your statement you say that you spoke to accused and that he did not answer. Could this have been due to the number of people in the yard and the attendant noise and bustle.

A. No Sir.

Q2. In your statement you say there were several men in the great yard. How do you define several

A. There were at least five besides myself and the RSM.

Q3 Were you present when the Accused was marched to the Guard Room.

A.3. Yes Sir.

Q.4 Did you notice accused stumble or stagger as he was being marched away.

A. Yes Sir, he staggered.

Q.5. Could this, do you think, be caused by anything other than drunkeness.

A. Yes Sir.

~~No re-examination~~

Questioned by Court

Q1 Did you called Accused by name the first, second and third times.

A. Yes, for the first two times. I would not swear to the third time.

Q2 Did you see Sgmn Hanley at 0900 hrs before he left the billet area.

A. Yes, I saw him between 0830 hrs and 0900 hrs.

~~Q3. When the Accused departed prior to 0900 hrs before he left the billet area~~

Q 3 What time did you expect Sgmn Hanley back from his trip that day

A. No particular time.

Q 4. How long does it normally take a Dr to collect patrol approximately.

A. No definite answer is possible

RCP 83(B) is complied with.

The witness withdrawn.

~~The document CAN F 57826 is now marked "L" signed by the President and attached hereto.~~

THIRD WITNESS Having been duly sworn states:

"Sir, I am F26375 L/Sgt Jewell R.H. 3 Can Div Sigs. On 24 May 43 at about 1445 hrs I was ordered by RQMS Noland to march the Accused, whom I recognize, to the Guard Room. I fell in the escort and the Accused and when I gave the order "Left Turn" the Accused was slow in obeying the order. And when I gave the Command "Quick March" the Accused was again slow. On the way down to the Guard Room the Accused broke step. I turned him over to the Guard Commander."

Cautioned by Prosecutor

Q 1. Had the Accused been drinking

A. Yes Sir

Cautioned by Def. Off.

Q 1. How do you know the Accused had been drinking

A. He was slow obeying orders, and he broke step going to the Guard House.

Q 2. As a Sgt. do you find that a soldier always responds promptly and never breaks step

A. Not always.

Q 3. How many men were there in the Courtyard besides yourself, the RSM and the RQMS.

A. Three that I know of.

Q 4 Was there any noise or commotion.

A. No Sir.

Q 5. Did you hear either the RQMS or the RSM speak to the accused

A. No Sir.

Question by the Court.

Q1. Did you smell alcohol on the Accused's breath

A. No Sir.

Q 2. What do you mean by saying that the Accused ~~staggered~~ broke step

A. He staggered to the left about two paces out of line.

Q (To the wish of the Defending Officer), Could this staggering have been caused by anything other than drunkenness.

A ~~Yes~~ I do not know.

R.P. 83 (B) complied with.

The witness withdrew.

Fourth Witness having been duly sworn states.

"I am H38838 L/Cpl Sutton R.W.M. 3 Cdn Div Sigs. On 24 May 43 I was Guard Commander at 3 Cdn Div Sigs billets. At approx 1500 hours I was summoned from the Admin Bldg, where I had been escorting a prisoner, and on arriving at the Guard Rm I found Sgm Hawley whom I recognized"

Guard Room

Question by the Prosecutor.

Q1 Was there anything unusual about Sgm Hawley when you arrived at the

A. He had the smell of alcohol on his breath and was talking a little loudly

Questioned by Def: Off.

Q1. How close were you to Hawkey when you saw him in the G.R.
A. I was face to face with him.
Q2. Did Sgm. Hawkey ask you to procure aspirin tablets because his feet and legs were paining him.
A. Yes he did Sir, after I had been there after 25 minutes.
Q3. Did you get them for him.
A. No Sir as the conversation took another trend.

Question by Court

Q1. What was the trend but the conversation took.
A. Uncertain as the room was crowded.
Q2. Was the accused unsteady on his feet.
A. I am unable to answer as the room was overcrowded.
Q3. As Guard Commander did you have to give Sgm Hawkey any orders.
A. I assigned the Accused a task which he took.
Q4. Did the Accused give you any trouble in the Guard Room
A. No Sir
Q5. Do you think it could have been because of the crowded conditions of the room that Sgm Hawkey spoke in a loud voice.
A. It is possible, because three prisoners and three guards were in the room besides myself.
R.P. 83 (B) complied with
The witness withdrew.

FIFTH WITNESS ~~Having been duly sworn states~~. Capt W J Thomson.
Quartermaster 3 Can Div Signals ~~is~~ is duly sworn.

Question by Prosecutor

Q1. You are Capt. W.J. Thomson, QM of 3 Can Div Sigs.
A. Yes
Q2. Are you responsible for the petrol supply of this unit.
A. Yes
Q3. Did you draw petrol on 24 May 43.
A. Yes
Q4. Did Sgm Hawkey come to you with a work ticket for his vehicle CL 4214237, a 30 Cwt Lorry to have it signed so that he could proceed to draw petrol ~~A. Yes~~

A.A Yes.

QS. What time was this

A. At 0830 hrs 29 May 43.

QG. Then shortly after that Hembley left to draw the patrol and returned in the early afternoon.

A. Yes.

QM. Do you know when he arrived back.

A. No.

QS. Was the first thing you knew about his being back was when you were informed that Hembley was in the Guard tent.

AS. Yes.

QS. Would you present the Court with the work ticket in question.

A. Yes, here it is and identify it as the actual work ticket used on that day.

The ticket is read by the Court, marked "A", signed by the President and attached hereto.

No questions by Def. Off.

Questions by the Court.

Q1. Did the accused present the work ticket for your signature in person

A. Yes he did.

Q2. ~~Had the Accused been drinking~~ Is there anything that would lead you to think that Sgm. Hembley had been drinking at this time.

A. No.

On wishes of Def. Off.

Q 3 How long were you the Accused when you signed the work ticket

A. About three feet.

R.P. 83 (B) complied with.

The witness withdrew.

The Prosecution is closed.

DEFENSE RP 40(A) and 40(B) complied with.

FIRST WITNESS The Accused having been duly sworn is questioned.

Questioned by Def. Off.

Q1. Were you in billets on the night of 23 May 43.
A. Not till late.
Q2. Where had you been that evening.
A At the Bull Inn Sir.
Q3. Had you imbibed freely
A I did Sir.
Q4. Did you have breakfast on the morning of the 24 May 43.
A. I did not Sir.
Q5. Why.
A. I was not feeling good.
Q6. Did it take you longer than usual to draw the patrol 24 May 43.
A. No Sir.
Q7. Did you have any lunch on 24 May 43.
A. No sir I did not.
Q8. You say you were not feeling well on the morning 24 May 43. What was wrong with you.
A. ~~Sir, due to a bad cold from the previous night~~, I was suffering from pains in my feet and legs.
Q9. Did you report this to anyone.
A ~~Yes after~~ coming back to camp, and in the Guard Room at about 1500 hrs.
Q.10. Did you take anything to relieve this pain.
A. Yes Sir
Q11. What and how many.
A. Aspirins — over a dozen of them.
Q12. When did you take them
A. After 1200 hrs.

~~Cross-examined by~~ Prosecutor declines to cross-examine.

Questioned by the Court

Q1 Did you have anything to drink between 0900 hrs and 1495 hrs 24 May 43

A.J. Cooper

A.1 I had ½ pint of beer at 1400 hrs approx.

Q.2. Did you have anything to drink Besides this ½ pint of beer.

A. No.

Q.3 Why did you not report sick on the morning of 24 May 43.

A. I had had the same complaint before in Feb. 43. and did not think it necessary.

Q.4. To what do you attribute the pains in your feet and legs.

A. My boots Sir and a severe cold.

R.P. 83 (B) complied with

The witness ~~do~~ sits down

SECOND WITNESS. having been duly sworn states.

"I am Capt. D.D. Munday RCAPC. Paymaster 3 Can Div Sigs. I had a conversation with the Accused on the evening of 23 May 43 ~~in my office~~. He had been drinking heavily previously.

Questions by Prosecutor

Q1. At what time was this.

A. Between 2200 hrs.

~~Q~~ R.P. 83(B) complied with

The witness withdrawn.

THIRD WITNESS. having been duly sworn states.

"I am Capt. F.A. Ramsay, Chaplain 3 Can Div attached RCASC. I visited the ~~Accused~~ Accused at approx noon 26 May 43 in the Guard Rm, and heard his story. He told me that he had taken about ~~12~~ drinks from about noon 21 May 43 until his time of arrest and had had no food, but had had ½ pint of beer. ~~Subsequently I visited him in the guard room.~~

Prosecutor declines to Cross examine.

R.P. 83 (B) complied with.

The Witness withdrawn.

Statement of Character.

Defending Officer states that the Accused wears a Good Conduct Stripe.

Closing Address for Defence

The Defending Officers closing address is produced, read in Court, marked "L", signed by the President and attached hereto.

Prosecutors Reply

The Prosecutors reply is produced read in Court, marked "M", signed by the President and attached hereto.

The Court is closed to consider the finding

FINDING - As in schedule.

The Court being re-opened, the accused is brought before it.

Evidence as to Character

The Prosecutor having been duly sworn states:

I, Capt J. T. Brodie, 3 Cdn. Div. Sigs. produce M.F.B 255 'Statement as to Particulars of Service of Accused' and a certified true copy of M.F.H 6 of the accused, Sigmn. George Arnold Hawley. I certify that the persons named in these statements is the accused and that they are correct according to the regimental books.

The documents are read, the M.F.B 355, marked 'N' and the M.F.H 6 marked 'O', signed by the President and attached hereto.

The Defending Officer declines to cross-examine.

Question to Accused

The accused declines to make a statement in mitigation of sentence although asked if he desires to do so.

Close the Court.

The Court is closed to consider the Sentence.

R 15.

F Argue.

Sentence

The Court sentence the Accused C64478 Sigmn. George Arnold Hawley, 3 Canadian Division Signals – Dentention for. to undergo Dentention for Seven (7) Days.

Signed at Headquarters 3rd Canadian Division Signals this 5th Day of June 1943.

"F. J. Argue Major
President F. G. C. M"

P.16.

3 CDN D IV SIGNALS "H"
In the field,
4 Jun 43.

OPENING ADDRESS BY PROSECUTION

The prosecution will prove that the accused was, when on duty, drunk, due to previous indulgence in alcoholic stimulents and also was in charge of a W.D. vehicle during that time. First however the Court is respectfully requested to look at Para. 45 on page 25 of the M.M.L. which states in part " From a Military point of view, drunkeness on duty is considered in reference to the soldier being fit or unfit for duty. There cannot be any distinction between various degrees of drunkeness when on duty".

The prosecution will produce witnesses, senior N.C.O's., who will state that the man was drunk, that they smelt liquor on the mans breath, that his mind was sluggish and when spoken to did not answer, and when given orders was unable to obey them at once, as a soldier should do, and finally that on being marched to the guard room did stagger on route. These all add up, so that there is only one conclusion to be drawn, namely the man was drunk.

The prosecution will also prove that the man was in charge of the vehicle, and was at the appointed place for petrol and on arrival back from that place was drunk, and therefor was in charge of a W.D. vehicle whilst under the influence of alcoholic stimulents.

P 17.

Marked "K" 7. Signal Troops

CAM-1-ST. 825
40/P & S/784

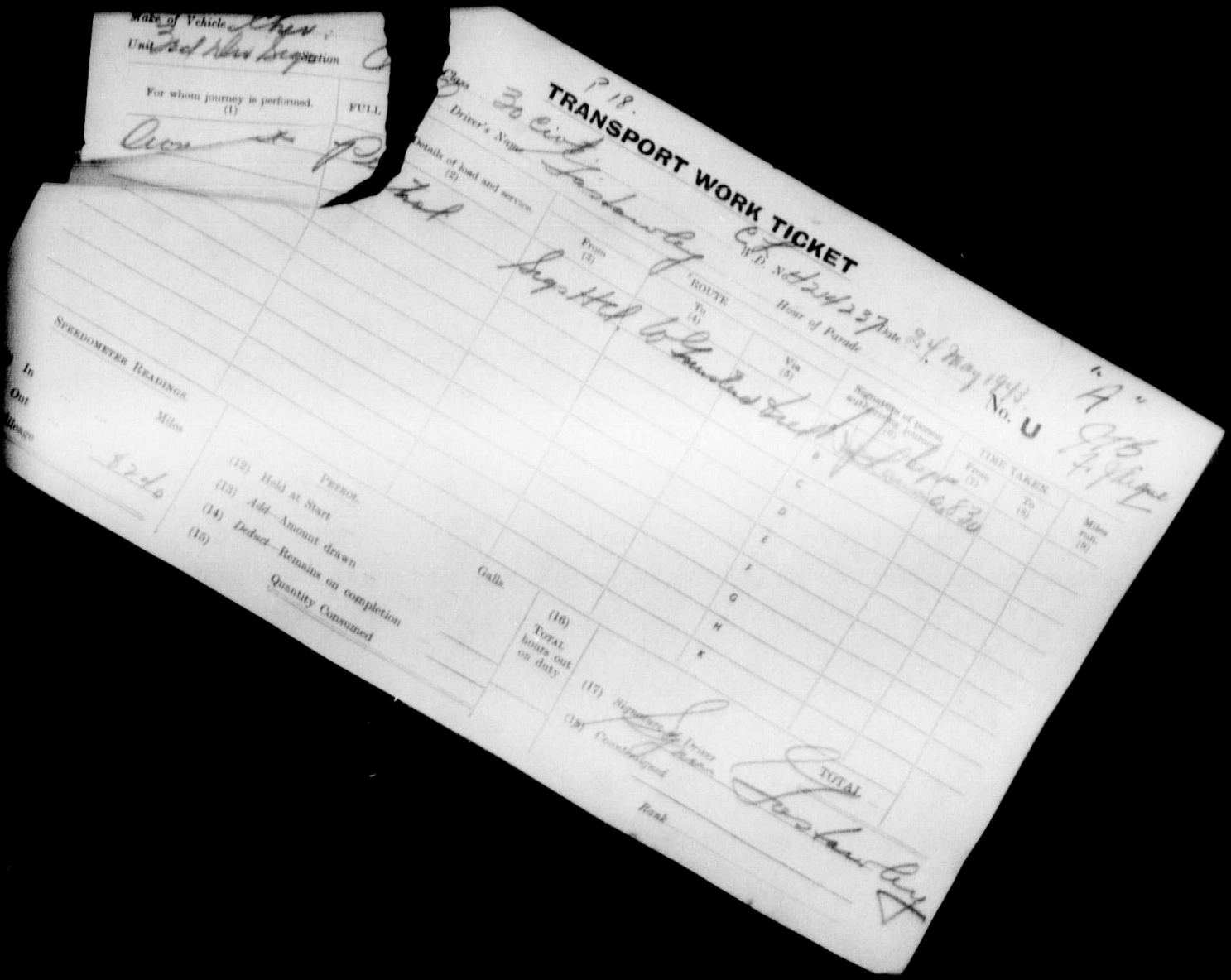
RECORD OF ISSUES OF PETROL, OIL AND LUBRICANTS

ISSUING UNIT ... DATE ...

RECEIVING UNIT ... ISSUE VOUCHER No. ...

MAKE AND TYPE OF VEHICLE	W.D. VEHICLE No.	PETROL Gallons	DIESEL OIL Gallons	PARAFFIN Gallons	LUBRICATING OIL		GREASE		CONTAINERS		DRIVER'S SIGNATURE
					Type	Quantity Pints	Type	Quantity Lbs.	Type	Quantity	
	[illegible] 115										[illegible]
	TOTALS										

INITIALS ... CERTIFIED CORRECT ...



P 18.

TRANSPORT WORK TICKET

Make of Vehicle Thos

Unit 2nd Rhd Inf Regt

For whom journey is performed. (1)

FULL

Details of load and service (2)

Driver's Name 30 Cwt Sadowsky

W.D. No. 2142237 Rank Pte Date 24 May 1943

Hour of Parade

No. U

"A"

ROUTE

From (3) Sig Sqn HQ

To (4)

Via (5)

Signature of issuing authority (6)

TIME TAKEN

From (7) 0830

To (8)

Miles run (9)

A

B

C

D

E

F

G

H

K

TOTAL

SPEEDOMETER READINGS

In

Out

Mileage

Miles

8240

PETROL

(12) Held at Start

(13) Add—Amount drawn

(14) Deduct—Remains on completion

(15) Quantity Consumed

Galls.

(16) TOTAL hours out on duty

(17) Signature of Driver

(18) Countersigned

Rank

P 19.

"A"

TRANSPORT WORK TICKET

Army Form G 3518

W.D. No. 424237 Date 24 May 1943 No. U

Make of Vehicle Chev. Class 30 cwt

Unit 2nd Hrs Sqn Section D Driver's Name Eastanley Hour of Parade

For whom journey is performed (1)	FULL Details of load and service (2)	From (3)	ROUTE To (4)	ROUTE Via (5)	Signature of person authorising journey (6)	TIME TAKEN From (7)	TIME TAKEN To (8)	Miles run (9)
Account	Petrol	Sqn HQ	Gunderhill		Albert	0830		
					B			
					C			
					D			
					E			
					F			
					G			
					H			
					K			
						TOTAL		

SPEEDOMETER READINGS.

Miles

(10) In ... ...

(11) Out 8740

Mileage

PETROL. Galls.

(12) Held at Start

(13) *Add*—Amount drawn

(14) *Deduct*—Remains on completion

(15) Quantity Consumed

(16) TOTAL hours out on duty

(17) Signature of Driver Eastanley

(18) Countersigned

Rank

P19 'Li Jayne

Summing up of Defending Officer.

In summing up the case as presented to this Court, I humbly beg to direct the courts attention, that only clear facts as produced by the evidence, should be considered.

The first witness for prosecution states that the breath of the accused smelt of liquor & that he staggered & stumbled while being marched to the guard room. But he admits that the staggering & stumbling could be attributed to causes other than drunkenness. I submit that this witness presumed the accused to be drunk because he had the smell of liquor on his breath & staggered & stumbled, but, despite the fact that witness was positive that accused was drunk, can these symptoms be taken as authority for this conviction, especially when witness admits the awkwardness of accused might not be due to the imbibing of intoxicants.

I submit that statements of second witness does nothing more than establish the fact that accused did not answer when spoken to & stumbled & staggered when marched away. The former fact could quite easily be due to the noise of the courtyard, or possibly the preoccupation of the accused while the second fact has been disproved by the witness who agrees in cross examination that this condition might be due to other causes than drunkenness.

This witness, altho he must have been as close to the accused as first witness, makes no mention of the presence of liquor on accused's breath.

The third witness accuses Bentley of being drunk because he broke step & was slow in obeying commands & yet admits on cross questioning that he didn't smell liquor on his breath & by his answers admits that he cannot judge whether a man is drunk or not.

'L2' H. Thorpe

Fourth witness can only state that accused talked loudly & his breath smelt of liquor, but admits that his talking loudly may be due to the crowded condition of the room.

It would seem that the only witness presented by the prosecution who could definitely state accused was drunk was the first witness & he based his opinion on the fact that Bowley had liquor on his breath & staggered. I humbly submit to the court that these facts are quite true. The accused did have the smell of liquor on his breath — but it was from the previous evening's drinking. And he did stagger & was slow to respond to commands, but only because he had taken so many aspirins in quick succession. It has been established that accused had imbibed fairly freely & quite late the previous evening — & not having had any breakfast or dinner on the following day, coupled with the fact of his taking a dozen pills made him somewhat groggy & I therefore humbly submit that the evidence of drunkenness produced by the writers for the prosecution is incorrect & suggest to the court that the charges laid against this man are erroneous.

G. Saunders Capt.
Defending Officer.

P 21

"A" L. Jacque

Prosecution Summary.

I again draw the courts attention to para 95 P25 M.M.L., where drunkenness means unfitness for duty. Witnesses have shown that he, the accused, in taking too long to obey commands, not answering when spoken to, having a smell of alcoholic refreshment on his breath, and staggering, that the accused was unfit for duty, and therefore drunk. The prosecution has shown that Lgnm Hawley did drive the truck and thus was in charge of a vehicle whilst under the influence of alcoholic stimulant.

The mixture of beer, aspirins, and the aftermath of the previous nights drinking would combine to make the man unfit for duty, being drunk.

In spite of the circumstances that the defence have shown as to the mans history, medical and personal, the man was on duty and became unfit for duty from previous indulgence in alcoholic stimulants.

3 CDN DIV SIGNALS
In the field,
26 May 43.

SUMMARY OF EVIDENCE

In the case of C-64478 Sigmn. George Arnold Hawley.

First Witness — R.S.M. Taylor, J., being duly sworn states:

I am M-37147 A/R.S.M. Taylor, 3 Cdn. Div. Signals. On 1445 hours 24 May 43 I was in the company of R.Q.M.S. Neeland in the yard in front of the Q.M. Stores. The accused, whom I recognize, as Sigmn. Hawley came into the yard and was going into Q.M. Stores. When he was about five yards from R.Q. Neeland and myself the R.Q.M.S. asked Sigmn. Hawley how much petrol he had drawn. Sigmn. Hawley did not answer and continued walking toward the stores. R.Q.M.S. Neeland repeated the question and did not receive an answer. He then intercepted Sigmn. Hawley, who stopped and R.Q.M.S. Neeland asked him for some papers which he had in his hand and Sigmn. Hawley handed them over. He then asked Sigmn. Hawley how much petrol he had drawn, Sigmn. Hawley did not answer. The R.Q.M.S. then asked Sigmn. Hawley if he had been drinking, Sigmn. Hawley did not answer. The R.Q.M.S. turned to me and asked me what my opinion of his condition was. I asked Sigmn. Hawley if he had been drinking, he did not reply. I smelt liquor on Sigmn. Hawleys breath and ordered him into close arrest on a charge of drunkeness, while in charge of a W.D. Vehicle. R.Q.M.S. Neeland detailed Sgt. Jewell to fall in an escort and march sigmn. Hawley to the Guard Room. The escort fell in and Sgt. Jewell gave the commend for the escort and the accused to come to attention. It was a matter of seconds before the accused realized that he had been given an order and came to attention. The same thing happened when Sgt. Jewell told the escort and accused, "about turn". Sgt. Jewell then gave the command "Quick March". The leading escort took at least four or five paces before sigmn. Hawley started to walk. He then staggered considerably on his way to the Guard Room. He was drunk.

Accused — Sir, would you say that if a man staggered that it couldn't be due to any other cause than drunkeness or intoxication.

Answer — Yes, he could stagger for other causes.

Accused — Sir, couldn't it be possible that if the accused did stagger, that it could be from some other cause except drunkeness or intoxication.

Answer — It might be from some other cause.

Accused — Sir, do you figure that because I didn't answer the R.Q.M.S. question from that distance, that drunkeness was the cause of it?

Answer — When I knew the condition in which the accused was, I appreciated why he did not hear the question.

Accused — What condition do you mean, Sir?

Answer — The condition of drunkeness.

SUMMARY OF EVIDENCE
(Cont'd)

In the case of C-64478 Sigmn. Hawley

Accused — And it couldn't be any other cause in your mind?

Answer — It was for no other cause.

Accused — Why was I charged with being incapable of doing my duties when up to that time I had done my duties?

Answer — I say you were drunk and a drunk man is unfit for duty.

Accused — Had you any other reason to believe I was drunk except what you have stated?

Answer — No other reason.

Accused — How many times was I spokento before I heard what you said?

Answer — On the sixth time you were spoken to after a pause of about five seconds, you carried out a commend.

Accused — Could it have not been because I did not hear your order?

Answer — I did not give the order.

Accused — But you did ask me some questions, and couldn't it have been that I did not hear your questions, and didn't answer them for some other reason than drunkeness and intoxication?

Answer — Not unless you are very deaf.

Accused — What condition does a man ahve to be in to constitute a drunken man?

Answer — A man is drunk when he has a smell of liquor on his breath, staggers, and is unable to obey an order implicitly and immediately.

Accused — Declines to question further.

J. Taylor

Second Witness — R.Q.M.S. Neeland, being duly sworn states:

I, M-9044 R.Q.M.S. Neeland, M.W. of 3 Cdn Div Signals was present in the company of R.S.M. Taylor in the yard adjoining Q.M. Stores, at 1445 hours 24 May 43. Sigmn. Hawley entered the yard carrying some papers which pertain to the drawing of petrol, one of which is Form CAN-P-ST-825 Record of Issue of P.O.L. which I present. As sigmn. Hawley came within a distance of five or six feet from me, I called him by name, but he continued on toward the Q.M. office and did not answer. I called him again and he still continued on and did not answer. I then moved over to intercept him spoke to him and secured the document I desired. I then asked him if he had been drinking and received no answer. I turned to the R.S.M. and

SUMMARY OF EVIDENCE
(Cont'd)

In the case of C-64478 Sigmn. Hawley.

asked his opinion as to the condition of the man. R.S.M. Taylor questioned Hawley and received no answer. He then instructed me to secure an escort and have him placed under close arrest. There were several men present in the Q.M. Yard, so I called for two men and Sgt. Jewell, Sgt. Jewell took charge of the party and marched them to the guard room.

Accused — Couldn't it have been possible that I didn't hear you speak to me, that it could be one reason for not answering your question?

Answer — It is quite possible you did not hear me the first time I called to you, but I do not see how you could have failed to hear me the second time as you were no more than a distance of two feet from me, I spoke quite loudly.

Third Witness — Sgt. Jewell, being duly sworn states:

I am F-26375 L/Sgt. Jewell R.E. 3 Cdn. Div. Sigs. I was at Sigs. Billets drawing equipment at 1445 hours 24 May 43. R.Q. Neeland told me to fall in two men and march the accused, whom I recognize, to the guard room. I fell in the escort with the accused in the centre, gave a command, " About Turn", the escort acted on the command, the accused paused two seconds, I then gave the order "Quick March" and the accused was again slow. On the way down to the guard house the accused broke step. I turned him over to the guard there.

Accused — Would you say that I was drunk or intoxicated when you escorted me to the guard room?

Answer — Yes.

Accused — What proof had you that I had been drinking?

Answer — Slow in obeying commands and broke step on the way down to the guard house.

Accused — Couldn't that have been caused from any other reason?

Answer — I don't know.

Fourth Witness — H-38838 L/Cpl. Sutton, R.W. being duly sworn states:

I, H-38838 L/Cpl. Sutton, R.W. was guard commander at 3 Cdn. Div. Signals on 24 May 43. At approximstely 1500 hours, while escorting a prisoner in the Adm. building, I was summoned to the guard room where I found the prisoner Sigmn. Hawley, Whom I recognize

SUMMARY OF EVIDENCE
(Cont'd)

In the case of C-64478 Sigmn. Hawley.

Accused — Was I drunk or intoxicated when you first came to the guard room?

Answer — Sigmn. Hawley was talkative, and while in the guard room was not seen to stagger in. His breath smelt of liquor and by that it could be told that he had been drinking, at approx. 1600 hours he laid down on the bed to which he was assigned and went to sleep. At approx. 1645 hours I found him awake and he asked in a normal fashion for a guard to escort him to supper. He agreed to wait until the next shift took over

Accused — Was I disorderly or creating any disturbance?

Answer — No.

Accused — Didn't I ask you for some aspirin to take because I had severe pains in my legs and feet?

Answer — I believe he asked for some aspirin but I could not swear to it and he mentioned the fact that he couldn't sleep because of terrible pains in his feet.

Accused has no more questions.

Fifth Witness — Capt. W.J. Thomson, being duly sworn states:

I Capt. W.J. Thomson am Q.M. of 3 Cdn Div Signals, and as such am responsible for the supply of petrol. At approx. 0830 hours on the 24 May 43, Sigmn. Hawley, driver of 30 cwt. lorry (CL 4214237) presented his work ticket for signature, as he was to proceed for the drawing of petrol.

W/Ticket attached marked "A"

Accused has no questions.

W.J. Thomson Capt

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3 CDN DIV SIGNALS
In the field,
26 May 43.

RULE OF PROCEDURE 4 (C), (D), (E)
and (F) has been complied with.

(J.T. Brodie) Capt.

Witness for prosecution

R.S.M. Taylor, J.	- 3 Cdn. Div. Signals.
R.Q.M.S. Neeland, M.W.	- 3 Cdn. Div. Signals.
L/Sgt. Jewell, R.E.	- 3 Cdn. Div. Signals.
L/Cpl. Sutton, R.W.	- 3 Cdn. Div. Signals.
Capt. W.J. Thomson.	- 3 Cdn. Div. Signals.

C-64478 Hawley, G.A.
No. Name

Sqn., Battery, or Company: Admin Corps: 3 Cdn. Div. Sigs. Date of enlistment: 23-10-40 O.C. Badges: O. T. Hague

Service or Proficiency Pay:

M.F.M. 6
A.F.W. 1119
1175M—7-41 (1215-20)
H.Q. 1172-20-1052

Date of last entry in Company Conduct Sheet:

No. and date of last drunk:

Period not reckoning towards freedom from extra fine:

Sheet No. 2

Signature O.C. Company, etc.: R.H. Widdifield Major.

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed - Last entry 3 May 42					
Field	14Apr 43	Sgmn		A.A. 15(1) A.W.L. from 1400 hrs till 2230 hrs 14 Apr 43 (absent 8 hrs 30 mins)	RQMS Neeland	7 days C.B.	15 Apr 43	Major, R.H.Widdifield	1 days forfeiture pay FR&I 149 (1)(a).
				Certified true copy: (R.H.Widdifield) Major Admin. Officer 3 Canadian Div. Signals:					

P22

"N" F. Brigade

M.F.B 355
H.Q. 1772-39-620
10M-8-40 (M19)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C64478	SGMN.	HAWLEY G.A.	3 CON. DIV. SIGS.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and ~~Squadron, Battery~~ ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For AWL.	1 times	times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, ~~Air Force Act~~ A.C.I. 1769 A.A. 73 of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for ——— beginning on the ——— day of ———~~

4. The accused has been in confinement awaiting trial on the present charges, for ——— days in civil custody, and 10 days in military custody, making a total of 10 days in custody, of which ——— days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is 38 yrs 6 mo.

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 23.10.40.

7. The service which the accused is allowed to reckon towards discharge is 2 yrs 8 mo.

8. The accused is entitled to reckon 2 yrs 8 mo service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward.~~ military military

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of ———~~

11. ~~(In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank~~ of Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. ~~The accused has served as a non-commissioned officer continuously, without reduction, to the~~ present date:—

..... Date of promotion.

In the rank of ..... years,

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number C84478 Rank SGMN

Name HAWLEY. G.A. of 3 CDN DIV SIGS Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

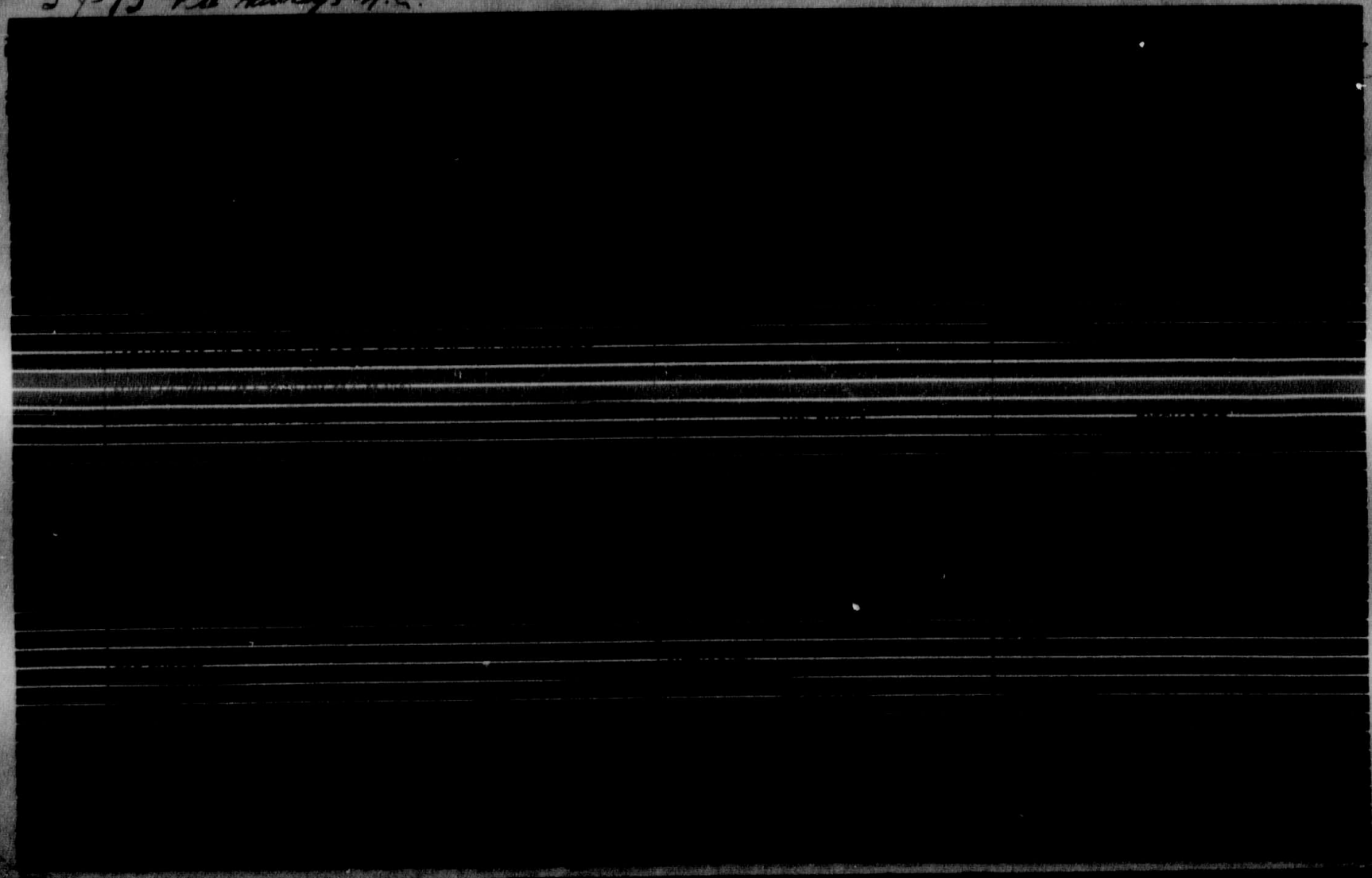
Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
C.O.	1.T.F. 14APR.43.	A.W.L.	7 days C.B.	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this [illegible] 5th day of June 43 J. T. Burdett Capt adjt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

5Y-73 Rte Hawley, N.C.



SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : C101 HQ PTE Hawley M.C. Can Army Staff (Paras)

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	GUILTY	
2nd ALTERNATIVE	NOT GUILTY	NOT GUILTY	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~As presently under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 44 days, of which 5 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be imprisoned with hard labour for one (1) year.

(Sgd) A M Ecclestone Capt. 21 Jan 46 (Sgd) [illegible] major.
Judge-Advocate, if any. Date awarded. President. (RP 43, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 33(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered~~(1) ##
(1. AA 57A. Delete if not used.)

Date 26 Jan 46 (Sgd) [illegible]
Commanding Officer. T/Comd 2 Can B R Gp

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 1946 JAG BRANCH

RECORDED AT CMHQ IN AS 108 [illegible] 5/-73

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA81) 40/P & S/10/46 (2 [illegible])
4/388

Convened by Order of LT Col L J FLYNN T/Comd 2 Can B R Gp dated 19 Jan 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C101 HQ	PTE	MARSHALL CARMEN	HAWLEY.	CDN. MIL. STAFF (PARAS)

PROCEEDINGS REVIEWED
19 Feb 46 [illegible]
REVIEWING OFFICER, JAG BRANCH O[illegible]

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) FRANCE. on (date(s)) 21 Jan 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns/RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95: for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1[illegible] hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO~~ (2).

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to~~ ~~as interpreter ?~~ Ans ~~—~~

~~The Interpreter is sworn.~~(1) ~~Do you object to~~ ~~as shorthand writer ?~~ Ans ~~—~~
~~The shorthand writer is sworn.~~(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ? Ans No Sir. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJ	W A STANDING	C/C PE H C BR BN
Member	CAPT	H N McLEOD M.C.	C.I.S. PE 13 C BR BN
Member	CAPT	R P STEWART	C/C PE 13 C BR BN
Judge-Advocate	CAPT	A M ECCLESTONE	D.J.A. HQ C BRG
Prosecutor	CAPT	P.T. H. O'NEIL	BRUSSELS MIL STAFF
Defending Offr	MAJ	F A BAILLARGEON	GL HQ 2 C BRG

Questions by President : Is the Prosecutor a lawyer ? Ans YES Is the Defending Offr a lawyer ? Ans YES (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused C101 HQ PTE M.C. HAWLEY before arraignment make(s) (~~no~~) (~~a~~) plea ~~—~~ (3)

(3. If a special plea is made for separate trial on one or more charges (RP 62(E), 102), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or in case of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HQ 2 Cdn Corps Bft Gp
Vol II Page 11

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No Sir.(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~no~~) (no) opening address.(1) or L.
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).~~ (2) ~~The Court is closed, and considers the submission.~~ (3) ~~The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~ (4) or L.
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Have nominated to Prosecute Myself. Do you intend to call witnesses on your behalf? Ans. No. Are they witnesses as to character only? Ans. N/A or L.
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1st charge(s), being subject to confirmation, will be promulgated later.(1)
Or, ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2) or L.
(*1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No Sir.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "A" and Ex "B" respectively.(3)
(*1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. I have said my Defending Officer.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 44(2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

78.

CHARGE SHEET

The accused, No. C10146 Pte Marshall Carmen HAWLEY, Canadian Military Staff (Paris), a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 18(4)
Army Act

WHEN ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

in Paris, between 0730 hrs and 1200 hrs 7 Dec 45, stole one towel and one pair of pyjamas, the property of H102870 Pte DANDENEAU, C.F., Canadian Military Staff (Paris), a person subject to military law.

Second Charge
Alternative
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in Paris, at approximately 1800 hrs 8 Dec 45 was in improper possession of one towel and one pair of pyjamas, the property of H102870 Pte DANDENEAU, C.F., Canadian Military Staff (Paris).

(A. T. Dixon) Lt-Col
AA & QMG
CDN MIL STAFF (PARIS)

PARIS, FRANCE
7 Jan 46

To be tried by Field General Court Martial.

(L J Flynn) Lt col
T/Commander
2 Cdn Base Rft Gp

In the Field
16 Jan 46

Approved on behalf of the Cdn JAG Overseas in accordance with R.R.(CAN) 540.

(A M Eccleston) Capt
D J A
HQ 2 Cdn Base Rft Gp

In the Field
16 Jan 46

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C10148	Pte		Marshall Carmen	HAWLEY	Cdn Mil Staff (Paris)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~xxx~~) committed the offence(s) set forth in the Charge Sheet(~~s~~ attached and on (date) 16 Jan 46 endorsed by me, ~~xx xx xxxxxx xxxxxxxx xx xxx~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~xxxxxxxx xxxx xxxxxxx xx xxxx xx xxx xx xxxxxxxx xx x xxxxx xxxxxx xxxx~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~s~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I xx xxxx xx xxxxxxx xx xx xxxxxxxx xxxxxx xxx xxxx (x) xxxx xxxx xx xxxxxx xx xxxxxx xxxxxxx xxxx xxxx xxxxx xxxx~~.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	W A STANDING	CIC PE 4 CBRBn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	H N McLEOD MC	CIC PE 13 CBRBn
Capt	R P STEWART	CIC PE 13 CBRBn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	A M ECCLESTONE	HQ 2 CBRG

On Active Service in the Fd

in HOLLAND
(Country.)

L J Flynn
(Signed personally. RP 105 (e 2).) (Rank.)

Dat 16 Jan 46

Commanding (L J FLYNN) Lt-Col
T/Comd - 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Medical Certificate

I certify that I have this day examined C 10148 Pte Howley C and that he is fit to undergo trial by Field General Court Martial.

Francis Shand.

Major RAMC.

21 Jan 46.

To: Convening Officer,

Re C101 48 Pte. Hawley M. C.

The Court recommends that the accused be examined by a psychiatrist as soon as possible

Major.

President

21 Jan 46

P-7/HAWLEY MC/98 (A1)

COPY

CANADIAN MILITARY STAFF
PARIS

2 Feb 46

1 Coy 13 CHR Bn
(Nijmegen Transit Area Rear Party)

Attn: Capt Ecclestone

FGCM - 21 Jan 46
C10148 Pte HAWLEY MC
Cdn Mil Staff (Paris)

1 Reference your S/HAWLEY MC/1 (DJA) d/26 Jan 46.

2 Findings and sentence of punishment awarded by FGCM in connection with the recent trial of the m/a soldier have been promulgated and a minute of promulgation has been completed. AFA 2104 has also been completed and the papers are returned herewith. The recommendation of the Court that the SUS should be examined by a psychiatrist has been noted. Unfortunately, there is no medical officer in Paris who qualifies as psycho-neurologist and the suggested examination can not be arranged by this HQ.

3 The SUS will be despatched with the first escort team which arrives in Paris, to your HQ for forwarding to the place at which the sentence awarded is to be served.

"M HAY" Capt
for (A.T. Dixon) Lt col
AA & QMG
CDN MIL STAFF (PARIS)

signed at 11.30 A hrs

Minute of Promulgation

FGCM
C.10148 Pte HAWLEY, Marshall Carmen
Cdn Military Staff (Paris)

Charges:
First Charge - AA Sec 18(4) - Stealing property belonging to a person subject to Military Law

Second Charge (Alt) AA 40 - Improper possession

Date of Trial: 21 Jan 46

Findings:
First Charge - guilty
Second Charge - not guilty

Sentence:
To be imprisoned with hard labour for one (1) year.

Date of Sentence: 21 Jan 46

Confirmation:

Confirmed

Date of Confirmation: 21 Jan 46

R. J. Flynn

(L J Flynn) Lt col
T/Cond
2 Cdn Base Rft Gp

Time in confinement awaiting trial - a total of 44 days, of which 5 days were spent in hospital.

Promulgated and extracts taken

Accused	Date	Signature of Officer
C10148 Pte HAWLEY. Marshall Carmen CDN MIL STAFF (PARIS)	31 JAN 46	A. Service Lt. (S Service) Lieut., Camp Commandant, Cdn Mil Staff (PARIS)

CDN MIL STAFF (PARIS) CMC RETURN No. 20 d 1 FEB 46

Enquiry 21 Jan 46.

C 101 48 Pte Marshall Carmen Hawley.
Con Mil Stopt Paris

Prosecution

First Witness

H. S. Ferris Comp. Commandant Con. Military Stopt Paris having been duly sworn states.

I recognise Pte. Hawley the accused. I saw Pte Hawley in the Waiters room Hotel Meurice I believe the 7th of Dec 45. On receipt of a telephone call I had proceeded to the Waiters' room in connection with a list enquiry that I had ordered my Orderly Comp. Sgt. Major to carry out after receipt of information regarding some of civilians from Hotel Belle Chasse

When I entered the room at the Meurice [redacted], the A.C.S.M. Sgt. Baker, the accused, Pte Donaldson and Pte Merrison were present

The accused was in the room about 3 feet away I was informed by Sgt Baker

that he had found in the accused possession one blue pyjama top and one grey towel which were recognised by Pte Donaldson as being his property. On questioning Pte Howley as to the whereabouts of the lower part of the pyjamas he informed me after some hesitation he was wearing them. I then told him to remove the pyjama bottoms which he did.

The pyjama top and bottoms and towels recovered in my possession will be produced over to S.C "A"

[Prosecution informs Court these have been produced]

I questioned the accused further as to where he had obtained the pyjamas and towel and he informed me he had taken them from the Belle Chasse hotel [D.C does not object to this evidence]

The pyjama top and towel were found in the ~~room~~ right hand corner of the lower drawer of the bureau in the room occupied by Pte Howley.

Cross Examination.

The room is also occupied by Pte Mawson also

The towel and Pyjamas top were in the room when I came in, on the bureau drawer.

The Pyjamas were light blue. I have never seen Pyjamas of that color and texture before in the army issue.

I have not seen American Hospital Pyjamas.

He did not say in which room where the Pyjamas bottoms were. He hesitated considerably before me.

No Re-examination.

R.P. 83(B) completed.

Accused Witness:

H. 102 870 Pte Donovan C. S. Canadian Military Staff Paris. Sworn by his own oath.

I recognize Pte Hawley (accused) I found a towel and one Pyjamas missing from my room on 7 Dec and reported it to Sgt Boden. The next day we went to the Mercedes Hotel to Pte Hawley's room and that is where we found the towel and Pyjamas. There was Sgt Boden A Tennis and Eyers Pte. We found the Pyjamas and towel in the room.

One part of the Pyjamas the top part was in

the drawer and he took the other pair on him. He examined the pyjamas closely. He particularly examined them as well. He examined the towels by the bathroom mat.

I saw the pyjamas and towels on my return the morning before I left. When he went out at noon they were gone. He knew where he got that room.

Cross Examination

He brought the pyjamas from a relative. I could not say they were Omeara Hospital issue pyjamas. I must have got the towels from the 2 M. I do not know.

No Re-examination

By the Court

I was issued two towels. He took three towels. It must have been any room.

The pyjamas were eight blue, one colour. They were eight colour

P.P.S.3 (B) company mark

Third Witness:

At 1130 Sgt Baker A.P.M. Corrective Military Staff Police having been duly sworn states:

I recognise Pte Hanley. On my tour of duty I believe 7 Dec 45 on report received I had to grant the accused a pass permission on the person of Pte Dorsen saw and the accused amongst the accused had a towel the upper part of a light blue pyjamas also one towel carrying making name tail outside which were recognised by Pte Dorsen saw on being his property. I then contacted the Camp Commandant H Service and requested that he come to the accused's quarters.

The man was then charged with improper possession, on the arrival of H Service the accused was ordered to open the suit he ordered [D.O does not object] having the lower half of the pyjamas on his person. I then placed the accused under close arrest and he was then handed over to the Cdn. Mil Police for safe custody

The top tray were found in a drawer ~~on the left~~ on left hand side of the room as you entered in the bottom drawer on the right hand side.

Cross Examination

I had a good look at the prisoners they are not Canadians I do not know if they are American Negroes I took R.P. & B to Company unit.

Further Evidence

1465 5884 Pte J Morrison H.A.I.(Bn) att to B.A.S (Fmns) having been duly sworn states:

I recognize the accused. On approx 8th Dec 45 I came back to my room at 1700 hrs and found a Sgt the accused and the non accused I do not know his name in my room. The Sgt was looking through my drawers, I asked him what he wanted The Sgt asked me if the top two drawers were mine, I said yes, and the bottom two drawers belonged to the accused The Sgt then opened the bottom two and found the articles he was enquiring in

There was nothing of mine in the bottom two drawers.

No Cross Examination

R.P. 83 & Complainant rests.

The Prosecution is not calling the Chemist in the Summary. The Defence does not require the Chemist for the purpose of Cross examination.

Prosecution is Closed.

Defending Officer notes no submission

Defence.

The accused having been sworn states - I am 29 last Sept. my home is Belleville, Ont. I was born in Thomasburg Ont - just north of Belleville. I am single and my parents are still living. I am born of mixed race my mother is part indian (mohawk) and my father Irish and Scotch. RJS I was a general labourer before enlistment. I volunteered to enlist in spring of 42 at Picton Ont but they were not taking recruits. I then went back to work at a Pea canning factory in Picton

From there I went to work at the aluminum factory in Kingston Ont. I enlisted in the Can Army 6 march 44. I left Canada 15 november 44 for overseas. I went to Italy shortly before the 15th Jan 45 and joined N & P. E. I was in action until the Div, left Italy I came to N.W.E. and I saw action in Holland until I was wounded on 15 April 45, I had a fractured right shoulder & buttock from a piece of shrapnel, and a wound rein from a piece of shrapnel in the left arm. When I was wounded I was in a small room in a house across the road from eggsdoom, my section of the Platoon number in the book shed attached to the house number on 55 H.F. hit the building I was in, killed my platoon Sgt. as well as another Pte who I do not know his name, I was evacuated to 1 C. Cy. H. in Nijmegen. From there I went to 5 C. Cy. H. Lundgaat Belgium and was discharged from there and rejoined my unit, near Haarlem Holland. I was there a short time and got in some trouble about the 5 June 45 I appeared before an F. G.C.M. for stealing under 15 (4) B. A.

for an offence which took place on the 22nd of May 45. I have another entry for D.W.L. 19 Nov 45 for 16 hrs 56 mins in Paris. I have no explanation as to why I was in possession of a pair of pyjamas and a towel which I am charged with. I moved from the Bristol Hotel I took my kit bag to the Hotel Voltaire where I left it until the afternoon of the same day until I got a vehicle to move me to the Hotel Westminster after I was there for an hour or so I decided to have a bath and I unpacked my belongings placed them in the drawers which were allotted to me in the room, and whether the towel which I am claiming is his I cannot say whether it is his or not because the towels I have are quite old and I never took any particular pains to look and see if there was any markings on them At the same time I discovered the pyjamas when I was looking for a pair of drawers so I used the pyjamas without. I have no explanation for them being in my kit bag I was pretty drunk the night before I do. I remember coming back

to my billets that night. I have heard drinking quite a bit lately, I have been shunning with a chap by the name of Hudson, he does not drink very much. I started to drink fairly heavy just after I came overseas after I was wounded at Ypres. I started to drink fairly heavily as my nerves have been pretty bad, I know. I had an examination. I have not been examined by a psychiatrist since I was wounded. I remember the pegamoe which were found in my possession they were bright colour I have never seen any like that before but since then I have at the No. 239 U.S General Hospital after I was wounded close arrest as a patient there for an infection in my right eye, we all had them in the ward including myself. When I have a drinking bout I cannot remember what I did previously to drinking. I do not remember coming home.

Cross examined by the Prosecution

I did not take any pegimoe with me when I left the U.S Hospital I cannot explain how the pegimoe got into my kit bag as he always keeps his door locked and I had no way of knowing how they got there

I am not a particular friend of Dandurand just a common acquaintance, I knew his door was locked as he said so that night. I knew the pajamas did not belong to me but I have quite a few things in my kit bag which do not belong to me, but I do not know where I got them

no. Redexamination

R. I. R. B complied with

Defence is closed.

Prosecutor sums up A.P.P. I

Defending officer replies APP II

Judge Advocate addresses Court. APP III

R. J. Blackmore Capt.

A. M. Emerson Capt
J. A.

App. I

Summing up Prosecution.

It is the contention of the prosecution that on the evidence the accused must be found guilty on the first charge.

The circumstantial evidence is complete. Evidence has been given by the complainant that he positively identifies the articles found in the possession of the accused.

Evidence has been given by 3 other witnesses that it was in fact in the possession of the accused. The accused has offered no explanation as to how the articles came into his possession. Therefore it is the contention of the prosecution that the accused is guilty of theft.

T. B. Hilliard Capt.
Prosecutor.

Defence in Reply

Mr President and Gentlemen.
There is no need for me to review the evidence. It is a simple case and the evidence is fresh in your minds. However there are a few matters that I would like to point out to you, and ~~as~~ to these, the J A will advise you as to the law.

There is evidence that accused had been drinking prior to the commission of the alleged offence, and although he was found in possession of a pair of pyjamas and a towel, he has no knowledge as to how they came into his possession I therefore submit that the element of intent necessary in

the first charge has not been proven.

Further there is evidence that the pyjamas were ~~the property~~ similar to those issued to patients in 239 American General Hospital. I contend they were not the property of Dandenean. As to the fact that Dandenean states that it must have come from the R.M.

I respectfully suggest that the prosecution has not proven the first charge beyond reasonable doubt and that the accused should be given the benefit of that doubt.

J.R. Baillargeon
Major

Judge Commonsense Sums Up.

It is mine to point out that it is part of my duty as Judge advocate to sum up the evidence and advise the Court on the law.

The Court is however the sole judge of the facts and anything I may say or may have previously said concerning my personal opinion as to the facts should be entirely disregarded. The Court and the Court alone are the sole judge of the facts.

I do not think it necessary to summarise the evidence as their memory and opinion as to be any assistance in that respect.

At the outset of this consideration the Court must remember the accused enjoys the benefit of the presumption of innocence. It is not for the accused to prove himself innocent, it is for the prosecution to prove his guilt.

The accused is charged on the first charge with theft contrary R.A.R. Sec 13 (a) [Charge Read]

Theft is defined as follows [MMM L. p113. Sec 50 read to court]

If the court finds the accused was in possession of the articles mentioned in the charge the court may also consider the question of recent possession [MMM L p124 Sec 66 read to court]

The Defence in act in this charge because the accused alleged that was responsible and put in on ~~behalf~~ of friends. There was some evidence that these are American Hospital ~~Corps~~ of however the court finds that Pte Donaldson was in possession of them unless knowledge that they were American Corps This is accused have an ~~appeal~~ property in them within the meaning of the definition of Theft that is more persuasive

There is some evidence The accused may have acted under the influence of drink the court must remember that one of the elements of theft is an intention at the time of the taking to permanently deprive the owner thereof. [MMM L. P106. Sec 9 read to court]

If the court finds the accused not guilty of the first charge the court may

Concerning the eleventh and twelfth charges [Charge 2 Record pg 2 Court]. To be guilty of this offense the Court must be satisfied that the performance of the charge was unlawfully, premeditated and in addition that it is Contrary to the provisions of both general Orders and Military Discipline.

It is now my duty to point out to the Court that the accused is entitled to the benefit of any reasonable doubt & by a reasonable doubt that is such a doubt based on the evidence before the Court and not some doubt which is merely imaginary. If the Court has a reasonable doubt after having duly weighed the evidence then the accused is entitled to the benefit of that doubt.

That is all it is needful to say across the Court on the Prosecution in Defending Officer reserve themselves on some point it may have overlooked

Prosecution "No"
Prosecution "No"
Defending Officer "No"

A.M. Eaglestone Capt
J.A.

E3

Plea in Mitigation.

Mr President and Gentlemen. You have already heard the accused's story under oath and I do not believe it necessary to go into that in detail again.

I think the Court can understand how "fire water" acts on a man with Indian blood in his veins.

There does not seem to be any explanation for these silly acts except what he has gone through in action, and because of drink. Had he anything to gain, I could understand, such as to "flog" the articles to buy more whiskey.

In view of his service I would ask the court to be as lenient as possible in their sentence, and further due to the fact that accused has not been examined by a psychiatrist since his injuries, I would request the court to recommend that he be so examined before serving his sentence.

Lt Baillargeon Def

"B"

SUPPLEMENTARY

No. C10148 Name HANLEY MC | Sqn, Battery, or Company | Corps CIC | Date of enlistment 6Mar44 | CC Badges | ns | Service or Proficiency Pay | 3/47 MFM 6 (AFB 122)

Date of last entry in Company Conduct Sheet	No. and date of last drunk	Period not reckoning towards freedom from extra fine	Sheet No	Signature OC Company, etc	Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial with trial	By whom awarded	Remarks
Field	22May 45	Pte		WOS Stealing - AA Sec 18(4)	Lcpl Bourcier Lcpl Henry Pte McMahon	6 mos Detention	9Jun45	FGCM	Forf 183 days pay FR&I 1aw(1)(b) Forf 8 days pay FR&I 1aw(1)(c)(1) Total forf 191 dys pay
				RELEASED from the 1 Cdn Detn & FP Bks on Oct 2, 1945 SENTENCE HAVING EXPIRED. Remission earned under 'Rules for Detention Barracks and Military Prisons' 61 days					
				Sgd Certified true copy GI Baldwin Capt & Adjt 19 Jun 45 Date Officer having custody of original documents. HQMR					

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Paris, France	19Nov 45	Pte		AA 15(1) AWL from 2359 hrs 19 Nov 45 to 1535 hrs 20 Nov 45 (Absent 15 hrs 36 mins)	11788 Sjt Baker AJ	28 days pay	23Nov45	AT Dixon Lt-Col	1 dys auto forf of pay

Certified true copy

(A T G Hay) Captain

Officer having custody of regimental books.

"A"
am Enclosure Capt
JA

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C10148	Pte	HAWLEY Marshall Carmen	CDN MIL STAFF (PARIS)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the fair conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers here stated should correspond with the entries or series in the conduct sheets, no mistakes being given by the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA 15(1)	one times	~~XXXX~~
For AA 18(4)	~~XXXX~~	one times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct~~

or

~~There are no entries in the conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted.~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~or the accused at the present time has undergone sentence for~~

~~imprisonment for a total period of~~

4. The accused has been in confinement, awaiting trial on the present charges, for 180 days in civil custody, and ~~nil~~ days in military custody, making a total of 464 days, of which ~~No~~ 5 days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 29

6. The date of his ~~enlistment~~ attestation specified in his record of service / ~~attestation paper~~ is 6 Mar 44

* 7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr 10 mons

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr 5 mons service.

9. The accused is entitled to reckon 1 yr 5 mons service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~(or has been recommended for one)~~ ~~and is entitled to state any military decoration he or may be entitled to~~ CVSM + Clasp 39-45 Star Atlantic Star. France-Germany

11. ~~He was mentioned in or was awarded a certificate in the despatch of~~ ~~made by~~

12. ~~He has served as an officer, or the accused holds or has held the army rank of~~ ~~and in his regiment (or corps or establishment) the rank of~~

(P23000) W1.14698/1720 20,000 10/43 A. & E. W. Ltd. Gp.698
(39804) W1.12014/1499 15,000 2/45 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 910148 Rank Pte Name [redacted] of Quartermaster's Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	5 JUN 45 NWE	AA Sec 1m(a) 70 & - Stealing	6 months detention	61 days

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Twenty First day of January, 1946

(A. F. Dixon) Lt-Col
AA & QMG GDN HIL ST FF (PARIS)

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of Promotion.
[redacted]	[illegible]
[redacted]	[illegible]
[redacted]	[illegible]
[redacted]	[illegible]

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraphs concerned amended accordingly.)

SUMMARY of EVIDENCE

in the case of C-10148 Pte HAWLEY M.C., Cdn Mil Staff Paris, a soldier of the Cdn Army Overseas.

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness : Lt S. Service, Camp Comd, CMSP, having been duly sworn, states :

" On the morning of Friday 7 Dec 45, Sgt Baker came to me and told me that a loss had been reported to him from the Bellechasse Hotel. I instructed him to check to ensure that the articles were actually lost and were not misplaced.

On Saturday morning, he again came to me and reported that Pte Dandeneau C.F. had lost one pair of pyjamas and a towel from his room. I again told Sgt Baker to check and make sure that w as all that was missing and he reported in the afternoon that he had a suspicion that the stolen articles were in Pte Hawley's kit.

It was at this time that I instructed Sgt Baker to carry out a kit-inspection of Pte Hawley's kit and report to me at the Westminster Hotel. I was in my room at approx 1800 hrs, when I received a phone call from Sgt Baker, saying that he was in Pte Hawley's room at the Westminster Hotel and that he had found some of the missing articles. I proceeded to Pte Hawley's room and there found Pte Hawley, Sgt Baker and an English soldier by the name of Pte Merryson. In the right hand corner of the bottom drawer of a dresser, which was open , I found a towel and the top part of a pyjama, which I now produce (marked as Exhibit "A" and "B" respectively). I questioned Pte Hawley as to where the articles had come from. At first, he did not know and later he said that he had taken them from Pte Dandineau's room.

I asked him where the other part of the pyjama was ; he took a moment to think about it and then said he was wearing it . He was then ordered to take off the lower half of the pyjama which I now produce (accepted and marked Exhibit "C"). I took charge of the three exhibits which have been locked up in my room until produced for this Summary of Evidence.

Pte Hawley was then warned that he was under close arrest. I contacted the DAPM and he phoned the Provost to take Pte Hawley to custody."

The accused declines to cross-examine this witness.

C. Service
Lieut S. Service

Second Witness : H-102670 Pte DANDENEAU C.F., Cdn Mil Staff, Paris, having been duly sworn, states :

" At about 0730 hrs, 7 Dec 45, I left room No. 11 at Bellechasse Hotel where I am billeted with the staff of CMSP. I left in my room a light blue pair of pyjamas, by the bed, a towel hung by the sink and the rest of my stuff was in a cupboard which was locked and the key of which was in my pocket. I locked the door of my room and put the key downstairs.

I returned to my room at 1200 hrs and found that the towel and the pyjamas were gone. I asked the room-maids and they said they did not know anything about it. They then said that Pte Hawley, who was in room 12, had moved out of the hotel in the morning.

I did not report to anybody that day, but the next day I told Sgt Baker about it. Later that day, at approx 1800 hrs, Sgt Baker asked me if I wanted to be present at a kit-inspection of Pte Hawley's kit, at which Pte Hawley would be present. In Pte Hawley's room, in the drawer of a cupboard, we found a towel and the top part of a pyjama which I identified as being mine.

.....

Sgt Baker asked Pte Hawley, in my presence, where was the other part of the pyjama. Pte Hawley said he had it on him and we found it on his person. I identified it as being the second part of my pyjama suit."

Questions by the officer taking Summary :

Q - " I show you three articles (producing Exhibits "A", "B" and "C"). Have you seen them before ? "

A - " Yes. I definitely identify both the towel (because of the laundry mark "49") and the pyjama suit, beyond doubt, as my property which was removed from my room on 7 Dec 45 and was later found in Pte Hawley's room and on his person on 8 Dec 45".

The accused declines to cross-examine this witness.

C.F. Dandeneau

H-102870 Pte Dandeneau C.F.

Third Witness : L-1788 Sgt BAKER A.J., Cdn Mil Staff Paris, having been duly sworn, states :

" On Friday 7 Dec 45, in my line of duty supervising the meal hour, at approx 1300 hrs, Pte Dandeneau approached me and reported a pair of light blue pyjamas and one towel missing from his room at Bellechasse Hotel. He gave me his suspicion that Pte Hawley, who had moved from the hotel to the Westminster Hotel that same day, had taken his property. So I investigated on my own.

On 8 Dec 45, at approx 1600 hrs, I met Pte Hawley in my room at the Voltaire Hotel. I told him that articles had been removed from a room in Bellechasse Hotel on the previous day, and that I was investigating. I asked Pte Hawley if he knew anything about it and he said No . I asked if he could have taken them away by mistake, and was given the same answer, that he had not taken them.

I telephoned Pte Dandeneau to report to my room and explained to him that, if he so wished, he could require a kit-inspection. Pte Dandeneau decided that Pte Hawley's kit be inspected. We then went from the Voltaire Hotel to the Westminster Hotel, which was Pte Hawley's new quarters, and asked Pte Hawley to lay out his kit. He took some of his kit from a large wardrobe and displayed a very small amount of kit on his bed. Nothing was found. I asked him if that was all his kit and he said it was. At the bottom of the big wardrobe there was a drawer which Pte Hawley opened with a key. The drawer was empty. On the other side of the room, there was a dresser. I asked Pte Hawley to open the dresser for inspection. I was told that the dresser belonged to his room-mate, who was an English soldier. Seeing the locks on the dresser were the same as the wardrobe , I took it on my own to unlock the first drawer of the dresser, when the soldier whose kit was in that drawer came in the room. I asked the said soldier if he had any objection for me to took at his kit, as I was looking for certain articles that had been reported missing. He opened the two first drawers for inspection and, after satisfying myself, he shut them. I asked the soldiers to open the two bottom ones. The English soldier told me that the two bottom drawers belonged to Pte Hawley. I proceeded to open the next two drawers. In the bottom one, on the right hand side, I saw the top part of a pyjama and a towel which were identified by Pte Dandeneau as being his property. In addition, in this drawer was the remainder of Pte Hawley's, which he admitted to be his kit. I asked Pte Hawley to give some explanation, which he never did.

Then I contacted Camp Comd, Lt Service, at his quarters. Lt Service came to the room of the accused and talked with the man as to where the other half of the pyjamas was. At first, he got evasive answers and, when advised that he should speak the truth, Pte Hawley admitted in my presence and in the presence of Pte

.....

Dandeneau, wearing the bottom part of the pyjamas. He was then ordered to undress and took them off. I then placed him under close arrest and notified the Cdn Provost. Later on, he was turned to the Cdn Provost for safe custody. Before the man was placed under close arrest, the articles were taken by Lt Service and kept as exhibits. "

Questions by the Officer taking Summary :

Q - " I show you three articles (producing exhibits "A", "B" and "C"). Do you recognize them ?
A - I recognize Exhibit "A" as being similar to the towel found in Pte Hawley's room with the top part of the pyjama, which I identify as Exhibit "B". Exhibit "C" is the bottom part of the pyjamas which the accused took off his person."
Q - " During the inspection of his kit, was Pte Hawley present at all times when his kit was inspected ?"
A - " He never left the room."
Q - " What was the name of the British soldier who shared the room with Pte Hawley ?"
A - " I do not know."

The accused declines to cross-examine this witness.

A.J. Baker

I-1788 Sgt Baker A.J.

Fourth Witness : 14655084 Pte HARRISON HLI (Br), batman att to BAS (France), having been duly sworn, states :

" On 8 Dec 45, I was on duty at 1200 hrs at Hotel Westminster. I left my room at 1200 hrs and did not come back until 1445 hrs. One of my friends came with me and as I told him I would go out that night, he advised me to put my coat on. I looked for it but could not find it. I thought maybe somebody had borrowed it. I inquired, but nobody had it.

At approx 1700 hrs, when I came back to my room, the Sgt-Major was there, with the accused whom I recognize, and another Cdn soldier, and they were looking through my drawers. When Pte Hawley had been assigned to my room the day before, it had been agreed that I would use the top two drawers of the dresser and he would use the bottom two. The Sgt-Major then looked through the bottom two and found the articles which they were interested in, that is a pair of pyjamas and a towel.

This is all I know about the case."

Questions by the officer taking Summary :

Q - " I show you three articles (producing Exhibits "A","B" & "C") Do you recognize them ?"
A - " Yes."
Q - " What are they ?"
A - " A pair of pyjamas and a towel ."
Q - " Where have you seen them before ?"
A - " In the bottom drawer of the dresser, at the time the Sgt-Major opened it."
Q - " Regarding the drawers of the dresser, did you have any article whatsoever in the bottom two ?"
A - " No."
Q - "Was it agreed by mutual consent between yourself and the accused that the top two drawers would be used by you and the bottom two by him ?"
A - " Yes, the date he moved in."

.....

Q - " Were the drawers locked ?"
A - " When I arrived, my top drawer was locked, but the other three were unlocked."
Q - " What is the number of the room you shared with Pte Hawley?"
A - " It was room 607."

The accused declines to cross-examine this witness.

J Merrison

14655884 Pte Merrison

Fifth Witness : B-17936 Pte CHURCHER K.C., CMSP, having been duly sworn, states :

Q - " I show you three articles (producing Exhibits "A", "B" & "C") Have you seen them before ?"
A - " I have seen Exhibits "B" and "C". I have seen Pte Dandeneau wearing these pyjamas at Dufayel Barracks, in Spring. He slept in a bed opposite to mine, across the room. He often wore them in day-time. I am certain these are the pyjamas worn by Pte Dandeneau. I cannot positively identify Exhibit "A", as all members of the staff are issued towels of this type. "

The accused declines to cross-examine this witness.

K.C. Churcher

B-17936 pte Churcher K.C.

The accused was cautioned as follows :

" Do you wish to make a statement or to give evidence on oath ? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence ."

The accused reserves his defence.

The accused does not wish to call any witnesses at this time.

Pte Hawley M.C.

C-10148 Pte Hawley M.C.

I certify that the foregoing Summary of Evidence consisting of four pages was taken down by me in the presence of the accused and that RP 4 (C,D,E,F & G) have been complied with.

J.L.G. May

In the Field
4 Jan 46

J.L.G. May Capt
Offr detailed to take Summary

Request for a Defending Officer

I desire the services of a Defending Offr and would like the Court to appoint one on my behalf.

Pte Hawley M.C

Jan 46

C-10148 Pte Hawley M.C.

List of Witnesses for the Prosecution

Lt S. Service, Camp Comd, CMSP
M-102870 Pte Dandeneau A., CMSP
L-1766 Sgt Baker A.J., CMSP
14655884 Pte Merrison , HLI (Er)
B-17936 Pte Churcher K.C. , CMSP

List of Witnesses for the Defence : Nil

List of Exhibits : "A" : Towel ; "B" : Top part of pyjama ; "C" : Bottom part of pyjama .

J.L.G. May

In the Field
4 Jan 46

J.L.G. May , Capt
Offr detailed to take Summary

5J-13

Pte Hawrysh A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H-20835 Pte Anthony HAWRYSH - CIC - 1 CITR

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15	Guilty	Guilty	
2nd AA Sec 40	Guilty	Guilty	
3rd AA Sec 40	Guilty	Guilty	
4th AA Sec 8(2)	Guilty	Guilty	
5th			
6th			

(Note: As to Findings for lesser offences see AA 36, RP 44; Findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of Kit see RP 44 fn 6.)

At present under sentence for Nil beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under EZ.)

Sentence Awarded by the Court:

To undergo Detention for Sixty (60) days.

(Sgd) ..... Judge-Advocate, if any. 16 May 45 Date awarded. (Sgd) J.M. Muller President. (RP 45, 90.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(G) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)
(1. AA 57A. Delete if not used.)

Date 18 May 45 (Sgd) K.G. Blackader (K. G. BLACKADER) Brig
Commanding Cond-13 Cdn Inf Trg Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
H-20835 Pte Hawrysh A	21 May 45	(B. Mothersill) Adm Offr 1 Cdn Inf Trg Regt

Published in Pt II DO #120, dated 23 May 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 28 MAY 1945 JAG

RECORDED AT CMHQ IN AB 160 5713

CFAB6 (In lieu of AFAB) (CFBR 1658 (2804))

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig Milton KG Blackader Comd 13 CITB dated 14 May 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 21, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, ~~183~~, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-20835	Pte	Anthony	HAWRYSH	CIC 1 CITR

PROCEEDINGS REVIEWED A.F. Ready Capt 29 May 45 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 16 May 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Cautions do NOT include all relevant from RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of each variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Can 557. 2. AA 44(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to 22126 Cpl Sinclair as shorthand writer? Ans No
~~The shorthand writer is sworn.~~(2)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.M. Muller ED KR	N.B. CRA
Member	Capt	J.C. Peters	3 C DJR
Member	Lieut	R. Ostfield	1 C DJR
~~Judge-Advocate~~			
Prosecutor	Lieut	A.E. Constant	1 C DJR
Defending Offr	Major	J.J.S. Cagnon	1 C DJR

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea ..... (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-88 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*B*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)
Additional evidence of Capt Fraser. Standing orders marked Ex B.

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts as'y of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP* [redacted] *2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans I myself on oath and witnesses as to facts and character
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(2) Ans Plea by Def. Offr. .....
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP* [redacted] *One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182. RP 46-50, 69, 118, 119(A). KR Can 308, 330, 563-566. Overseas RO 309, 2323. MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, H20855 Private Anthony HAWRYSH, Canadian Infantry Corps, attached to No.1 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
SECTION 11
ARMY ACT

WHEN ON ACTIVE SERVICE, NEGLECTING TO OBEY CAMP STANDING ORDERS,

in that he,

on the 28th day of April, 1945, was out of bounds, i.e., being in the Officers' Mess, 1 CITR, buildings and quarters, contrary to 1 CITR Camp Standing Orders, paragraph 1(b), dated 15 Feb 45.

SECOND CHARGE
SECTION 40
ARMY ACT

WHEN ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

on the 28th day of April, 1945, in Albuhera Officers' Mess, 1 CITR, did improperly wear rank badges to which he was not entitled, that is to say, badges of rank of a Lieutenant.

THIRD CHARGE
SECTION 40
ARMY ACT

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

did use obscene language, that is to say, on the 28th day of April, 1945, in Albuhera Officers' Mess, 1 CITR, did say "Fuck you, you dirty bastard".

FOURTH CHARGE
SECTION 9(b)
ARMY ACT

WHEN ON ACTIVE SERVICE, USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER,

in that he,

in Albuhera Officers' Mess, 1 CITR, on the 28th day of April, 1945, did say to Major R.G. Shawcross, "Another Major - beat it," and "Fuck off, we've had enough of Majors."

C.B. Ware Colonel,
(C.B. Ware) Commander
1 Cdn Inf Training Regiment.

In the Field,
10th day of May, 1945.

To be tried by Field General Court Martial.

(A.C. Blackader) Brig
Comd
13 Cdn Inf Trg Bde

IN THE FIELD
14 May 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H-20635	Pte		Anthony	HAWRYSH	CIC 1 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has [have] committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 10 May 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [and that it is not practicable to delay the trial for reference to a superior qualified offr.]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E M MILLEN, ED	1 CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by Comd	3 CITR
Lieutenant	to be detailed by Comd	1 CITR

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	to be detailed by Comd	1 CITR

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(K G Blackader)

Date 14 May 45 Commanding 13 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAAS (To Item 9 of AFA3) 40-7 & 8/1897 (4921)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. H20833 Pte Hammyoh A.

of 1 C.I.T.R. and in my opinion he

Is ~~unfit~~ fit to undergo Trial by Court Martial.

Station FIELD

Date 16 May 45

J.C. Allison Capt.
Medical Officer

CASE OF

H.20835 Pte HAWKISH A 1 CITR

WITNESS

Capt LEA FRASER, 1 CITR, having been duly sworn, states:

I am the SPO 1 CITR, and I produce Standing Orders of the Unit which were posted in the Office of the SPO where accused has been employed for the past 6 mths. They have been posted on the wall since about end of Feb 45.

NO CROSS-EXAMINATION

ORDERS MARKED EXHIBIT B

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

D-1 STATEMENT BY ACCUSED (ON OATH)

On 28 Apr I went downtown where I met a couple of my friends and we got a bus and went into Farnham and lounged around until the pubs opened. We indulged in some drinks in the pub when it opened and that is as far as I can remember. I don't remember getting back to Aldershot or anything else after that except that the following morning I woke up in the SPOs office and was being told by the SPO what I was supposed to have done the night before.

CROSS-EXAMINED

Q. What was the last thing you remember doing on the day of the 28th?
A. Drinking in the pub in Farnham, I can't tell you the time, but it was quite late I imagine. We went in between 6 and 6.30.

Q. It must have been between 6.30 and 10 o'clock at night?
A. Yes.

Q. How many drinks did you have?
A. I don't remember, but I know I had plenty. Sufficient.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

CHARACTER WITNESS

Lt MR WHITE, 1 CITR, having been duly sworn, states:

PRESIDENT: (President reads Sec 95 Chap 6 MMC to this witness when witness tells the Court before being examined that he is on a charge in connection with an incident that took place on the evening of 28-29 Apr, with which the accused is charged)

WITNESS: I understand that, Sir.

Prosecutor: Will you relate what happened on 28 Apr 45.

WITNESS: Yes, on the day of 28 Apr 45, myself, the accused and another OR went to Farnham together in the afternoon. We had supper and went into a pub at about 5 o'clock. I've known the accused from the fd and he has always been a friend of mine, so I wanted to entertain him more or less. As a result of this he had considerable to drink and when it came time to catch the train from Farnham to Aldershot at 8207 hrs he appeared to be quite drunk. The OR and myself got him on the train and brought him back to Aldershot. [redacted] We went and had something to eat in order to try and sober him up a bit and finally came on as far as the sidewalk outside the Offrs Lines 1 CITR. As the other soldier who was with

us, appeared capable of looking after him I left him there and went into the Mess.

Q. How long have you been commissioned?
A. Since 10 Jun 44, and before I went for my commission I was in the same Coy as the accused.

CROSS-EXAMINED

Q. What condition was the accused in when you put him on the train?
A. He seemed to have a little difficulty in navigating. He had his girl friend with him, and he had to be more or less dragged onto the train.

Q. Was that the 2207 train from Warnham?
A. Yes.

Q. What time was it when you left him on the sidewalk?
A. Approx 11, 11.10.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

CHARACTER WITNESS

M.10824 Cpl HILLGC, 1 CITR, having been duly sworn, states:

I'm a member of the RP 1 CITR and while on duty on the night of 28th and the morning of the 29th, as a result of infm I went to the Albuhura Men's Mess kitchen and found a soldier lying there, who was the accused and whom I now recognize. Another L/Cpl was with me, and we picked the accused up, and we couldn't get his name or anything about him from him as he was so drunk. He couldn't tell us anything.

Q. What time was this?
A. Between 1 and 2 in the morning.

CROSS-EXAMINED

Q. What made you think he was drunk apart from his inability to answer questions?
A. He couldn't stand up, Sir, and you could smell liquor off his breath.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

CHARACTER WITNESS

M.100446 Lcpl DONAGH, CW, 1 CITR, having been duly sworn, states:

I'm a member of the RP 1 CITR, and between 1.30 and 2 o'clock on the night of the 28th as a result of infm recd, myself and Cpl Hills went over to the Albuhura Men's Kitchen and a man was lying under the eaves in the snow and rain. That man was the accused. We tried to get him up, waken him, but he wasn't able to get up or stand. We questioned him but he didn't know where he was supposed to be sleeping, until we finally got it out of him that he worked in the SPOs office and we took him there.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

CHARACTER WITNESS

M.16001 Cpl JOHNSTON JH, 8 CITR, having been duly sworn, states:

I saw the accused early in the morning of the 29th. About 20 mins to 1

the accused and some other individual came into my room, and the accused spoke to me and then left with this other chap. About 20 mins later he came in again, alone. I got up, put the light on and saw that he was quite wet and I put him to bed in the room. He had been staying there about a week and a half prior to that, but had changed his quarters. The accused was very drunk, and I took his boots off and put him to bed. I lit a cigarette for him and told him to make sure and put the butt out before he went to sleep. The next morning he had a hole through his shirt and his chest was burnt. He definitely was drunk alright.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(3).

CHARACTER WITNESS

Maj ER TAIBOT, 1 CITR, having been duly sworn, states:

I've known the accused since I got 43 when he was in a coy of which I was OC, and during that time until sometime in early Jul 44 he was an exemplary soldier, and I don't remember any major case of any charges against him. As far as I was concerned he was a good soldier. At the time I was a Capt.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(3).

CHARACTER WITNESS

Capt LEA FRASER, 1 CITR, having been duly sworn, states:

The accused has been employed in my office, the SIC, since last Nov, and I have found him absolutely trustworthy and reliable and I've even recommended him for promotion. I would be glad to have him back in the office and if it was in civil life, if it was within my power, I would employ him.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(3).

PLEA IN MITIGATION
(NONE MADE)

PROSECUTOR:

Although I know that drunkenness is no excuse for crime, it does in some cases mitigate the punishment. In this case the degree of drunkenness is incalculable, as between 1.30 and 2 o'clock he was lying outside the Men's Kitchen. At 11 o'clock he was in condition to walk from Aldershot to the Offrs Mess, at 12 O'clock he was able to answer, or lie, to questions put to him about an identity card.
The reason no charge of drunkenness was laid was because at 2400 hrs there was no witness to say that the accused was drunk. Between 2400 and 0100 hrs a man could imbibe enough liquor to lay 5 men in the snow.

DEF OFFR:

I would like to go on record as objecting to the remarks of the Prosecutor as in my opinion it is not a proper thing for a reply to be made after a plea in mitigation.

Pres: The Court will permit you to have the last word.

Def. Offr. I do not wish to say anything further.

F GCM of H-20835 Pte R. Hawrysh

RP 37 F: footnote 7 permission should always be given.

Opening address: 1. I wish to put the accused on the stand under oath to establish the fact that when these offences were committed he was drunk.
2. I wish to call four witnesses as to fact to establish the fact that the accused was drunk at approximately 2200 hrs on night 28/29 April 45 and that he was still drunk at approximately 0100 hrs on the same night. 1. Accused 2. Pte White 3. Cpl Hill 4 Pte Donagh 5 Cpl Johnson. Character wit: Major Talbot, Capt Fraser.

Opening address: I wish to refer the Court to Chapter III of MML "Offences & Punishments" Section 48 which states: Drunkenness often has to be considered by court-martial not as an offence itself, but in relation to greater offences, which it accompanies. Where intention is of the essence of the offence, drunkenness may justify a court-martial in awarding a less punishment than the offence would otherwise have deserved, or reduce the offence to one of a less serious character. Thus, if an ordinarily steady respectful man commits himself when drunk by the use of insubordinate language, it may be clear that he did not really intend to be insubordinate; & though the offence cannot be passed over, yet a more lenient punishment will meet the justice of the case than if the same man had used the same language deliberately when sober. So, too, acts, which if done deliberately would show a wilful defiance of authority, may, if the man was drunk, be regarded as amounting only to the less offence of simple disobedience.
With reference to the first charge having been

drinking with an officer who was formerly an other rank with him it's quite natural for him to have made his way back to the officers quarters with him having done so before. With reference to the second charge, not having been admitted to the dance, and being in a cheery mood someone no doubt suggested that the accused wear an officer's tunic in order to get in, he certainly did not deliberately wear badges of rank otherwise he would be in possession of these yet. With reference to the 3rd & 4th charges language such as the accused is charged with using certainly is not common every day language used by a sober person.

Plea in mitigation of sentence:

Mr President & gentlemen of the Court I wish to make a plea in mitigation of sentence for the accused.

We have here a single young man of 27 years of age who was a commercial artist before the war. He volunteered for active service in ~~March~~ July 1941, joined the QOCH of C in August 1942 with whom he served in the field till he was wounded in France. After his convalescence his category was lowered to L3, not being able to rejoin his Unit, he started working in the Selection Personnel Office where as you've already been told by his CO he did splendid work. He lived at home in Canada. He has never been in trouble in civil life and his conduct sheet only shows two offences over a period ~~exceeding~~ of almost four years.

During the winter of 1943/44 he volunteered from "C" Coy in his Unit to join the Scout Platoon which I personally formed and trained. As a scout I can only speak very highly of his work.

The accused has already been in detention for over two weeks.

During his Military career the accused always invested in Victory Bonds and has been planning on going into business with the help of his gratuities on his return to civilian life.

In view of these facts Gentlemen I plead with you to deal as leniently as possible in sentencing the accused.

[illegible] Major

STANDING ORDERS

1 CANADIAN INFANTRY TRAINING REGIMENT

issued by

Col. C. B. Ware, DSO,
Commander

15 Feb 45

I. BOUNDS

1. The following are "OUT OF BOUNDS" to all other rank personnel except when on duty:-

(a) Regimental Headquarters, Records Office, Wing & Coy. Offices.
(b) Officers & Sgts Mess Buildings and quarters.
(c) All unoccupied buildings.
(d) Gas Defence centres.
(e) F.A.P. and Unit Post Office.
(f) Unit Q.M. Stores
(g) Kitchen, Mess Rooms, and stores.
(h) Towns out of bounds without a pass.
(i) Transport and Carrier Park.

2. All Cafes, Restaurants, Tea Rooms, including NAAFI and Salvation Army Canteens, Soldiers' Homes, Cinemas, Theatres and other places of amusement are "OUT OF BOUNDS" to all troops during parade hours.

3. (a) The lines of other Units are "OUT OF BOUNDS".
(b) Personnel will NOT pass through the lines of another Unit but will walk along the Unit Roadways and walks.

4. Personnel below the rank of Sgt will not leave camp after 2200 hrs.

II. DAILY ROUTINE

1. Daily routine will be laid down in Unit Part I Daily Orders.

III. BUGLE CALLS AT NIGHT

1. No bugle calls will be sounded between "Lights Out" and "Reveille" except in the case of an emergency.

IV. FIRE PRECAUTIONS AND AIR DEFENCE

1. (a) The Standing Fire Orders for this Unit are published as Appendix "A" to this Order.
The A.D. Standing Orders for this Unit are published as Appendix "B" to this Order.
It will be the duty of all Pn and Company Commanders to ensure that all ranks under their command are fully conversant with these instructions at all times. Therefore, due to rapid turnover of personnel, it will be necessary that these instructions are reviewed by all ranks at least once a month.
(b) Special fire precautions will be exercised in dry periods during exercises and manoeuvers.
(c) Fire Detail personnel are responsible that fire pails and sand buckets are kept filled and ready for instant use. Also that all fire fighting equipment is maintained in good order.

V. INSPECTION OF ARMS AND AMMUNITION

1. (a) On every occasion that troops are on parade with fire arms each weapon will be examined, not only with a view to its cleanliness, but also to ensure that no live or blank ammunition is in the barrel or the magazine.

V. INSPECTION OF ARMS AND AMMUNITION (cont'd)

1. (b) On all occasions that blank or drill ammunition is used, not only will the inspection of arms be carried out in accordance with (a) above but pockets, pouches and bandoliers of all men will be inspected to ascertain that they are not in possession of any live ammunition. All blank or drill ammunition will be carefully inspected to ascertain that there is no ball ammunition with it. This inspection will be carried out before the commencement of and at the end of these parades. All remaining cartridges will be collected and turned into the stores after each parade.

(c) Before men are dismissed from any parade for which ball ammunition has been issued, an Officer or Warrant Officer will ascertain that no rounds remain in rifles, pouches, magazines or bandoliers. After firing with ball ammunition a certificate will be rendered to the Adjt Trg Bns by the Officer in charge that all unexpended rounds of ball ammunition have been collected or otherwise accounted for. (K.R.(Can), para 1315 (a)).

VI. AIR DEFENCE

1. (a) Times for Blackout will be published in Unit Part I D.O. Unit Orderly Officers, detailed by Adjutant, and Orderly Sergeants, detailed by RSM, will inspect the Unit to ensure that all blackouts within the Unit are securely fastened.

(b) All torches and flashlights will conform with existing regulations. Torches will be shone downwards on the ground and not in the air.

(c) Unit Air Defence Orders are published as appendix "B" to this order.

VII. INJURIES - PERSONNEL

1. (a) All cases of major or minor injuries will be immediately reported to the Unit Medical Officer or to the Orderly on duty at the Unit F.A.P. who will take the necessary steps to obtain medical attention necessary. All cases of major injuries will in addition be reported immediately to the Adjt or Orderly Officer at RHQ.

(b) M.F.B. 371 to be completed in quadruplicate by the Medical Offr. in all cases of injury. (As governed by existing regulations. See ORO 2022). One copy to be retained in the Unit Medical Files and three copies to be forwarded to RHQ within 24 hours from the time of the accident.

VIII. ROAD ACCIDENTS

Attention is directed to CRU Admin Instruction No. 19 d/15 May 44, copies of which are in possession of T.O. of Depot Bn, 1 Trg Bn, and 5 Trg Bn.

1. (a) The following procedure will be strictly adhered to:

(i) It will be the responsibility of the driver of any vehicle involved in an accident to obtain full particulars and complete the Road Accident Report in his possession at the scene of the accident to the end of Part 1 at least. Names and numbers of all available witnesses to be listed along with the statements of the witnesses. If involved in an accident with another vehicle the statement of the other driver.

(ii) Immediately on return to the Unit the driver will report personally to the Unit Transport Officer giving all the particulars. (In the absence of the T.O., to the NCO i/c.)

(iii) The Officer or NCO i/c will immediately notify the Unit Adjutant by telephone (or Orderly Officer).

(iv) The Orderly Officer in the absence of the Adjutant will phone the particulars to Bde HQ and hand over a preliminary report to the Adjt when being relieved from duty.

(v) The Transport Officer concerned will ensure that the procedure as outlined in existing regulations is strictly adhered to in that:-

(a) A preliminary report to be forwarded to RHQ immediately.
(b) Duplicate CMHQ 1000:42a to be fwd to RHQ within 24 hrs.
(c) CMHQ 1000:42 (in triplicate) will be completed within 5 days and forwarded to RHQ on completion.

IX MEDICAL ATTENTION

1. LEAVE - Personnel requiring Medical attention whilst on leave will communicate with the nearest Medical Officer (Military). If a civilian practitioner is called he will be requested to communicate with the nearest military Medical Officer (Canadian) and report the circumstances and the particulars of treatment.

2. INNOCULATIONS - All Ranks will submit to innoculations, vaccinations and treatment against any infectious disease and to complete examination when requested, in accordance with Overseas RO 1809 dated 3 Apr 40. Unreasonable refusal by an Officer or soldier will constitute an Offence under the Army Act.

3. VENEREAL DISEASE - Any Officer or soldier suffering, or believed to be suffering from V.D. must report sick without delay. Concealment of V.D. is an offence against the Army Act in accordance with K.R. (Can) 442. Concealment of V.D. constitutes an offence under A.A. Sec 11.

X. MONTHLY STATEMENTS

1. Monthly statements of Messes & Regimental Institutes will be submitted in accordance with Overseas R.O. 359 and 4L/Gen/4 dated 20 Mar 41.

2. Lists of Officers Unpaid Mess Accounts as of 15th of each month will be submitted to Bde monthly.

XI. LIQUOR IN CAMP

1. Consumption of alcoholic beverages in any place in camp other than in canteens and messes is forbidden. Soldiers in uniform are prohibited from purchasing or from carrying on their person any form of alcoholic spirits.

XII. MARCHING

1. Bodies of troops will march on the left of the road. Individuals and small groups will march on the right side of the road facing the traffic. Bodies of troops while marching at night will be preceeded by 2 men at least 50 yards in advance and two men in the rear. At night red lights will be carried by the advance and rear files. Columns of troops will observe traffic signals in the same manner as other road users except in the case of urgent operational necessity. Where sidewalks or footpaths are provided, individuals and small groups will NOT walk on the roadways.

XIII. TRAFFIC

1.(a) The speed limit of motor vehicles at all times within the camp area is 15 miles per hour. Disciplinary action will be taken against person in charge of any vehicle exceeding this limit.

(b) All vehicles driving within the camp will be confined to the road.

(c) Military vehicles will not be used for private purposes except in cases where recreational transport has been authorized in writing by the Bn Commander. No vehicle will leave the unit area on Monday or Friday of each week without an authority signed by the Commander. Pro forma to be used for this purpose is attached as Appendix "E" to this Order.

(d) Drivers of all military vehicles must carry a work ticket (AFC 3518). Work tickets for each journey will be signed by the Transport Officer or in his absence by the Unit Adjutant.

(e) Requisitions for transport will be submitted 24 hours in advance except in cases of utmost urgency. Transport will not proceed further than a 20 mile radius from Regimental Headquarters except under special authority. The Commander may authorize the use of transport for certain organizations, functions or parties in accordance with Overseas R.O. 4543.

XIV FUEL AND LIGHT

1. All ranks are warned of the vital necessity of economising on both fuel and light and careful supervision must be maintained at all times to ensure no waste.
2. Wastage of fuel and light constitute an offence under Sec 11 of the Army Act.

XV BLACKOUTS

1. Blackouts will not be placed in position until ½ minutes prior to the commencement of blackout and all blackouts will be raised on the expiration of the blackout period.

XVI WATER SUPPLY

1. Taps must not be left running and other wasteful methods and practices must be stopped as the facilities of supply are hardly adequate for everyday needs.
2. Wastage of water constitutes an offence under Sec 11 of the A.A.

XVII PRIVATE PROPERTY

1. Personnel will not trespass on private property. During training periods when private property is used the Senior Officer will take steps to see that no damage is done or gates left open. Private property can only be used for training with the permission of the owner. Poaching, hunting and interfering with game reserves is strictly forbidden.

XVIII MAIL

1.(a) Mail will be sorted and ready for despatch by the Unit Post Office at times to be published in Part I Orders. D.R. Service will also be advised through Part I orders.
Bn and/or Coy Commanders will detail Wing and/or Coy Orderly Sgts to deliver and call for mail at the Unit Post Office. This will be in the form of a written authority signed by the Company Commander to receive the Company mail. (A.C.I. 992, 1942.)
(b) Out-going Mail - (Free postage to Canada and the U.S.A.) Letters and Postcards free of postage addressed to Canada and U.S.A. only are to be endorsed "C.A.(O)" above the address on the face of the envelope or postcard. No. Rank and name is all that is to be shown on the reverse side of envelope or postcard. Senders Unit must not be indicated anywhere on the envelope.

XIX CLEANLINESS OF CAMP AREA AND VICINITY

1. Personnel will not throw paper, matches, or empty cigarette packages anywhere except in the receptacles provided for that purpose.
2. Bn and Coy. Commanders are responsible for the neatness and cleanliness of their respective areas.

XX ARMY ACT

1. Bn Commanders are responsible that K.R. (Can) Section 420 is complied with. Certificate that same has been complied with will be forwarded to H.Q. quarterly.

XXI ELECTRICAL SYSTEM

1. All ranks are warned that on no account will they interfere with the electrical wiring or appliances either inside or outside the building.
2. In the event of the failure of electric lighting or power equipment, requisitions for adjustment or repairs will be made immediately to the Q.M.
3. The use of unauthorized appliances is prohibited.

XXII JACKET HEATERS AND STOVES

1. To prevent damage, personnel filling stoves and jacket heaters will ensure that ashes do not accumulate below the grates and that wet fuels are not placed in the grates of fire boxes. Fires will at no time be overloaded.

XXIII PERSONAL PROPERTY

1. Articles of value lost, stolen or found must be reported immediately to the Regimental Police who will investigate and report, in writing, to Regimental Headquarters forthwith.

XXIV MEDICAL RESPONSIBILITIES

1. Officers will pay careful attention to the condition of the men's feet. Men suffering from sore feet will report to the Unit Medical Officer at the end of each day. Men will be encouraged to bathe their feet each day and prepare clean socks for the following day.

2. Any person incurring a wound of any nature will report to the Unit Medical Officer at once.

3. All sources of water other than those which have been tested and approved are out of bounds to all ranks. When on training outside the camp area, water bottles will be filled before leaving the camp.

4. The following instructions from the D.A.D.M.S., Canadian Troops will be noted.
"Officers granted sick leave must go to the Officers Convalescent Hospital, Garnons, Hereford, as laid down in "Instructions for MOs No. 5", except when they are able to furnish a certificate that they have a home in which they can stay for the duration of their sick leave. Other ranks must invariably be sent to Convalescent Depot.

XXV HITCH HIKING

1. The practice of hitch hiking is not in keeping with the dignity and prestige of His Majesty's Canadian Forces and is forbidden. Strict disciplinary action will be taken against offenders.

XXVI SALUTING

1. All ranks will pay the proper compliments at all times and will pay particular attention to cars bearing the flags of formation commanders.

XXVII DRESS

1. For officers and Auxiliary Supervisors as detailed in Appendix "A" to ORO 4144. For W.Os, NCOs and ORs as detailed in Appendix "B" to ORO 4144.

2.(a) Shoes - In accordance with Overseas RO 4144 personnel are permitted to wear black or brown civilian shoes or boots and no anklets, web, with battledress on the following occasions only.

(i) When on leave (provided that all ranks when proceeding on leave will be correctly turned out and carry all the necessary kit, including boots, ankle, and anklets, web, in accordance with Overseas RO 3363.)
(ii) When walking out.
(iii) After duty, in barracks or unit lines.

(b) All personnel, Officer and Other Ranks, will wear anklets, web, and belts waist (W.E.) whilst on duty during parade hours. The only exception will be such personnel as are excused by the Medical Officer.

SUEDE OR BUCKSKIN SHOES WILL NOT BE WORN

(c) Respirators - In accordance with Overseas RO 2543, respirators will be carried by all ranks on the following occasions:-

(i) At all times in Field Service Marching Order unless otherwise ordered by the Commander.
(ii) At any time when ordered by the C.O. to do so.
(iii) On picquets and guards, other than ceremonial.
(iv) After orders notifying state of emergency have been issued.

XXVII DRESS (Contd)

(v) As directed in Part I Orders, respirators will be worn on parade each Tuesday morning - face pieces to be adjusted from 1000 hrs to 1030 hrs.

3.(a) Officers and soldiers absent from their stations will take their respirator with them but need not carry them except on occasions detailed above

(b) Unless otherwise ordered, respirators will be carried in a slung position, i.e., the sling over the right shoulder, haversack on the left side.

(c) Steel Helmets - In accordance with Overseas RO 1145, whenever the steel helmet is carried it will either be worn on the head or carried on the point of the right shoulder.

XXVIII LEAVE - DISCIPLINE

1. All troops will be warned that proper discipline must be maintained while on leave. In future soldiers about to proceed on leave will be paraded for inspection and instructed in the proper observance of dress regulations, paying of compliments and general behaviour, particularly towards civilians and allied forces.

2. Tunics will be done up at the neck, unless ties are worn, and caps, berets, etc., worn at the proper angle.

3. All ranks will leave the address where they will be located while on leave. Telephone numbers if available will also be left.

4. Telegrams requesting extensions of leave WILL NOT be answered unless sender has arranged for prepaid reply.

5. Emphasis should be laid on the fact that, as Canadians away from home, they are naturally objects of, even greater than the usual amount of, critical observation.

6. Military Police will arrest troops disobeying these orders. In such cases the soldier will be returned to the Unit under escort, and upon conviction, his leave will be terminated.

7. Personnel proceeding on leave to a stated destination will have their pass stamped by the R.T.O., Civil Police or Military Police at that destination. Passes, upon return, to be turned into the Company Commander whose responsibility it will be to ensure that this order has been carried out.

8. The following extract from A.C.I. 2591 of 1942 is published for information of all ranks:

DISCIPLINE - MUTUAL POWERS OF PROVOST, IN MILITARY FORCES OF THE UNITED KINGDOM, CANADA AND NEW ZEALAND

1. All ranks are advised that members of the Military Police, Provost Corps or picquets of the Military Forces of the United Kingdom, Canada and New Zealand have reciprocal powers of Command including the power of arrest, over personnel of all three forces.
2. Canadian Personnel, will therefore, comply with the lawful orders of such members of the United Kingdom and New Zealand military forces given in the course of their duty as if they had been given by members of the Canadian Provost Corps. Failure to do so is an offence upon which disciplinary action may be taken by an appropriate service authority.
3. Commanding Officers will ensure that the substance of this Order is brought to the attention of all ranks under their command.

XXIX ORDERLY OFFICER AND ORDERLY SERGEANT

1. There will be an Officer on Duty at RHQ at all times.
2. Orderly Officer and his duties are as detailed in Appendix "C" to this Order and Part I DOs.
3. Any special instructions will be issued by the Adjutant.
4. The Orderly Sergeant will be detailed daily by the RSM and will perform such duties as detailed by the RSM.
5. In addition the Orderly Sergeant will report to the Orderly Officer at the Men's Mess at 0700 hrs and will accompany the Orderly Officer on all of the inspections detailed in Appendix "C" to this order and Part 1 DOs.

XXIX ORDERLY OFFICER AND ORDERLY SERGEANT

6. Further, the Orderly Sergeant will be responsible for checking the condition of the blackout within the entire camp area, such inspection to commence one half hour after the time Blackout begins as laid down in Part I DO and result of inspection to be immediately communicated in person to the Orderly Officer at RHQ. Orderly Sergeant will take immediate action to remedy any violation of the blackout regulations.

XXX SECURITY MEASURES

1. All ranks are warned of the necessity of exercising complete discretion in their correspondence both within and without the United Kingdom. The following extracts from Pamphlet No. 3 of FSPB of 1938 are published for guidance in that respect.

(a) Allusions to any of the following matters is forbidden at all times in private correspondence during the war, whether relating to Naval, Military, or Air Force, or to operations:

(i) Strength, morals, or physical state or re-organization of our forces including any statements on the absence of presence in the theatres of war of a Unit or formation or disclosure regarding the formation to which any unit is attached or belongs.

(ii) Location or movement of Naval, Military or Air Force Units or detachments, arrival or lack of reinforcements.

(iii) Criticisms and statements calculated to bring into disrepute our forces or those of the allies.

(b) It is forbidden to send, or attempt to send, to unauthorized persons:

(i) Official documents, including Intelligence Summaries, Orders, Reports, Maps, etc., or to disclose their contents except in the course of duty.

(ii) Any document captured from the enemy or found in places occupied by the enemy, any document containing information about the enemy.

(iii) Any official document belonging to the Civil authorities in Allied or enemy territories.

(c) It is forbidden to despatch to neutral countries or enemy countries, photos, or pictorial matter of any kind, from whatever source they may have been obtained.

(d) It is forbidden to insert advertisements or letters in any publication inviting correspondence with strangers, or to enter into correspondence with strangers in response to such advertisements or invitations.

(e) It is forbidden to communicate with the press, except through duly authorized channels.

(f) It is forbidden to send through the post photographs or films except those taken under proper authority. The procedure in this regard is laid down in Overseas RO No. 2430.

(g) The greatest caution and reserve are necessary in acknowledging presents from unknown donors, or in replying to trade circulars from unknown merchants and dealers, especially those in neutral countries.

(h) It is forbidden to use a civil address. The proper form of address is laid down in Overseas RO 4537. (Published as MBI).

2. Careless talk - Careless talk costs lives. Disciplinary action will be taken against persons who use careless talk. Matters of Military Nature WILL NOT be discussed in public.

3. Railway warrants, pass books and rubber Orderly and Signature stamps will be kept under lock and key at all times, when not in use.

XXXI EXCUSED AND LIGHT DUTY PERSONNEL

1. All OR personnel below the rank of Sgt, on excused or light duty will report daily to their Coy Orderly Sgt at 1800 hrs and 2000 hrs.

2. This will provide a means of checking on said personnel as all excused and light duty personnel are automatically confined to barracks.

XXXII INSPECTION OF OUT GOING DRAFTS

1. In accordance with instructions from Bde Headquarters, outgoing drafts to Field Units will be inspected by a Field Officer and a report as to the condition of the draft submitted to Regimental Headquarters before 1000 hrs. on the day the draft departs.

XXXIII TELEPHONES

1. Telephones installed within the barracks other than civilian pay boxes are for military use only and no calls of a personal nature will be put through military switchboard. Strict disciplinary action will be taken against offenders.
2. All outgoing trunk calls must be approved by Commander or Adjutant before being put through by switchboard operators.
3. All outgoing calls will be monitored by switchboard personnel, any calls which are not official will be terminated forthwith.

XXXIV TREES

1. No trees will be mutilated and none felled without permission from Bde HQ.

XXXV MESSES

1. Women will not be permitted within the barrack area except under the following circumstances.
   (a) The occasional entertainment at afternoon and evening parties in the Officers and Sgts Messes provided always that such entertainments are official functions, authorized by the Commander.
   (b) At all authorized Unit dances.
2. The above restrictions apply to Officers of Nursing and Auxiliary Services as well as to civilians. Casual appearance of women in Officers or Sgts Messes will not be tolerated.
3. Other Rank personnel of female Auxiliary Services, etc., in uniform, will not be permitted to enter the Officers Mess on any occasion.

XXXVI PAY PARADES

1. Bn Commanders will detail an Officer to be present at all Unit Pay Parades to act as witnessing Officer, when personnel of their Bn are being paid. Times and places of pay parades will be notified in Unit Part I Orders.

XXXVII GUARDS AND SENTRIES

1. (a) Normal Unit Guards and picquets will be detailed through the medium of Part I Orders or by special notification from Regimental Headquarters.
   (b) Special guards will be detailed by Higher formations.
   (c) Special Guards or Sentries - In the event it is found necessary to detail an armed Guard for Duty at a V.P. the instructions contained in Overseas AO 725 and 2372 must be adhered to. It will be the responsibility of the Coy Commander from whom the guard is detailed to ensure that all men on the guard are familiar with these instructions.
   (d) During the hours of daylight guards and sentries as mentioned in sub-para (c) will NOT have magazines charged. Ammunition will be carried in pouches. During the hours of darkness guards and sentries as mentioned in sub-para (c) will have magazines charged and safety catches or cut-offs closed. (It will be pointed out to all members of the guard that it is NOT permissible to have a round in the chamber of the rifle.)
   (e) Transport piquet - Mounted daily. Duties as in Appendix "E".

XXXVIII PERSONNEL REPORTING TO UNIT

1. All personnel reporting to this Unit, both officers and other ranks must report immediately to Unit Records Office. This includes personnel reporting from other units, reporting from course and hospital. In the case of absentees or personnel returned to this Unit for disciplinary action, senior NCO in charge of Regimental Police on duty at the time a soldier is admitted, will be responsible for advising particulars of the soldier to Unit Records Office.

2. Records Office will complete posting notice, CFA 205, in triplicate, for all ranks with distribution as follows: (a) one copy to the individual for transmission to R&D Wing (b) one copy to be retained by Records for Part II Order purposes. (c) one copy for R&D Wing. (Copies of posting notice as per para c will be accumulated at Records Office, i.e., one copy for each officer and other rank who reports to this Unit during the course of any one day. They will be despatched to R&D Wing the following morning. Example - Posting Notice (as per C) for personnel who report on 12 Mar 45 will be despatched to R&D Wing on the morning of 13 Mar 45).

3. R&D Wing Coy Commander will be responsible for checking these posting notices against their records of personnel who have reported to the Wing and will ensure that the body for whom the posting notice was created, has reported to their Wing.

4. Any personnel who it is found have failed to report will be reported on the absentee report.

XXXIX TRANSPORT

1. Drivers of all MT vehicles are hereby warned that it is an offence for them to move a Canadian Military Vehicle without first having completed all details of the journey in columns 1 to 6, incl, on Army Form G3518 (transport work ticket).

2. All work tickets must be completed in ink and the signature in column 6 must be that of a commissioned officer.

3. Any commissioned officer on strength of 1 CITR is authorized to sign an Army Form G3518 in column 6 providing verbal authorization from one of the following has been obtained:

Commander	1 CITR
Adjutant	1 CITR
Tpt Officer	1 CITR

XL APPENDICES TO STANDING ORDERS

Appendix "A" - Standing Fire Orders.
Appendix "B" - A.D. Standing Orders.
Appendix "C" - Orderly Officers Reports.
Appendix "D" - Rules and management of Unit Guard Room.
Appendix "E" - Orders for Unit Transport Guard.
Appendix "F" - Vehicle Holiday Release Pro Forma.
Appendix "G" - Standing Fire Orders - 5 Trg Bn.
Appendix "H" - A.D. Standing Orders - 5 Trg Bn

R.J. Mothersill Major
(R. J. Mothersill) Adm Offr
1 Cdn Inf Trg Regt

APPENDIX "A"
TO UNIT STANDING
ORDERS

STANDING FIRE ORDERS

For

1 CANADIAN INFANTRY TRAINING REGIMENT

1 Jan 45 Barrosa and Albuhera Barracks

PART I

1. OUTLINE OF FIRE ORGANIZATION

(a) Tidiness and cleanliness in all military buildings is essential.
(b) Smoking is prohibited in all garages, stores, workshops, and magazines.
(c) The use of lights other than those officially authorized, is prohibited.
(d) All ranks are cautioned against allowing red hot coals to fall from fires on to wooden flooring, and against throwing down cigarettes, pipe ashes, or glowing matches.
(e) Electric fittings and wiring must be kept in good repair, any evidence of damage, etc., to the installations will be reported to the Q.M., who will in turn inform the DCRE. Only electrical installations sanctioned by competent authority will be used.
(f) Fire Point equipment will be kept in good order--sand for fire-fighting purposes must be well sifted and dry, enabling it to be poured like water.
(g) No naked lights will be allowed near a receptacle that contains, or has contained, petrol, whilst cleaning or repairing operations are in progress.
(h) Inspection pits of garages will be kept clean and ventilated, spilled petrol will be wiped up at once. Petrol will on no account be allowed to run into drains. Tops of petrol cans will always be firmly screwed down, never left open. Petrol tins will NOT be left in wooden huts or buildings, neither will paraffin (coal oil) or other inflammable material, under any circumstances, be stored in ordinary buildings. Special arrangements must be made for this storage, and at least two buckets of sand provided as an anti-fire measure.

(i) There will be no accumulation of grease, oil waste, waste paper, neither will sand bags (treated) or camouflage nets be piled in heaps, as they are liable to spontaneous combustion.

(j) On no account will fire fighting equipment be removed from its authorised location unless to fight fire or to be used for drill and exercise purposes.

(k) Where stove pipes pass through walls or roofs constructed of wood or other combustible material, the air space will NOT be stuffed with paper or other material, but must be left open, and on no account will articles be laid across stovepipes. Fires will NOT on any account be raked out on the hearth, but will be burned or damped out.

(l) In offices where smoking is permitted,- metal ash trays will be used.

2. FIRE ALARM (INSTRUCTIONS FOR RAISING)

(a) The alarm must always be raised when a fire is reported even if the fire is small.
(b) By shouting "FIRE".
(c) By beating on the IRON TRIANGLES (located at)

Barrosa Barracks	Albuhera Barracks
Guard Room	Guard Room
Outside Offrs Mess Kitchen	

(d) By sounding ALARM on bugle.
(e) By telephoning ALDERSHOT MIL FIRE BDE (Aldershot 0130), and Unit Fire Bde Office, extension 12.

3. DUTIES OF FIRE OFFICER

(a) The FIRE OFFICER is responsible for the care and maintenance of all fire fighting equipment in the Barrack Areas.
(b) It is the FIRE OFFICER'S duty to see that the fire fighting personnel and auxiliaries, are kept up to strength, and properly trained.
(c) In the event of an outbreak of fire, he will take charge of fire fighting with the unit fire fighting personnel's aid, until the arrival of the Military or Civil Bde.

4. DUTIES OF FIRE NCOs

(a) The Unit Fire NCOs (one Sjt and two Cpls are permanently detailed) will assist the FIRE OFFICER in carrying out his duties.

5. DUTIES OF FIRE DETAIL

(a) 1 NCO and 5 ORs will be detailed weekly by Holding Wing for fire fighting duties, under i/c FIRE FIGHTERS--during this period they will sleep in the FIRE OFFICE and will be confined to camp for the period of their tour of duty. They will be instructed in use of equipment, their duties, knowledge of fire orders, and locations of fire hydrants, static water tanks, etc. They will also assist in maintenance of equipment and installations for fire fighting.

6. DUTIES OF FIRE PICQUET

(a) 1 NCO and 6 Pte will be detailed daily by 1 CIT Bn, their tour of duty will be from 1800 hrs to 0630 hrs daily.
(b) They will report to NCO i/c FIRE OFFICE at the commencement of their tour of duty and will be posted in pairs by him, each pair changing every two hours.
(c) They will patrol the whole of the Camp Area--looking into the windows of all unoccupied buildings and huts, to see everything is in order--in the event of fire occurring, they will act as in para (2).

7. FIRE FIGHTING APPLIANCES

FIRE OFFICE IS LOCATED IN BASEMENT OF ALBUHERA MEN'S KITCHEN.

(a) Fire Points consisting of
(i) 3 Pails Water)
(ii) 2 Tins Sand) - Placed in Buildings
(iii) 1 Stirrup Pump)
(b) 1 HOSE REEL stationed at the Guard Room in Barrosa Barracks, 500 feet of hose is stored on the reel.
(c) FIRE SCREENS. Corrugated iron sheets are available at the following points:-
Barrosa Barracks - 1 Supply rear of QM Stores.
1 Supply S.E. corner of MT Garage.
Albuhera Barracks - 1 Supply South end SP Coy HQ 1 Trg Bn
(d) LADDERS (50 foot) are located at
Barrosa Barracks - 1
Albuhera Barracks - 1
(e) WATER SUPPLY
(i) Fire Hydrants are conveniently located throughout the Bks, and are painted YELLOW and marked "FH".
(ii) Static Tanks are at the following locations in Barrosa Bks:-

South end MT Garage
NE corner of Sjt's Mess
SW corner of Tennis Court
NE corner of Barrosa Lodge

(iii) Underground Water Tanks
East of "A" Block
East of "C" Block
East of "I" Block

(iv) Static Tanks are located in Albuhera Bks as follows:-
NW corner of playing field
N end of stables
S end Men's Mess
NE of Garrison Theatre

Underground Water Tanks
of Hut 2
W of NAAFI

7. FIRE FIGHTING APPLIANCES (Contd)

(f) LOCAL ASSISTANCE
(i) Stand pipe, hose reels, 8 crew, stationed in Albuhera Bks, also a Trailer Pump, may be obtained with a crew from Corruna Bks. (This assistance is mutual).

8. PUBLICATION OF FIRE ORDERS

(a) These orders will be posted in all Coy offices, all offices, QM Stores, and Guard Rooms.
(b) They will be read to all incoming troops, and at least once a month thereafter. (This is a Coy Comd responsibility).
(c) Part II Fire Orders will be posted in all Barrack Rooms, and Bn Notice Boards.

9. NAAFI PREMISES

(a) OsC are responsible for the fire precautions in all parts of NAAFI premises under their control, including institutes in requisitioned accommodation.
(b) To minimize the risk of fire after the closing of the Institute for the day, the NCO on duty will inspect all parts of the Institute used by troops, and will pay particular attention to extinguishing cigarette ends which have been discarded where they might cause a fire. Fires in heating stoves and grates, will be damped down before the Institute is closed.
(c) The NCO on duty will be responsible for the removal of blackout coverings in all parts of the institute used by troops, including refreshment rooms, immediately after the final closing for the day, so that any fire which may break out can be seen clearly in its early stages from outside the building.
(d) Smoking. In Military Establishments, smoking will only be allowed in such places, and at such times, as may be authorized. Cigarette ends, pipe ash, and spent matches, will be discarded in receptacles provided for the purpose when near any building, tent, or store.
(e) Incinerators. Incinerators must be segregated from other buildings, the minimum distance being 50 ft.
(f) Grass and Undergrowth. Grass and undergrowth will be kept short in barrack, camp, and depot areas.

10. FIRE DRILL AND PRACTISE EVACUATION

(a) To ensure that all ranks are familiar with their duties in case of fire and to minimize the loss of stores and equipment in case of fire occurring, action will be taken as follows:-
(b) FIRE DETAIL will hold at least one full dress drill each week; this to include coupling of hose to a hydrant and playing of water through hose under direct supervision of i/c FIRE DETAIL.
(c) ALL RANKS with the exception of Barrack Room orderly and FIRE DETAIL, will report to the following assembly areas:
(i) All ranks quartered NORTH of SCARLETTS RD will parade on the main parade square.
(ii) All ranks quartered SOUTH of SCARLETTS RD will parade on Albuhera Playing Field.
(iii) All Coy Officers will report to their respective Coy assembly areas, and the senior officer present will take over.
(iv) Personnel employed in stores, offices, and workshops will report to their places of employment and stand by to remove documents, stores, etc., when necessary.
(v) MT personnel will report to MT lines and stand by their vehicles--the evacuation area for vehicles is the park area SOUTH of Albuhera Officers Mess.
(vi) REGIMENTAL POLICE will report to Guard Room, and be prepared to evacuate prisoners if ordered.
(vii) Officers Mess staff will fall in on lawn in front of Officers Mess.

10. FIRE DRILL AND PRACTICE EVACUATION (Contd)

(viii) Attention is drawn to OVERSEAS RO 3245. Provisions of this Order will be carried out immediately, whenever a fire, explosion, or other occurence involving damage to Public property takes place on premises used by the Canadian Army Overseas from any cause.

(ix) IT IS EVERYBODY'S DUTY TO ATTACK AN INCIPIENT OUTBREAK OF FIRE.

PART II

1. ACTION ON OUTBREAK OF FIRE

Any person discovering a fire will:-

(a) Summon assistance by shouting "FIRE",

(b) Try to put it out by means available without opening any door or windows more than necessary.

(c) When help arrives send runners to Unit Duty Officer, Fire Detail NCO, and Guard Room.

(d) In buildings occupied, warn occupants and render assistance.

2. ACTION OF GUARD COMMANDER

(a) Sound ALARM by use of bugle and triangle--turn out the FIRE DETAIL if not already warned, and notify Unit Duty Officer.

3. ACTION BY UNIT DUTY OFFICER

(a) On the first alarm the UNIT DUTY OFFICER will notify ALDERSHOT MILITARY FIRE BRIGADE (ALDERSHOT 0130) without reference to any individual. N.B. The foregoing does not absolve any individual discovering a fire, from putting in a telephone call to ALDERSHOT 0130 through unit switchboard; the operator on duty will know then whether or not a call for help has been put in, and if not immediately acquaint ALDERSHOT 0130.

4. ACTION BY SWITCHBOARD OPERATOR

(a) Upon receipt of a call of "FIRE" he will immediately clear all lines and ring ALDERSHOT 0130 and allow fire call to go through.

5. ACTION OF FIRE PARTY

(a) The FIRE DETAIL will be on duty 24 hours a day and will sleep in the basement of ALBUHERA MEN'S KITCHEN.

(b) Cordon and ladder squads will be provided by No. 1 Cdn Inf Trg Bn upon request from the Fire Marshall.

(c) Unit rescue parties will act as the salvage squad. They will consist of Unit Carpenters and ORs.

(d) Transport Officer will detail one 15 cwt truck or suitable vehicle and driver to be ready for fire duties under the orders of the NCO i/c Fire Fighters.

6. ACTION OF FIRE MARSHALL

(a) Upon being notified he will proceed to the scene of the fire, and take charge of all fire-fighting operations until the arrival of military or civil fire brigades, who will then take over.

(b) If necessary he will detail cordon leader, ladder and light rescue parties.

(c) Detail picquets on smouldering debris to prevent further outbreak after control has been achieved. Dismiss remainder of troops.

(d) Notify Unit Duty Officer when fire is under control.

7. ACTION TAKEN BY OTHER PERSONNEL

(a) On sounding the fire alarm, except when due to enemy action, all ranks will parade outside their quarters, wearing steel helmets and respirators.
(b) Officers and NCOs will join their troops at once.
(c) Troops will not disperse until the fire is out. They will be available to assist Fire Marshall or Senior Officer present.
(d) Personnel employed in offices or stores, will proceed immediately to guard same.
(e) MT Drivers will report to their garages or where their vehicles are parked and if these are in danger will drive or push them clear.

WHEN ALARM IS SOUNDED PERSONNEL QUARTERED IN THIS BUILDING WILL PARADE AT

_____

APPENDIX "B"
TO UNIT STANDING
ORDERS

STANDING P.A.D. ORDERS

For

1 CANADIAN INFANTRY TRAINING REGIMENT

20 Feb 45 Barrosa and Albuhera Barracks

1. OBJECT

(i) The object of the Unit P.A.D. Standing Orders is to mitigate by org trg and discipline the effect of enemy attacks from the air, so that interference with normal activities is reduced to a minimum.

AREA

(ii) The area to be covered by P.A.D. Scheme includes the whole of Albuhera and Badajos Barracks Blks area including Cardigan and Albuhera Theatres, also Albuhera and Barrosa Offrs Mess Blks.

COORDINATION

(iii) N.F.S. and Mil Fire Bds, Aldershot Area, are available 24 hrs per day.

2. GENERAL ORG

(i) Unit Control Centre is at R.H.Q. and the area controlled by 1 Can. Inf. Trg. Regt is divided into three sections A, B and C.

A Area. All Bldgs and huts NORTH of ALBUHERA RD excl ALBUHERA OFFRS MESS.

B Area. All Bldgs and huts SOUTH of ALBUHERA RD excl BARROSA OFFRS MESS.

C Area. ALBUHERA and BARROSA OFFRS MESS.

(ii) The Unit Fire Offr is detailed as P.A.D. Offr and he has as his assistants 3 NCOs of fire fighting staff.

(iii) (a) The Admn Offr and Asst Admn Offr at R.H.Q. are responsible for proper supervision at Control Centre.
(b) All Coy and Bn runners will act as messengers for the period they are on duty.
(c) Unit Fire Services are under control of P.A.D. and Fire Offr for trg.
(d) Regtl Police are permanently stationed in Regtl Guard House and are available for duty 24 hrs per day.
(e) All Bn and Coy Ord Sgts are in addition to their normal duties appointed AIR RAID WARDENS.
(f) M-15015 P.S.M. PRATT, R.W. is detailed as Bomb Reco Offr.
(g) First Aid and Rescue Parties will be provided from troops on the spot detailed and under the orders of senior offr present.

(iv) LOCATION OF KEY POSTS

(a) Unit Control Centre is R.H.Q.
(b) Wardens Posts are in all Coy and Bn Ord Rooms.
(c) F...P. is situated next to #2 BARROSA MESS KITCHEN.

(v) SYSTEM OF ALARMS

Air Raid Warning.
(a) Rising and Falling note on the SIREN.
(b) Telephone message "RED WARNING."

(vi) ACTION ON ALERT BY P.A.D. PERSONNEL

(a) By day -
All personnel will in so far as possible carry on with normal activities.

ACTION ON ALERT BY P.A.D. PERSONNEL, cont'd

(b) By night -
All Air Raid Wardens as detailed in 3(c) above will report to FIRE OFFICE situated under Mens Kitchen, Albuhera Kitchen immediately.
(c) On receipt of "RED WARNING" and "ALL CLEAR" the senior offr at R.H.Q. will notify swbd opr and P.A.D. office.

(vii) ACTION TO BE TAKEN DURING AN AIR ATTACK

(a) Definition of attack - the drop of bombs in close proximity to camp, or illumination by the use of flares- generally considered a prelude to an attack.
(b) All officers will report to their respective Ord Rooms but trg and cod routine will continue until attack is imminent, when senior offr will take such measures as he considers necessary for safety of personnel.
(c) Regt Police will direct personnel to A.D. posts, direct essential traffic around obstacles, patrol area to prevent sabotage and looting, enforce black out regulations at night.
(d) N.B. - the presence of gas will be indicated by the shouting of the word "GAS".
(e) Swbd oprs all remain at their post.
(f) Office staff will report to their respective offices and prepare documents for quick removal.
(g) Setarn will stay in or near offrs quarters and act as picquets and fire watchers.

(viii) FIRE PLANNING

(a) Action must be taken to deal with incendiaries immediately.
(b) Fire fighting will grossed by Unit Fire Dept.
(c) First aid work will be carried out by Unit F.A.P. staff and casualties which occur will be taken to F.A.P. for first treatment before evac to hospital.

(ix) ACTION AFTER RAID

(a) Recce will be carried out immediately following cessation of air attack by P.A.D. Offr and M.O. to determine Casualties, UX missiles, damage to bldgs. UX missiles will be roped off and become direct responsibility of Bomb Recce Offr until handed over to Bomb Disposal Squad R.C.E.
(b) Contaminated areas will be roped off and marked.
(c) Fatal casualties will be conveyed to unoccupied bldg next to Education Office to await disposal.

(x) SUBMISSION OF RETURNS

(a) Unit Wardens will compile a report as per appendix "A" regs for P.A.D. Org 944 and submit to Unit P.A.D. officer who will compile these reports and fwd to R.H.Q. as soon as possible after raid has taken place.

1 CANADIAN INFANTRY TRAINING REGIMENT

APPENDIX "C"
to
STANDING ORDERS

.....194..

TO BE LEGIBLY COMPLETED BY ORDERLY OFFICER AND HANDED IN PERSON TO UNIT ADJUTANT NOT LATER THAN 1000 HOURS DAY TOUR OF DUTY TERMINATES.

I have the honour to report that as Orderly Officer on the.....

RATIONS & MESSING STORES

1. I inspected the rations in Messing Stores and Unit Butcher Shops at.....hrs previous to issue which were.....

COOKHOUSES

2. I inspected the cookhouses at.....hrs and found .....complaints.

MESS HALL

3. I visited the Mens Mess Hall at.....hrs and found.....complaints, ...hrs and found.....complaints, ...hrs and found.....complaints.

GUARD ROOM

4. I visited the Guard Room at.....hrs and found .....men in custody; at.....hrs and found .....men in custody. There were.....complaints.

SENTRIES

5. I visited the Transport Sentries at.....hrs by night and found.....

TRANSPORT

6. I visited the Unit Transport at.....hrs by day and.....hrs by night and found.....

NAAFI

7. I visited the NAAFI dry and wet canteen at.....hrs by day and.....hrs by night and found..... .....

FAP SICK BAY

8. I visited the FAP and Sick Bay at.....hrs by day and found.....patients; and.....hrs by night and found.....patients; there were.....complaints; and signed the register.

UNIT THEATRE

9. I inspected the Unit Theatre at.....hrs and found.....

QUARTERS

10. I inspected the lines and quarters at.....hrs and found.....

LATRINES

11. I inspected the latrines and bath houses at..... hrs and found.....

WORKSHOPS DEPARTMENTS

12. I inspected all Workshops and Departments at..... hrs and found.....

BLACKOUTS

13. I inspected all unoccupied buildings at.....hrs and at.....hrs. I inspected all blackouts and found..... Orderly Sgt reported the condition of the blackout to me at RHQ at.....hrs and stated that blackout regulations ~~were not~~ were being complied with.

TATTOO

14. I received a report from the Orderly Sgt at..... hrs that.....NCOs and.....ORs were reported absent on the tattoo report.

MESS FUNDS

15. I received monies from Offr Mess Steward at..... hrs and returned same to him at.....hrs. Sum involved was £.....

MESS FUNDS 16. I received monies from Sgts Mess Steward at.....
hrs and returned same to him at.....hrs. Sum
involved was £.....

ORDERLY SERGEANT 17. The Orderly Sergeant accompanied me on all Inspections.

I have the honour to be, Sir, your
obedient servant,

Sir:

.....

REMARKS: If insufficient space for explanations referred to above, remarks will be written hereunder.

DISCIPLINE AND TREATMENT OF SOLDIERS UNDER SURVEILLANCE AND CLOSE ARREST

1. The object of detention is to render the soldier more fit for his duties in the ranks of his unit. All soldiers in confinement, whether under sentence of Court Martial, or by his Commanding Officer, will be dealt with alike, and subjected to the same discipline during their detention in the Barrack Guard Room.
2. All soldiers in close arrest are to be confined in the Guard Room and will be visited every hour until sent under escort to their companies or the Orderly Room. Those in state of drunkenness will be confined alone. On arrival of a soldier in close arrest at the Guard Room, the NCO in charge will search him in the presence of one of his men and take from him all such superfluous articles as money, pipe tobacco, cigarettes, pocket knife, matches, etc. These articles will be signed for by the NCO i/c including the soldiers pay book. A receipt for same will be given to him. Personal letters and photographs are the only articles that a soldier in custody may retain.
3. No reading material will be allowed soldiers in custody at any time unless first passed by the Officer in charge Regimental Police.
4. All soldiers under close arrest will be confined separately except where space does not permit.
5. Playing Cards will not be allowed in the Guard Detention Rooms.
6. Soldiers in close arrest are not permitted to have cigarettes, tobacco or alcoholic beverages of any kind at any time.
7. Bedding will be removed during the day and will not be spread on bunks until after lights out, and the men will not be in possession of bedding except when actually required for use.
8. Soldiers under close arrest and under sentence, on Active Service, must work except for time allowed for personal toilet and meals. They are to be worked from reveille until lights out.
9. Reveille for the Guard Room will be at 0500 hrs and lights out at 2015 hrs.
10. Soldiers under close arrest are responsible for cleaning the whole of the barracks as well as the immediate area around their beds, and in addition will be required to do any other work that is necessary while in arrest.
11. Regimental Police will NOT enter into conversation with the soldiers in custody except insofar as may be necessary for the execution of their duties.
12. RPs will see that all parties of soldiers under their control are constantly working hard at whatever task they are given to do.
13. When moving about the camp area all soldiers will be kept moving at the double except where the MO orders otherwise.
14. RPs i/c of soldiers in custody will be responsible for the paying of compliments to all officers.
15. Medical Examination - soldiers under close arrest or serving sentence will report sick at the time appointed when they will be examined by the Unit Medical Officer detailed for this duty, daily.
16. All complaints by soldiers in close arrest, or serving sentence must be fully investigated by the Orderly Officer, or if necessary by the Senior Duty Officer.
17. Senior NCO i/c RPs will ensure that all soldiers are medically examined on the morning of their trial of FGCM and each subsequent morning of the trial.
18. Inspection
    (a) The Unit Senior Duty Officer will inspect the Unit Guard Room once daily.
    (b) The Guard Room will be inspected daily, once by day and once by night by the Orderly Officer accompanied by the Orderly Sergeant.
19. To prevent soldiers under close arrest or serving sentence, escaping and thus aggravating their charge, trousers, boots, etc., will be removed at lights out and returned at Reveille.

Appendix "D"

20. The Guard Room and its surroundings, and the prisoners, are to be kept clean. This is one good way to keep the prisoners busy. EVERYTHING IN THE GUARD ROOM - floors, benches, tables, toilets, etc., should be scrubbed daily - the prisoners doing the work. Shortages of soap need not interfere.

21. Every soldier under close arrest or serving sentence, will bath himself thoroughly at least twice a week. The hair of every soldier will be cut close.

22. Bathing and Washing Parades

Bathing and Washing parades will be adequately escorted. Men sentenced to 28 days, 50% escort of a party up to 4 - soldiers awaiting FGCM and sentenced by FGCM 100%. One soldier will be escorted by one RP providing handcuffs are used, otherwise there will be an extra RP included in the party.

23. When a soldier is to appear for an interview or Orderly Room he will be delivered over to the NCO i/c Escort, supplied by his Pn or Coy HQ. The NCO will leave a receipt for the soldier with the NCO i/c of the shift.

24. Mail (outgoing) will be censored. Numbers of letters may be limited. Letter writing will be permitted on Sunday Afternoons only.

25. Mail (incoming) will be censored if so desired by the Comd of the Unit, by the Unit Adjt., or an Officer detailed by him.

26. Parcels will be held in Unit Post Office for soldiers under close arrest or serving sentence, but may be signed over to their friends by the soldiers, in the presence of witnesses.

27. The following procedure will be adopted when a soldier is admitted to 1 Cdn Inf Trg Regt Guard Room.

(i) Upon arrival a check will be made with Records Office to ensure that the soldier is on strength of this Unit.

(ii) The soldiers rank, name and number and particulars will be notified to his Coy HQ. The CQMS of his Coy will arrange to have the soldier issued with two suits of denim, change of underwear, socks, small kit containing personal cleaning materials and one pair of boots. All other items of the soldier's clothing and equipment will be taken away and kept with the soldier's kit at Coy HQ. This must be done within two hours of the man's arrival at the Unit Guard Room except when such arrival takes place after 1700 hrs, in which case the above will be completed by 0830 hrs the following morning.

(iii) Soldiers in 1 CITR Guard Rooms will not be employed outside the Guard Room or enclosure unless an adequate escort is provided.

(iv) The outside door will be kept locked at all times and the keys removed from the locks and kept in custody of a member of the staff.

(v) Soldiers under short sentence, less than 28 days, may be employed on outside fatigue within the camp area.

(vi) Soldiers receiving longer sentence will be kept in close confinement awaiting removal to Military prison or Cdn Detention Barracks as the case may be, but will be kept within the Barrack Detention Rooms or the wire enclosures at the rear unless the Medical Officer orders otherwise.

(vii) Senior NCO i/c RP will immediately notify Unit Adjt particulars of all personnel remanded for Summary of Evidence or FGCM and will also advise Adjt of all personnel held in custody in excess of 24 hrs without a charge being preferred.

(viii) Senior NCO i/c RP will be responsible for the earliest possible committal to detention barracks of all SUS immediately sentence awarded by FGCM has been promulgated.

28. 24 hrs prior to such removal they will be completely equipped with full kit by the CQMS of the Coy. MFM 6 Field Conduct Sheets must also be completed to date, and forwarded to Regimental Police Office.

29. Meal Parades

Meals will be distributed by the Regimental Police on duty, under the supervision of the NCO in charge of the shift. Meals will be picked up at the kitchen by prisoners accompanied by an escort.

NOTE to ensure safe custody of soldiers in confinement the above regulations will be strictly adhered to.

Appendix "D"

30. Visitors - soldiers under sentence who wish to receive visitors should make application 48 hrs in advance to the Adjutant and permission will be allowed only under special circumstances.

31. It is an offence under regulations for unauthorized persons to talk to, give any article whatsoever to, or in any way interfere with soldiers in custody.

STANDING ORDERS
for
UNIT TRANSPORT PIQUET
1 Canadian Infantry Training Regiment

APPENDIX "E"
to
STANDING ORDERS

15 Feb 45

DUTIES OF TRANSPORT PIQUET

1. TOUR of DUTY

The piquet will consist of an NCO in charge and 6 men. Their tour of duty will be 1800 hrs to 0630 hrs. The NCO and 4 men will remain in upper right of "A" Block in Barrosa Barracks.

2. DRESS

Battle dress, Belt, boots, anklets, and Greatcoats.

3. DUTIES

(i) The NCO in charge will obtain from Transport Officer the following information when going on duty.

(a) No. of vehicles, wheeled, tracked and motorcycles in the park.

(b) No. of each type out. The NCO will keep a record of numbers of vehicles coming in and going out.

(ii) Two men will be on patrol of the transport park , Depot Bn. They will allow no vehicles to move without written authority from the O.C., 2 i/c, Adjt. or Transport Officer. All drivers will be in possession of the following orders.

(a) Standing Orders.
DMD vehicles (wheeled)
(b) Transport work ticket No. MFM 246.

APPENDIX "F"
to
STANDING ORDERS

15 Feb 45

1 CANADIAN INFANTRY TRAINING REGIMENT

RELEASE FORM AUTHORIZING MOVEMENT OF VEHICLE ON VEHICLE HOLIDAYS

Veh No_____ Make_____ Class_____

Drivers Regtl No_____ Rank_____ Name_____

The above mentioned vehicle is hereby authorized to proceed from

_____ to_____ via most direct route

and return. Journey to commence at_____ hrs_____ 194

for the purpose of_____

This release form is valid ONLY FOR THE DETAIL AS SET OUT ABOVE. This release form, which may be signed only by the Commander, 1 CITR must be in possession of any driver moving a vehicle of this Unit on a vehicle holiday. Driver, in addition, must be in possession of Transport Work Ticket, AF G3518, with columns 1 to 7 completed in INK and Log Book, both of which must be applicable to the vehicle numbered as above. Driver will in addition be in possession of such documents as deemed necessary by the Unit Tpt Officer and in particular War Department Driving permit, AF A2038.

Colonel
(C. B. Ware) Commander
1 Cdn Inf Trg Regt

SUMMARY OF EVIDENCE

In the case of H20835 Private Anthony HAWRYSH, Canadian Infantry Corps, attached to Number 1 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this summary of evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION — H200189 A/Cpl Irving, DR, having been duly sworn, states:

"I am H200189 A/Cpl Irving, DR, and am NCO IC batmen, Albuhera Offrs' me ss, 1 CITR. On the night of 28/29 Apr 45 my duties consisted of collecting and selling tickets for a dance held in Albuhera Offrs' Mess. At approx 2300 hrs 28 Apr 45, Pte Hawrysh, whom I now see and recognize as the accused, approached me in company with a CSM inside the lobby of the Mess. I told them that the dance was for offrs, and that they could not be admitted."

D. A. Irving
(H200189 A/Cpl Irving, DR)

The accused declines to cross-examine this witness.

SECOND WITNESS FOR THE PROSECUTION — Lt CW Emms, having been duly sworn, states:

"I am Lt CW Emms, on strength "H" wing, 1 CITR. During a draw of raffle tickets held at an Albuhera Offrs' Mess dance, 1 CITR, on 28 Apr 45, I was standing with a lady guest by a window beside the piano with several other couples. I heard a man's voice saying "Fuck you, you dirty bastard." I turned around and heard the man continue to use obscene language. He was wearing the badges of rank of a Lt, and I now see and recognize the man as the accused, Pte Hawrysh. I reported the matter to the Mess Secretary."

C W Emms Lt.
(C.W. Emms)

The accused declines to cross-examine this witness.

THIRD WITNESS FOR THE PROSECUTION — Lt WC Duncan, having been duly sworn, states:

"I am Lt WC Duncan, Mess Secretary , Offrs' Mess, 1 CITR. At approx 2400 hrs 28 Apr 45 as a result of a statement made to me by Lt Emms, I left the Mess bar and in company with Maj Shawcross, went into a room, where a dance was being held. Inside the room I saw an offr lying on the floor. Standing by him was a person wearing the badges of rank of a Lt, whom I now see and recognize as the accused, Pte Hawrysh. Maj Shawcross attempted to pick up the offr on the floor, but the accused intervened. He said, "I don't trust you" and added something to the effect that he wanted to take the offr on the floor upstairs by himself. He used foul language but I cannot remember the exact words he used. Maj Shawcross asked the accused to produce any means of identification he had in his possession. The accused said that he had none in his possession. Maj Shawcross left the room with the offr who had been lying on the floor and the accused followed them out. Later I went to the head of the stairs leading to the upper hallway of the Mess. There I saw the accused, who was then wearing a Pte's tunic, in the company of another offr. The accused left by one of the rear servant's stairways."

W. C. Duncan Lt.
(W.C. Duncan)

the accused declines to cross-examine this witness.

SUMMARY OF EVIDENCE

FOURTH WITNESS FOR THE PROSECUTION

Maj R.G. Shawcross, having been duly sworn, states:

"I am Maj R.G. Shawcross, OC B coy, 1 Trg Bn, 1 CITR, and a member of the Offrs' Mess Committee, 1 CITR. At approx 2150 hrs 28 Apr 45, whilst at a dance in Albuhera Offrs' Mess, I went to the lobby of the Mess. In the lobby I saw an offr, a CSM, and a Pte soldier whom I now see and recognize as the accused. I said to the offr, "I'm sorry, you cannot bring them in." "O.Rs. are not allowed in an offrs' mess", or words to that effect. All three turned around and went out forthwith without saying anything. At approx 2400 hrs that night, as a result of a statement made to me in the bar by Lt Duncan, I went into the dance room. There I saw an offr lying on the floor. Standing around him was a group including the accused. The accused waswearing the badges of rank of a Lt. I asked the accused for his dance ticket stub. He said that he had lost it. I then asked him to produce his identity card. He said that he would have to go upstairs for it. The accused was trying to lift up the offr lying on the floor. I took the offr out of the dance room. The accused joined us and grasped the free arm of the offr. On the first landing upstairs the accused asked me who I was. I replied, "A member of the Mess Committee." He then said, "No, what is your name?" I replied, "Maj Shawcross." The accused laughed and said "Another Major - bent it." I replied that I wanted to see that the offr got to his room alright and that I wanted to see the identity card of the accused. He said, "Fuck off, we've had enough of Majors," and left the offr hanging onto the bannister and approached me in a threatening manner. I went downstairs to get some witnesses. I contacted Lt Zary who went upstairs, but at his request, stayed behind myself."

R.G. Shawcross Maj.
(R.G. Shawcross)

The accused declines to cross-examine this witness.

FIFTH WITNESS FOR THE PROSECUTION

Lt J. Zary, having been duly sworn, states:

"I am Lt J. Zary, on strength "RAD" wing, 1 CITR. At approx 2400 hrs 28 Apr 45, as a result of a statement made to me by Maj Shawcross in the Albuhera Offrs' Mess, where a dance was being held, I went upstairs to an offr's room, after requesting the Maj to remain behind. Just as I left this offr's room I saw a Pte soldier, with his back towards me, going down the hall and Lt Duncan approaching from the opposite direction."

J. Zary Lt.
(J. Zary)

The accused declines to cross-examine this witness.

The accused was cautioned as follows: "Do you wish to make any statement or to give evidenceupon oath? You are not obliged to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence." To this the accused replied, "I don't want to say anything now, Sir."

A. Hawrysh
(H20835 Pte Hawrysh, A.)

The accused declines to call witnesses in his own behalf.

15 Feb 45

APPENDIX "F"
to
STANDING ORDERS

1 CANADIAN INFANTRY TRAINING REGIMENT

RELEASE FORM AUTHORIZING MOVEMENT OF VEHICLE ON VEHICLE HOLIDAYS

Veh No_____Make_____Class_____

Drivers Regtl No_____Rank_____Name_____

The above mentioned vehicle is hereby authorized to proceed from _____to_____via most direct route and return. Journey to commence at_____hrs_____194 for the purpose of_____

This release form is valid ONLY FOR THE DETAIL AS SET OUT ABOVE. This release form, which may be signed only by the Commander, 1 CITR must be in possession of any driver moving a vehicle of this Unit on a vehicle holiday. Driver, in addition, must be in possession of Transport Work Ticket, AF C3513, with columns 1 to 7 completed in INK and Log Book, both of which must be applicable to the vehicle numbered as above. Driver will in addition be in possession of such documents as deemed necessary by the Unit Tpt Officer and in particular War Department Driving permit, AF A2038.

Colonel
(C. B. Ware) Commander
1 Cdn Inf Trg Regt

STANDING ORDERS
for
UNIT TRANSPORT PIQUET

APPENDIX "E"
to
STANDING ORDERS

15 Feb 45 — 1 Canadian Infantry Training Regiment

DUTIES OF TRANSPORT PIQUET

1. TOUR of DUTY

The piquet will consist of an NCO in charge and 6 men. Their tour of duty will be 1800 hrs to 0630 hrs. The NCO and 4 men will remain in upper right of "A" Block in Barrosa Barracks.

2. DRESS

Battle dress, Belt, boots, anklets, and Greatcoats.

3. DUTIES

(i) The NCO in charge will obtain from Transport Officer the following information when going on duty.

(a) No. of vehicles, wheeled, tracked and motorcycles in the park.

(b) No. of each type out. The NCO will keep a record of numbers of vehicles coming in and going out.

(ii) Two men will be on patrol of the transport park , Depot Bn. They will allow no vehicles to move without written authority from the O.C., 2 i/c, Adjt. or Transport Officer. All drivers will be in possession of the following orders.

(a) Standing Orders.
DND vehicles (wheeled)
(b) Transport work ticket No. MFM 246.

SUMMARY OF EVIDENCE

In the case of H20835 Private Anthony HAWRYSH, Canadian Infantry Corps, attached to Number 1 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this summary of evidence is taken on oath.

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"I am H200189 A/Cpl Irving, DR, and am NCO IC batmen, Albuhera Offrs' me ss, 1 CITR. On the night of 28/29 Apr 45 my duties consisted of collecting and selling tickets for a dance held in Albuhera Offrs' Mess. At approx 2300 hrs 28 Apr 45, Pte Hawrysh, whom I now see and recognize as the accused, approached me in company with a CSM inside the lobby of the Mess. I told them that the dance was for offrs, and that they could not be admitted."

D. R. Irving
(H200189 A/Cpl Irving, DR)

The accused declines to cross-examine this witness.

SECOND WITNESS FOR THE PROSECUTION — Lt CW Emms, having been duly sworn, states:

"I am Lt CW Emms, on strength "H" wing, 1 CITR. During a draw of raffle tickets held at an Albuhera Offrs' Mess dance, 1 CITR, on 28 Apr 45, I was standing with a lady guest by a window beside the piano with several other couples. I heard a man's voice saying "Fuck you, you dirty bastard." I turned around and heard the man continue to use obscene language. He was wearing the badges of rank of a Lt, and I now see and recognize the man as the accused, Pte Hawrysh. I reported the matter to the Mess Secretary."

C W Emms Lt.
(C.W. Emms)

The accused declines to cross-examine this witness.

THIRD WITNESS FOR THE PROSECUTION — Lt WC Duncan, having been duly sworn, states:

"I am Lt WC Duncan, Mess Secretary , Offrs' Mess, 1 CITR. At approx 2400 hrs 28 Apr 45 as a result of a statement made to me by Lt Emms, I left the Mess bar and in company with Maj Shawcross, went into a room, where a dance was being held. Inside the room I saw an offr lying on the floor. Standing by him was a person wearing the badges of rank of a Lt, whom I now see and recognize as the accused, Pte Hawrysh. Maj Shawcross attempted to pick up the offr on the floor, but the accused intervened. He said, "I don't trust you" and added something to the effect that he wanted to take the offr on the floor upstairs by himself. He used foul language but I cannot remember the exact words he used. Maj Shawcross asked the accused to produce any means of identification he had in his possession. The accused said that he had none in his possession. Maj Shawcross left the room with the offr who had been lying on the floor and the accused followed them out. Later I went to the head of the stairs leading to the upper hallway of the Mess. There I saw the accused, who was then wearing a Pte's tunic, in the company of another offr. The accused left by one of the rear servant's stairways."

W C Duncan Lt.
(W.C. Duncan)

the accused declines to cross-examine this witness.

SUMMARY OF EVIDENCE

FOURTH WITNESS FOR THE PROSECUTION

Maj R.G. Shawcross, having been duly sworn, states:

"I am Maj R.G. Shawcross, OC B coy, 1 Trg Bn, 1 CITR, and a member of the Offrs' Mess Committee, 1 CITR. At approx 2150 hrs 28 Apr 45, whilst at a dance in Albuhera Offrs' Mess, I went to the lobby of the Mess. In the lobby I saw an offr, a CSM, and a Pte soldier whom I now see and recognize as the accused. I said to the offr, "I'm sorry, you cannot bring them in," "O.Rs, are not allowed in an offrs' mess", or words to that effect. All three turned around and went out forthwith without saying anything. At approx 2400 hrs that night, as a result of a statement made to me in the bar by Lt Duncan, I went into the dance room. There I saw an offr lying on the floor. Standing around him was a group including the accused. The accused waswearing the badges of rank of a Lt. I asked the accused for his dance ticket stub. He said that he had lost it. I then asked him to produce his identity card. He said that he would have to go upstairs for it. The accused was trying to lift up the offr lying on the floor. I took the offr out of the dance room. The accused joined us and grasped the free arm of the offr. On the first landing upstairs the accused asked me who I was. I replied, "A member of the Mess Committee." He then said, "No, what is your name?" I replied, "Maj Shawcross." The accused laughed and said "Another Major - best it." I replied that I wanted to see that the offr got to his room alright and that I wanted to see the identity card of the accused. He said, "Fuck off, we've had enough of Majors," and left the offr hanging onto the bannister and approached me in a threatening manner. I went downstairs to get some witnesses. I contacted Lt Zary who went upstairs, but at his request, stayed behind myself."

R.G. Shawcross Maj.
(R.G. Shawcross)

The accused declines to cross-examine this witness.

FIFTH WITNESS FOR THE PROSECUTION

Lt J. Zary, having been duly sworn, states:

"I am Lt J. Zary, on strength "R&D" wing, 1 CITR. At approx 2400 hrs 28 Apr 45, as a result of a statement made to me by Maj Shawcross in the Albuhera Offrs' Mess, where a dance was being held, I went upstairs to an offr's room, after requesting the Maj to remain behind. Just as I left this offr's room I saw a Pte soldier, with his back towards me, going down the hall and Lt Duncan approaching from the opposite direction."

J Zary Lt.
(J. Zary)

The accused declines to cross-examine this witness.

The accused was cautioned as follows: "Do you wish to make any statement or to give evidenceupon oath? You are not obliged to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence." To this the accused replied, "I don't want to say anything now, Sir."

A Haurysh
(H20835 Pte Haurysh, A.)

The accused declines to call witnesses in his own behalf.

SUMMARY OF EVIDENCE

I certify that the foregoing summary of evidence consisting of three (3) pages was taken down by me inthe presence and hearing of the accused, and that Rules of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

A Constant Lt.
(A.H. Constant) Officer
taking Summary of Evidence.

In the Field.
5th day of May, 1945.

In the case of H20835 Pte Hawryah, A., CIC, 1 CITR

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at 1 CITR, In the Field, preliminary to my trial by Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

Signed at 1 CITR
In the Field
this 10th day
of May 1945.

A Hawryah

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Major J.D. Bagnall if he is available.

LIST OF EXHIBITS IN THE CASE
OF

NIL

LIST OF WITNESSES IN THE CASE
OF

FIRST WITNESS FOR THE PROSECUTION	H200189 A/Cpl Irving, D.R.	1 CITR
SECOND WITNESS FOR THE PROSECUTION	Lt C.W. Enns	1 CITR
THIRD WITNESS FOR THE PROSECUTION	Lt W.C. Duncan	1 CITR
FOURTH WITNESS FOR THE PROSECUTION	Maj P.G. Shawcross	1 CITR
FIFTH WITNESS FOR THE PROSECUTION	Lt J. Zary	1 CITR

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H20635	Pte	HAWRYSH A.	1 CITR

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers here stated should correspond with the number of Entries in the Field Conduct Sheet, precedence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 40 — 2 times.

For AA Sec 15 (1) — 1 times.

For ____ — ____ times.

For ____ — ____ times.

Date of first entry in Field Conduct Sheet 10 Jul 42

Date of last entry in Field Conduct Sheet 30 Aug 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for ____ beginning on the ____ day of ____

Blank. Blank.

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 14 days in military custody, *i.e.*, NIL days in open arrest, 14 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 25 years 9 months

6. The date of his ~~calling up for military service~~ attestation is 14 Jul 41

B.L.

7. The service which the accused is allowed to reckon is 3 years 309 days

†State the military decorations (if any) held by accused.

8. The accused is in possession of† CVSM & C

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	Blk.
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(P29072) Wt.30721/1391 25,000 9.41 A.S.E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 16 ~~15~~th day of May 1945

Major
(B.M. McLean) Officer In Charge
Regimental Documents Cdn Art Units.

No. H80835 Name HAWRYSH, A. | Sqn, Battery, or Company C | Corps CIC | Date of enlistment 14 Jul 4[illegible] | (QC Badges) | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAM/186 10413

Date of last entry in Company Conduct Sheet | No. and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Shilo Camp Man	10 Jul 42	A/Cpl		AA Sec 40 Conduct to the prejudice of good order and military discipline, in that he quarelled with WO II Rowe, F and used violent language	WOII F Rowe S/Sjt Campbell, W.I.	Reduced to permanent grade	11 Jul 42	Lt-col R.L. Mitchell	
Field	30 Aug 43	Pte		First Charge: WOAS AWL, 8 hrs. Second charge: AA Sec 40		14 days CB		Taken from MFM 4.	Forf 1 days pay FRAI 149 (1) (a)

Certified True Copy consisting of One page

[signature] Major
(E.A. McLean) Officer In Charge
Regimental documents Cdn Rft Units
10 May 45

KKK-43

GNR HAY A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H-35699 Gnr Arthur HAY 7 Cdn A/Tk Regt, RCA

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Charge	Guilty	Guilty	
2nd Charge	Guilty	Guilty	
3rd Charge	Guilty	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~XXXXXXXXXXXXXXXXXXXX~~ beginning on (date) ~~XXXXXXXXXXXXXXXXXXXX~~ "GW"(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B396.)

Time in confinement awaiting present trial—a total of 8 days, of which none days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B396 admitted in evidence under E2.)

Sentence Awarded by the Court: Two years imprisonment without hard labour.

(Sgd) ..... 27 Mar 44 (Sgd) "G Wright" Major.
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I confirm the findingd of the court and commute the sentence as follows;- To undergo detention for a period of one year, I confirm the sentence as so commuted

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(7), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

~~The sentence by reason is not suspended to prison or detention barracks until further order.~~ "ECF"
(1. AA 57A. Delete if not used.)

(Sgd) "E.C. Plow" Brig

Date 28 Mar 44 Commanding CCRA 1 Cdn Corps.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
H-35699 Gnr Arthur HAY 7 Cdn A/Tk Regt, RCA	29 Mar 44	"J.A.Gillies" Lt-Col O.C. 7 Anti-Tank Regiment RCA,CA

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED. (A.F)

Certified true Copy. R. Lindsay Capt (R. Cordeau.)

Spare copy-XXX-43

CPA86 (In Section A) 40-P.A.E./1608 (2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of B.C. Plow Brig. Comd CCRA dated 25 Mar 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H-35699	Gunner		Arthur	HAY	7 Cdn A/Tk Regt RCA

17 MAY 1944 2 Rd ECHELON

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 27 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 72, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3) "GW"

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1010 hours trial commences. "GW"

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court martial instead of being dealt with summarily by the CO.~~(2) "GW"

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to XXXXXXXXXXXXXXXXXXXX as interpreter?~~ Ans ~~XXX~~ "GW"

~~The interpreter is sworn.~~ ~~Do you object to XXXXXXXXXXXXXXXXXXXX as shorthand writer?~~ Ans ~~XXX~~ "GW"
~~The shorthand writer is sworn.~~(1) "GW"

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G. Wright	1 Cdn LAA Regt, RCA
Member	Capt	F.D. Mathias	1 Cdn Survey Regt, RCA
Member	Lieut.	R.W. Shuel	1 Cdn Survey Regt, RCA
Judge-Advocate			
Prosecutor	Lieut.	M.V. Longeworth	7 Cdn A/Tk Regt, RCA
Defending Offr	Lieut.	C.K. Kennedy	7 Cdn A/Tk Regt, RCA

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Govt Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused H-35699 Gnr Arthur HAY before arraignment make(s) (no) (a) plea. "GW"
(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~separately~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. "GW"

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 37(E) fn 6 ; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the plea(s) of Guilty to (a) the Court decides (not) to advise accused to change plea~~ "GW"
~~to charge(s) of Guilty to Not Guilty on charge(s). The accused is (is not) advised and he elects~~ "GW"
~~to change his plea(s) of Guilty to Not Guilty on charge(s). Part I of the Schedule is amended accordingly~~ "GW"
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) *not* changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 3.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 42, 117(A). See Notes re Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.) "GW"

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy [illegible] of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier A having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3) "GW" "GW"
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Defence makes statement in mitigation Ex D (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) "D"
(1. When several accused tried separately see RP 75(B). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-738. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CDN 56/20/PETITIONS/1(DJA)

8 Aug 44

OIC
Cdn Sec GHQ 2 Ech AAI

PETITION
H35699 Gnr Hay A
7 Cdn A/Tk Regt RCA

Ref your CECH/48/Ct Mart/8(A8) of 31 Jul 44.

1 Herewith enclosed are all enclosures forwarded in the a/m letter.

2 It will be observed that the OIC this HQ has endorsed on the AFA 3104 "Petition dated 26 Jul 44 considered. No remission or suspension." The proceedings will again come forward for review on 27 Sep 44 being the date of the regular 6 months review.

3 Herewith enclosed is a letter for transmission to Gnr Hay through the regular channels. May a receipt therefor be obtained and retained on the files of 2 Ech.

D. D. Carrick

(D D Carrick) Major
DJA
Cdn Sec GHQ 1 Ech

CDN 56/20/PETITIONS/1(D.J.A.)

8 Aug 44

OIC
Cdn Sec GHQ 2 Ech AAI

PETITION
H35699 Gnr Hay A
7 Cdn A/Tk Regt RCA

1 I have considered the petition of Gnr Hay, dated 26 Jul 44, and find no circumstances which would warrant any remission or suspension of the sentence at this time.

2 The offences for which Gnr Hay was convicted were serious offences and the sentence was not a heavy one compared to other sentences awarded in this theatre committed in similar circumstances.

(E C Weeks) Brigadier
Officer IC
Cdn Sec GHQ 1 Ech

Subject appeals. R/685

The Commandant
No 2 Field Punishment / Detention camp
No H35699. Gnr. Hay. A.

Sir I beg to submit this application for a suspention of my sentence. I was tried by F.G.C.M. on 25 march 1944. was awarded 12 months Detention I have nearly 4 years service in the army. I feel that I have benefitted from discipline training in this camp. I now feel that I should be making a better use of my time if I were with my own unit on the line where I should endeavour to the best of my ability.

I am. Sir
your obedient servant
A. Hay. Gnr.

In the Field
26-7-44

CHARGE SHEET "GW"

The accused H-35699 Gnr Arthur HAY, 111 Bty., 7 Cdn ATk Regt a soldier of the Canadian Army Overseas is charged with;

First Charge
A.A. Sec.8(2)

WHEN ON ACTIVE SERVICE: STRIKING A SUPERIOR OFFICER

in that he

While in the field in Italy at approximately 1630 hrs., 19 Mar 44 did strike K-92306 Sjt Neil, D.G., 111 Bty., 7 Cdn A.Tk Regt, RCA.

Second Charge
A.A. Sec 8(2)

WHEN ON ACTIVE SERVICE: USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER.

in that he

While in the field in Italy at approximately 1630 hrs 19 Mar 44 used insubordinate language to M-125 Sjt Morris A.L. 111 Bty, 7 Cdn A.Tk Regt., in that he , said "You told Sjt West that we were making a row up-street" "You're a prick" "I know you; I used to think you were a good fellow but you are nothing but a cock-sucker" or words to that effect.

Third Charge
A.A. Sec.22

WHEN ON ACTIVE SERVICE: BEING IN LAWFUL CUSTODY, ATTEMPTING TO ESCAPE.

in that he

While in the field in Italy at approximately 1845 hrs., 19 Mar 44, did attempt to escape from custody by jumping from the window of the billet in which he was confined.

Signed in the Field on 22 Mar 44.

"J.A. Gillies" Lt-Col.
(J.A. Gillies) Comd.
7 Cdn A.Tk Regt, RCA

To be tried by Field General Court Martial.

In the Field.
25 Mar 44

"E.C. Plow"
(E.C. Plow) Brigadier
CCRA 1 Cdn Corps.

"GW"

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA33)
40/PAM/1607 (20663)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H-35699	Gunner	Arthur	HAY	7 Cdn A/Tk Regt RCA

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 Mar 44 endorsed by me, (~~which charge sheet(s) I have~~). " To be tried by Field General Court-Martial ". "ECP"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is expedient that the accused should be tried by a Field General Court-Martial~~). "ECP"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I have appointed the Officer commanding the Field Ambulance to be Judge-Advocate, and have directed him to attend the trial.~~ "ECP"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I have appointed the Officer commanding the Field Ambulance to be Prosecutor.~~ "ECP"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G Wright	1 Cdn LAA Regt RCA

MEMBERS.

Captain to be detailed by OC 1 Cdn Survey Regt, RCA

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain or Lieutenant	to be detailed by OC 1 Cdn Survey Regt	RCA

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain or Lieutenant	to be detailed by OC 7 Cdn A/Tk Regt,	RCA

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy
(Country.)

"E.C. Plow"
(E.C.Plow) Brigadier
(Signed personally. RP 105 fn 2.) (Rank.)

Date 25 Mar 44

Commanding 1 Cdn Corps Artillery.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

XXXXXXXXXXXXXXXX

MEDICAL CERTIFICATE (K.R.(CAN) 557

I certify that I have this morning examined No. H-35699 Gnr HAY A. of 111 Bty 7 Cdn A/Tk Regt, RCA and, in my opinion he is fit to undergo trial by Court Martial

Station. In the Field.

Date. Mar 27/44

"John E. Baker Capt.
R.C.A.M.C.

SUMMARY OF EVIDENCE "A"
"GW"

Summary of evidence in the case of H-35699 Gnr Hay, A., 111 Bty., 7 Cdn ATk Regt, R.C.A. a soldier of the Canadian Army Overseas.

BY DIRECTION OF THE COMMANDING OFFICER THIS SUMMARY OF EVIDENCE IS TAKEN ON OATH.

First Witness
M-125 Sjt Morris, A.L. 111 Bty., 7 Cdn ATk Regt, R.C.A. having been duly sworn states;

I am M-125 Sjt Morris A.L. of 111 Bty., 7 Cdn ATk Regt. R.C.A. On the 19th of March 44 I went to my drivers billetx at approximately 1600 hrs. While I was there an Italian boy who lives in the house came upstairs saying that his Mother wanted the soldiers down below put out of the house. L/Bdr Mitchell went down and told them that they had better leave. About 20 minutes later the boy came back up again with the same story as before. As it was nearly supper time the drivers and myself all went down stairs As we went through the room L/Bdr. Mitchell again asked them to leave. We then went out and about 25 yards down the street we met Sjt West who is the Sjt of the same troop as some of the men in the building. I asked him if he would see that the men were put out of the house. I then went on down to the Mess Hall for supper. I was in the supper line and had just had my cup filled with tea, waiting for the rest of my supper when Gnr Hay came up to me and said "You told Sjt West to kick us out didn't you" I replied "Yes" I have men billeted there and it is up to me to look after them" He said "You are a prick, I used to think you were a pretty good guy, now I know you are nothing but a cock-sucker" At that time my mess tins were filled up and I went on past the end of the serving table to eat my supper. As I passed the end of the table Sjt Neil was standing there and asked me what I was looking so down-hearted about, I did not reply but I went up the street where I ate my supper.

"A.L. Morris" Sgt.

The accused declines to cross-examine this witness.

Second Witness
K-16060 L/Sjt. O'Connell, J.W. of 111 Bty., 7 Cdn ATk Regt R.C.A. having been duly sworn states;

I am K-16060 L/Sjt O'Connell, J.W. of 111 Bty. On the evening of the 19 Mar 44 I was standing in the meal line up talking to Sjt Morris who was in front of me when Gnr Hay came up to Sjt Morris and asked him if he sent Sjt West to a house to order Gnr Hay out. Sjt Morris said "yes" I did "I have troops billeted in this house and didn't want any trouble for them" Gnr Hay then said you are a prick, I used to think you were a good guy but your nothing but a cock-sucker.

"J.W. O'Connell L/Sgt.

The accused declines to cross-examine this witness.

Third Witness K-92306 Sjt Neil D.G., 111 Bty., 7 Cdn ATk Regt, R.C.A. having been duly sworn states.

I am K-92306 Sjt Neil D.G.111 Bty. On the afternoon of 19 Mar 44 at 1645 hrs. I was standing at the head of the meal parade drinking a cup of tea. Sjt Morris came up and asked him what he was so unhappy about. Gnr Hay immediately came over to me and started tapping me on the chest with his finger, saying he didn't like the idea of me giving him a dirty look, I told him that I had not given him a dirty look, he then knocked the cup out of my hand and remarked that I had given him a silly grin. I warned Gnr Hay that he would be up for office the next day. He then grabbed hold of my tunic and remarked that he didn't give a fuck and that no Sjt. could give him a dirty look I ordered him to take his hands off me, telling him he was looking for serious trouble. He remarked that he didn't give a fuck how much trouble he got into and struck me on the left ear with his fist. I then told him that he was under close arrest and he was taken under escort by Sjt Culshaw.

" Sgt. Neil D.G.

The accused declines to cross-examine this witness.

Fourth Witness F-16151 Bdr. Schultz, G.R., 111 Bty., 7 Cdn ATk Regt, RCA having been duly sworn states;

I am F-16151 Bdr Schultz, G.R. 111 Bty. on 18 Mar 44 between 1630 hrs. and 1700 hrs. I overheard an argument between Gnr Hay and Sjt Neil. Gnr Hay stated that he wasn't taking any shit off Sjt Neil and with that he struck Sjt Neil Sjt Neil caught Gnr Hay by the tunic and held him off. That is all I saw.

"Bdr Schultz R.G."

The accuse declines to cross-examine this witness.

Fifth Witness D-114886 Cpl. Goyette, E.R.(RCASC) att to 111 Bty., 7 Cdn ATk Regt. R.C.A. having been duly sworn states;

I am D-114886 Cpl. Goyette, E.R. of the RCASC att to/111 Bty 7 Cdn ATk Regt. I heard some trouble outside the kitchen. An argument was in progress and looked like the start of a fight. There was some bread and butter on the table and I saw Gnr Hay knock it off the table onto the street. I still had 30 men to feed and had to supply more bread and butter.

"Cpl. Goyette E.R."

The accused declines to cross-examine this witness.

Sixth Witness H-59578 Pte Henderson, J.M. RCASC., att 111 Bty., 7 Cdn ATk Regt. RCA having been duly sworn states.

"I am H-59578 Pte Henderson J.M. RCASC att 111 Bty., 7 Cdn ATk Regt, RCA. On the 19 Mar 44 on supper parade I heard Gnr Hay arguing and then I saw him grab the tray with the bread and butter on it an d thrown it on the ground. I then saw him marched away under escort.

"J.M. Henderson".

The accused declines to cross examine this witness.

Seventh Witness M-368 Gnr MacLean J.M. 111 Bty., 7 Cdn ATk Regt, RCA having been duly sworn states.

I am M-368 Gnr MacLean, J.M. 111 Bty., on 19 Mar 44 I saw Gnr Hay knock the bread tray off the table onto the street I then went back into the kitchen to get some more bread.

"J.M. MacLean"

The accused declines to cross-examine this witness.

Eighth Witness M-62 Bdr McDonald, F.E. 111 Bty., 7 Cdn ATk Regt., RCA having been duly sworn states.

I am M-62 Bdr. McDonald F.E. 111 Bty, At about 1700 hrs. on 19 Mar 44 I spoke to Sjt Culshaw when he told me he was having trouble with Gnr Hay, As there was no detention room he asked me if I could guard him in my billet for the night. I then went up the street to get Gnr Hay . I took him to my billet under a drunken condition and ~~was~~ turned him over under close arrest. Finally Gnr McCormack and myself got him quieted down and put him on the bed, trying to get him to sleep. I then went ~~xxxx xxxxxxx~~ out to get some wood. The first thing I knew Gnr Hay had jumped out the window and was on his way down the street. The window was 25 ft. from the ground and was the only means of escape as there is only one door to the house which Gnr McCormack and I were guarding. Realizing he had gone out the window I ran after him and brought him back to my billet. We then took off his boots and kept guard over him until he went to sleep.

"F.E. McDonald".

The accused declines to cross examine this witness.

Ninth Witness M-399 Gnr McCormack, T.M., of 111 Bty., 7 Cdn A.Tk Regt. R.C.A., having been duly sworn states.

I am M-399 Gnr McCormack, T.M. 111 Bty. At approximately 1700 hrs., 19 Mar 44 I was in my billet when Gnr Hay was brought in by Bdr McDonald . Gnr Hay appeared to be in a drunken condition. He was told by Bdr. McDonald that he was under close arrest. Gnr Hay did not seem to realize this. We got him to the room and finally got him to lay down on the bed. I waited until he appeared to be asleep then I went out to help Bdr McDonald cut wood. We were cutting wood in front of the only door in the house. I noticed Bdr McDonald running around the corner of the house. I ran into the house and found that Gnr Hay had gone. I then went to the road and started in the direction that I was told Hay had gone. I had proceeded down the road a short distance when I saw Bdr McDonald bringing Gnr Hay back. I helped Bdr McDonald escort him back to the room where we placed him on the bed and took off his boots. He soon went to sleep.

"Thomas McCormick"

The accused declines to cross examine this witness.

The accused having been asked; Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence. makes no statement.

"HayA"

I certify that the foregoing Summary of Evidence, consisting of 4 pages was taken down by me in writing in the presence of the accused and that Rules of Proceedure 4 (c) (d) (e) and (f) have been complied with.

Signed in the Field this 22 day of March 1944.

"M.V. Longworth" Lieut.

(M.V. Longworth)
Officer Taking Summary.

PLEA FOR MITIGATION OF SENTENCE D "GW"

In my plea for mitigation of sentence I wish to point out the following; That in over two years service in this Battery I have grown to know H-35699 Gnr Hay A. probably better than any other officer.

(when the above offences were committed)

There is no doubt that he was under the influence of liquor and, although drunkenness is defined as no excuse. it definately affects a man's mind.

Hay has been a good soldier. His conduct sheet has had several entries the majority of which crimes were all caused by drink.

I have seen Hay drunk. I have seen him sober and during 18 months when I was his Troop Commander I never found a more willing fellow nor a better gunner .

May I also add that I've met him on the field of Sport and never was there an occasion where he portrayed signs of an evil temper.

Hay's big trouble has been liquor and I hope that the court may take this into consideration and that they may also take into consideration that his soldiering abilities are definately first class.

R.P. 83 (b) complied with.

"C.K. Kennedy. Lt.

RECORDED AT CMHQ IN AB 160 KKK-43

CFA86 (To form part of AFA3)
40 P & S 1608 (2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of G.C. Bucknall Brig Comd CCRA dated 25 Mar. 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) A/rank or A/Appmt.	Full Christian Names.	Surname.	Unit.
H35699	Gunner	Arthur	HAY	7 Cdn A/Tk. Regt. RCA.

14 APR 1944

PROCEEDINGS REVIEWED

16 May 44

JUNIOR OFFICER, JAG BRANCH, CMHQ

F148

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Italy on (*date(s)*) 27 Mar. 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See book of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~(or)~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1010 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ... as interpreter? Ans~~ ~~The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G.L. Wright 1 Cdn. LAA. Regt. RCA.
Member	Capt	F.D. Mathias 1 Cdn. Survey Regt. RCA.
Member	Lieut	R.H. Sheel 1 Cdn. Survey Regt. RCA.
Judge-Advocate		
Prosecutor	Lieut.	M.V. Longworth 7 Cdn. A/Tk. Regt. RCA.
Defending Offr	Lieut.	C.K. Kennedy 7 Cdn A/Tk. Regt. RCA.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dil p 3.)

A8. The accused H35699 Gnr. Arthur HAY before arraignment make(s) (no) ~~not~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H35699 Gnr. Arthur HAY 7 Cdn. A/Tk Regt. RCA.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Charge	guilty	guilty	
2nd	Charge	guilty	guilty	
3rd	Charge	guilty	guilty	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and re loss of kit see RP 44 fn 6.)

At present under sentence for ... beginning on (date) ... (1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which NONE days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Two years imprisonment without hard labour

(Sgd) ... Judge-Advocate, if any. 27 Mar. 44 Date awarded. (Sgd) G.L. Wright Major President. (RP 55, 90.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. ~~MINUTE WHERE CONFIRMATION RESERVED.~~ (AA 54(5), RP (20)(F), MML p 760.)

I confirm the finding of the court and sentence the sentence as follows:- To undergo detention for a period of one year. I confirm the sentence as commuted.

Date ... (Sgd) ... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP (20)(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I ~~direct that the accused be not committed to prison or detention barracks until further orders.(1)~~ J.I.P.
(1. AA 57A. Delete if not used.)

(Sgd) E.L.M. Burns Maj Gen

Date 28 Mar 44 Commanding 1 CDN CORPS Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
H35699 Gnr Arthur HAY 7 Cdn A/Tk Regt RCA	29 Mar 44	J.H. Mullins Lt.-Col. O.C. 7 Anti-Tank Regiment, R.C.A. C.A. (A.F.)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans No defence make statement in mitigation.
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3; *MML p* 54 *para* 47. 4. *See para* 3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (5). The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty in charge(s). The accused is (not) so informed, and he (then) changes(s) his (their) plea(s) as charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans .....
Do you intend to call witnesses on your behalf ?
Ans .....
Are they witnesses as to character only ? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(*2*) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(*2*), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier~~s~~ having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Defence make statement in mitigation.
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 78(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas AO* 309, 1323, *RP* 48. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1B), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused H.35699 Gnr. Arthur HAY, 111 Bty., 7 Cdn ATk Regt., a soldier of the Canadian Army Overseas is charged with:

First Charge

WHEN ON ACTIVE SERVICE: STRIKING A SUPERIOR OFFICER

in that he

A.A. Sec. 8(2)

While in the Field in Italy at approximately 1630 hrs., 19 Mar. 44 did strike K.92306 Sjt. Neil, D.G., 111 Bty., 7 Cdn A.Tk. Regt. R.C.A.

Second Charge

WHEN ON ACTIVE SERVICE: USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER:

A.A. Sec. 8 (2)

in that he

While in the Field in Italy at approximately 1630 hrs., 19 Mar. 44 used insubordinate language to M.125 Sjt. Morris, A.L., 111 Bty., 7 Cdn A.Tk. Regt. , in that he, said "You told Sjt. West that we were making a row up-street" "You're a prick" "I know you, I used to think you were a good fellow but you are nothing but a cock-sucker" or words to that effect.

Third Charge

WHEN ON ACTIVE SERVICE: BEING IN LAWFUL CUSTODY, ATTEMPTING TO ESCAPE:

A.A. Sec. 22

in that he

While in the Field in Italy at approximately 1845 hrs., 19 Mar. 44, did attempt to escape from custody by jumping from the window of the billet in which he was confined.

Signed in the Field on 22 Mar. 44

.....Lt.-Col
(J.A. Gillies) Comd.
7 Cdn A.Tk. Regt. R.C.A.

To be tried by Field General Court Martial.

(E C Plow) Brigadier
CCRA 1 Cdn Corps.

In the Field
25 Mar 44.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40(FAR/1697 (2003)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-35699	Gunner	Arthur	HAY	7 Cdn A/Tk Regt RCA

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 Mar 44 endorsed by me, ~~(or by an offr of my staff for me)~~,[1] To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also ~~appoint as Judge-Advocate thereat the Offr mentioned hereunder~~.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	G Wright		1 Cdn LAA Regt RCA

MEMBERS.

Captain to be detailed by OC 1 Cdn Survey Regt RCA

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain or Lieutenant	to be detailed by OC 1 Cdn Survey Regt RCA	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain or Lieutenant	to be detailed by OC 7 Cdn A/Tk Regt RCA	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY (Country.)

(E C Plow) Brigadier (Signed personally. RP 105 fn 2.) (Rank.)

Date 25 Mar 44

Commanding 1 Cdn Corps Artillery
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL CERTIFICATE (K.R.(Can) 557)

I certify that I have this morning examined No. H 32699 Pte
HAY A. of 11 Fd. Pk. Coy. R.C.E. and, in my opinion,
he is fit ~~unfit~~ to undergo trial by Court Martial.

Station 11 Fd. Pk. Coy.

Date 22.7.44

Allen E. Baker Capt.
R.C.A.M.C.

MEDICAL CERTIFICATE (K.R.(Can) 557)

I certify that I have this morning examined No ...H.35699...Gnr...
.....H.A.A.....A.....of M.Bty. 7th Can Army Group R.C.A. and, in my opinion
he is fit to undergo trial by Court Martial.

Station..In the field.....
Date ..MAR 27/44.....

.....J.S.W.E. Baker.....Capt.
(Medical Officer) R.C.A.M.C.

Plea for Mitigation of Sentence

D Gof.

In my plea for mitigation of sentence I wish to point out the following: That in over two years service in this Battery I have grown to know H 35699 Gnr. Stay. H. probably better than any other officer.

There is no doubt that he was under the influence of liquor when the above offences were committed, and, although drunkenness is defined as no excuse, it definitely affects a man's mind.

Stay has been a good soldier. His conduct sheet has had several entries the majority of which crimes were all caused by drink.

I have seen Stay drunk. I have seen him sober, and during 18 months when I was his Troop Commander I never found a more willing fellow "for a bottle Gunner".

May I also add that I've met him on the field of sport and never was there an occasion where he portrayed signs of an evil temper.

Stay's big trouble has been liquor and I hope that the court may take this into consideration and that they may also take into consideration that his soldierly abilities are definitely first class.

R.P. 83(3) complied with.

C K Kennedy Lt.

A

SUMMARY OF EVIDENCE

Summary of Evidence in the case of H.35699 Gnr. HAY, A., 111 Bty., 7 Cdn ATk Regt. R.C.A. a soldier of the Canadian Army Overseas

BY DIRECTION OF THE COMMANDING OFFICER THIS SUMMARY OF EVIDENCE IS TAKEN ON OATH.

First Witness

M.125 Sjt. Morris, A.L., 111 Bty., 7 Cdn ATk Regt. R.C.A., having been duly sworn, states:

"I am M.125 Sjt. Morris, A.L. of 111 Bty., 7 Cdn ATk Regt. R.C.A. On the 19th of March 44 I went to my drivers billet at approximately 1600 hrs. While I was there an Italian boy who lives in the house came upstairs saying that his Mother wanted the soldiers down below put out of the house. L/Bdr. Mitchell went down and told them that they had better leave. About 20 minutes later the boy came back up again with the same story as before. As it was nearly supper time the drivers and myself all went down stairs. As we went through the room L/Bdr. Mitchell again asked them to leave. We then went out and about 25 yards down the street we met Sjt. West who is the Sjt. of the same Troop as some of the men in the building. I asked him if he would see that the men were put out of the house. I then went on down to the Mess Hall for supper. I was in the supper line and had just had my cup filled with tea, waiting for the rest of my supper when Gnr. Hay came up to me and said "You told Sjt. West to kick us out did'nt you?" I replied "Yes", I have men billeted there and it is up to me to look after them" He said "You are a prick, I used to think you were a pretty good guy, now I know that you are nothing but a cock-sucker" At that time my mess tins were filled up and I went on past the end of the serving table to eat my supper. As I passed the end of the table Sjt. Neil was standing there and asked me what I was looking so down-hearted about, I did not reply but went on up the street where I ate my supper.

A.L. Morris Sjt.

The Accused declines to cross-examine this witness.

Second Witness

K.16060 L/Sjt. O'Connell, J.W. of 111 Bty., 7 Cdn ATk Regt. R.C.A., having been duly sworn, states:

"I am K.16060 L/Sjt. O'Connell, J.W. of 111 Bty. On the evening of the 19 Mar. 44 I was standing in the meal line up talking to Sjt. Morris who was in front of me when Gnr. Hay came up to Sjt. Morris and asked him if he sent Sjt. West to a house to order Gnr. Hay out. Sjt. Morris said"yes I did, Gnr. Hay then asked Sjt. Morris why. Sjt. Morris then said "I have troops billeted in this house and didn't want any trouble for them" Gnr. Hay then said you are a prick, I used to think you were a good guy but you're nothing but a cock-sucker.

J.W. O'Connell L/Sjt.

The Accused declines to cross-examine this witness.

Third Witness

K.92306 Sjt. Neil, D.G., 111 Bty., 7 Cdn ATk Regt. R.C.A., having been duly sworn, states:

"I am K.92306 Sjt. Neil D.G., 111 Bty. On the afternoon of 19 Mar. 44 at 1645 hrs. I was standing at the head of the meal parade drinking a cup of tea. Sjt. Morris came up and I asked him what he was so unhappy about. Gnr. Hay immediately came over to me and started tapping me on the chest with his finger, saying he did'nt like the idea of me giving him a dirty look. I told him that I had not given him a dirty look, he then knocked the cup out of my hand and remarked that I had given him a silly grin. I warned Gnr. Hay that he would be up for office the next day. He then grabbed hold of my tunic and remarked that he did'nt give a fuck and that no Sjt. could give him a dirty look. I ordered him to take his hands off me, telling ~~me~~ him he was looking for serious trouble. He remarked that he did'nt give a fuck how much trouble he got into and struck me on the left ear with his fist. I then told him that he was under close arrest and he was taken away under escort by Sjt. Culshaw.

Sgt. Neil D.G.

The accused declines to cross-examine this witness.

Fourth Witness

F.16151 Bdr. Schultz, G.R., 111 Bty., 7 Cdn ATk Regt. R.C.A. having been duly sworn, states:

"I am F.16151 Bdr. Schultz, G.R., 111 Bty. On 18 Mar. 44 between 1630 hrs. and 1700 hrs. I overheard an argument between Gnr. Hay and Sjt. Neil. Gnr. Hay stated that he wasn't taking any shit off Sjt. Neil and with that he struck Sjt. Neil. Sjt. Neil caught Gnr. Hay by the tunic and held him off. That is all I saw.

Bdr. Schultz G.R.

The accused declines to cross-examine this witness.

Fifth Witness

D.114886 Cpl. Goyette, E.R. (RCASC) att to 111 Bty., 7 Cdn ATk Regt. R.C.A., having been duly sworn, states:

"I am D.114886 Cpl. Goyette, E.R., of the RCASC att to 111 Bty, 7 Cdn ATk Regt. I heard some trouble outside the kitchen. An argument was in progress and looked like the start of a fight. There was some bread and butter on the table and I saw Gnr. Hay knock it off the table onto the street. I still had 30 men to feed and had to supply more bread and butter.

Cpl. Goyette E.R.

The Accused declines to cross-examine this witness.

Sixth Witness

H.59578 Pte. Henderson, J.M., R.C.A.S.C., att 111 Bty., 7 Cdn ATk Regt. R.C.A. having been duly sworn, states:

"I am H.59578 Pte Henderson, J.M. RCASC att 111 Bty., 7 Cdn ATk Regt. RCA xx. On the 19 Mar. 44 on supper parade I heard Gnr. Hay arguing and then I saw him grab the tray with the bread and butter on it and thrown it on the ground. I then saw him marched away under escort.

J.M. Henderson

The Accused declines to cross-examine this witness.

Seventh Witness

M.368 Gnr. MacLean, J.M., 111 Bty., 7 Cdn ATk Regt. R.C.A., having been duly sworn, states:

"I am M.368 Gnr. MacLean, J.M., 111 Bty., on 19 Mar. 44 I saw Gnr. Hay knock the bread tray off the table onto the street. I then went back into the kitchen to get some more bread.

J.M. MacLean

The Accused declines to cross-examine this witness.

Eighth Witness

M.62 Bdr. McDonald, F.E, 111 Bty., 7 Cdn ATk Regt. R.C.A., having been duly sworn, states:

"I am M.62 Bdr. McDonald, F.E., 111 Bty. At about 1700 hrs. on 19 Mar. 44 I spoke to Sjt. Culshaw when he told me he was having xxxxx trouble with Gnr. Hay. As xx there was no detention room he asked me if I could guard him in xxx my billet for the night. I then went up the street to get Gnr. Hay. I took him to my billet under a drunken condition and warned him he was under close arrest. He did'nt seem to realize that he was under close arrest. Finally Gnr. McCormack and myself got him xxxx quieted down and put him on the bed, trying to get him to sleep. I then went out to get some wood. The first thing I knew Gnr. Hay had jumped out the window and was on his way down the street. The window was 25 ft. from the ground and was the only means of escape as there is only one door to the house which Gnr. McCormack and I were guarding. Realizing he had gone out the window I ran after him and brought him back to my billet. We then took off his boots and kept guard over him until he went to sleep.

F.E. McDonald

The Accused declines to cross-examine this witness.

Ninth Witness M.399 Gnr. MC Cormack, T.M., of 111 Bty., 7 Cdn A.Tk. Regt. R.C.A., having been duly sworn, states:

" I am M.399 Gnr. McCormack, T.M., 111 Bty. At approximately 1700 hrs., 19 Mar. 44 I was in my billet when Gnr. Hay was brought in by Bdr. McDonald. Gnr. Hay appeared to be in a drunken condition. He was told by Bdr. McDonald that he was under close arrest. Gnr. Hay did not seem to realize this. We got him in the room and finally got him to lay down on the bed. I waited until he appeared to be alseep then I went out to help Bdr. McDonald cut wood. We were cutting wood in front of the only door in the house. I noticed Bdr. McDonald running around the corner of the house. I ran into the house and found that Gnr. Hay was not there. Some children showed the way Gnr. Hay had gone. I then went to the road and started in the direction that I was told Hay had gone. I had proceeded down the road a short distance when I saw Bdr. McDonald bringing Gnr. Hay back. I helped Bdr. McDonald escort him back to the room where we placed him on the bed and took off his boots. He soon went to sleep.

J. Gnr. Mc Cormack
.....

The accused declines to cross-examine this witness.

The Accused having been asked: Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or given evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence" makes no statement.

Hay
.....

I certify that the foregoing Summary of Evidence, consisting of 4 pages was taken down by me in writing in the presence of the Accused and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with..

Signed In the Field this 22 day of March 1944.

M.V. Longworth
.....Lieut.
(M.V. Longworth)
Officer Taking Summary.

MFM 6
(W.B. 122)

No H35699 Name Hay, A. | Sqn, Battery, or Company | Corps RCA | Date of enlistment 20/12/40 | GC Badges | Service or Proficiency Pay | Character C

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	Sheet No. 1 revised and destroyed in accordance with AO (10/6) 319 after 6 months service.								
Field	3/4/41	Gnr		A.A. Sec 15 (1) AWL from 2300 hrs. 15 Sep 41 until 0330 hrs. 16 Sept. 41	Bdr Gelinas	14 days C.B.	17/9/41	Major Rankine.	
Field	5/10/41	Gnr.		AWOL from M.T. Picquet Mounting at 1900 hrs. 5 Oct 41	Bdr Clynick	14 days C.B.	11/10/41	Major Rankine	
Field	5/10/41	Gnr.		AA Sec. 40 Mos Conduct, etc., refusing to obey an order	L/Bjt Sparkson.				
Field	15/11/41	Gnr		A.A. Sec. 15 (1) AWL 15 hrs. and 15 minutes)	Bjt Green	7 days C.B.	17/11/41	Major Chapman	Forf 1 d. pay
Field	1/10/42	Gnr		AA Sec 40 Neglect, etc., in that his rifle was found in an unclean condition	Lt Kennedy	7 days C.B.	17/10/42	Major Harrison	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3/6/42	Gnr		A.A. Sec 40 Conduct, etc., did drive a WD Vehicle without proper authority.	BSM Paterson Sjt Tawns	27 days FP 27 days Pay	8/6/42	Lt.-Col. Devine	
				(2) AA Sec. 10 (2) Offering violence to Superior Officer	L/Sjt Lavigne " Aikens				
			One	(3) A.A. Sec. 19 Drunkeness					
Field	20/10	Gnr		Conduct, etc., did use improper language to an NCO	BQMS Innes L/Bdr Montgomery	7 days C.B.	20/10/42	Major Harrison	
Field	22/12/42	"		A.A. Sec 40 Conduct, etc, using abusive language and causing a disturbance in cook house	Bdr Goyette " Tucker	7 days C.B.	24/12/42	Major Harrison	
Field	7/8/43	Gnr		AA Sec 22 - When in lawful custody attempting to escape .	Documentary	14 days F.P.	11/8/43	Lt.-Col. Gillies	
Field	30/11/	Gnr		AASec 15 (1) Absent himself without leave from Piquet Mounting at 1600 hrs. until 2200 hrs., 30/11/43.		28 days F.P.	30/11/43	" "	

Certified true extract from the Regimental Books in my possession

[illegible] Adjutant,
[illegible] Tank Regiment, R.C.A. (A.F.)

M.F.B. 355
(23M—5-41 (572-3)
H.Q. 1773-39-629
A.F.B. 206

B

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H.35699	Gnr.	Hay, A.	7 ATk Regt. R.C.A.

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. 15(1)	1 times	Four	times
For	A.A. 40	No times	Five	times
For	A.A. 19	No times	One	times
For	A.A. 22	One times	One	times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act A.F.A. 78 Section 47 of the Army Act and dispensations with trial under A.A. 75 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for~~ Nil ~~beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges for No days in civil custody, and ~~Eight and~~ Three ~~Air Force~~ days in military custody, making a total of ~~Eight and~~ Three days in custody, of which No days were spent in hospital.

5. The present age of the accused according to his record of service is 23

6. The date of his ~~enlistment~~ attestation specified in his record of service is 20 Dec. 40

7. ~~The service which the accused is allowed to reckon towards discharge is~~ 3 yrs, 5 months

8. ~~The accused is entitled to reckon 3 yrs 5 mos service for the purpose of determining his position, etc.~~

9. The accused is in possession of or entitled to ~~no air force~~ decoration, or ~~air force~~ reward (~~military~~ C.G.M.) ~~military~~ ~~State any air force decoration or reward.~~

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of Nil

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit
NIL dated ....., and in his regiment (or corps), the rank of
..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

NIL Date of promotion.

In the rank of NIL, ... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force
Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....
Unit
Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NIL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22 (27 mar) day of March 44 M.Hargreaves.....

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked E & B signed by the president, and annexed to the proceedings.

G Wright Major

56R.

R.Q.M.S. HAY, H.D.T.

O. H. M. S.

M. F. B. 270

R Thompson Major

A 56R.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this SEVENTH day of OCTOBER, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 6 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[redacted]

In my opinion military exigencies, namely the dispersion of units and difficulties of communication and other difficulties render it inexpedient to observe the provisions of those rules inconsistent with Appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

PROCEEDINGS REVIEWED

A Major Cdn (A&J) C.M.H.Q. 24 Nov 42

#127

President.

Rank.	Name.	Regiment.
Major	R. Thompson	Cameron of C

Members.

Rank.	Name.	Regiment.
Capt.	L.G. Boissonault	Fus M R
Lieut	E. Argue	Cameron of C
Waiting Member Lieut	J.L. Gates	1 Cdn Scot R

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed. (H.A. Young), Brig,
Commanding 6 Cdn Inf Bde.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
L-12258 R.Q.M.S. Hay, H.D.J. 8 Sask R	1st charge A.A.Sec 40 Conduct to the prejudice of good order and military discipline in that he in the field on the night of 1/2 Sep 42 was concerned in the improper use of W.D.Vehicle CZ 4205206 for private purposes.	Guilty	Guilty Reduced to the Rank of Sergeant 8 Oct 1942 R. Thompson Majr	I Confirm A.W.

* Question to be asked of accused, if he pleads not guilty (R. of P. 34 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) [signature] (H.A. Young), Brig,
Commanding 6 Cdn Inf Bde.
Convening Officer (*e*)

(Signed) R. Thompson Majr
President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 8th day of October 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 8th day of October 1942

R. Thompson Majr
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 764 M.M.L. 1939.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I direct that the soldier named in the margin be not committed to prison until further order.~~) A.W.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 10 day of Oct 1942

A.W. Mutlebee
Confirming Officer. 15 Corps

Promulgated and extracts taken in the case of

(*a*) (Dated) 13 Oct. 42 (Signed) [illegible] Lt. Col. Sand Sask Regt

Promulgated and extracts taken in the case of

(Dated) ~~13 Oct 42~~ (Signed) [illegible] Capt. for SC 6 C.I.B.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B 2

CHARGE SHEET

L-12255 H.Q.M.S. (W.O.II) Howard Douglas Jerome Hay of the South Saskatchewan Regiment, a soldier of the Canadian Army Overseas is charged with:-

First Charge
A.A. Sec 40

Conduct to the prejudice of good order and military discipline, in that he, in the field, on the night of 1/2 Sep 42, was concerned in the improper use of M.D. Vehicle Oz 4205206 for private purposes.

20 Sep 42

(H.T. Kempton) Lt.Col.
O.C., S.Sask.R., C.A.(O)

To be tried by F.G.C.M.

7 Oct 42.

for (H.A. Young) Brigadier,
6 Cdn Inf Bde, C.A.(O)

Staff Lieut.

MEDICAL CERTIFICATE (A.F. (Can) 387)

I certify that I have this morning examined No. L-12258

RQMS Hay, H.D.J. of S.Sask.R.

and in my opinion he is FIT / ~~UNFIT~~ to undergo trial by Court-Martial.

Station In the field

Date 8 Oct 42

Medical Officer

R. Thompson Major

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Genl G. Court-Martial held at in the field
on the 8th day of October 1942, by order of
Brig H.A. Young Commanding 6 Cdn. Inf. Bde.
dated the 7th day of October 1942.

President,
Major R. Thompson
Canadians of Canada
Members.
Capt L. A. Boissonault
Que. R.
Lieut. E. Legue
Canadians of Canada

, Judge Advocate.

Trial of 5 12258 Rfn (A.O.M.) Howard Douglas Leonard Hay.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that ———— is not available to serve owing to

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Lieut. J. F. Ramsay South Sask. Regt

Counsel‡ or defending officer† Major J. R. Mather South Sask Regt

At 0930 o'clock the Trial commences.

The order convening the Court is read, and is marked A signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
10M—3-41 (9670)
H.Q. 1772-39-224

B

The President, members and ~~judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Lieut. F. L. Yates.
1 Edin. Scot. Regt

Charge-Sheet

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. *If the accused has elected to be tried under Army Act, sec. 40 (8) the fact should be here recorded.*

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Yes Sir *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused 12258 RQMS (A.C.) H.D.J. Hay

is found guilty of as charged.

*The summary (or abstract) of evidence is read, marked C, signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment? No.

Answer. The accused in mitigation of punishment says:—

[*or* hands in a written statement, which is read, marked ~~D~~, signed by the President, and attached to the proceedings.]

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character? ~~Yes Sir~~

Question to the accused.

Answer Yes Sir

Evidence as to character.

Attached as D.

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused ~~Guilty~~ R. Lambert Wyatt

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

~~*The Court being re-opened, the accused is again brought before it.~~

Evidence of character, &c.

Lieut. F. T. Ramsay South. Scot. Regt is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Nil

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Cross-examined by the accused.

Question to the accused.

Do you wish to address the Court? *Answer.* No Sir

The Court is closed for the consideration of the sentence.

F

Sentence

The Court sentence the accused ~~Sgt 2580 R.S.M.S. (2011)~~ Howard Douglas ~~Sgt~~ Major to Sentence:

Reduced to rank of Sergeant

8 Oct 1942.

R Thompson Major

6

Abstract of Evidence

In the Field General Court Martial of
L-12856 R.Q.M.S. (W.O. II) Howard Douglas Jerome Hay,
S.Sask.R., C.A.(O), in pursuance of R.P.76

Take notice that at the trial of the above mentioned Warrant Officer:-

1. No. L-18814 Pte. Black H.R., S.Sask.R., C.A.(O) will be called as a witness to give evidence that he was on guard the night of 1 Sep 42 and that he reported the absence of vehicle No. CZ 4206806 to L-12387 Sgt. Outhwaite W.G., Transport Sgt. of the S.Sask.R., C.A.(O) at approximately 2200 hrs.

2. No. L-12387 Sgt. Outhwaite W.G., Transport Sgt - S.Sask.R., C.A.(O), will be called as a witness to give evidence as follows:-
(a) That at approximately 2200 hrs 1 Sep 42 the absence from Unit Transport Lines of vehicle CZ 4206806 was reported to him.
(b) That at 0615 hrs 2 Sep 42 he saw the same vehicle return to the transport lines.
(c) He will produce A.F. C2518, Work Ticket covering a journey authorized by Major G.H. Matthews which was used by the accused for authority for an unauthorized trip. This form will disclose speedometer readings which were recorded prior to, and at the conclusion of the journey in question, establishing that speedometer readings denote 71 miles of travel.

3. Major G.H. Matthews, O.C. H.Q. Coy., S.Sask.R., C.A.(O) will be called as a witness to give evidence as follows:-
(a) That he authorized a trip for this vehicle for a person other than the accused and for a destination other than that to which the vehicle travelled.
(b) That he preferred charges against the accused for improperly using the vehicle for his own purpose.

4. No. L-12946 Pte. Jones W.F., S.Sask.R., C.A.(O) will be called as a witness to give evidence as follows:-
(a) That he is an authorized driver (M.T.) of the M.T. Section of the S.Sask.R., C.A.(O)
(b) That he was ordered at approximately 1730 hrs 1 Sep 42 by the accused to drive him in vehicle CZ 4206806.
(c) That he drove the accused in the aforesaid vehicle to LETHBRIDGE and return.

The accused was duly warned in accordance with R.P. 4 (c) but declined to make a statement and reserved his defence.

Compliance with R.P. 4 (d) certified.

(H.T. Kempton) Lt. Col.,
O.C., S.Sask. R., C.A. (O)

In the Field
This 6th day of October 1942.

To: This Honourable Court,
L-12856 R.Q.M.S. (W.O.II) H.D.J. Hay
Lieut J.T. Ramsey, S.Sask.R., C.A.(O), Prosecutor.

R. S. Thompson Major

LIST OF WITNESSES

In the case of L-12260 R.Q.M.S. (W.O.II) Howard Douglas Jerome Hay:-

PROSECUTION

Major G.R. Matthews - S.Sask.R., C.A.(O)
L-13267 Sgt. Outhwaite W.G. - S.Sask.R., C.A.(O)
L-12946 Pte. Jones W.F. S.Sask.R., C.A.(O)
L-12814 Pte. Black M.E. S.Sask.R., C.A.(O)

DEFENCE

Major J.R. Mathers, S.Sask.R., C.A.(O)
Capt. T.D. Wallace, R.C.O.C., C.A.(O)

LIST OF EXHIBITS

Exhibit "A" A.F.C. 3018

R. Thompson Major

STATEMENT OF THE ACCUSED

I, L-18858 R.Q.M.S.(W.O.II) H.D.J. Hay, S.Sask.R., C.A.(O) do not require an officer to be assigned to represent me at my trial by F.G.C.M.

This is to certify that I have been given free of charge a copy of the charge sheet, abstract of evidence and list of witnesses and exhibits relating to my trial by F.G.C.M.

H.D.J. Hay

(H.D.J. Hay) R.Q.M.S. (W.O.II)
S.Sask.R., C.A.(O)

In the Field
8 Oct 42.

R. Henderson Major

APPLICATION FOR APPOINTMENT AS "SURERVISOR" CDN. AUXILIARY SERVICES. D

To: Assistant Director Auxiliary Services, C.M.H.Q.

1. Application is hereby made by (No) L12255.....(Rank) R.Q.M.S. .. (Name) H.D.J.Hay.....(Present Unit and/or Corps) South Sask. Reg't. to be discharged from the Canadian Army and appointed as a Supervisor of the (Name of National Voluntary Arganization) Cdn. Legion War Services Inc. for duties with the Cdn. Auxiliary Services.

2. Age 44 ....Previous Military Service, C.E.F. 102nd. Bn. May 1916 to Feb. 1919.
Decorations-None. No. Dependents-one. Category-"A".
Civil Occupation-Salesman and Auditer B.A. Oil Coy.
Home Address- Regina, Sask.

3. I understand that, if this application is approved, I shall require to:

(a) Be discharged from the Canadian Army.
(b) Relinquish my present pension rights and accept rights and rates as applicable to "Supervisor" (at present Captain's rank).
(c) Assign to my dependents from my pay an amount not less than the total they now receive from my Assigned Pay and Dependents Allowance.
(d) Accept such other conditions, i.e. death or disability allowances, Income Tax provisions, etc. as applied by regulations to all Supervisers Overseas.
(e) Conform to Regulations of the (National Voluntary Organizations) Canadian Legion War Services Inc. with whom I shall serve.

4. I am the soldier named in para. 1. and I desire to be appointed Auxiliary Services "supervisor" in accord with the above provisions, for the following reasons- Owing to my age- also with the experience I have had in organization and sports along with that gained while with the S.S.R. I feel capable of handling the m/n position.

Signed.. H.D.J.Hay. Date. 5-10-42.

---

5. I am the Senior Representative of Canadian Legion War Services Inc. Overseas and I agree to accept the m/n soldier as a Supervisor.

Signed. Robt. Macniecl.

6. I am the C.O. of yh m/n Soldier and I recommend this application be granted, in th interests of the Services for the following reasons: (State fully age, category, or other considerations affecting decision)

X Date..... Signature..... Rank.....

---

7. Formation Commander: Concurrence or otherwise.....

8. Recommendation from A.D.A.S. that the applicant be appointed and statement that the appointment is within the W.E. (If not within W.E. state urgency of case and whether same will be within any proposed W.E. presently pending).

.....

9. A.A.G. (Pers) C.M.H.Q. Concurrence or otherwise.....

10. Senior Officer CMHQ: Concurrence or otherwise.....

Enclosure: (a) Copy of M.F.M. 6.

Certified true Copy.

R Simpson Major

Evidence of Major J.R. Mather, South Saskatchewan Regiment re character of 2/17758 RQMS Clay. H.B.J.

From end of Sept. 1939 until the end of December 1940. I was adjutant of the 46th regt. during that time. I came in contact with the accused everyday. His work at all times was without reproach, and I know that the hours spent by him at his task averaged from 18-20 hours every day. In January, 1941 I became Coy. Comde. "A" Coy, and in all my coy. dealings with the Q.M. dept. everything has worked very smoothly and efficiently.

With regard to the application of the accused for transfer to the dental services, this application has been accepted.

I hereby submit a copy of this document signed by the senior representatives of Canadian Legion, viz. Robert Leitch.

R. Cameron Major

D

Evidence of Witness Capt P.S. Wallace R.C.O.C.
regarding character of R.Q.M.S. Hay, H.D.J.
L12758.

Capt P.S. Wallace, R.C.O.C. having been duly sworn states:- I was Q.M. of the South Saskatchewan Regt. from 15th November 1939 until Apr. 10th 1942. On assuming the duties, stores were under charge of the accused. When I took over I had no idea of C.M. work, and has to be taught by the accused. From that time the accused has worked long and unsocial hours, with the consequence that he was allowed extra privileges, allowing him the use of the unit at any hour of day or night. During the years I was with the unit, there was at no time that circumstances arose by which the accused's work was ever neglected, and I believe it was due to his untiring effort that the regt. stores were in such good state when I left the unit. During my period as Q.M. his character was irreproachable. As the full responsibility for the handling on boards & LCol Lett, and Lt Col Merritt, rested on his shoulders, the lack of shortages can be credited to his untiring effort.

Just prior to reverse "Re opn" the accused was recommended for a commission. The examination took place later. I understand he obtained very high marks. Before the selection board only his age stood in his way.

As the accused was a fine athlete, it was decided he would be of great value to the auxiliary services. Hence leaving. I understand his application has been accepted.

R. Simpson Major

No. L-12356 Name May, H.D.F. Sqn., Battery, or Company HQ Corps S.Sask.R. Date of enlistment 3/10/39 G.C. Badges Service or Proficiency Pay

M.F.M. 6
A.F.B. 122
500 M.—4-40—(39)
H.Q. 1775-43-37

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dismissing with ignominy	By whom awarded	Remarks
Shilo	31-8-40	R/Cpl		AWOL 1800 hrs 31-8/40 to 0830 hrs 5-9-40 (A.A. Sec 14)	Capt Campbell	Reprimanded	6-9-40	Lt.Col Wright	Forf 3 days pay

O.C. 1st Reserve Battalion
S.S.R.

(Substitute for A.F.B. 296
or M.F.B 355)

E

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No. L-12258 Name Hay, H.D.J. Unit S.Sask.R.

Age 43 Married or Single Married No. of Dependants One

Date of Attestation 2 Oct 1939

No. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL Nil MILITARY Nil HOSPITAL Nil TOTAL Nil

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY

C.Q.M.S. 24-10-39, R.Q.M.S. 13-11-39. Confirmed R.Q.M.S. 13-3-41

A CERTIFIED TRUE COPY OF M.F.M. 6 MUST ACCOMPANY THIS FORM

(Officer i/c Records)

Jack Hay Unit

Dated at

THIS ~~22~~ 8 DAY OF ~~April~~ Oct 1942

(To be dated and signed as of date of trial)

W-113

Tp. HAY. J.

W-113

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Eighteenth day of January, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "E" Group, C.R.U.

, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~xxxx

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
L 74186 Tpr HAY J. 1 C.A.C.R.U. (R.C.D.)	First Charge: A.A. Sec 40	Guilty	Guilty Finding and Sentence Confirmed Sentence To forfeit Forty Five (45) Days Pay. 19th Jan 1943	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have had insufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) _____ (Signed) _____
(S. A. Lee) Colonel
Commanding "E" Group, C.R.U.
Convening Officer (*c*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 19th day of January, 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 19th day of January 1943.

President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *~~A.C.I. 570 of 1918~~ have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

Signed this 19th day of January 1943.

(S. A. Lee) Colonel
Confirming Officer
"E" Group, C.R.U.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Promulgated and extracts taken in the case of L 74186 Tpr Hay J. No 1 C.A.C.R.U.

(*a*) (Dated) 19 Jan 43 (Signed) [illegible] Lieut. & Adjt. No. 1 C.A.C.R.U.

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused No.L-74186 Tpr. Jack HAY, 1st Canadian Armoured Car Regiment,(RCD), on strength of No.1.C.A.C.R.U., a soldier of the Canadian Army, Overseas, is charged with, when on Active Service,

Section 40 Army Act

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

at about 2200 hrs. 15th January, 1943, was using a W.D. Vehicle No.C.M.4202239, for a private purpose, without proper authorization.

A.T.PATERSON, Lt.Col.,
Commanding Officer,
No.1.Cdn.Arm'd.Corps
Reinforcement Unit.

Inkerman Barracks,
Surrey,
16th January, 1943.

I direct that this be tried by F.G.C.M.

In the Field
18 Jan 43

(S. A. Lee)Colonel,
Comd "E" Gp, C.R.U.

CERTIFICATE OF MEDICAL FITNESS FOR TRIAL BY COURT MARTIAL

I hereby certify that I have this day examined the accused L.74186 Tpr. Hay, J. and find him fit to undergo trial by Field General Court Martial.

.....
MEDICAL OFFICER, No.1. C.C.S.N.Z.M.C.

Inkerman Barracks,
18th January 1943

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT ENKEKMAN BARRACKS.
ON THE 18th DAY OF JANUARY 1943

The accused. A/T/186 TPR. (A.A.) F. Unit. 1 C.A.C.R.U. R.C.D.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 & 23.

The accused is brought before the Court.
The Medical Certificate is presented to the Court.
The order convening the Court is read by the President and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President. A/T/Sgt. P.S. R.E.M.M. Unit. H.Q. C.A.C.R.U.

Members. S/SGT. C.R. KAMAN. Unit. 8 C.A.C.R.U.

LIEUT. G. STELLEPAK. Unit. 8 C.A.C.R.U.

The officers under instruction are duly sworn:-

(ALSO ATTACHED) Unit.

Unit.

Prosecutor. LIEUT. L.R. ROSEBUCK. Unit. No. 1 C.A.C.R.U.

Defending Officer. LIEUT. A.E. ARCHEY. Unit. No. 1 C.A.C.R.U.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B)
The Summary of Evidence is read.
The Prosecutor is sworn and produces MFB 355 and MFM 6.
The Court complies with R.P. 46(B). ~~AFB 296~~

Pursuant to R.P. 37 THE ACCUSED:-

(a) ~~makes a statement in mitigation of punishment~~
(b) ~~calls witnesses as to character~~
(c) ~~calls witnesses in mitigation of punishment~~
(d) addresses the Court by his Defending Officer

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE AND ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Plea in mitigation is attached

(OVER)

Tpr. Hargis I
47186 (CACR) WCD

- Officers Under Instruction -

Lieut. R. A. Causey No 2. CACR
" F. P. Clarke "
" M. F. Barnes No. 1 CACR
" W. E. Roxburgh " "
" M. G. Wrake No. 3. CACR
" L. R. Moore " "

THE CASE OF TROOPER HAY: 1-74186. 19 JAN 43.

Occasionally a case arises which one feels is deserving of special consideration from the Court. Here we have a steady-going young soldier with a clean record. We have, too, a man who possesses one of the finest characteristics of a superior mind . He was wrong. He slipped. But he had the moral courage to admit his fault. He did not try to shift the blame. He did not try to slide out from under the responsibility. In his statement he mentioned no names. He merely said another trooper was with him.

On investigation I find that this man was off duty. He met his colleague. Undoubtedly there was considerable drinking done in the pub. before closing time. On leaving the pub, it was decided that a visit to the dance in Woking was the thing. But how? Should they walk; no time for that, it was late in the evening then. They belonged to Recce. ---not infantry. What could be more natural than to drive into Woking. They did dozens of times a week. There was adventure in the air--the spirit of daring; but what about the work ticket? What about the sentry---- simply elementary--any plausible story would fool the guard. An emergency hospital run! That was the idea. It would work like a charm. And it did. From the evidence it would appear that the sentry,having sworn to the fact that the car was travelling at about 40 miles per hour, erred in his judgement. He heard the message called to him. I think it would be very hard to hear a message shouted from a car, particularly a closed vehicle, at a speed of 40 miles per hour. However that is not the issue.

Trooper Hay, on whose shoulders all the blame was put by his companion, has an enviable reputation with the Transport Section. He is honest and capable. He has never had an accident. He has never made a misstep. And then this escapade which is worthy of Halloween has placed him in a position of jeopardy. This man is more than useful to the Transport Section. Must he sacrifce a long seperation from this job which he enjoys with more enthusiasm than any I have yet met? Could not these qualities which he is known to possess entitle him to a short term of punishment from which he could return to rebuild the reputation for integrity which he has always enjoyed?

There was no accident. No civilians or soldiers were endangered. He used a vehicle without proper authority, but he did not abuse the vehicle. There are no costly repairs to consider.

Decidedly I feel that a certain leniency could be expended in his case without prejudice to discipline. Everyone in this camp knows him, likes his cheerful manner and his capabilities. His friends would realize that any consideration shown would be meritted by his past record. He is badly needed as a Driver. There was no premeditated plan about this decision to drive to Woking. The car was being returned. No time is being used up while it might rest in the repair department or some L.A.D. Please let the facts influence your decision to the fullest in awarding your term of punishment on Tpr. May.

A.E. Brodie
Lieut.

PM

3

Summary of Evidence in the case of No. L-74186 Tpr. Jack HAY, 1st. Armoured Car Regt. (RCD), on strength of No.1. C.A.C.R.U., a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the summary of evidence is taken down on oath.

FIRST WITNESS for the Prosecution

No. D-98626 Tpr. N.V. Stewart, 8th. Cdn. Recce. Regt. (14H), on strength of No.1. C.A.C.R.U., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

"AT Inkerman Barracks on the night of 15 Jan 43 I was on Guard Duty at the Knaphill entrance of the Camp lines. Between 2215 hrs. and 2230 hrs. a Ford Staff Car approached the gate coming from camp at about 40 m.p.h. I flashed my torch at it and yelled trying to signal it down. It slowed down a bit but continued through the gate and proceeded towards Knaphill. There appeared to be 2 people in the car and as it went past one of them yelled that they were making an emergency hospital run. I was not certain what action to take and at 2300 hours the Corporal of the M.T. appeared and asked me if a Staff Car had gone out. I reported the above facts to him and then he drove me to the Guard Room where I reported the matter to the Gurd Commander.

Question 1: "Could you recognize any of the distinguishing markings on the vehicle?"

Answer 1: " No Sir, I couldn't."

Question 2: "Where you able to recognize any one in the vehicle?"

Answer 2: "No Sir."

Cross-Examined by the accused.

Question 1: "Are you certain the car was going 40 m.p.h.?"

Answer 1: "I am pretty certain it was going at that speed but it might have been slightly less."

D-98626 Tpr. Stewart, N.V.

SECOND WITNESS FOR the prosecution

No.C-70664 Cpl. Feron, P. 4th. Cdn. Recce. Bn.(PLDG) on strength of No.1. C.A.C.R.U., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

"AT Inkerman Barracks on the night of 15 Jan 43 I was Orderly Corporal and despatcher of the M.T. Section At about 2200 hrs I was in the M.T. office with Tpr. McNulty, Tpr. Cooper and the accused. At that hour I went out to take tattoo and when I returned (Tpr. Cooper) and the accused were missing. At 2245 hrs. Tpr. McFayden and I went out to get Staff Car CM4202239 as he was to take it out on a run. We could not find this vehicle in its proper place or within the Transport lines. I then checked on the exits from camp and at No.2 Post (Knaphill) the Guard on duty informed me that a Staff Car had gone through without stopping at approximately 2230 hours. I reported it to the L/Cpl of the Guard and to Capt. Pitman the Transport Officer at approximately 2330 hours.

C-70664 Cpl. Feron, P.

The accused declined to cross examine this witness.

SUMMARY OF EVIDENCE (Continued)

The accused was cautioned as follows: Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused elects to make a statement.

The accused No. L-74186 Tpr. Jack HAY, 1st. Armoured Car Regt. (R.C.D.), on strength of No.1. C.A.C.R.U., a soldier of the Canadian Army Overseas, states:

"On the night of January 15th. 1943 at approximately 2200 hours I came to the Transport Office in company with another trooper and while the Orderly Corporal was out we took a car CM 4202239. I drove the car. We proceeded out Knaphill gate. When stopped by the sentry an excuse was used that would satisfy him and let the car proceed. We went up to Knaphill and down to the cross roads and past the barracks, then to Woking. From there we went out to the six cross roads, back to Woking. We parked in Woking for a short time and then left to come back to camp. On the way back, due to a blot of fog on a bend in the road the car ran off the edge of the road and not wanting to use the brakes with the possibility of upsetting the car I let it run into the ditch. Not being able to get it out under its own power we came back to camp.

The accused does not call any witnesses for the defence.

L-74186 Tpr. Hay, J.

I certify that the foregoing summary of evidence of two (2) pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(G) (D),(E), and (F) have been complied with.

H.W. Logan, Lieut.,
Officer taking Summary of Evidence

INKERMAN BARRACKS,
16 January 1943

Previous sheet destroyed 7-7-42 on completion of six months service.

No. L74186 Name HAY, J. | Sqn., Battery, or Company: Corps Cdn Arm'd Corps | Date of enlistment: 7-1-42 | G.C. Badges: NIL | Service or Proficiency Pay: NIL

M.F.M. 6
A.F.B. 122
175M—7-41 (1219-30)
M.Q. 1771-39-1612

Date of last entry in Company Conduct Sheet: NIL | No. and date of last drunk: NIL | Period not reckoning towards freedom from extra fine: NIL | Sheet No. 1 | Signature O.C. Company, etc.: R. Thomson Major | Character: Good

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED TRUE COPY

S. I. Mc Barrett, Lieut.
Adjutant
No. 1 C.A.C.R.U.

(P.T.O.)

M.F.B. 355
40/F & B/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L-74186	Trooper	Hay, J.	No.1.C.A.C.R.U.

1. The following is a fair and true summary of the entries in the ~~Service and Regimental~~ Regimental and Squadron, Battery ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	~~Within last 12 months~~	~~Since enlistment~~
~~For~~	Nil times	Nil ~~times~~
~~For~~	~~times~~	~~times~~
~~For~~	~~times~~	~~times~~
~~For~~	~~times~~	~~times~~

Number of instances of gallantry or distinguished conduct Nil

or,

There are no entries in the conduct sheets of the accused.

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for no days in civil custody, and three days in military custody, making a total of three days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 26 yrs, 11 mos, 3 days

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper 7 Jan 42

~~7. The service which the accused is allowed to reckon towards discharge is~~

~~8. The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no ~~service decoration or war medal~~ military ~~(or is in possession of or entitled to)~~. State any military decoration or reward.

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

MH

11. ~~(In the case of an officer.)~~ The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

~~12. The accused has served as a non-commissioned officer continuously, without reduction, to the~~ present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

~~In the rank of ..... years.~~

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number J.74186 Rank Trooper

Name HAY, Jack of No. 1 C.A.C.R.U. Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody. D. Jno. Barrett, Lieut + Adjt.

Signed this ~~16th~~ 18th day of January 43

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

I, L-74186 Tpr. Hay, J. No.1.Cdn.Arm'd.Car Regt.(RCD) of No.1.C.A.C.R.U., desire to have an Officer assigned to me at my trial by Court Martial.

I desire the services of Lieut. A.B.Brodie, 8th Cdn.Recce. Regiment (14H) on strength No.1.Cdn.Arm'd.Corps Reinf.Unit, if he is available.

I acknowledge receipt of one complete copy of the Summary of Evidence.

L-74186 Tpr Hay J.

L-74186 Tpr. Hay, J.

5 T — 80

Pr. Hays, J.t.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H77458 Tpe James Akerstream HAY - 2 CGRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
~~2nd~~			
~~3rd~~			
~~4th~~			
~~5th~~			
~~6th~~			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 40 days, of which 9 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
10 months Detention for a period of six (6) months and to be put under Stoppages of Pay until he has made good £0-6-8 the expenses of his return to his unit.

(Sgd) ..... (Sgd) .....
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) (1. AA 57A. Delete if not used.)

Date 14 Sep 45 (Sgd) A Brownfield Brigadier, Commanding "C" Group, Can. Reinforcement Units.
Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
H77458 Tpr Hay J.A.	14 Sep 45.	Galsmith MAJOR ADMIN. OFFR. 2 C.G.R.U.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 1 OCT 1945 C.M.H.Q. BRANCH

5T-80

FIELD GENERAL COURT-MARTIAL

CPA86 (To Hgu on AFA31 40/P & R/1698 8/441) 4 38B

Convened by Order of Brig H.O.N. Brownfield, Comd "C" Group dated 10 Sep 45
ORE NO

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apPmt, A/rank or A/apPmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H77458	TPR	James Akerstream	Hay	2 CGRU

PROCEEDINGS REVIEWED 8047 8/17 Sep 45

PROCEEDINGS OF TRIAL.

(1) HeM in the Fd in (country) ENGLAND on (date(s)) 13 SEP 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RGs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(a) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused:~~ Do you object to ..... as interpreter? Ans .....
~~The Interpreter is sworn.~~(1) Do you object to ~~Pte G.C. Gordon~~ as shorthand writer? Ans Nil
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NAD (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L. REDMAN	40 CRU
Member	CAPT	T.H. ORR	1 CGRU
Member	LIEUT	O.P. GUNN	1 CGRU
~~Judge-Advocate~~			
Prosecutor	LIEUT	S.D. WHITE	2 CGRU
Defending Offr	LIEUT	A.W. LEE	2 CGRU

Questions by President: Is the Prosecutor a lawyer? Ans Nil Is the Defending Offr a lawyer? Ans Nil (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 8.)

A8. The accused ..... before arraignment make(s) (no) ~~(a)~~ plea ..... (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or as bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans N/A SIR.(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1)~~ The Court decides (not) to advise accused to change his ~~(their)~~ plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on ..... charge(s).~~ Part I of the Schedule ~~is amended accordingly~~.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans..... Do you intend to call witnesses on your behalf? Ans..... Are they witnesses as to character only? Ans.....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans NO - SIR
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex ..... respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Reply will be made (MADE ALTO)(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, H77458 Tpr James Akerstream HAY, Royal Canadian Armoured Corps, on the strength of No. 2 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas,

is charged with,

FIRST CHARGE — WHEN ON ACTIVE SERVICE

(A.A.Sec 15(1)) — ABSENCE WITHOUT LEAVE — in that he,

in the Field, did absent himself without leave from 0800 hrs 26 Apr 45 until apprehended by the Canadian Provost Corps at 1600 hrs 4 Aug 45 at London, thereby incurring expenses in returning him to his Unit in the amount of £0-6-8.

Absent 101 days 8 hrs.

Dated at Bordon, Hants, this 6th day of Sep 1945.

(W. A. TOWNSLEY) Col RCA
Commanding Officer
No. 2 Cdn Gen Rft Unit

To be tried by Field General Court Martial

Commanding [illegible] Group, Cdn Reinforcement Units
(Convening Officer)

Bordon, Hants
10 Sep 45

CHARGE SHEET

The Accused, H77458 Tpr James Akerstream HAY, Royal Canadian Armoured Corps, on the strength of No. 2 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas,

is charged with,

FIRST CHARGE — WHEN ON ACTIVE SERVICE

N.A.Sec 15(1) — ABSENCE WITHOUT LEAVE

in that he,

in the Field, did absent himself without leave from 0800 hrs 25 Apr 45 until apprehended by the Canadian Provost Corps at 1600 hrs 4 Aug 45 at London, thereby incurring expenses in returning him to his Unit in the amount of £0-6-8.

Absent 101 days 8 hrs.

Dated at Bordon, Hants, this 6th day of Sep 1945.

(W. A. TOWNSLEY) Col RCA
Commanding Officer
No. 2 Cdn Gen Rft Unit

To be tried by Field General Court Martial

Brigadier
Commanding 4th Group, Cdn Reinforcement Units
(Convening Officer)

Bordon, Hants
10 Sep 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H77458	Tpr		James Akerstream	HAY	2 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) this date endorsed by me, (or by my offr comd for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~AND WHEREAS IT IS NECESSARY IN ORDER THAT THE TRIAL BE HELD WITHIN A REASONABLE TIME BY A SUPERIOR FIELD OFFR~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I HEREBY DIRECT AS APPOINT (A) THREE OFFRS TO CONSTITUTE SUCH COURT, (B) A FD OFFR AS PRESIDENT, BE CONVENED AT THE~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate to attend the Offr nominated hereunder~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Colonel	D.L. Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by CO	1 CGRU
Lieut	to be detailed by CO	1 CGRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

M M Brownfield (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Dat: 10 Sep 45

Commanding "C" Group, Cdn Reinforcement Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 66 (In Lieu of AFA 3) 40-P & S/1697 (5143)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S REPORT

I certify that No. A 7745 8 Hay J.A.
of 2. C.S.R.I. is in a good state of health,
and fit to undergo Trial by Court martial.

D.M.O. Gp
Medical Officer

Station 3 C.M.R.S.D.B.

Date 13 Sept 45

M. F. B. 246
25M—6-41 (702)
H.Q. 3773-09 480

H77458 TPR HAY J A PLEA OF MITIGATION

This soldier joined up 19 Jun 41 and served till 16 Feb 42 when he was discharged as underage, was 16 years of age at the time. He was given a good military conduct reference.

He again enlisted 24 Feb 43 and was posted O/S Oct 44. He asked to be sent to a theatre of operations but was found to be unstable.

This soldier has had an unhappy marriage, he has not hea rd from his wife in months and has tried to obtain a divorce. Being young he sought legal advice but could not see his way clear to undertake the usual procedure of obtaining evidence when obtaining grounds for a divorce.

This soldier is category S5 and this unhappy married state has not helped his mental outlook. He figured by going AWL his wife would start divorce proceedings when her allowance was stopped. While AWL he obtained work to support himself.

This soldier being S5, cannot stand being confined, his nerves are giving out and he has been on Field Pay of 1 shilling per day since 31 Aug 43.

He has been under close arrest since 4 Aug 45 and has been doing the same work as those undergoing detention, he is willing to undergo any punishment so long as it doesn't entail being confined to a cell as he suffers from claustraphobia. I aske the Court to take into consideration this soldier's youthfulness and his category S5 when passing sentence.

E-3

SUMMARY OF EVIDENCE in the case of H77458 Tpr James Akerstream HAY, on the strength of "D" Wing, No. 2 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS for the Prosecution

Lieut C. D. Underhill, RCA, Asst Adjt of "D" Wing, No. 2 Canadian General Reinforcement Unit, Canadian Army Overseas, having been duly sworn, states:

I am Lieut C. D. Underhill, RCA, of No. 2 Canadian General Reinforcement Unit, Asst Adjt of "D" Wing, and as such I produce from the Wing Orderly Room files the following documents which have been shown to the Accused:

The first document, which is marked Exhibit "A" is a certified True Extract from No.1 Canadian Armoured Corps Reinforcement Unit Part II Orders No. 99, dated 28 Apr 45, page 5, which declares in Para 9, sub-para (a) that H77458 Tpr Hay J.A., absented himself without leave at 0800 hrs 25 Apr 45 from his Unit.

The second document, which is marked Exhibit "B", is a Certificate in Accordance with P.C. 2797 of 10 Apr 42, signed by Lieut Willimont, D.A.P.M., C.M.H.Q., dated 5 Aug 45 which declares that H77458 Tpr Hay J. A., was arrested at 1600 hrs 4 Aug 45 at London.

The third document, which is marked Exhibit "C", is an Expense Voucher, CMHQ 100;55 (Ref KR & O (Can) 539) dated 7 Aug 45 and signed by the Officer Issuing Railway Warrant and Expense Monies, No. 6 Area Provost Coy., Canadian Provost Corp, London, which declares that expenses were incurred in returning H77458 Tpr Hay J. A., from London to Haslemere in the amount of £0-6-8.

C.D. Underhill
.....
(C.D. Underhill) Lieut RCA

The Accused declines to cross-examine this Witness.

J. A. Hay
.....
(H77458 Tpr Hay J. A.)

The Accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing, and may be given as evidence.

The Accused declines to make a statement and reserves his defence.

.....J.C.Hay.....
(R77486 Tpr Hay J.A.)

I certify that the foregoing Summary of Evidence, consisting of two (2) pages and three (3) Exhibits, was taken down by me in the presence and hearing of the Accused and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

Bordon, Hants
6 Sep 45

.....C.E.Ennis.....
(C.E. Ennis) Lieut RCA
Officer detailed to take
the Summary of Evidence.

E+A
my

EXHIBIT "A"

Certified True Extract from No 1. Cdn Armoured Corps
Reinf. Unit. Daily Order Part 11 No 99 dated 28 April 45.

NO 1 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT
DAILY ORDERS PART 11
ISSUED BY
COL. M.B.K. GORDON, D S O
COMMANDING OFFICER

LAST ORDER NO 98 27 APR 45

THIS ORDER NO 99 28 APR 45

PAGE 5

SECTION "B" OTHER RANKS

9. ABSENT WITHOUT LEAVE

(a) AWL wef 0800 hrs 25 Apr 45. (Rft)
H.77458 Tpr HAY, J.A.

(Sgnd) P. Keirstead
Capt. & Adjt., for
M.B.K. GORDON, Col.,
Commanding Officer
1 Cdn Armd Corps Reinf Unit.

CERTIFIED TRUE EXTRACT FROM ORIGINAL DOCUMENT HELD IN MY POSSESION
22 August 45

Records Officer at time (28 April 45)

A.E. Wilbur Capt.
(A.E. Wilbur) Capt.,
Officer i/c Records
1 Cdn Armd Corps Rft Unit.

EXHIBIT "B"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42

I certify that No. H. 77458. Rank Tpr. Name Hay. J.A.

Unit # I. CARU. Was arrested at London. (place)

at 1600 (Hour) On 4 Aug. 45. (date) and that at the time of his arrest he was wearing (Military uniform) or (xxxxxxxxxxxxxx), Signature of Provost-Marshal, Assistant Provost-Marshal, or other officer or the commanding officer of the protion of His Majesty's Forces or the officer, warrantOfficer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest (Strike out part inapplicable.)

London

5-Aug-45

[signature] Lieutenant-Colonel, CAPC.
D.A.P.M. -- C.M.H.Q.
(R.E.Birch)

EXHIBIT C

Expense Voucher Re— Ref: KR & O (Can) 539

Reg No. H 77458 Rank Lcpl Name Hay J. C. Unit #1 CARU.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit from London to Haslemere.

Date	Particulars ½ Portions	Amount £	s	d
7 Aug 45	Escorts return fare from LONDON To Haslemere		3	4
	Prisoners single fare to LONDON From			
	Prisoners fare from London to Haslemere		3	4
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		6	8

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

R P Harrison Capt

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London

1/35 CMHQ 100-55
40/P & S/483 (6763)

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H77458	Tpr	HAY J A	No 2 CGRU

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15 (1) AWL 4 times.

For R&I MDB 1939 (3J) 1 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 4 Aug 44

Date of last entry in Field Conduct Sheet 3 Apr 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

[redacted]

4. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for 40 days in military custody, *i.e.*, no days in open arrest, 40 days in close arrest; of which 9 days were spent in hospital.

5. The present age of the accused is 20 yrs 6 mos 23 days

6. The date of his [redacted] attestation is 24 Feb 43

7. The service which the accused is allowed to reckon is 2 yrs 6 mos 20 days

8. The accused is in possession of‡ CVSM

‡State the military decorations (if any) held by accused.

[redacted]

Date of Promotion.

[redacted]

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through*

EXB

(*28972) Wt.30721/3701 2M.(O) 9/44 A.& E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 13th day of September, 1945

P Chaplain (RAPC)

Officer in charge of records 2 CCRU.

No. H77458 Name HAY J A | Sqn, Battery, or Company | Corps CAC | Date of enlistment 24 Feb 43 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136 (7616)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Corps of trade or arm	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Dundern Field	4Aug44 26 Nov 44	Tpr		Offence under R&I MDB 1939(3J) AA Sec 15 (1) AWL fr 0945 hrs 26 Nov 44 to 0840 hrs 27 Nov 44 (22 hrs 55 mins)		3dys #1 Punish. 4Aug44 14 days FP 14 days pay FR&I 149(2)	27 Nov 44		Auto forf 14 dys pay AA Sec 46(2)(d) Auto forf 1 dys pay FR&I 149(1)a
Field	25 Dec 44	Tpr		AA Sec 15(1) AWL fr 2359 hrs 25 Dec 44 to 2330 hrs 26 Dec 44 (23 hrs 31 mins)		21 days FP 21 days pay FR&I 149(2)	30 Dec 44		Auto forf 21 dys pay AA Sec 46(2)(d) Auto forf 1 dys pay FR&I 149(1)a

(P20)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16 Apr 45	Tpr		AA Sec 15(1) AWL 7 hrs 59 mins		4 days pay FR&I 149(2)	16 Apr 45 TOTAL FORFEITURE 5 DAYS PAY		Forf 1 dys pay FR&I 149(1)a
Field	1 Apr 45	Tpr		AA Sec 15(1) AWL 2 days 7 hrs 50 mins		7 days CB 7 days pay FR&I 149(2)	3 Apr 45 TOTAL FORFEITURE 10 DAYS PAY		Auto forf 3 dys pay FR&I 149(1)a
				CERTIFIED TRUE EXTRACT FROM ORIGINAL MFM 4 HELD IN MY POSSESSION					
				4 Sep 45 (J.H.STEPHEN) Capt RCA Records Officer No. 2 C G R U					

6 Sep 45

Received from Lieut C. E. Ennis, RCA, Officer detailed to take the Summary of Evidence, One (1) copy of the Summary of Evidence and one (1) copy of the Charge Sheet, in the case of H77458 Tpr Hay J.A.

J. A. Hay

(H77458 Tpr Hay J.A.)

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

5 J-82

Mt Hay J. T.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B79440 Pte John Thomas HAY IRC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 45 and MML p 753, and in lieu of kit see RP 44 fn 8.)

At present under sentence for ..... Beginning on (date) ..... (1) WMWS
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To suffer penal servitude for a term of 3 years.

(Sgd) " WMW Shaw " Capt — 13 Mar 45 — (Sgd) "S McKinnon " Major
Judge-Advocate, if any. — Date awarded. — President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the finding and sentence for confirmation.

Date 14 Mar 45 (Sgd) "Ian S Johnston " Brig Commanding 11 Cdn Inf Bde

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)
(1. AA 57A. Delete if not used.) N ~~Sgd~~

Date 10 Apr 45 (Sgd) "H D St Evan" (H D St Evan) Comdr
Commanding 30 Corps & 1st Can Army
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. — Date. — Signature of Offr.

B 79440 PTE JOHN THOMAS HAY — 19 MAY 45 — J Medhurst Lt-Col.

Comdg, 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5J-82

FIELD GENERAL COURT-MARTIAL

CFAMS (To form of APAM 40/F & 41/F) 4/38B

Convened by Order of Brig I S Johnston DSO ED Comd 11 Cdn Inf Bde dated 10 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-79440	Pte		John Thomas	HAY	I R C

CERTIFIED TRUE COPY
[illegible]
Capt

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 13 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed. WMWS

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp. 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF A95, for units and insts on how the record addresses, evidence, etc., which insts are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) WMWS
The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3) WMWS
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1000 hours trial commences. WMWS

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) WMWS
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ WMWS
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ~~no interpreter?~~ ~~Ans~~ WMWS
~~The Interpreter is sworn.(1) Do you object to~~ ~~no shorthand writer?~~ ~~Ans~~ WMWS
~~The shorthand writer is sworn.(1)~~ WMWS
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No sir.
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	S. McKinnon	CBH
Member	Capt	R. J. Rancaster	IRC
Member	Lieut	G. A. Gallagher	Perth
Judge-Advocate	Capt	W. M. W. Shaw	HQ 5 Cdn Armd Div
Prosecutor	Lieut	J. Gourlay	IRC
Defending Offr	Lieut	G. R. Maybee	IRC

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment unless RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment makes(s) (no) ~~plea~~ plea WMWS
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(1) The President records the plea in Part I of the Schedule. WMWS
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 32; when several accused to be tried separately see RP 71(C), and use separate copies of CF A84 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D. WMWS

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*b*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1) WMWS
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~ WMWS
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Give evidence. Do you intend to call witnesses on your behalf ? Ans Yes. Are they witnesses as to character only ? Ans No WMWS
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened. WMWS
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~ WMWS
(1. *AA 54(3) (a), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No sir
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

WMWS E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(1. *MFB 255 or AFB 296.* 2. *MFM 6.* 2. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes I have defendings Offer .....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(3), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182. RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B79440 Pte John Thomas HAY IRC

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 752, and in lists of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) .....~~ (1) WMWS
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court: To suffer penal servitude for a term of 3 years.

(Sgd) " WMW Shaw " Capt — Judge-Advocate, if any. — 13 Mar 45 — Date awarded. — (Sgd) "S McKinnon " Major — President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

I reserve the finding and sentence for confirmation.

Date 14 Mar 45 (Sgd) "Ian S Johnston " Brig Commanding 11 Cdn Inf Bde

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)
(1. AA 57A. Delete if not used.) A [illegible]

Date 10 Apr 45 (Sgd) "A D S Error" (A D S error) General
Commanding 21 Army Gp Lt Gen Army
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B 79440 PTE JOHN THOMAS HAY	19 MAY 45	J Medhurst Lt-Col. Comdg, 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

8 Aug 45 / 18 May 45

FIELD GENERAL COURT-MARTIAL

CPA96 (To lieu of AFA96, 40, 1st & 2nd Edns, 1940)

4/388

Convened by Order of Brig I S Johnston DSO ED Comd 11 Cdn Inf Bde dated 10 Mar 45.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-79440	Pte		John Thomas	HAY	I R C

CERTIFIED TRUE COPY
[illegible]
Can Sec 18 Army Gp 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 13 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed. WMWS

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 62-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) WMWS
The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and WMWS
each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1000 hours trial commences. WMWS

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) WMWS
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ WMWS
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~ WMWS
~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~ WMWS
~~The shorthand writer is sworn.(1)~~ WMWS
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No sir.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	S. McKinnon	CBH
Member	Capt	R. J. Rancaster	IRC
Member	Lieut	G. A. Gallagher	Perth
Judge-Advocate	Capt	W. M. W. Shaw	HQ 5 Cdn Armd Div
Prosecutor	Lieut	J. Gourlay	IRC
Defending Offr	Lieut	G. R. Maybee	IRC

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~(a)~~ plea WMWS
.....(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. WMWS
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D WMWS

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MINUTE OF PROMULGATION

FGCM 13 Mar 45

B-79440 Pte HAY J.T.

Irish Regiment of C

CHARGE: AA Sec 12(1)(a)

FINDING: Guilty

SENTENCE: To suffer penal servitude for a term of three years.

CONFIRMATION: Confirmed.

Date 10 Apr 45

(Sgd)"H.D.G. Crerar"
(H.D.G. Crerar) General
GOC in C First Cdn Army

PROMULGATED AND EXTRACTS TAKEN

In the Field Belgium
(Country)

Signature

Lt Col
Rank

Commanding Officer
Appointment

19 May 45
Date.

1 Cdn Discipline Centre
Unit

CHARGE SHEET

The accused B79440 Private John Thomas HAY, The Irish Regiment of Canada, a soldier of the Canadian Army Overseas, placed on Active Service, is charged with: -

FIRST CHARGE
Sec 12 (1)(a) WHILE ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field, on 20 December 1944, when under enemy shell fire in a forward area, with intent to avoid service in such area, absented himself without leave from approximately 1800 hrs., 20 December 1944 until apprehended by C.M.P. at Macerata at about 2300 hrs, 3 February 1945. (Total absence 45 days, 5 hours.)

In the Field
10 Mar 45.

" G C A Macartney "

(G C A Macartney) Major
A/Comd The Irish Regiment of Canada

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
10 Mar 45

" Ian S Johnston "

(I S Johnston) Brigadier
Comd 11 Cdn Inf Bde.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B79440	Pte		John Thomas	HAY	IRC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 10 Mar 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial", ISJ

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.) ISJ
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed ISJ or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ ISJ ~~attached hereto~~.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) S. McKinnon (Must be named. RP 106.) C E H (Unit.)

MEMBERS.

Capt R J Lancaster I R C

Lieut (Rank.) G.A Gallagher (Named or detailed. RP 106.) Perth (Unit.)

WAITING MEMBER.

Capt (Rank.) G.P Murphy (Named or detailed, if any. RP 106.) P L F (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.) W M W Shaw (Must be named, if any. RP 106.) HQ 5 Cdn Armd Div (Unit.)

On Active Service in the Fd

in Belgium (Country.)

" Ian S Johnston (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 10 March 45

Commanding 11 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (PAM (In lieu of AFA 3) 41/P & S/1697 (4931))

(See overleaf for oaths and notes for use on trial.)

FIRST WITNESS Lt C.R. Haines, IRC, duly sworn, states:

I am 14 Pl Comd. I know accused, he is Pte Hay (pointing). On 20 Dec 44 I was Pl Comd 14 Pl - I received instructions from the coy comd, went to billets and warned everyone I could find and tole the Sgts also to warn anyone I had missed. Later on I saw accused arguing with CSM Hemmings, around 1600 hrs, and I told accused to get on the truck that we were moving forward. Accused got on truck and we moved off to assembly area. Sgt Major reported to me next day. Did not see accused again until he came up for coy office 10 Jan 45 - not sure of date of coy office. We were in Italy 20 Dec and stationed at Mezzano - the unit was out from the NAVIGLIO for a short rest. We were shelled a bit while at Mezzano. Am not sure if accused present when I warned the pl.

Cross examined

I had no reason to belive the accused or any members of the Pl had been drinking.

Re-examined - Nil

Court

Accused was on the truck the last time I saw him. I told him we were going forward. When I told him to get on the truck he was standing near the tail gate. I was acting as Coy Comd and when CSM reported to me on 21 Dec I did not personally check the coy area.

R.P. 83(b) complied with.

SECOND WITNESS B78521 CSM Hemmings W., IRC, duly sworn, states:

Am CSM "C" Coy, IRC. I know Pte Hay he is the accused (pointing). On 20 Dec 44 at approximately 1600 hrs coy was embussing to go forward. Sgt Ferrier reported to me and as a result I went to accused and ordered him 3 times to go forward, he said he would not go. I took accused to coy comd who spoke to him. I last saw accused near TCV talking to Mr. Haines. I next saw accused on 10 Feb 45. On 20 Dec he had all his kit ready to go into line.

I have been CSM of "C" Coy from Sep 44 until Feb 45. On 20 Dec C Coy went to assembly area and attaked that night. I had no opportunity to check area for accused that night.

Cross Examined

Accused had been drinking - I had seen a Sgt take a bottle from him. I have had no arguments or discussions with him before. In the assembly area we were under shell fire.

Re Examined - Nil

Court

We crossed MUNIO on 20 Dec about 1800 hrs. There was shellfire Coy had been in Mezzano since it was taken. I had placed accused under close arrest.

R.P. 83(b) complied with.

THIRD WITNESS M53303 Sgt Ferrier H.M. IRC, duly sworn, states: -

Am Pl Sgt 14 Pl C Coy IRC. I know Pte Hay, he is accused, (pointing). On 20 Dec 44 we were at Mezzano and going to proceed to front at approximately 1600 hrs. When I warned the accused he refused to go forward. Lt Haines and I warned the accused. I warned him personally. When he refused to go I took him to the CSM who placed him under arrest. After this the accused got on my truck and we proceeded At the debussing point the accused was present- from FUP we were to proceed to line. I checked the Pl and accused was absent. I did not see him again until about 10 Feb 45.

I warned accused and also told him what the coy were going to do in the attack. I checked the Pl at approximately 1800 hrs at the FUP which was about 1 mile from debussing point. Was no enemy action at debussing point but mortar and shellfire at FUP.

Cross Examined

I did not see accused drinking - he seemed quite normal to my knowledge.

Re-Examined - Nil

Court

Am still Sgt 14 Pl. Would know if accused had returned between 20 Dec and 3 Feb.

R.P. 83(b) complied with.

Prosecution officer present certificate of apprehension, admitted under O/S R) 5352 read, marked Exhibit "A" and attached.

PROSECUTION CLOSED

FIRST WITNESS The accused duly sworn, states: -

The had been with C Coy about 1 week before 20 Dec. Had previous battle experience, was with 48th Highlanders and have seen action with them. Was in hospital for a period. Had no trouble except hom trouble - my mother is alone and has only sister to support her, my other brother was AWL and I was worried. About 19 Dec, 2 or 3 bothering me. Another Pte, White and I were out drinking and a scout car hit him and I started worrying - we had gone to school together. I had a discussion with CSM before. He said my fault for what happened to my friend. I was not worried about going back into line - was not scared to go back in. If I hadn't been worried this would not have happened. I was muddled. Was no shellfire at debussing point or FUP, I was with Pl then.

Was worried about Pte White - had tried to go see him - did not know how he was - looked in Ravenna at CCS there but he was not there. I tried to find my friend, even asked Pro directions - when I got to one it was wrong one. Finally gave up search for him. Wanted to get to Caserta to see if at base hospital. If accident hadn't happened would not be here today.

Cross examined

Few in Pl knew I was worrying about this. I did not go see Pl Comd, CSM or Pl Sgt about it - I reported the accident to them when it first happened.

Was with 48th Highlanders about 7 or 8 mos - had left them only shortly before & had gone to hospital with fever about 20 days before, I joined the Irish.

I remember Sgt Fernier telling me not to go away. Was present at assembly area and did not notice any shellfire.

Re-Examined - Nil

Court

Was with 48th at Ortona when front static and in Gothic line. Missed Hitler line as in hospital with jaundice. Was knocked out by blast in Gothic line. Went to hospital with fever, 48th then in rest. Came out of hospital and posted to IRC.

Figured would be given stiff sentence so decided to take a holday. Remember night 20 Dec, truck ride and assembly area. I knew we were going somewhere but did not know where. There was some shellfire over to our right.

Had been drinking that day - was not drunk but feeling good - was drinking vino. White & I had been out drinking and on way home were scuffling - I pushed him and a scoutcar came by and hit him. I didn't hear the car coming or wouldn't have shoved him - was worried about how he was.

R.P. s3 (b) complied with.

DEFENCE CLOSED

Prosecutions Closing

Accused present when Pl warned moving forward - accused present at debussing area and FUP - not present later when Pl checked by Sgt. Area under shellfire. Did not report worries to anyone but took things in own hands. Had previous battle experience - no drunk - decided to leave to search for friend - soldering long enough to know score. Evidence clear accused knew going into action and did not return for 45 days.

Defending Officer

Accused left Pl according to chg when under shell fire. Possible for man to get into such mental state that does not care what happens to himself. Accused not afraid of battle.

JA Sums up

Fact finding function, credibility of witnesses, presumption of innocence, burden on prosecution, reasonable doubt, intent, AWL, desertion, AA 56 & RP 44 (d), judicial notice.

Defending Officer in Mitigation

Accused has no serious charges on conduct sheet - ask consideration be given to his mental state of mind.

The following si the correct form of medical certificate to be used for trial. The acused must be examined the morning of each day he is on trial and a certificate obtained on each such date.

I Certify that I have this morning examined B79440 Pte Hay J.T. and in my opinion he is fit to undergo trial by Court Martial.

Station: Irish Reg RAP
13-3-45

??????????????? Capt
Medical Officer
(KR(Can 557)

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

B79440 Pte HAY John Thomas, I R C

Age: 22 Married or Single: Single No of dependents: N/A

Date of Attestation: 31 Jan 1941

Number of days in close arrest awaiting trial: 37 days

Civil Military 37 Hospital TOTAL 37 days

Date of Appointments, Promotions, etc (if any): N/A

Decorations: N/A

In the Field
13 March 1945.

" G S Haigen " Capt & Adjt
Officer I/C Regtl Books.

NOTE: Certified true copy of MFM 6 Must accompany this form.

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT SECTION 163(1)(ii)

I certify that B79440 Pte HAY J T of the Irish Regt, 5 Cdn Div Corps was apprehended at Macerata at 2300 hrs on the 3rd day of February 45.

Signed " C. H. Seatson " Capt
O.C. 115 Provost Company

Exhibit "A" to the Evidence of Lt H.P. Henning taken & won before me this 11th day of February 1945.

" H R Young "
Lt H R Young A/Capt
Officer detailed to take the Summary.

Signature of Provost Marshall, A.P.M. or other officer into whose custody the above named person was taken on arrest.

Exhibit "A"

MFM 6 (AFB 122) 40/PAS/126 (3438)

No B79440 Name HAY J.T. | Sqn, Battery or Company | Corps C I C | Date of enlistment 31 Jan 41 | CC Badges | Service or Proficiency Pay |

Company Conduct Sheet Date of last entry in N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character C M HOWARTH MAJOR

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
ORIGINAL SHEET DESTROYED 31 Jul 41 - ENTRIES NIL - DRUNKENNESS - Nil.									
F.W.T.C. Bedford	4-3-42	Pte		AA Sec 11 Out without pass AA Sec 40 Creating disturbance in public place	L/Cpl McLean Pte McDonald Documentary	7 days C.B.	7-3-42	Capt Langstone Camp Comd	
Debert NS	19-9-42	Pte		AA Sec15(1)AWL from 0800 hrs 19-9-42 until 2030 hrs 22-9-42	C.Q.M.S. C.M. Bain.	3 days C.B.	23-9-42	Major R.D. Clendenning	forf 4.d.p.
Debert NS	14-10-42	Pte		AA Sec 40 Being found in bed at 0640 hrs after having been ordered by a superior officer to get out of bed.	Cpl Nicks	3 days C.B.	14-10-42	Major RD Clendenning	
Field	30-12-42	Pte		AA Sec 15(1) AWL from 0600 hrs 30-12-42 until 1335 hrs 30-12-42	Cpl Collins L/Cpl Fox	7 days C.B.	31-12-42	Capt F.L. Jones	fof 1.d.p.
Field	28-2-43	Pte		AA Sec 10(4) Breaking out of Camp contrary to coy orders.	Sgt Barrey	5 days pay	1-3-43	Lt Col RC Clark	
Field	26-3-43	Pte		AA Sec15(1)AWL from 0600 hrs 26-3-43 until 1200 hrs 26-4-43 (6 hrs)	Documentary	3 days C.B.	27-3-43	Capt A.Allen	Forf 1 d.p.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30-11-43	Pte		AA Sec 40 Refusing to comply with with order given his Sup Officer.	Documentary	7 days C.B.	2-12-43	Lt Col WP Brestowe	
Field	26-1-44	Pte		AA Sec 15(1)AWL from 1130 hrs 26-1-45 to 1600 hrs 26-1-45 (Total 4 hrs 30 mins.)	Sgt Todd	7 days FP 14 days pay	27-1-44	Lt Col WP Brestowe	
Field	22-10-44	Pte		AA Sec 15(1) AWL from 2145 hrs 22 Oct 44 until 2145 hrs 24 Oct 44 (absent 2 days)	Sgt Sexton	5 days C.B.	26-10-44	Lt Col WW Mathers	Forf 2. d.p.

"G S Haigen" Capt & Adjt.
CERTIFIED TRUE COPY FROM REGIMENTAL CONDUCT SHEET.

MINUTE OF PROMULGATION

AGCM 13 Mar 45

B-79440 Pte HAY J.T.

Irish Regiment of C

CHARGE: AA Sec 12(1)(a)

FINDING: Guilty

SENTENCE: To suffer penal servitude for a term of three years.

CONFIRMATION: Confirmed.

(Sgd)"H.D.G. Crerar"
(H.D.G. Crerar) General
GOC in C First Cdn Army

Date 10 Apr 45

PROMULGATED AND EXTRACTS TAKEN

In the Field... Belgium... (Country)

"E Hesburst"
.....Signature

Lt Col
.....Rank

Commanding Officer...Appointment

19 May 45
.....
Date.

1 Cdn Dis Centre .....Unit

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B79440 Pte John Thomas HAY IRC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and as to loss of kit see RP 44 fn 6.)

~~At present under sentence for ... beginning on (date) ...~~ (1) WMWS

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ... days, of which ... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under 52.)

Sentence Awarded by the Court: To suffer penal servitude for a term of 3 years.

(Sgd) " WMW Shaw " Capt — Judge-Advocate, if any. — 13 Mar 45 — Date awarded. — (Sgd) "S McKinnon " Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

I reserve the finding and sentence for confirmation.

Date 14 Mar 45 (Sgd) "Ian S Johnston " Brig — Commanding 11 Cdn Inf Bde

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-54, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.(1)~~
(1. AA 57A. Delete if not used.) A D Surr.

Date 15 Apr 45 — (Sgd) " H D G Crerar " Lieut-General — Commanding 1 Cdn Corps & Second Cdn Army — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKED. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B 79440	19 May 45	Lt-Col, Cdn Provost Corps

Certified true copy of sentence and duplicate copy of proceedings

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

55-82

4388

Convened by Order of Brig I S Johnston DSO ED Comd 11 Cdn Inf Bde dated 10 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-79440	Pte		John Thomas	HAY	IRC

CERTIFIED TRUE COPY
Lt-Col
Cdn Sec 1 Ed HQ 21 A Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 13 Mar 45

RECORD FORM A--OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed. WMWS

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 126.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) WMWS
The Court is satisfied that it is properly convened and constituted(3), accused is ~~(are)~~ amenable to military law, and WMWS
each charge discloses an offence.(3) WMWS

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1000 hours trial commences. WMWS

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) WMWS
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ WMWS

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. ~~President to accused: Do you object to ... as interpreter? Ans ...~~ WMWS
~~The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans.~~ WMWS
~~The shorthand writer is sworn.(1)~~ WMWS

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No sir.

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 23, 71, 76, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	S. McKinnon	CBH
Member	Capt	R. J. Rancaster	IRC
Member	Lieut	G. A. Gallagher	Perth
Judge-Advocate	Capt	W. M. W. Shaw	HQ 5 Cdn Armd Div
Prosecutor	Lieut	J. Gourlay	IRC
Defending Offr	Lieut	G. R. Maybee	IRC

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See GI p 2.)

A8. The accused ... before arraignment make(s) (no) (a) plea WMWS
(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule. WMWS

(1. RP 20, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D WMWS

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(*1. RP 27(B). 2. RP 27(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1) WMWS
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on (the latter charge(s)).(4)~~ WMWS
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ~~Have decide not~~ ..... Do you intend to call witnesses on your behalf ? Ans ~~Yes. Another witness as to character only.~~ Ans WMWS
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is ~~(are)~~ recorded in Part I of the Schedule.(2) The Court is re-opened. WMWS
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
~~Or The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~ WMWS
(*1. AA 54(3) (5), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true WMWS copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(i) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFS 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans ~~Yes. Have Defending Officer.~~ .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 1223, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B79440 Private John Thomas HAY, The Irish Regiment of Canada, a soldier of the Canadian Army Overseas, placed on Active Service, is charged with: -

FIRST CHARGE
Sec 12 (1)(a) WHILE ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field, on 20 December 1944, when under enemy shell fire in a forward area, with intent to avoid service in such area, absented himself without leave from approximately 1800 hrs., 20 December 1944 until apprehended by C.M.P. at Macerata at about 2300 hrs, 3 February 1945. (Total absence 45 days, 5 hours.)

In the Field
10 Mar 45.

" G C A Macartney "

(G C A Macartney) Major
A/Comd The Irish Regiment of Canada

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
10 Mar 45

" Ian S Johnston "

(I S Johnston) Brigadier
Comd 11 Cdn Inf Bde.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B79440	Pte		John Thomas	HAY	IRC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 10 Mar 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial". ISJ

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.) ISJ

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. ISJ

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ ISJ

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) S. McKinnon (Must be named. RP 106.) C B E (Unit.)

MEMBERS.

Capt R J Lancaster I R C

Lieut (Rank.) G.A Gallagher (Named or detailed. RP 106.) Perth (Unit.)

WAITING MEMBER.

Capt (Rank.) G.P Murphy (Named or detailed, if any. RP 106.) P L F (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.) W M W Shaw (Must be named, if any. RP 106.) HQ 5 Cdn Armd Div (Unit.)

On Active Service in the Fd

in Belgium (Country.) " Ian S Johnston (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 10 March 45 Commanding 11 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (PAAS 11b [26b of AFA3] 45/P & S/1607 [4491])

(See overleaf for oaths and notes for use on trial.)

FIRST WITNESS Lt C.R. Haines, IRC, duly sworn, states:

I am 14 Pl Comd. I know accused, he is Pte Hay (pointing). On 20 Dec 44 I was Pl Comd 14 Pl - I received instructions from the coy comd, went to billets and warned everyone I could find and tole the Sgts also to warn anyone I had missed. Later on I saw accused arguing with CSM Hemmings, around 1600 hrs, and I told accused to get on the truck that we were moving forward. Accused got on truck and we moved off to assembly area. Sgt Major reported to me next day. Did not see accused again until he came up for coy office 10 Jan 45 - not sure of date of coy office. We were in Italy 20 Dec and stationed at Mezzano - the unit was out from the NAVIGLIO for a short rest. We were shelled a bit while at Mezzano. Am not sure if accused present when I warned the pl.

Cross examined

I had no reason to belive the accused or any members of the Pl had been drinking.

Re-examined - Nil

Court

Accused was on the truck the last time I saw him. I told him we were going forward. When I told him to get on the truck he was standing near the tail gate. I was acting as Coy Comd and when CSM reported to me on 21 Dec I did not personally check the coy area.

R.P. 83(b) complied with.

SECOND WITNESS B78521 CSM Hemmings W., IRC, duly sworn, states:

Am CSM "C" Coy, IRC. I know Pte Hay he is the accused (pointing). On 20 Dec 44 at approximately 1600 hrs coy was embussing to go forward. Sgt Ferrier reported to me and as a result I went to accused and ordered him 3 times to go forward, he said he would not go. I took accused to coy comd who spoke to him. I last saw accused near TCV talking to Mr. Haines. I next saw accused on 10 Feb 45. On 20 Dec he had all his kit ready to go into line.

I have been CSM of "C" Coy from Sep 44 until Feb 45. On 20 Dec C Coy went to assembly area and attaked that night. I had no opportunity to check area for accused that night.

Cross Examined

Accused had been drinking - I had seen a Sgt take a bottle from him. I have had no arguments or discussions with him before. In the assembly area we were under shell fire.

Re Examined - Nil

Court

We crossed MUNIO on 20 Dec about 1800 hrs. There was shellfire Coy had been in Mezzano since it was taken. I had placed accused under close arrest.

R.P. 83(b) complied with.

THIRD WITNESS M53303 Sgt Ferrier H.M. IRC, duly sworn, states: -

Am Pl Sgt 14 Pl C Coy IRC. I know Pte Hay, he is accused, (pointing). On 20 Dec 44 we were at Mezzano and going to proceed to front at approximately 1600 hrs. When I warned the accused he refused to go forward. Lt Hains and I warned the accused. I warned him personally. When he refused to go I took him to the CSM who placed him under arrest. After this the accused got on my truck and we proceeded At the debussing point the accused was present- from FUP we were to proceed to line. I checked the Pl and accused was absent. I did not see him again until about 10 Feb 45.

I warned accused and also told him what the coy were going to do in the attack. I checked the Pl at approximately 1800 hrs at the FUP which was about 1 mile from debussing point. Was no enemy action at debussing point but mortar and shellfire at FUP.

Cross Examined

I did not see accused drinking - he seemed quite normal to my knowledge.

Re-Examined - Nil

Court

Am still Sgt 14 Pl. Would know if accused had returned between 20 Dec and 3 Feb.

R.P. 83(b) complied with.

Prosecution officer present certificate of apprehension, admitted under O/S R) 5352 read, marked Exhibit "A" and attached.

PROSECUTION CLOSED

FIRST WITNESS The accused duly sworn, states: -

The had been with C Coy about 1 week before 20 Dec. Had previous battle experience, was with 48th Highlanders and have seen action with them. Was in hospital for a period. Had no trouble except hom trouble - my mother is alone and has only sister to support her, my other brother was AWL and I was worried. About 19 Dec, 2 or 3 bothering me. Another Pte, White and I were out drinking and a scout car hit him and I started worrying - we had gone to school together. I had a discussion with CSM before. He said my fault for xxx what happened to my friend. I was not worried about going back into line - was not scared to go back in. If I hadn't been worried this would not have happened. I was muddled. Was no shellfire at debussing point or FUP, I was with Pl then.

Was worried about Pte White - had tried to go see him - did not know how he was - looked in Ravenna at CCS there but he was not there. I tried to find my friend, even asked Pro directions - when I got to one it was wrong one. Finally gave up search for him. Wanted to get to Caserta to see if at base hospital. If accident hadn't happened would not be here today.

Cross examined

Few in Pl knew I was worrying about this. I did not go see Pl Comd, CSM or Pl Sgt about it - I reported the accident to them when it first happened.

Was with 48th Highlanders about 7 or 8 mos - had left them only shortly before I had gone to hospital with fever about 20 days before, I joined the Irish.

I remember Sgt Fernier telling me not to go away. Was present at assembly area and did not notice any shellfire.

Re-Examined - Nil

Court

Was with 48th at Ortona when front static and in Gothic line. Missed Hitler line as in hospital with jaundice. Was knocked out by blast in Gothic line. Went to hospital with fever, 48th then in rest. Came out of hospital and posted to IRC.

Figured would be given stiff sentence so decided to take a holiday. Remember night 20 Dec, truck ride and assembly area. I knew we were going somewhere but did not know where. There was some shellfire over to our right.

Had been drinking that day - was not drunk but feeling good - was drinking vino. White & I had been out drinking and on way home were scuffling - I pushed him and a scoutcar came by and hit him. I didn(t hear the car coming or wouldn't have shoved him - was worried about how he was.

R.P. s3 (b) complied with.

DEFENCE CLOSED

Prosecutions Closing

Accused present when Pl warned moving forward - accused present at debussing area and FUP - not present later when Pl checked by Sgt. Area under shellfire. Did not report worries to anyone but took things in own hands. Had previous battle experience - no drunk - decided to leave to search for friend - soldering long enough to know score. Evidence clear accused knew going into action and did not return for 45 days.

Defending Officer

Accused left Pl according to chg when under shell fire. Possible for man to get into such mental state that does not care what happens to himself. Accused not afraid of battle.

JA Summe up

Fact finding function, credibility of witnesses, presumption of innocence, burden on prosecution, reasonable doubt, intent, AWL, desertion, AA 56 & RP 44 (d), judicial notice.

Defending Officer in Mitigation

Accused has no serious charges on conduct sheet - ask consideration be given to his mental state of mind.

The following si the correct form of medical certificate to be used for trial. The acused must be examined the morning of each day he is on trial and a c rtificate obtained on each such date.

I Certify that I have this morning examined B79440 Pte Hay J.T. and in my opinion he is fit to undergo trial by Court Martial.

Station: Irish Reg RAP
13-3-45

??????????????? Capt
Medical Officer
(RR(Can 557)

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

B79440 Pte HAY John Thomas, I R C

Age: 22 Married or Single: Single No of dependents: N/A

Date of Attestation: 31 Jan 1941

Number of days in close arrest awaiting trial: 37 days

Civil Military 37 Hospital TOTAL 37 days

Date of Appointments, Promotions, etc (if any): N/A

Decorations: N/A

In the Field
13 March 1945.

" G S Haigen " Capt & Adjt
Officer I/C Regtl Books.

NOTE: Certified true copy of MFM 6 Must accompany this form.

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT SECTION 163(1)(11)

I certify that B79440 Pte HAY J T of the Irish Regt, 5 Cdn Div Corps was apprehended at Macerata at 2300 hrs on the 3rd day of February 45.

Signed " C. H. Seatson " Capt
O.C. 115 Provost Company

Exhibit "A" to the Evidence of Lt H.P. Herring taken dwon before me this 11th day of February 1945.

" H R Young "
Lt H R Young A/Capt
Officer detailed to take the Summary.

Signature of Provost Marshall, A.P.M. or other officer into whose custody the above named person was taken on arrest.

Exhibit "A"

MFM 6
(AFB 122)
40/PAM/136 (3438)

No B79440 Name HAY J.T. | Sqn. Battery or Company | Corps C I C | Date of enlistment 31 Jan 41 | OC Badges | Service or Proficiency Pay

Company Conduct Sheet Date of last entry in N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc C M HOWARTH MAJOR | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
ORIGINAL SHEET DESTROYED 31 Jul 41 - ENTRIES NIL - DRUNKENNESS - Nil.									
F.W.T.C. Bedford	4-3-42	Pte		AA Sec 11 Out without pass AA Sec 40 Creating disturbance in public place	L/Cpl McLean Pte McDonald Documentary	7 days C.B.	7-3-42	Capt Langstone Camp Comd	
Debert NS	19-9-42	Pte		AA Sec15(1)AWL from 0800 hrs 19-9-42 until 2030 hrs 22-9-42	C.Q.M.S. C.W. Bain.	3 days C.B.	23-9-42	Major R.D. Clendenning	forf 4.d.p.
Debert NS	14-10-42	Pte		AA Sec 40 Being found in bed at 0640 hrs after having been ordered by a superior officer to get out of bed.	Cpl Nicks	3 days C.B.	14-10-42	Major RD Clendenning	
Field	30-12-42	Pte		AA Sec 15(1) AWL from 0600 hrs 30-12-42 until 1135 hrs 30-12-42	Cpl Collins L/Cpl Fox	7 days C.B.	31-12-42	Capt F.L. Jones	forf 1.d.p.
Field	28-2-43	Pte		AA Sec 10(4) Breaking out of Camp contrary to coy orders.	Sgt Barrey	5 days pay	1-3-43	Lt Col RC Clark	
Field	26-3-43	Pte		AA Sec15(1)AWL from 0600 hrs 26-3-43 until 1200 hrs 26-4-43 (6 hrs)	Documentary	3 days C.B.	27-3-43	Capt A.Allen	Forf 1 d.p.

OTO

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30-11-43	Pte		AA Sec 40 Refusing to comply with with order given his Sup Officer.	Documentary	7 days C.B.	2-12-43	Lt Col WP Brestowe	
Field	26-1-44	Pte		AA Sec 15(1)AWL from 1130 hrs 26-1-45 to 1600 hrs 26-1-45 (Total 4 hrs 30 mins.)	Sgt Todd	7 days FP 14 days pay	27-1-44	Lt Col WP Brestowe	
Field	22-10-44	Pte		AA Sec 15(1) AWL from 2145 hrs 22 Oct 44 until 2145 hrs 24 Oct 44 (absent 2 days)	Sgt Sexton	5 days C.B.	26-10-44	Lt Col WW Mathers	Forf 2. d.p.

" G S Haigen " Capt & Adjt.

CERTIFIED TRUE COPY FROM REGIMENTAL CONDUCT SHEET.

ZZ-29

PTE HAYDEN E A

Correspondence to be PINNED here.

B112 22-29

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Ninth day of December, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 4 Bn, 1 Cdn Base Reinforcement Depot C.A.(O)., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~and that it is not practicable to delay the trial for reference to a superior officer;~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

~~*I am unable to appoint — *(1) Other Officers to form the Court; *(2) A Field Officer as President; for the following reason, namely:~~

PROCEEDINGS REVIEWED
19 Jan 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	W P Steen	C & Y R on strength 4 Bn

Members.

Rank.	Name.	Regiment.
Capt	W. B. Wadds	12 C.T.R. on strength 4 Bn
Lieut	J.R. McHale	RCA on strength 4 Bn
Waiting Member		
Lieut	M W Hunka	RCA on strength 4 Bn

Under Instruction:

Lieut W G Armstrong CAC"B"
Lieut J P W Ostiguy CAC"A"

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (J. G. Vining) Lt.-Col.,
Commanding 4 Bn., 1 Cdn Base Reinf Depot.
Convening Officer. C.A.(O).

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B 87922 PRIVATE EDWARD ARTHUR HAYDEN, 4 Bn., 1 Cdn Base Reinforcement Depot, C.A.(O).	WHILE ON ACTIVE SERVICE, WHEN CONCERNED IN THE DISTRIBUTION OF PUBLIC PROPERTY, STEALING THE SAME, in that he, in the field, on or about the seventh day of December 1943, when as cook of "B" Coy 4 Bn, 1 CBRD, C.A.(O). he was concerned in the distribution of rations, stole 4 cans of cheese, 4 cans of corned beef, 2 cans of pilchards, 2 cans of Prem, and 2½ loaves of bread, part of the said rations.	Not Guilty	Not Guilty WPS Dec 14/43	
First Charge A. A. Sec 17				
Second Charge (Alternative) A. A. Sec 24	WHILE ON ACTIVE SERVICE, MAKING AWAY WITH BY BARTERING PUBLIC PROPERTY ENTRUSTED TO HIS CARE FOR MILITARY PURPOSES, in that he, in the field, on or about the seventh of December, 1943, bartered to a civilian, MAGLIO VINCENZO, for a quantity of tomato sauce, maccaroni and veal, the following articles; viz; 4 cans of cheese, 4 cans of corned beef, 2 cans of pilchards, 2 cans of Prem and 2½ loaves of bread, being public property entrusted to his care for military purposes.	Not Guilty	Guilty Sixty days (Ge) detention Dec 14/43 W P Steen Major	I confirm the finding and the sentence of the Court. [illegible]

*Question to be asked of accused, if he pleads not guilty (R. of P. 19 (A)):—"Do you wish to apply for an adjournment on the ground that any of the rules relating to [illegible] before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [illegible] (Signed) W. P. Steen Major
Commanding Officer. 4 I C B R D
Convening Officer (*e*) President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10th day of December 1943 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The Interpreter)
*(4. The officers under instruction)

*Omit if not applicable.

were duly sworn.

Signed this 10th day of December 1943.

W P Steen Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.]

Signed this 14th day of December 1943

Confirming Officer.

Promulgated and extracts taken in the case of B.87922 Pte Hayden, E.A.

(*a*) (Dated) 15 December 1943 (Signed) [illegible]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

23866 [illegible] 50,000 12-42 A. & E. W. Ltd. Cp.499

Exhibit B(2)

CHARGE - SHEET

THE ACCUSED, B 87922, PRIVATE EDWARD ARTHUR HAYDEN, 4 BATTALION, No.1 CANADIAN BASE REINFORCEMENT DEPOT, CANADIAN ARMY OVERSEAS, A SOLDIER OF THE CANADIAN ARMY, IS CHARGED WITH:-

1st Charge

A.A. Sec 17.

WHILE ON ACTIVE SERVICE, WHEN CONCERNED IN THE DISTRIBUTION OF PUBLIC PROPERTY, STEALING THE SAME,

in that he,

IN THE FIELD, on or about the seventh day of December 43, when as cook of "B" Coy 4 Battalion, No. 1 Canadian Base Reinforcement Depot, C.A. (O), he was concerned in the distribution of rations, stole 4 cans of cheese, 4 cans of corned beef, 2 cans of pilchards, 2 cans of Prem, and 2½ loaves of bread, part of the said rations.

2nd Charge (Alternative)

A.A. Sec 24

WHILE ON ACTIVE SERVICE, MAKING AWAY WITH BY BARTERING PUBLIC PROPERTY ENTRUSTED TO HIS CARE FOR MILITARY PURPOSES,

in that he,

IN THE FIELD, on or about the seventh day of December, 1943, bartered to a civilian, MAGLIO VINCENZO, for a quantity of tomato sauce, maccaroni, and veal, the following articles, viz: 4 cans of cheese, 4 cans of corned beef, 2 cans of pilchards, 2 cans of Prem, and 2½ loaves of bread, being public property entrusted to his care for military purposes.

IN THE FIELD
8 December
1943.

(J.R.G. Sutherland) Major,
A/Commanding Officer,
4 Bn., 1 C.B.R.D. C.A.O.CMF.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

IN THE FIELD
December
1943.

(J. C. Vinage) Lt.-col.,
Commanding,
4 Bn., 1 C.B.R.D. C.A.O.CMF.

To:

December 10 1943.

MEDICAL OFFICER'S CERTIFICATE

I certify that No. B.87922. Pte. HAYDEN E. A.

48th Highlanders Regt.

is "..Fit..." to undergo trial by Court Martial.

"Insert "Fit" or "Unfit".

R.P. Jessop Capt
Signature of Medical Officer

Accused B87922 Pte. Edward Arthur Hayden 4 Bn 1 Cdn. B.R.D.
(No.) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in Italy (Country) on 10th Dec 1943 (Date)

	Rank	Name	Unit
PRESIDENT:	MAJOR	W.P.Steen	Carleton & York (R) R.C.R.R.
MEMBERS:	Capt	W.B.Wood	C.A.C. "
	Lieut	J.R. McHale	R.C.A. "
JUDGE ADVOCATE: (if any)			
OFFICERS UNDER INSTRUCTION:	Lieut	W.G.Armstrong	C.A.C. W.Nova Corps

PROSECUTING OFFICER: Capt G.S. Main S.L. Lawyer? Ans Yes

DEFENDING OFFICER: Lieut H.A. Outhet S.L. Lawyer? Ans Yes

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (RsP 17(E), 22(A)).

The President, in closed court (RP 22, fn 1), reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (AA 49; RP 105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (RP 106).

The accused is ~~(are)~~ brought before the Court, and at 0935 hrs, the trial commences.

The Prosecuting Officer produces a Medical Certificate under KR (Can) 557 (See CMHQ Circular Letter 173) that the accused is ~~(are)~~ fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

President to accused: G21032
Do you object to Pte A Alverdini as interpreter? Ans No

The interpreter is duly sworn.

Do you object to ~~Shorthand Writer?~~ Ans

~~The Shorthand writer is duly sworn.~~ ~~(Forms of Oath on Page 'D')~~
The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (RP 10)

President to accused
Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans No

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (RP 26-27 (Forms of Oath on Page 'D'))

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused has (has not) elected trial by Court Martial (AA 46(8)).

(If special plea/s is/are made for separate trial on one or more charges (RsP 62(E), 108); or as to the jurisdiction of the Court (RP 34); or in bar of trial (RP 36); or as to accused's mental fitness to stand trial (AA 130, RP 57), record such pleas and evidence (if any) on separate sheet/s to be initialled by the President and attached to the proceedings.

Each Charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (RP 112). He pleads as follows:

First Charge Not Guilty

Second Charge Not Guilty

Third Charge

Fourth Charge

Fifth Charge

Sixth Charge

Seventh Charge

Eighth Charge

(For procedure on alternative charges, see RP 37, fn 2)

Further proceedings are recorded on pages hereto attached.

PAGE 'D'

(For use when Accused pleads 'Not Guilty' to all Charges)

(All printed matter not applicable to be struck out, and all alterations, erasures, and additions to be initialled by the President).

1. President to accused:
Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been predjudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (RP 39(A)). Ans No

2. The Prosecutor's open ing address (if any) (RP 39(B)) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto. (See RECORD OF EVIDENCE on Page 'D').

3. The Prosecution is closed. (If submission that there is no prima facie case established, see RP 40 fn 1; RP 70 fn 1).

4. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination (RP 40 fn 2) or that he may, if he wishes, make an unsworn statement, upon which he can not be cross-examined. (RP 40(D)(ii)(a)).

5. President to accused:
Q. Do you apply to give evidence yourself as a witness? Ans Yes
Q. Do you intend to call any other witnesses in your defence? Ans Yes
Q. Is he a witness as to character only? (RP 40(B)) Ans No

6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses see RsP 40, 41 and 42).

8. The Court is now closed to consider the finding (RsP 43 and 117)

9. The Court being re-opened, the accused is again brought before it, and the findings of 'Not Guilty' (if any) are pronounced and (if findings of 'Not Guilty' on all charges) the accused is released. (RP 117(B)).

10. Statement of Character and Service (AFB.296) and Field Conduct Sheet (WFM.6) signed in the manner required by AA 163 (1) (h) and purporting to refer to the accused by his number(if any), rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings (RP 46; Overseas RO 3131).

11. President to accused:
Q. Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of punishment? (RP 46(D)).
Ans Yes No cross-examination.
(Record address, if any, on separate sheet, initialled by the President and attached hereto).

12. The Court is now closed to consider the sentence (Record on Page 2 of AFA.3)
(Punishments, AA 44, MR (Can) 563 - 566; one sentence only awarded, (RP 48); sentence should be dated.

The sentence is not announced to the accused by the Court.

W. B Stevens Major
(Signature of President)

PAGE 'A'

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. RP 35(B) is complied with, by the President ascertaining that accused understands the nature of the charge/s (fn 3) and his plea thereto, explaining the difference in procedure by the plea (RP 37(B)) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:
Q. Do you desire to make any statement of the circumstances, in reference to the charge/s? (RP 37(B)) Ans_____

(Statement, if any, not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon)

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (RP 37(B)).

4. President to accused:
Q. Do you wish to make any statement in mitigation of punishment? (RP 37(C)). Ans_____

(Statement, if any, is recorded on separate sheet, initialled by the President and attached hereto. No cross-examination).

5. President to Accused:
Q. Do you wish to give evidence yourself or call any witnesses as to character? (RP 37(C)). Ans_____

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto).

6. Statement of Character and Service (AFB.296) and Field Conduct Sheet (MFM.6) signed in the manner required by AA 163 (i) (h) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked " ", and " " initialled by the President and attached to the proceedings. (RP 46; Overseas RO 3131).

7. President to accused:
Q. Do you wish to address the Court on your Statement of Character, Service and Conduct in further mitigation of punishment? (RP 46(D)). Ans_____ (No cross-examination). (Record address, if any, on separate sheet, initialled by the President and attached hereto).

8. The Court is now closed to consider sentence. (Record on Page 2 of AFA.3).

(Punishments, AA 44, MR (Can) 563 - 566; one sentence only awarded, RP 48). Sentence should be dated).

The sentence is not announced to the accused by the Court.

_____
(Signature of President)

Evidence for Prosecution

First Witness of Pros. Cpl of B. 8 7922 Pte Edward Arthur Hayden. 4 Bn 1 Con. B.R.D.

First Witness.

M 15798 Sgt. Pte 4th Bn. N.E.

Q. — What is your official position? A/ a master of 4th Bn. C. B.R.D.

A. A/ Quartr master 4th Bn. C. B.R.D.

Q Do you know the accused?

A - yes he has been working in the egg kitchen as a cook.

Q Is part of your duties do you draw rations for your egg?

A - No. rations are brought up and delivered to the cook.

Q. Do you know of the accused ever in the habit of receiving rations when deliveries by cook have?

A. No. Sir.

Cross ex. By Defence.

Q. In any case when rations were delivered to the. Where do rations go when they are delivered to your egg.

A. To cook house.

Q. Who are responsible.

A. Cook are responsible

Q. How many cook have you in egg

A. 3 cook

Q. If food were delivered to cook house any one of the three cook could have received them

A. yes sir.

W.H.B.

B (2)

Q. How many men are in your coy. for duty?

A. Off. 3 & some men, cannot not enroll. A.A.

Cross ex By. Pvt.

Q. You said there were 3 or 4 hrs. are they all equally earnest in rec. & preparing spuds.

A. - cannot answer, do not know. cannot say.

Second Witness. - C/4203 Cpl. Robinson. F.E. (Not present) Examn by Pres. 4 Bn. 1 C.B. R.D. C.A.O. Having been duly sworn states.

Q. - What is your no. Rank & name.

A - C/4203 Cpl. Robinson. F.E. (Not present) 4 Bn. 1 C.B.R.D. C.A.O.

Q. Do you recognise the accused?

A. Yes. Sir.

Q. Will you tell the court what you know about the charge laid against the accused.

A. On the morning of the 7 about 9 A.M. was standing out in front of the church when Isaac Mayhew came out of the camp passing N.S. mess. Hearing for the Barber station. He was carrying a blue canvas bag. I called towards him, and asked him what he had in the bag him, and asked him what he had in the bag and he answered me that he took some out of the bag. past the bag and said I was the other bag I wanted to see

I asked on the 28th day and found the following out. 4 cans of cheese, 4 bully beef 2 of pilchards, 2½ loaves of bread. then took the R & M south across the road and entered here the cautech and got the entry. and asked him where he got the articles he said from the kitchen. and when asked which kitchen he said he would show them the kitchen. he was armed. one to the big kitchen and he pointed out the one which he obtained the rations from he also stated he had given some to eat of meat for the rations he had. but copy of pilchards was given order for them the accompanied above arrest

1. Just what is your job.
2. Sport cuts.
3. Who was Magda Kenenzo?
4. Be a the official Reg Barber then a station who is authorized to cut hair.
5. I will show you here a dog. will you name the dog cautech.

Was that the dog which you took food from. —

yes.
for pros.

Q. A. 2½ loaves of bread
4 cheese
4 bully Beef
2 - Pilchards.

produce at court and mark it A by the pros.

WBS

Q. When you first took the bag & contents did you make a list of contents. Does your list check exhibit as there now?

A. yes. Sir.

Cross examined by defense.

Q. You say Cpt Robinson
Where was the barber passing when he see
next men first saw him

A. He was coming from H & mess. Cap.

Q. When you said. running out of the camp
do you mean, coming out of tent.

A. yes.

Q. He was passing the H & mess was he passing
on the road or walking

A. He came through the opening on the road.

Q. Where is the barber walking

A. As he came up out the canteen, the barber
walked in towards the church.

Q. When you saw the barber with the Boy and you suspect
that the boy carried something you turned around

A. yes

Q. why

A. Been watching him for some time - he should not
of been walking through the camp.

Q. you suspect every civilian going through the camp

A. No Sir.

Q. When you saw the barber going through before
did he take the same route

A. yes in more or less.

Q. When you challenge the barber for the first time
did he appear to know he was wrong

WHS

A. yes sir. he became excited and wanted not stop.

Q. you do not think that it was meant to mean anything by the pro.

A. No. sir

Question By the Court.

Q. Do that some definite purpose for your being here

A. to stop noises & clocking.

Q. How long have you been watching M. F.?

A. about a week.

Q. During that time were all meals taken to B. Coy Kitchen.

A. As far as not say that is true.

Q. Sgt Wood he in coming through he would pass H.Q. and Beg Kitchen

A yes sir.

Q. Do you know where he lives?

A. He lives at Stolle.

Q when you on took them to Beg kitchen was any thing said by the accus.

A. Made mark every and out of my sight and sound police.

Q. What was the accus action to them.

A. Normal

Q. Did he appear to know the Trial.

A. yes.

Q. Do the Sgt in charge of kitchen.

A B. Coy Sgt

B.

3. ind. (6.)

H.Q. for the pros. D. 985553 S/Sgt. Hayes E.J. (W01 pro. cay) 4 Bn. 1 C. B.R.R. C.P.O. has been duly sworn.

Q. What is your Rank & Number.

A. D. 985553 S/Sgt. Hayes E.J. (W01 Pro cay 4 Bn H.Q. C.B.R.R.

Q. Do you know the acc.

A. We have not previously been before and recognise him in court

Q. On the 7 what duties were you engaged on.

A. was engaged on pro duty in guard room.

Q. Will you tell the court what you know about the charge against the accused.

A. about 8 P.M. hrs. I saw a Dutch civ. rec. I. whom I recognized as one of the barbers. working in the billet area. He was coming past the Off. & Sgt mess. beside the day carrying his parker and pack. he was carrying a large black bag. which seem to be heavy. I had to speak to Capt. Robertson. who had gone over to check the civilians and then went over myself. I saw Capt. Robertson. open the bag. and in it saw 1/2 loaf of bread. 2 tins print. 2 tins of fish and a number of tins of cheese and Beef. I then went & fetch the Interpreter as the accused came along through the entrance. the civilian was asked. if these articles were his. he said yes. that he obtain them from the kitchen. and removed them. we then proceeded to kitchen. where sergt

[illegible] my kitchen. there the Italian civilian pointed out Private Hayden as the man whom he received the articles from. through the interpreter he stated that he had given the accused Pt Hyden some meat & ~~macaroni~~ macaroni. the accused was then placed under close arrest and put in guard room.

~~Cross examined by~~

Q. Will you swear Pt H. - was the man they the same.

A yes.

Cross examined by Defence.

Q. you saw the Italian going past the Off + Sgt. kitchen

A yes sir

Q. What was he carrying.

A - this Italian had a black bag.

Q That is a lot of stuff!

A yes

Q. could you see any of it in the bag?

A you could see the bread.

Question By the court

Q are you on special case with Cpl Robinson

A. No sir.

Q. Had you notice M. P. coming through camp time prior to this.?

A. No Sir.

A.A.J.

Wit.- Maglio Vincenzo. Contractor duly sworn to act as a barber, resides in camp area, 4 Bn. 1 C B R D. Having been duly sworn.

Question By the Court.

Q Do you understand that that is the oath.

A- yes Sir.

Question By the Pros.

Q. What is your name?

A. Maglio Vincenzo.

Q. What is your job?

A. a barber carry on

Q- Where do you do business?

A. In camp.

Q. Do you know the accused?

A. yes Sir.

Q. Have you been doing business recently.

A. No. Sir

Q. Did he do business with the accused last Sat. and Sun?

A- No Sir. Explanation. He said if the accused asked him if he had any pork meat and he said if he could bring some he would buy it to bring on Sunday morning. he brought him some. there was no contract made between the two whatsoever.

Q. Did he give the accused any thing else except the meat?

A. Meat + Sauce.

Q What kind of sauce?

A- Tomato Sauce

Q. What kind of meat?

A: Veal.

WAS

Q. Did the accused give the natives any thing
in exchange
A. the Soldier. gave him a present of the things which he was
found with.

Q. What were they?

A. Exhibit A' was identified as the food but
could not.

Q. - Do they gave daily rations given to him by accused

A. - Yes sir.

~~Q. Does~~

Q. How much Meat did he give the accused

A 1½ Kilo.

Q. How much more?

A. - between 1½ Kilo and 1½.

Q. - How much rice?

A. a small tins

Cross examn by the defence

Q. - Did the Mess give the accused on dec 22

A - daily meat.

Q. Meat

A. yes sir

Q. When did A. give the accuse the meat from

A. Does not know when he it was friday or sat ~~sun~~ AM.

Question by court.

Q. How many men could feed on this?

A. know a Eight men.

VI AJ

B (203)

Defence make a plead for the offence of first charge.
carry & taking away.

2-
3- proof of ownership
4- Deprivation

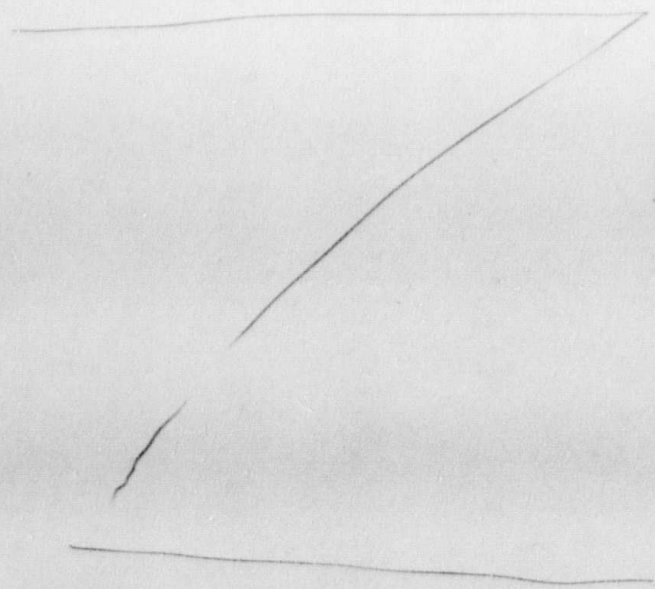
No.

Pro. 7

No. charge.

Defence warned as he cant stealing
Clement in that is missing - carrying away by
defender - and that was, Handing over money
which the cashier;

The Defence asked that the first charge be
thrown out. he cannot decides that
the Prima facie case established.
Court enfor the defence but the plear
was not granted.



203

B (11)

Q Has your plan to be call as witness

A yes Sir

Q Has your plan to call other witness

A yes Sir.

C. (1) Evidence for defence

Q. D-

print Witness sfuce.

B-87922 Private. Hayden F. A. & B.n

H.Q. & B. R.D. C.S.O. C.M.F. Has been duly sworn.

Q Tell your story of what happen on dec 7

A- On sat morning as the barber was coming to his work. Become to my kitchen saw open up a bag which he had, on side the bag. Canned of meat. wrapped up in cloth. addn a little pot of tomato past for making sauce. Then by signs he told me about a plant which were to be on used for Holidays and that they would be holding a Holiday for that occasion. he said he would bring me some up and went on about his work Sunday I Co-oked up some of the macaroni also and the past up. Then Sunday P.M. he come to kitchen and open his bag up again and showed me the meat. I took it and told him I could make the meat good good meat as they had not had good meat for a long while. so I change I gave him ration as I had it. He went on his way to his barber shop to go about his work. shortly after that he was back again with the R.C.M.P and the guard I was pointed out and put under close arrest. The Orderly Sgt took me over to the guard room

WAS

Q. Will you Mamie this contents? mac + Veal

A. yes sir.

Q. Tell the court at what time you got the mac + sauce + Veal.

A - Mac + sauce sat P.M. V eat Sunday A.M.

Q How much tomato sauce?

A. small jar.

Q Did you eat that?

A. yes Sir Sunday

Q. How much more?

A. Enough to put a dessertspoonful to.

Q. How much actually did you eat?

A. about two thirds that amount.

Q. Did you intended to eat this meat?

A. yes Sir. We have a ½ eq

Q - How many men warned you home?

A. 30 men at the most.

Q. - What was the purport of message Army for them

A - Good meat for the men.

Q. Who could men purpose fresh meat & Bully Beef

A yes Sir.

Exhibit A Defence.

~~Macaroni~~ Macaroni

~~Meat in portion~~

Cross ex. By pro.

Q. Hayden could you examine Lt. H's pro. and see how the rations you exchange?

A. yes sir?

Q. Did you ever have to bring you some meat?

A No sir, Dan

Q. - Who ate the meat & sauce on Sunday?

A. the men & my self

Q. How many meals would you say the army rations would put on Co. A of pt.

A.

Q. Would you say it would feed 20 men?

A. No sir.

Q. Bread. 10 men.

A. - 15 men

Q Belly beef

A 3 men

Q. Rib.

A. 6 men

Q. Prom.

A. Depends upon the size.

Question from the court.

Q. Could you get rations for 20 men.

A. No sir.

Re

Q. Have you been in a habit of exchanging

A. No. sir.

Q Did you know you were doing wrong.

A. I thought I was doing the men a favour

WAS

Cross ex. by Defense

Q: When you made this exchange did you think you were doing a good Bargain.

A - yes sir.

Q. On the exchange of food with M.K. on Reel 7 did you actually carry away the food.

A - No sir

Q. - What happen in the transaction of food.

Q. who did carry it away.

A. Italian: carry it away.

Rations are kept on Reel 7 and 8.

Q. Did you pick it up

A. yes But he carry it away.

Cross ex. By pros.

Q. did you take the article of he return

A. yes

Q. How did he get them

A. He was right beside me and took them out of my hands

Question By Court

Q. you are one of these cooks

A. yes

Q. It has two ton charge

A. I guess so.

Q. what is one man ration in meat per day

A. 4 oz.

C

5

Grand Jahrus.-

Second witness for defence. 11470 Cpl. Watchan A.J.
is duly sworn.

Q. Do you recognise them
A yes sir
Q What are they
A- Rations indents for Dec?
Q Some rations were cancelled off. on Dec?
rations
A. - Yes cancelled them off.

Q - Do you recognise the accused?
A - yes sir.
Q - Who is the accused?
A - opt. Private Hayden B coy Kitchen
Q - Did Hayden prepare these?
A. He issued orders about them Sir
Q - also cancelled any ~~one~~ 8. number of entries crossed out for the same purpose?
A. Yes Sir.

Exhibit B. for defence
two (2) rations indents.

Cross examined

Q. what is your job?
B. Cpl in Ration Stores
Q. - the lists are prepared by whom
A. Some one in 'B' coy Kitchen
Q. Why are these items put on and then crossed out?
A. I make the list up and then they are crossed out.

Cpl B

Q. How do they know which Boy has a surplus of one day's ration required.

A. Procedure in ration stores: draw up a list and go into room after kitchen and then make rations off.

Question by Court.

Q. are these the actual indents for the day?

A. yes Sir.

Q Who is W. C. Doon?

A. Cook in our "B" Kitchen

48x1.4BRD

Third Witness for Defence. A/5323. Pte Dean W C has been truly sworn.

Q. Did you know anything about barges of the accused.

A. Nothing

Q Did you see or no anything of red macaroni in sacks?

A. yes Sir I saw them

Q. Do you recognize it there

A yes sir.

Q Tell the court what purpose they were put to?

A When began the mess change in rations

Q. Do that all the macaroni?

A No sir better than ½ has been eaten and also the tomato sauce

Q. - What is your job.

A. - Cook group "C"

Q. Do you think that there is enough food here for the men?

A yes by adding a bit more.

Q. Has the accused made any steps to help them?

A No Sir.

Q. Do you think the accused struck a good danger?

A. Do not know what was tracked

Defence read out the danger which was tracked

Q. What do you charge for the trade

A. Very good sir.

No question from the pris.

Question by Court.

Q How many men could be fed?

A. Could cook for enough 30 men.

Joseph Williams for Defence, L 5 35 93 Pte. Canadian Rd. H.

Has been duly sworn.

Q. Do you recognize the P. Defence.

A yes

Q. Did you see this in B'dy cook house

A yes

Q What was this to be used for?

A. a meal for the men

No question from pris.

Closing address from the defence

Character Witness for defence. Capt. L. C. Willoughby

Company Com. of "B" Company, State - Has known the woman for a while and has formed that ch. named as:

Good worker, generally did her work well and conscious

~~conscious~~

WAB

Findings

Not guilty of the first charge.

WPS.

Guilty of second charge.
(alternative)
W P Steer Brig
President

A.F.B. 296 & M.F.M. 6. produced by the prac. and omitted by the president

Sentence of the Court.

To undergo detention for a period of Sixty (60) days. Dec 10. 1943
W. P. Steer Brig
President

WPS

Take notice that the Prosecution intends to call as a witness at the trial of B 87922, Pte Hayden, E.A., the ~~following~~ under-mentioned Non-Commissioned Officer who was not called as a witness on the taking of the Summary of Evidence:

M 15798, Sgt OLSEN N
4 Bn., 1 C.B.R.D., C.A.(O).

and further take notice that the above-mentioned N.C.O. will give evidence to the effect that he is Acting C.Q.M.S. of "B" Coy, 4 Bn 1 C.B.R.D., that the accused, Pte Hayden E.A., has been acting as cook of the aforementioned "B" Coy, and that rations were delivered to the said Pte Hayden.

Dated in the field this 10th day of December, 1943.

Exhibit 13
for the defense

B. 1243.

~~[illegible]~~

~~[illegible]~~

T Veg 8 X

Potatoes 22 X

~~Beef~~ Milk 8 X

Pickles 1 X

O'meal 4. X

~~[illegible]~~

~~[illegible]~~ X

~~[illegible]~~

~~[illegible]~~ 4

~~[illegible]~~ 4

~~[illegible]~~ 15. X

~~[illegible]~~

~~[illegible]~~ 15 X.

Sausage 15

~~[illegible]~~

~~[illegible]~~

Stirabout 1 Dripping 1 Sugar 1 Jam 1 Cheese 1 Milk 8

B2

SUMMARY OF EVIDENCE IN THE CASE OF B 87922, PRIVATE HAYDEN E.A., 4 Bn., 1 C.B.R.D., C.A.O., C.M.F.

By Order of the Commanding Officer, the Summary of Evidence was taken on Oath.

1st Witness: C 42035, Cpl Robinson, E.E., (No.1 Pro. Coy) 4 Bn, 1 CBRD, C.A.O., having been duly sworn, states:

"I am being employed on special investigations to assist the Regimental Police, 4 Bn, 1 C.B.R.D., C.A.O. At about 0900 hrs 7 Dec 43, I saw a civilian, whom I recognized as the officially authorized Regimental barber, coming through the men's lines. He was carrying a blue canvas bag. The R.S.M. had previously told me to keep an eye on this civilian, so I asked him what he had in the bag. He said "Good-morning", and kept on going. I followed him to the enclosure where the barbers work, and asked him again what he had in the bag. He showed me first of all a bag with his barber's tools in it. I pushed this aside and pointed to the other bag he had been carrying. I opened this bag and found it to contain army rations; 4 cans of cheese, 4 cans of corned beef, 2 cans of pilchards, 2 cans of Prem, and 2½ loaves of bread. The R.S.M. appeared nearby at this time, so I showed him the bage and contents. I called over Pte Alivernini, A., who speaks Italian, and questioned the civilian barber as to where he had got the rations. He said he had got them from the kitchen. When I asked him what kitchen he said he would take me over. I then made a list of the articles in the bag, which up to that time had not been out of my possession. The civilian took me and the R.S.M. to "B" Company kitchen, where he pointed out the accused as being the man whom he had obtained the articles from. He also stated he had given the accused 1½ kilo veal and some macaroni for the rations. The R.S.M. then gave orders for the accused to be placed under close arrest. I identify the bag and contents shown to me as the bag and rations found by me in the possession of the civilian, whose name is Maglio Vincenzo."
(Bag and contents marked EXhibit "A").

The accused declined to cross-examine this witness.

2nd Witness: D 98553, L/Cpl Hayes, E.J.,(No.1 Pro. Coy) 4 Bn, 1 CBRD, C.A.O., having been duly sworn, states:

"I am at present working with the Regimental Police, 4 Bn, 1 CBRD, C.A.O. At about 0900 hrs, 7 Dec 43, I saw an Italian civilian, whom I recognized as one of the barbers, going past the Officers, W.Os. and N.C.O.s kitchen. He was carrying a large bag which, from the way he was carrying it, appeared to be pretty heavy. I had been speaking with Cpl Robinson a few moments before and saw him speak to the civilian and I followed them into the enclosure where the barbers work. I saw Cpl Robinson examine the contents of the bag and I recognized them as Army rations. As far as I can remember there were 2½ loaves of bread, 2 tins of Prem, 2 tins of fish, and some tins of corned beef and cheese. The R.S.M. had by this time appeared and a soldier who spoke Italian had been obtained. On being questioned by the R.S.M. thro the interpreter, the civilian said he had got the rations from a kitchen and would take us there. He took us to "B" Coy kitchen, where he pointed out the accused as the man who had given him the rations. He also stated he had given the accused some veal and maccaroni in exchange. I recognize the bag and contents now shown to me as the bag and contents found in possession of the civilian barber, whose name I do not know.

The accused declined to cross-examine this witness.

G 21032, Pte Alivernini, A.R. was sworn as interpreter.

Witness: MAGLIO VINCENZO, civilian authorized to act as a barber within camp area of 4 Bn, 1 CBRD, C.A.O., having been duly sworn, states:

"I recognize the accused soldier as one with whom I have been doing business lately. Last Saturday I gave the accused some tomato sauce and about one and a half kilos of maccaroni. This morning, the 7 Dec 43, I gave the accused one and a half kilos of veal. In exchange for these things the accused gave me some Army rations. The accused told me he wanted to fix up a good meal for the soldiers. I recognize the bag and rations now shown to me as my bag and rations given to me by the accused.

Maglio Vincenzo

The accused declined to cross-examine this witness.

The accused was cautioned in accordance with R.P. 4 (E) and declined to make a statement.

Certified that Rule of Procedure 4 (C) (D) (E) & (F) have been complied with.

Taken down by me in writing, in the presence of the accused, in the field this 7th day of December, 1943.

S. G. Main

(S. G. Main) Capt., (S.L.I.)
Officer Taking Summary.

No. B 87922 Name HAYDEN E.A. Sqn., Battery, or Company HQ Corps R Regt C Date of enlistment 10 Nov 39 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F. [illegible]) 40 (P & /H) (2065)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Toronto	23 Dec 39	Pte		A.A. Sec 15(1) A.W.L. 1630 hrs 23 Dec 39 until 0800 hrs 27 Dec 39. Total absence (3 dys 15½hrs)	Sgt Macharen L/Cpl Gordon	14 days C.B.	28 Dec 39	Lt.-col G.H. Basher	Forfeits 4 dys pay.
Toronto	2 Feb 40	Pte		A.A. Sec 15(1) A.W.L. 2200 hrs 2 Feb 40 to 2130 hrs 3 Feb 40.	Sgt Lamont Sgt Kirkman	7 days C.B. Fined 3dys pay	5 Feb 40	Lt.-col G.H. Basher	Forfeits 1dys pay Total 4
Toronto	9 Mar	Pte	1	A.A. Sec 19 Drunkenness	Sgt Murphy	Admonished	11 Mar40	Maj J.F West.	dys pay.
Toronto	1 May 40	Pte		A.A. Sec 10(4) Breaking out of barracks	L/Cpl Edgson	10 dys Detention	7th May 40	Lt.-col G. H. Basher	Forfeits 16 days pay.
				A.A. Sec 15(1) A.W.L. 0900 hrs 1 May 40 to 0720 hrs 6 May 40	L/Cpl Rush				
Toronto	23 May 40	Pte		A.A. Sec 15(1) A.W.L. 2400 hrs 23 May 40 to 0720 hrs 25 May 40	L/Cpl Beaton	7 dys C.B.	25 May 40	A. Curtis	Forfeits 2 days pay.
Camp Borden	7 Jun 40	Pte	2	A.A. Sec 19 Drunkenness	Capt Carter L/Cpl Rose	168 hrs Detention	11 Jun 40	Lt.-col., G.H. Basher	Fined $5.00

(P.T.O.)

[illegible]	Date of offence	Rank	Cases of previous convictions	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17 Mar 42	Pte		A.A. Sec 15(1) A.W.L. 2400 hrs 17 Mar 42 to 2145 hrs 18 Mar 42	Sgt Rees J	7 days C.B.	19 Mar 42	Capt J C Houssen	Forfeits 1 days pay.
Iceland	29 Aug 40	Pte	3	A.A. Sec 19 Drunkenness A.A. Sec 15(1) A.W.L. 2315 hrs 29 Aug 40 to 2345 hrs 29 Aug 40	CSM SpencerD L/Cpl Jones	Fine $10.00 14 Days F.P.	31 Aug 40	Maj Eric Jones	Forfeits 14 days pay & $10.00.
Lagapell	20 Sep 40	Pte		A.A. Sec 40. Conduct to the prej udice etc, using threatening language to his superior officer	CSM Garrett	14 days F.P.	21 Sep40	Lt.-col., G. H. Basher	Forfeits 14 days pay.
Alafoss	10 Oct 40	Pte		A.A. Sec 40. Conduct to the prej udice etc, in that he appeared on parade in a slovenly condition	Sgt Kirkman	3 days C.B.	14 Sep40	Mabr D E Catto	
Aldershott	4 May 41	Pte	4	A.A. Sec 19 Drunkenness A.A. Sec 15(1) AWL 1215 hrs 4 May 41 tol405 hrs 4 May 41.	Lt R.C.Hicks Sgt Kirkman	Fined $10.00 14 days C.B.	6 May 41	Lt.-col G. H. Basher	Fined $ 10.00
Field	29 Sep 42	Pte		A.A. Sec 40 Conduct etc, failed to wear identity discs.	L/Sgt Pierce	5 days C.B.	30 Sep42	Capt Wright	

No.	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18 Jan 42	Pte		A.A. Sec 40 Conduct etc, in that he was found to have taken beans cooked for breakfast from kitchen stove.	C.Q.M.S Hobson	14 days	19th Jan	Major A.M.	Forfeits 14 days pay
				A.A. Sec 11 Neglecting to obey standing orders, found with alcoholic beverage in his billets.	Cpl Skidmore	F. P.	42 23 Feb	Young Major	
Field	22 Feb 42	Pte		A.A. Sec 15 (1)AWL from 2245 hrs 22 Feb 42 to 2320 hrs 22 Feb 42.	Sgt Surphlis	7 dys C.B.	42 28 Mar	A.M. Young Lieut W.B.	
Field	28 Mar 42	Pte		A.A. Sec 15(1) AWL from 1900 hrs 27 Mar 42 to 2340 hrs 27 Mar 42	Sgt Surphlis	5 days C.B.	42	Thomson	
Field	16-2-43	Pte		A.A. Sec 40 Conduct etc	A/Sgt Pettit	5 days pay	17-2-43	LtcolNichols	5 dys pay
"	"	"		A.A. Sec 40 Neglect etc	" "	30 dys trades P		"	30 dys trades P
"	"	"		A.A. Sec 15(1) AWL from 1100hrs 16 Feb 43 to 2245 hrs 16 Feb 43	L/Cpl Miller	12 dys pay	17-2-43	"	11 dys pay
						7 dys pay	17-2-43	"	1 dys pay
Field	30 Mar 43	Pte		A.A. Sec 15(1) AWL from 2359 hrs 31 Mar 43 to 0828 hrs 31 Mar 43.	C.Q.M.S Hobson		1 Apr 43	Major A.M. Young	Forfeits 1 dys pay

Certified true copy.....10 Dec 43

Officer Commanding Records

M.F.M. 6

No. B 87922 Name HAYDEN E.A. | Sqn., Battery, or Company | Corps R Regt C | Date of enlistment 10-11-39 | G.C. Badges | Service or Proficiency Pay | (A.F. 40/P.&/38 (1965))

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	4-5-41	Pte		A.A. Sec 40 Conduct etc, creating a disturbance in a public place	Sgt Kirkman Pte Taggart	21 days F.P.	6-5-41	Lt.-col G.H.Basher	Forfeits 21 dys pay
Broomham	14 Jul 41	Pte		A.A. Sec 15 (1) AWL 2245 hrs 14 Jul 41 to 1115 hrs 15 Jul 41.	Sgt McLeod	10 days F.P.	18-7-41	Lt.-col., G.H.Basher	Forfeits 11 days pay
Broomham	31 Jul 41	Pte		A.A. Sec 40 Neglect to the prejudice etc, performed his duties so negligently that breakfast was 25 minutes late.	Cpl Tait Cpl Pettigrew	4 days C.B.	31 Jul 41	Lt Hutchinson	
Field	14 Aug 42	Pte		A.A. Sec 15(1) AWL 1500 hrs 14 Aug 42 to 2315 hrs 14 Aug 42.	Cpl MacDonald L/Cpl Lessard	7 days C.B.	15 Aug 42	Capt G Housser	Forfeits 1 days pay
Broomham	2-8-41	Pte	5	A.A. Sec 19 Drunkenness A.A. Sec 40 Conduct etc	Lieut Biggs	Admonished 10 days F.P.	4 Jul 41	Lt.-col G.H. Basher	Fined $10.00 Forf 10 dys pay

(P.T.O.)

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 87922	Pte	HAYDEN E.A.	RCASC, P.E. 4 Bn, 1 C.B.R.D.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, information being given in the next column(s) of offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA SEC 15(1)	2 times	12 times.
For AA SEC 19	0 times	5 times.
For AA SEC 40	2 times	12 times.
For AA SEC 11	0 times	1 times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

The above entries in the conduct sheets of the accused

2. The accused has not been previously convicted, *or*

[illegible] by a court martial or a civil court, summary awards under section 47 of the Army Act, [illegible] section 73 of the Army Act, [illegible]

3. The accused is not under sentence at the present time, *or* [illegible]

beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for 4 days in civil custody, and Nil days in military custody, making a total of 4 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his [illegible] is 34 years 9 Months.

6. The date of his commission / attestation specified in his record of service / attestation paper is N/A

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). N/A

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated , and in his regiment (*or* corps *or* department) the rank of N/A dated

(72947) Wt.31703/1977 10,000 10/42 A.& E.,W.Ltd. Gp.456
(82967) Wt.32658/1237 [illegible] 2/43

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ..... day of .....

J. Hamilton Capt.
Records Officer. 1st Bn. 1st R.D.

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years

In the rank of ..... years,

In the rank of .....

(Instruction—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such source as are available and the paragraph inserted amended accordingly.)

5R-141
Pt. Hayes, O.T.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused D. 35115 PTE HAYE, O.T., 8 C REPAT D.

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA SEC 40	NOT GUILTY	GUILTY	
2nd AA SEC 8(2)	NOT GUILTY	GUILTY	
3rd AA SEC 8(1)	NOT GUILTY	GUILTY	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

10 months Detention for a period of Ninety (90) days

(Sgd) ..... 14 Aug/45 [illegible] President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 123A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) Court
(1. AA 57A. Delete if not used.)

(Sgd) E.W. Haldenby Brig

Date 15 Aug 45 Commanding Officer. A Group - CRU

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D35115 HAYE, O T		(W Hutt Capt, (K S Bjorn) Colonel

Promulgated and extracts taken in Pt II Order No 18 d/25 Aug 45
Promulgated to the accused by his Commanding Officer 30 Aug 45

for Officer Commanding 8 Can Repat Depot

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 2 SEP 1945 CANADIAN M.H.Q.

RECORDED AT CMHQ IN AR 160- 5 K- 1447

FIELD GENERAL COURT-MARTIAL

CFAMS (To Illus. of AFAR) 40/P & R 1698 (8/44) 4/38B

Convened by Commander Brig E W Haldenby Comd A Gp, CRU dated 12 Aug 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D35115	Pte	Oscar Theopholus	HAYE	8 Cdn Repat Dep

PROCEEDINGS REVIEWED 3 Sept 45 JAG BRANCH C.M.H.Q. REVIEWING OFFICER

PROCEEDINGS OF TRIAL.

Held in the Rec Hall (Remarks) Aldershot on (date) 14 AUG 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~ assemble, and the Court is closed.

(PRINTED MATTER. NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the Offr.~~ (2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ P2126 ~~as interpreter? Ans~~

~~The Interpreter is sworn.~~(1) Do you object to LOTAH SINCLAIR as shorthand writer? Ans NO
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L. BERMAN	HQ CRU
Member	CAPT	H.W. NOBLE	2 C REPAT D
Member	LT	P. CAUVREAU	3 C REPAT D
~~Judge Advocate~~			
Prosecutor	LT	F. McDONALD	8 C REPAT D
Defending Offr	LT	H.M. PEGG	8 C REPAT D

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (b) and fn 2 were not followed. See Dir p 2.)

A8. The accused ..... before arraignment make(s) (no) ~~(no)~~ plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO SIR.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (his) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTC-ATT
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. Give Evidence..... Do you intend to call witnesses on your behalf ?
Ans. NO - 214 Are they witnesses as to character only ? Ans.....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*) NOTC ATT

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO-SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex C respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Plead Offr's (NOTE ATT)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

8 CANADIAN REPATRIATION DEPOT
"A" Wing

CHARGE SHEET

The accused, No. D-55115 Private Cesar Theopholus HAYE, of 8 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with:

1st Charge
Section 40
Army Act

WHILE ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Aldershot, on the 27th of July 1945, did interfere with No. L-109175 L/Cpl Flavel J. A., a member of the Canadian Provost Corps, in the execution of his duty by taking hold of his tunic and using threatening language.

2nd Charge
Section 8(2)
Army Act

WHILE ON ACTIVE SERVICE USING THREATENING A SIGN TO HIS SUPERIOR OFFICER

in that he

at Aldershot, on the 27th of July 1945, when approached by No. M-101078 Sgt. Sharpe L. E., a member of the Canadian Provost Corps, did brandish a pocket-knife with the blade opened in front of said NCO saying: "I'll carve you up the same as my people were carved," or words to that effect.

3rd Charge
Section 9 (1)
Army Act

WHILE ON ACTIVE SERVICE, DISOBEYING, IN SUCH MANNER AS TO SHOW A WILFUL DEFIANCE OF AUTHORITY, A LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR OFFICER IN THE EXECUTION OF HIS OFFICE

in that he

at Aldershot, on the 27th of July 1945, when personally ordered by No. M-101078 Sgt Sharpe L. E. to get into a Jeep (500 weight) refused and did not do so.

In the Field
4 August 1945

(A.D'A MARKS) Major,
Officer Commanding,
"A" Wing, 8 Cdn Repat Depot.

To be tried by FGCM.

(E L Haldenby) Brig
Comd
A Gp, Cdn Rft Units

12 Aug 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D35115	Pte	Oscar Theopholus	HAYE	8 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 Aug 45 endorsed by me, (~~as aforesaid~~) To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable that the trial be postponed for a reasonable time~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~I direct that the officer appointed as Judge Advocate shall be a Staff Officer as Paragraph 106(A) of the Regulations requires.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~I direct that a Judge Advocate shall be appointed.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D L Redman, VD	HQ CMC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt	To be detailed by CO 2 Cdn Repat Dep	2 Cdn Repat Dep
A Lt	To be detailed by CO 3 Cdn Repat Dep	3 Cdn Repat Dep
	~~Alternate Member~~	
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	~~Alternate Member~~	
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 12 Aug 45

(Signed personally. RP 105 fn 2.) Brig (Rank.)

(E W Haldenby) Brig
Commanding "B" Gp, Cdn Hft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

No. 8 C.M.A.D.I.N REPATRIATION DEPOT

MEDICAL OFFICER'S CERTIFICATE

I certify that No D-35115 Pte HAYE O.T., "A" Wing '8' Con. Repat Depot is fit to undergo trial by Court-Martial.

.....
Signature of the Medical Officer.

14 August 1945

TRANSCRIPT BY: P28126 SGT AH SINCLAIR

TRIAL OF ...

D.35115 Pte HAYE O.T. 8 Cdn Repat Depot

PROSECUTION

FIRST WITNESS

L.109175 Lcpl FLAVEL JA, 14 Cdn Pro Coy, having been duly sworn, states:

I recognize the accused, and on the evening of 27 Jul I was on street patrol on the rd leading up to the Stn in Aldershot from approx 7.30 to 11 o'clock. About 2245 hrs I was on duty with the civil police; we were on the street and we were informed that there was a quarrel going on up one of the side streets so we proceeded up to see what was happening. As we rounded a corner we saw two soldiers in the distance fighting on the ground. As we approached they got up, one fellow leaving before I got there and the other headed in my direction and I asked him what had happened. As I was talking to this chap the accused approached and he inquired with words to the effect of who had hit the fellow and I I told him I didn't know, so he repeated the question and I told him again I didn't know, and then he said something to the effect that someone had better know. At this time the soldier whom I was talking to kind of got the accused convinced to leave and then I went to see if there were some more Pro around. The civil policeman and I were were on our way down the street when the accused came up again to see us and asked again something about who had hit the soldier and I still told him I didn't know. At this time I noticed he had a knife in his hand or something that looked like a weapon to me.

Q. Did he appear to have been drinking?
A. He may have been but I didn't notice him wobbling around.

Q. Continue?
A. It seemed to me that he wanted to get hold of me. Before this he had taken hold of my tunic. The civilian policeman stepped in between us and the question was repeated again by the accused several times but while the civil policeman and I were standing there two more Pro appeared and as they appeared the accused and the other soldier who was with him more or less started to amble off. When the other Pro appeared I went to get the Sgt IC at the City Police Stn. I went there and Sgt Sharpe and another Pro came back with me. I left the Sgt then who was IC from there on. We continued back to where the other Pro were and we located the accused in front of the Stn. During the conversation in front of the Stn the Sgt asked the accused to get into the jeep and come to the Police Stn for questioning and then he ordered him to get into the jeep. While there we saw the accused again with a knife in his hands, and then just about that time a truck came along from one of the Repat Depots, the accused jumped in it together with other soldiers and the Sgt told the dvr of the truck to take it to the City Police Stn, and the Sgt and I went on ahead in a 5 cwt.

Q. Did the accused use any threatening language to the Sgt?
A. Yes, after the Sgt had ordered him into the 5 cwt he said something about that he would the knife on us. My general impression was that if we went to take him he would use it on all of us.

Q. Did he get into the jeep?
A. No, he got into the other truck when it came along.

Q. What time elapsed from when he got the order to get into the 5 cwt until he got into the truck?
A. About 5-10 mins, Sir.

CROSS-EXAMINED

Q. How far was the distance from where you saw these two fighting?
A. I imagine between 75-100 yds.

Q. Why didn't you get the name of the other soldier who was fighting?
A. The accused interfered.

Q. He deliberately interfered?
A. Yes.

Q. Don't you think the fact that the other soldier got away had cause to provoke the accused?
A. The other soldier had gone before I got there and I was talking to the fellow who was closest to me.

QUESTIONS BY THE COURT:

Q. Did he threaten you in any way?
A. He had a knife in his hand and at one time he made a reach for my tunic, Sir.

Q. Did he say anything of a threatening nature?
A. No, except that someone had better know who had been fighting with this other soldier.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

SECOND WITNESS

P.C.313 CLARKE GW, Hampshire Joint Police Force, having been duly sworn, states:

I am a P.C. stationed at Aldershot and I recognize the accused. I was on duty there with Lcpl Flavel of the Cdn Pro when a woman came up and told us of a fight in Burchetts Road and Flavel and I proceeded there to investigate, and we found there a Cdn soldier lying on the ground with his face covered with blood. He stood up and Flavel was talking to him when the accused came forward and asked Flavel who hit the other soldier or words to that effect, and Flavel told the accused he didn't know. The accused then took hold of Flavel's tunic and adopted a threatening attitude, and repeating the same question. I intervened and the accused asked me the same question. I saw nothing in the accused's hand at that time. This white Cdn soldier managed to get the accused away; in the meantime Flavel had gone to the Police Stn for assistance. Shortly after two more Cdn Pro came on the scene and in the meantime the accused had proceeded along the rd and this was the las I saw of him.

Q. Would you say there was anything threatening in the accused's attitude?
A. Yes, when he got hold of Flavel's tunic, his arm was slightly raised. It was dark at the time.

CROSS-EXAMINED

Q. In your opinion do you think it is possible that the failure of Flavel to get the name of the other soldier tended to incite the accused?
A. Yes, I would be of that opinion, Sir. He felt pretty sore about it but I didn't see any reason why he should attempt to deal with the Pro himself.

QUESTIONS BY THE COURT:

Q. Did you see the other soldier who may have hit the white soldier?
A. No, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

THIRD WITNESS

M.101078 Sgt SHARPE, LE, 14 Cdn Pro Coy, having been duly sworn, states:

I recognize the accused and at about 2300 hrs on 27 Jul I was IC of the Aldershot patrols when Lcpl Flavel reported to me at the Police Stn and as a result of what he told me we proceeded downtown in a jeep and a few mins later at the Ry Stn in Aldershot I noticed a gp of soldiers. A coloured lad had been described to me by Flavel and he was in this gp. He was the accused. I drove up beside the gp and I asked the accused for his paybook to identify himself. I saw he wasn't going to get it out and so I got out of the jeep and faced him. At the time I noticed in his right hand he had an opened knife (PROSECUTOR SHOWS WITNESS A KNIFE AND WITNESS SAYD "THAT IS THE KNIFE")

Q. Was the knife closed or open?
A. Open, Sir. He took 2-3 paces back and I followed him and I saw I couldn't take the knife and so I ordered him into the jeep, which he didn't do, but made the statement "I can carve you up the same as my people were carved" or words to that effect.

Q. Did he make any gesture?
A. No, other than talking with his hands.

Q. Did he say he wouldn't get into the jeep?
A. No, he just refused to get into the jeep "what do you want me for?" he said, and I said "for questioning at the Police Stn" and he said "no, you can get me tomorrow" or words to that effect. After repeating the statement several times about carving up Pro and myself I decided we had to get him in and I went around to get some stuff out of the bottom of the jeep so that he wouldn't get his hands on it when we would get him in, and just then a Repat truck drove up and the accused jumped in that with about 15-20 other soldiers getting in behind him. I then asked the dvr of the truck to go to the Police Stn with the truck and I put my patrol Lcpl Pasternak, in the truck with the accused and I proceeded to the Police Stn in the jeep and within a few mins I saw Pasternak and the accused coming towards the Police Stn on foot. We took him into our room at the Police Stn and I immediately searched the accused, taking out of his left hand trouser pocket a knife which I have previously recognized.

Q. This is definitely the knife?
A. Yes.

KNIFE MARKED EXHIBIT 1

Q. Yes, go ahead?
A. After taking the knife and his personal belongings such as his paybook, etc., he was placed under arrest and escorted to the Gd Room.

Q. Would you say the accused had been drinking?
A. I didn't smell his breath.

Q. Might he have been drinking?
A. I wouldn't like to say, I only saw him for a few mins that night.

CROSS-EXAMINED

Q. Did you ask the accused for his paybook or the knife first?
A. He had the knife out, I asked him for his paybook first.

Q. Why didn't you place him immediately under arrest instead of waiting until you got him to the Police Stn?
A. It was no good placing him under arrest unless I could take him in, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

FOURTH WITNESS

B.157138 Lcpl PASTERNAK J, 14 Cdn Pro Coy, having been duly sworn, states:

I recognize the accused and on 27 Jul about 2300 hrs I accompanied Sgt Sharpe and Lcpl Flavel to the Ry Stn in Aldershot and when we got there we found the accused and a gp of soldiers standing around. Sgt Sharpe came off the jeep and asked him if he was the man who had threatened Flavel with a knife and the accused immediately put his hands in his pockets and pulled a knife out. Exhibit 1 is the knife. The accused then said if we came near him he would carve us up or words to that effect. Just about then a truck pulled up from a Repat Depot, the accused piled into it and also some other soldiers.

Q. Did the Sgt order the accused?
A. He tried to order him into the jeep but he wouldn't go.

Q. Did he actually say he wouldn't go?
A. No, he just stood there with the knife in his hand.

Q. Go ahead?
A. He piled into this truck and Sgt Sharpe directed me to stay with the truck until it got to the Police Stn. On the way I heard a noise and on looking back - saw the accused lying on the pavement. I jumped off the truck and the accused said "Alright, alright, I'll come along". When I got him to the Police Stn the Sgt searched him and took the knife out of his pocket.

Q. Had he been drinking?
A. He may have, but I don't know.

Q. Did he walk straight?
A. After the bump on the head that he got from the fall to the pavement off the truck he was a little wobbly, Sir.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

THE PROSECUTION IS CLOSED

- DEFENCE -

FIRST WITNESS

The accused, having been duly sworn, states:

Sir, I've never been in any serious trouble before in the Army. On the afternoon of 27 Jul 45 another soldier and I went down town to Aldershot, and when the pubs opened we started drinking all they had to offer, rum, whisky and gin and other stuff. We were having a meal in a restuarant after and one of the two fellows I was with, went out for a leak or something and the girl came along for me to pay for the meal. I went out to get the other fellow as he was going to pay he

said and I found him with his face covered with blood. I asked the Pro who hit him and I also asked the civilian police but they said they didn't know and I guess I was pretty mad and attacked him. I didn't know but what it was the Pro that hit him. This friend of mine I thought if he was going to get himself into trouble all the time I wasn't going to stay with him and so I walked off to the Ryn Stn. Another fellow and I waited until a Repat truck came along, and just then a Sgt came towards me asking for a knife and I said "sure" as most fellows have a knife anyway you know. He said I was coming with him in the jeep and I asked him what for as he had nothing on me. I figured all this was not needed as I didn't see any reason, and besides I was on draft for the Far East. I got on the truck and while it was taking me along one of the fellows said to me that I had better jump off as I might possibly be able to get away from the Pro. I jumped off in a daze as I was drinking pretty heavy anyway, and then two Pro got me and brought me to the cell where I was stripped and then I was taken to the MIR where I had four stitches put in my eye and after that I was placed under arrest. That night before starting out I had £7 or so on me and when I finished I had exactly ninepence.

CROSS-EXAMINED

Q. Why did you carry this knife?
A. I suffer from calluses on both feet, Sir, and the MO told me not to use a razor blad on them; that it was safer to use a knife.

Q. When you are drinking did you often get involved in fights?
A. Never.

Q. You realized when you did this that you were committing a serious offence?
A. No, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

THE DEFENCE IS CLOSED

STATEMENT BY THE PROSECUTOR ON THE FINDING

(NOTE ATT)

STATEMENT BY THE DEF OFFICER ON THE FINDING

(NOTE ATT)

THE COURT IS CLOSED TO CONSIDER ITS FINDING

THE COURT IS REOPENED

PLEA IN MITIGATION

(NOTE ATT)

STATEMENT BY THE PROS ON THE FINDING

The first charge against the accused is that he interfered with a Provost whoe's duty it was to investigate a street fight. We have the evidence of three witnesses - L-Cpl Flavel, the Police constable, and the accused himself to verify that this in fact did happen - the accused grabbing the provost by the tunic and repeatedly asking "Who done it?" despite the fact that he was assured by both the Policemen and the Provost that they did not know.

The second charge against the accused is that he used threatening language to a Sgt of the Provost Corps. That the accused did actually say "I'll carve you up the same as my people were carved." or some similar statement was again witnessed by three persons. That this was a real threat is proved by the fact that the accused brandished a knife in such a manner as to leave nodoubt in the Provost's mind of his dangerous intentions.

The third charge against the accused is that when ordered to get into a Jeep by the Provost Sgt he refused and jumped on to a lorry going back to camp hoping thus to lose himself in the crowd and avoid arrest. That his purpose was to escape from the Provost is further shown by the fact that, when he suspected that the lorry was being driven to the police station, he jumped out of the back. On these facts we have the testimony of the accused himself.

I submit that the accused is guilty beyond doubt of the charges against him. His only excuse for his shocking behavior is one of drunkeness - and here we have only his word for it. The three witness from the Provost say that they had no reason to believe he had been drinking at all and the Police Constable assures us that the accused, though he may have been drinking, was certainly not drunk and quite capable of

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STATEMENT BY THE DEFENCE ON THE FINDING

PLEA IN MITIGATION

Mr. President and members of the Court. I ask you to consider the past good record of the accused in 3½ years as a soldier in [redacted] service and the fact that he had volunteered for the CAPT and was awaiting repatriation.

The accused felt provoked by the neglect of the guard at long last he did so deliberate harm was intended.

In reaching a sentence I ask you to bear this in mind.

My

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
D 36115	Pte	HAYE, O.T.	8 Cdn Repat Depot

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, insomuch as credit has been given in the most serious offence in each entry, and no not recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For AA Sec 15(1) AWL	times	8 times
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, ~~as far as known~~.

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 77 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time. ~~or The accused at the present time is under sentence for imprisonment as the day of~~.

4. The accused has been in confinement, awaiting trial on the present charges, for ~~nil~~ days in civil custody, and 18 days in military custody, making a total of 18 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ attestation paper, is 28 years.

6. The date of his ~~attestation~~ specified in his attestation paper, ~~record of service~~ is 8 Jan 42 (NRMA until 21 Jun 45)

7. ~~During the period the accused is stated to have been in civil custody or under arrest the hours were~~

8. The accused is entitled to deferred pay or gratuity in respect of 3 years 7 months service.

9. ~~The accused is entitled to reckon~~ service for the purpose of determining his periods of

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*). Nil

11. ~~(If the accused is a warrant officer) The accused became (or was made or ranked as) a warrant officer~~ on

12. ~~(If the date of an offence) The accused held in the army the rank of and in his regiment (or corps or department) the rank of on that~~

EXB

W1.57637/1119 20M. 5/44. P. Ltd. TN-3.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D - 35115 Rank Pte Name HAYE, O. T. of 8 Corps Regt. Regiment (or as the case may be).

(*INSTRUCTION*—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		N/A		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a **true extract** from the regimental books in my custody.

Signed this 14 **day of** AUG 45

A/Adjutant

No. D-35115 Name HAYE Oscar | Sqn, Battery, or Company | Corps C. I.C. | Date of enlistment 8 Jan42 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. One | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Esquimald B.C.	19 Oct 42	Rfn		A.W. L. from 0700hrs 19/10/42 until 1630hrs 25/10/42 (6dys 9½hrs) Sec 15. (1)	DO C	14 dys Detn	26/10/42	J.R. Keene Captain	FORF 7 dys pay FRI 149 (1) (a) Forf 1 dys pay FRI 149 (1) (a)
Esquimald B. C.	20 Aug 44	Sgmn		Sec. 15(1) A.A. A.W.L. from 2230 hrs 20 Aug.44. until 0730hrs 23 Aug 44.	K-46608CSM Kilpatrick A	14 dys C.B.	25Aug 44	Major B Guynne	FORF: 3 dys pay FRI 149(a)(1)
Certified Copy				(H. H. Lees) Capt., Adm Offr, 6 Cdn Repat Depot					

Sheet Destroyed 8 Jul 44.

SUMMARY OF EVIDENCE

IN the case of D35115 Pte. Oscar Theopholus Haye, No 8 Cdn Repat. Depot, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

No. L.109175 L/Cpl Flavel J.A., 14 Cdn. Provost Coy. having been duly sworn states:

I am L109175 L/Cpl Flavel J.A., 14 Cdn Provost Coy. On 27th July 45 I was on street patrol in Aldershot accompanied by a civilian policeman, At approx. 22.45 hrs as a result of information received I proceeded up the street accompanied by the civilian policeman and saw two soldiers fighting. As I approached they stopped fighting and one of them STARTED to walk away. I approached the other soldier whose face was covered with blood and enquired of him what the trouble was. As I was talking the accused, whom I now recognize, approached and asked the soldier who had hit him. The soldier replied to the effect that everything was all right. The accused then enquired of me "Who hit him"?, or words to that effect. I replied that I did not know. The accused came toward me and repeated the question and I again said I did not know. I believe it was at this time the accused took hold of my tunic and said "Some one had better know", or words to that effect. The civilian policeman moved between the accused and myself and I was able to free my tunic.

About this time the soldier who had blood on his face convinced the accused that he should move away and they moved off together. Being the only Provost on the spot I decided to go for help. As the civilian policeman and I were moving away the accused and the soldier with him caught up to us again and the accused again enquired who had hit the soldier and again I replied I did not know. The accused then came closer and I saw what looked like an open pocket knife in his hand, and he repeated his question. The accused then said "Somebody had better know", or words to that effect, at the same time raising the open knife to about the height of his shoulder. About this time the civilian policeman stepped in between us and kept between us until I noticed two more Provost approaching. The accused and the other soldier then started to move away. The two Provost came up and I left to report to Sgt. Sharpe at the Police Station.

I reported to Sgt. Sharpe and then Sgt. Sharpe, L/Cpl Pasternak and myself returned to the scene in a 5 cwt. The accused was not in sight but we caught up with him a few minutes later in front of Aldershot station. The sergeant ordered the accused into the jeep but he did not obey the order. We all three got out of the jeep and the sergeant approached the accused to arrest him. The accused then pulled the knife from his pocket and opened it, and during the conversation that followed said he would use it on us if we tried to take him. Shortly afterwards a truck drove up and the accused got into the truck. On the instructions of Sgt. Sharpe I then proceeded to the Police Station.

QUESTIONED BY THE ACCUSED:

Q.1 Why did you not take the name of the soldier who was fighting?

A.1 The soldier was not present when I returned from the police station.

Q.2 Was I under the influence of liquor at the time?

A.2 I had no reason to believe you were under the influence of liquor.

J.A. Flavel

L109175 L/Cpl Flavel J.A.

LIST OF WITNESSES FOR THE PROSECUTION

L 109175 L/Cpl FLAVEL J.A., a soldier of the Cdn Army Overseas, on the strength of No 14 Cdn Provost Company.

B 157138 L/CPL PASTERNAK, J., a soldier of the Cdn Army Overseas, on the strength of No 14 Cdn Provost Company.

M 101078 Sgt SHARPE, L.E., a soldier of the Cdn Army Overseas, on the strength of No 14 Cdn Provost Company.

P.C. 315 CLARKE, G.W., Police Constable of the Hampshire Joint Police Force, stationed at Aldershot.

LIST OF WITNESSES FOR THE DEFENCE - NIL

SECOND WITNESS FOR THE PROSECUTION

No. B157138 L/Cpl Pasternak J., 14 Cdn Provost Coy. having been duly sworn states:

I am B157138 L/Cpl Pasternak J., 14 Cdn Provost Coy On 27th July 45 at about 23.00 hrs. I was at Aldershot Police Station together with Sgt. Sharpe who was in charge of patrols. L/Cpl Flavel came to the station at that time and as a result of what he told us Sgt. Sharpe and I accompanied him to the Aldershot Station where we saw the accused, whom I now recognize. Sgt. Sharpe spoke to the accused asking if he had threatened L/Cpl Flavel with a knife. The accused put his hand into his pocket and pulled out a pocket knife which he opened. (Witness is shown a knife which he identifies. Knife is shown to accused and marked Exhibit "A") At the same time the accused said "I will use the knife on you if you come anywhere near me", or words to that effect. Sgt. Sharpe walked over to the jeep and about the same time a truck of No. 8 Repat. Depot pulled up. Immediately the accused and some other soldiers jumped into this truck. Sgt. Sharpe instructed me to stay with the truck. I got into the cab and instructed the driver to drive to the police station.

On the way to the police station I heard a noise in the truck and on looking out of the window I saw the accused lying on the pavement. I told the driver to stop, got out of the vehicle and took the accused to the police station on foot, where Sgt. Sharpe took charge. I saw Sgt. Sharpe take Exhibit "A" from the pocket of the accused.

J Pasternak

B157138 L/Cpl Pasternak J.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

THIRD WITN ESS FOR THE PROSECUTION

No. M101078 Sgt. Sharpe L.E., 14 Cdn Provost Coy. having been duly sworn states:

I am M101078 Sgt. Sharpe L.E., 14 Cdn Provost Coy. On 27 July 45 at approx. 23.00 hrs. I was in charge of patrols in Aldershot and I was at the Aldershot police station. At that time L/Cpl Flavel, 14 Cdn Provost, reported to me and as a result of what he told me L/Cpl Flavel, L/Cpl Pasternak and myself proceeded in a jeep to Aldershot station where I saw a group of soldiers amongst whom was the accused, whom I now recognize. I asked the accused for his service book. He then drew a pocket knife from his right hand pocket and opened the blade, (Witness identifies Exhibit "A") saying to me "I'll carve you up the same as my people were carved", or words to that effect, repeating it several times. I then ordered him into the jeep saying - "I now order you into the jeep". He did not obey the order. A few minutes later I was arranging the jeep to load the accused when a 60cwt lorry drove up in front of the station and allthe soldiers who were standing around, including the accused, climbed into the lorry. I then detailed L/Cpl Pasternak to accompany the vehicle and instructed the driver to drive to the police station. I then proceeded to the police station in my jeep and L/Cpl Pasternak arrived there shortly afterwards with the accused. I searched the accused taking all his personal effects from his pockets, including Exhibit "A". I then placed the accused under arrest and escorted him to CRU guard room.

(Sgt. Sharpe - continued)

QUESTIONED BY THE ACCUSED.-

Q.1 Did you ask me for my paybook or did you ask me if I had a knife?

A.1 I asked you for your paybook.

Q.2 When you saw me was I under the influence of liquor?

A.2 I don't know. I did not smell your breath.

L Sharpe
M10170 Sgt. Sharpe L.E.

FOURTH WITNESS FOR THE PROSECUTION

P.C. 313 Clarke G.W. , Hampshire Joint Police Force, having been duly sworn states:

I am a Police Constable of the Hampshire Joint Police Force, stationed at Aldershot. At approx. 22.45 hours 27th July 45 I was on duty ou tside the Hippodrome in company with L/Cpl Flavel of the Cdn Provost. As a result of what a woman told us about a fight in Burchetts Road the L/Cpl and I proceeded to investigate. On arrival we found a Cdn soldier on the ground, his face covered with blood. Apparently he had been fighting. We stood talking to this injured soldier when we were accosted by the accused, whom I now recognize.

The accused enquired of the L/Cpl as to who had hit his pal. L/Cpl Flavel replied he did not know. The accused asked the question several times and was again told by L/Cpl Flavel that he did not know. The accused then adopted a threatening attitude and grabbed L/Cpl Flavel by the tunic. I intervened and the accused repeated his question to me. I informed him I did not know. About this time the injured soldier intervened and endeavoured to get the accused away. The accused moved away and I did not see him further.

QUESTIONED BY THE ACCUSED -

Q.1 Was I under the influence of liquor at the time?

A.1 I would say that obviously you had been drinking but not sufficient to make you drunk and incapable

G.W. Clarke
PC 313 Clarke G.W.

QUESTION TO THE ACCUSED -

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

THE ACCUSED ELECTS TO GIVE EVIDENCE ON OATH.

D35115 Pte. Haye O. having been duly sworn states:

I am D35115 Pte. Haye O., No. 8 Cdn Repat Depot. On 27th July 45 about 14.00 hrs I was washing some clothes in camp when I was asked by one of the soldiers on my draft (I do not know his name) if I would like to go to town to have some beer. My reply was "No" because I had been to town the day before. This friend of mine got dressed and then asked me if I had changed my mind. I said "O K, I'll go", and we went to Aldershot reaching there about 17.00 hrs. We had supper and then went to a pub which opens at 18.00 hrs. We started drinking whiskey, gin and beer. I had just cashed a cheque for five pounds.

We drank in several pubs until they closed at about 22,00 hrs and my friend then suggested that we have something to eat. While we were drinking we had been joined by a third soldier and we three went into a restaurant. I gave this third soldier ten shillings so he could order the meal but he ran outside with the money. I went out to look for him and I saw my first friend standing on the sidewalk his face covered with blood. I asked him what had happened but he said he didn't know. I saw a L/Cpl Provost and a civilian policeman talking to him so I asked them what had happened. They said they didn't know. Being drunk I lost my temper and I pulled out my knife and said to the Provost "You must know who hit the soldier", but he replied "I do not know". Then I released the Provost and asked the civilian policeman what he knew about it, but he also said he didn't know.

My friend and I then started towards the station to catch the lorry back to camp. When I arrived at the station I had to wait for the truck. While waiting for the truck about seven Provost arrived. They stopped their jeep and the Provost sergeant came towards me. He asked me if I had a knife on me. My answer was "Yes", and I pulled the knife out of my pocket with the blade open. I asked "What do you want me for? I haven't done anything or caused anybody any trouble. The sergeant said "You'd better come with me", but I refused because I figured he had no reason to bring me in. Then the lorry came. I closed the knife and put it in my pocket and got on the truck with the rest of the boys and the truck drove off. Later I jumped off the truck because I didn't want to go back with the Provost. In jumping I lost my balance and fell striking my head on the pavement and getting a cut just above the right eye. I remember nothing further.

Oscar Haye

D35115 Pte. Haye O.

I certify that the foregoing Summary of Evidence consisting of five pages was taken down by me in the presence and hearing of the accused, and that Rule of Procedure 4 paras. (c),(d),(e),(f) have been complied with.

2 Aug 45

R.D. Russell, Capt.
Offr detailed to take
the Summary of Evidence.

RECEIPT

I acknowledge receipt of Exhibit 1, which I agree to hand to The Asst P who will hold until further orders.

Frank McDonald
Lt.
Prosecution.

FFF-102

PTE HAYES A.W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F.40098 Pte. Angus William HAYES - 2 Cdn Gen Pnr Coy

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. Sec 15(1)	Guilty	Guilty	
2nd	A.A. Sec 24(2)	Guilty	Guilty except that he was not absent of 1 hrs 15 mins - ground The Pros. suppressed the commencement of the convening officer The Court accepted the plea	
3rd				
4th				
5th			FINDING GUILTY	
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of AR see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 3 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of Two (2) year and to be put under stoppages of pay until he has made good $42.19 the value of kit lost by neglect

21 Mar 1944

(Sgd) ..... (Sgd) .....

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison, or detention barracks, until further orders.~~ (1. AA 57A. Delete if not used.)

(Sgd) M.K. Greene Col

Date 22 March

A/Commanding 'A' GP, CRU

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 573, 577.)

Accused.	Date.	Signature of Offr.
F.40098 Pte Angus William Hayes	23 March '44	J.H. Craig MAJOR 2 CDN. GEN. PIONEER COY.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF G.H.Q. 1 FEB 52

FIELD GENERAL COURT-MARTIAL

(CPA99 (1B Illus of AFA3) 40/P.R.R/1698 (3864))

Convened by Order of Col M.K. Greene A/Comd "A" Gp, CRU dated 20 Mar 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F.40098	Pte	Angus William	HAYES	2 CDN GEN PNR COY

PROCEEDINGS REVIEWED
J.H. Craig Capt
29 March 1944
REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 21 Mar/44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any,~~ and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number bearing reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. As 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(2) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~as interpreter? As~~

~~The Interpreter is sworn.(1) Do you object to~~ ~~as shorthand writer? As~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO - SIR

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any,~~ and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-col	D.L. REDMAN	HQ CRU
Member	Capt	D.F. Storey	2 C.I.B.U.
Member	Capt	J. Duchaine	6 C.I.B.U.
~~Waiting Member~~ ~~JA, if any~~			
Prosecutor	Capt.	D.F. Hoy	2 C.M.P.C.
Defending Offr	Lt	D.A.W. Kilpatrick	2 C.I.B.U.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused F.40098 Pte HAYES, A.W. before arraignment make(s) (no) ~~No~~ plea. (1)

(1. If a special plea is made (for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused ~~does~~ (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witness by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO - SIR (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 3, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A96. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(B).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO - SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. AFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Nothing further (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 1320, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused F-40098 Pte Angus William Hayes, of No2 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas is charged with:-

1ST CHARGE SEC 15(1) A.A

WHILE ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he

at Laurentide Camp, Witley, Surrey, absented himself without leave from 2359 hrs 28 Nov 43 until surrendering himself to his unit at 0630 hrs 18 Mar '44.

Total time absent: 110 days 6 hours 31 mins.

2ND CHARGE SEC 24(1) A.A.

WHILE ON ACTIVE SERVICE

LOSING BY NEGLECT HIS EQUIPMENT, CLOTHING AND REGIMENTAL NECESSARIES.

in that he

at Laurentide Camp, Witley at 0900 hrs 18 Mar 44 was deficient in kit to the of $44.40, forty four dollars and forty cents as per following list.

		Vocabulary value	Expired wear value
Blouses battledress	2	10.50	7.88
Trouses,	prs 2	10.78	8.09
Boots ankle	" 1	5.46	4.10
Braces, prs	1	.28	.22
Brushes, hair	1	.34	.26
Caps, comforter	1	.34	.26
" field service	1	.56	.42
Greatcoat	1	11.31	8.48
Combs, hair	1	.04	.03
Drawers cellular short	1	.43	.32
" woollen	prs 1	1.20	.90
Gloves, woollen	" 1	.47	.35
Knives clasp	1	.86	.65
Shirts, angols drab	1	2.03	1.52
Shoes, canvas r/sole	" 1	.65	.49
Socks worsted	" 2	.74	.66
Towels, hand	1	.32	.24
Vests, woollen	1	1.20	.90
Vests cotton gym	1	.36	.27
Bags, ration	1	.04	.03
Blankets, 1098	1	3.07	2.30
Sheets, ground	1	n2.94	2.21
R.A.G. haversacks	1	1.42	1.07
Eyeshields	prs 1	.08	.06
Capes , Anti- Gas	1	2.76	2.07
Gloves, leather	" 1	.82	.62
		$ 59.00	$ 44.40

(J.H.Craig) Major
A/ Commanding
2 Cdn Gen Pnr Coy.

Laurentide Camp,
Witley Surrey.
18 Mar 44.

To be tried by Field General Court Martial.

(M.K. Greene)Col,
A/Comd,
"A" Gp Cdn Rft Units,
C.A.(O).

20 Mar 44
Witley,Surrey

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA32)
40/P&S/1697 (2668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.40098	Pte		Angus William	HAYES	2 CDN GEN PNR COY

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has ~~(since)~~ committed the offence(s) set forth in the Charge Sheet ~~of~~ attached and on (date) 20 Mar 44 endorsed by me, ~~as an outside offr "suit for one"~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

~~XXXX

Medical Officers' Certificate
K.R. (Can) para. 557.

I certify that I have this morning examined F 4098 PTE HAYES, A.W
(No.) (Rank) (Name)

of 2 Coy Cdn Gen Pioneers and in my opinion he is ~~fit~~ unfit to under go trial by Court Martial.

Station Witley, Surrey

Date 21 Mar 44

(Medical Officer)

Plea of Mitigation

President & Members of the Court

Pte Hayes has been in the army over two years, and during that period has had no cases of drunkenness, or crimes other than being A.W.L., and only on two previous occasions did his A.W.L.'s exceed two days. This shows that his conduct while on parade has been good. I spoke with an officer of no 2 Cdn General Hospital regarding his conduct, and he stated he was a very good soldier, and worked hard.

Pte Hayes proceeded on a 48 hr. leave, and it was on this occasion that he went A.W.L. Over staying his leave was due to gold troubles. His girl friend

was going to have a baby
[illegible] whom he was the father.

The girls mother had nothing
to do with the girl and more or
less disowned her, and also
told her sister to have nothing
to do with her, and not to
allow her to live at her place
she would also have to go to
a so called workhouse until
she became 21 unless there
was someone to take care
of her. She pleaded with the Hayes
not to leave her.

Pte Hayes liked the girl,
and knew he was responsible
for these difficulties, so to help the
girl he found living quarters for
her. While he was A.W.L. he was
working, so as to earn money
for hospital expenses, and also
for the living quarters. He made
arrangements at the Lambeth Hosp.

and she was admitted under
his name

Pte Hayes also knew he
was Category B-2, and was to
go back to Canada sometime
in December, but instead of
just leaving the girl he felt
he had a responsibility and
should help her.

Several days after
returning from the hospital
his girl friend took very sick.
He arranged for a woman to
take care of the baby while
she went to Dulwich Hospital
to undergo an operation. She
was placed on the danger list
as the attached sheet no ①
shows. Sheet no ② is the
visiting slip he received once
his girl friend was placed in
a special ward waiting to
undergo the operation.

Pte Hayes visited the hospital daily. All the time his being A.W.L. was preying on his mind, and every time he told her he was going back to camp she would scream and cry, and when he saw these troubles on his hands, he just couldn't leave. Finally he visited his girl friends' sister and told her to tell his girl friend he was returning to camp. He also left £5 with her asking her to give it to the hospital for part of the expenses. Also attached you will find sheet no (3) which is written by Pte Hayes girl friends sister which also indicates he had been wanting to return.

I would also wish to point out to the court that Pte Hayes is very young. He is 19 years of age, and on making out a statutary declaration to that effect. under the circumstances of the troubles Pte Hayes has undergone, and also that he is only 19 years of age I ask that the court realize the difficulty he was in when passing sentence. I might also state he returned to camp himself.

Adjt Kirkpatrick

Officer for defence

DULWICH HOSPITAL
EAST DULWICH GROVE, S.E.

Re Private Augustus Hempes

This man who has been admitted to hospital suffering from an acute condition & is in the danger list. I understand Pte Hempes had to make arrangements & was ready to be looked after before the end came.

Thanks Chaplain
Mobile Unit
Senior Officer
Pte Medical Staff

WM

(2)

G.H. 228.

No. 174620

London County Council.
Public Health Department.

DULWICH HOSPITAL, Hospital.
EAST DULWICH GROVE, S.E.22.

WARDS CLOSED
1 P.M. TO 2.30 P.M.
3.45 .. .. 6.15 ..
8.30 .. .. 9.30 ..

17 · 3 · 1944

Dear Sir (or Madam),

I have to inform you that Hayes Florence M
Ward H 2. is undergoing an operation
and may be visited on any day, as long as the name remains
on the special visiting list.

Will you please note that the number of visitors at the
bedside should be not more than two at any one time.

Yours faithfully,

H. A. Lewington.

Steward.

To Mr. Angus Hayes
2 Summerlayton Rd
S W 9.

(3)

V. McGale
83 Blackfriars Rd
SE1

Dear Sir, I think it would be better to write to explain why Pte. Hayes as been a absentee It is not his fault he has been wanting to come back for a long while, but my sister has been very ill she gave birth to a child Feb 21st she has been very ill she is now in Dulwich hospital I am sure it is not his fault as you can get particulars from both hospitals Lambeth and Dulwich.

yours truly
Mrs McGale

a/f "A"

RECORD of the Declaration of a Court of Inquiry assembled at Laurentide Camp on the 20 day of December 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. F-40098 Pte HAYES, A.W.

DECLARATION

The Court declare that No. F-40098 Pte HAYES A.W.

illegally absented himself without leave from Laurentide Camp, Witley Surrey at 2359 hrs on the 28th day of November '43, that he is still so absent, and that on the 20 December '43 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE
N/A			

Capt H.D.Hay President

Lieut W.D.Lowden Member

Lieut. R.W. Spurr Member

Signed at Laurentide Camp

this 20 day of Dec 1943

Signature of Commanding Officer Major J.H.Craig

Certified true copy A.Holdaway capt 18 Mar 44

Signature of officer having custody of original record

M.F.B. 375
A.F.B. 135
(6534—F-41 (1900))
H.Q. 1773-99-287

EX 179

(1) I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at East Meon, Hants, preliminary to my Court Martial. I further acknowledge that I am being brought to Court Martial.

Hayes AW

F-40098 Pte Hayes, A.W.

Dated at Witley
Surrey
this 2nd day of
March 1944

(2) I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of _____
if he is available.

Hayes AW.

Dated at Witley
Surrey
this 2nd day of
March 1944

SUMMARY OF EVIDENCE

Laurentide Camp,
Witley, Surrey
18 Mar 44.

Summary of Evidence
in the case of F-40098 Pte Angus William Hayes, No 2 Canadian General Pioneer Coy.

R.P.4(F) The Commanding Officer directs that the evidence be taken under oath.

FIRST WITNESS Lieut. F.G.Rivers of No 2 Canadian General Pionner Coy, having been duly sworn states:-

I am Lt.F.G.Rivers, 2 Cdn Gen Pnr Coy. I present certified true copy of the Record of Declaration of Court of Inquiry assembled at Laurentide Camp, Witley on 20 Dec.43(Appx."A") The said declaration declared that F-40098 Pte Hayes, A.W. of 2 Cdn Gen Pnr Coy illegally absented himself without leave at Laurentide Camp, Witley at 2359 hrs on 28 Nov 43 and was still so absent on 20 Dec 43.

F.G. Rivers Lt
Lieut. F.G.Rivers

SECOND WITNESS The accused declines to cross- examine the witness.

M-11368 A/Sgt Surtees, J. of 2 Canadian General Pioneer Coy, having been duly sworn states:-

I am M-11368 A/Sgt Surtees,J., 2 Cdn Gen Pnr Coy. On the morning of 18 Mar 44 I was on duty as company orderly sergeant. At 0630 hrs of 18 Mar 44 I entered Hut A.6 and F-40098 Pte Hayes, A.W. whom I now recognise as the accused, reported to me that he had returned from being A.W.L. He was sober and was in a bed. I placed him under open arrest telling him it was for A.W.L. At 0730 hrs I instructed Bdr.Pajala O.M. to place him under close arrest.

J. Surtees
M-11368 A/Sgt Surtees J.

THIRD WITNESS The accused declines to cross-examine the witness.

H-36703 CQMS Luettge, F.T. of 2 Canadian General Pioneer Coy, having been duly sworn states:-

I am H-36703 CQMS Luettge, F.T. 2 Cdn Gen Pnr Coy. I am quarter-master sergeant of 2 Cdn Gen Pnr Coy,and have been since December of 1942. I recognise the accused as F-40098 Pte Hayes A.W. On 20 Dec 43 on being informed of the absence of Pte Hayes A.W., an inventory was made in the presence of an officer, of his kit turned into Q.M.stores. On his return a kit inspection was held on 18 Mar 44 and the result compared with the former inventory. The resulting kit deficiencies are as now listed.

					Less 25%
Blouses, battledress		2	@ 5.25	10.50	7.88
Trouses "	prs	2	@ 5.39	10.78	8.09
Boots ankle	"	1	@ 5.46	5.46	4.10
Braces	"	1	@ .28	.28	.22
Brushes, hair		1	@ .34	.34	.26
Caps, comforter		1	@ .34	.34	.26
" field service		1	@ .56	.56	.42
Greatcoat		1	@ 11.31	11.31	8.48
Combs, hair		1	@ .04	.04	.03
Drawers, cellular short		1	@ .43	.43	.32
" woollen	prs	1	@ 1.20	1.20	.90
Gloves, woollen,	"	1	@ .47	.47	.35
Knives, clasp		1	@ .86	.86	.65
Shirts, angola drab		1	@ 2.03	2.03	1.52
Shoes, canvas, r/sole	"	1	@ .65	.65	.49
Socks, worsted,	"	2	@ .37	.74	.66
Towels, hand		1	@ .32	.32	.24
Vests woollen		1	@ 1.20	1.20	.90
" cotton, gym		1	@ .36	.36	.27
Bags, ration		1	@ .04	.04	.03
Blankets, 1098		1	@ 3.07	3.07	2.30
Sheets, ground		1	@ 2.94	2.94	2.21
H.A.G. haversacks		1	@ 1.42	1.42	1.07
Eyeshields	prs	1	@ .08	.08	.06
Capes, Anti-Gas		1	@ 2.76	2.76	2.07
Gloves, leather	prs	1	@ 82	.82	.62
				$ 59.00	$ 44.40

Pte Hayes A.W. on his return has been unable to produce M.B.M.1 Part III, but I can state that in the normal course of events he would have been issued with an M.B.M.1 Part III and that he would have been issued with full kit and has been issued with full kit.

Question by the accused:

Have you charged me with a ground sheet?

Answer:

Yes.

Question by the accused.

Did we not turn in ground sheets that were rubber last year?

Answer.

Yes.

H-36703 C/ME Luettge, F.T.

The accused declines to cross-examine the witness further.

The accused is duly cautioned as follows "Do you wish to make any statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement.

I certify that the foregoing summary of evidence consisting of three pages were taken down by me in the presence of the accused at Laurentide Camp, Witley, Surrey onthe 18 Mar 44 and that Rules of Procedure 4(C),(D),(E),(F), have been duly complied with.

J.R.C. Dowdell Lieut.

Lieut. J.R.C.Dowdell
Officer taking the summary

Laurentide Camp,
Witley, Surrey.
18 Mar 44.

EXA

M.F.M. 6
(A.F. B.1227)
40/P & /8136 (2968)

No. F40098 Name Hayes A.W. Sqn., Battery, or Company Corps C.I.C. Date of enlistment 18 Mar 42 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. J.H. Craig Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Sheet destroyed 18 Sept 42 Date of last entry 15 Sep 42 No Cases of drunkenness Sheet destroyed defaced 13 May 43 J.H. Craig Major									J.H. Craig Major
Field	16 Oct 42	Pte		Sec.40AA-W.O.A.S. Conduct to the prejudice,etc,absent from duty	Sgt Carney L/C McNutt	3 days C.B.	17 Oct 42	Major A.C. Gerovan	JHC
Field	26 Nov 42	Pte		Sec.15(1)AA- W.O.A.S. from 2200 hrs 26 Nov 43 to 0630 hrs 27 Nov 42 (8 hrs 30 min)	Sgt Ring F.W.	Admonished	27 Nov 42	Major P.A. Woods	JHC

P.T.O.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11 Mar 43	Pte		(1)Sec.15(1)AA-W.O.A.S. AWL from 1200 hrs 11 Mar 43 to 2200 hrs 25 Apr 43 (45 days 10 hrs) (2)Sec.24 AA-W.O.A.S. Losing by neglect- his clothing and equipt. to the value of £6-11-5½ Released from Detention Barracks on 21 Aug 43 sentence having expired.Remission earned under 'Rules for detention Barracks and Military Prisons'-39 days. J H Craig major	CSM Graham Sgt Elphinstone C/QMS Luettge Documentary	150 days Detention Confirmed Cmdr "A" Gp. C.R.U. 7 May 43 J H Craig major	3 May 43	F.G.C.M.	Forfeits 46 days Pay FRI 149(1)(a) Forf 150 days Pay FRI 149(1)(b) Forf 6 days Pay FRI 149(1)(c) Stoppages £6-11-5½

M.F.M. 6
(A.F. B.122)
40/P.C./8136 (2nd)

No. F40098 Name Hayes A.W. | Sqn., Battery, or Company | Corps C.I.C. | Date of enlistment 18 Mar 42 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. J.H. Craig major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	12 Sep 43	Pte		Sec.15(1)AA WOAS AWL from 2200 hrs 12 Sep 43 to 0700 hrs 13 Sep 43 (9 hrs)	Sgt Flight J.M.	7 days C.B.	13 Sep 43	Major J.H. Craig	Forf 1 days Pay FRI 149 (1)(a)
Field	8 Oct 43	Pte		Sec.15(1)AA WOAS AWL from 1200 hrs 8 Oct43 to 1000 hrs 10 Oct 43 (1 day 22 hrs)	Sgt Surtees Documentary	7 days C.B. Forf 7 days Pay FRI 149(2)	11 Oct 43	Major J.H. Craig	Forf 2 days Pay FRI 149 (1)(a)
Field	22 Oct 43	Pte		Sec.15(1)AA WOAS AWL from 2200 hrs 22 Oct 43 to 0800 hrs 1 Nov 43 (9 Days 10 hrs)	Sgt Burtt Sgt Surtees	21 days Detn	1 Nov 43	Major J.H. Craig	Forf 10 days Pay FRI 149 (1)(a) Forf 21 days Pay FRI 149 (1)(b)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Certified true copy consisting of 2 sheets

Officer having custody of original documents J.H. Craig Major
(J.H. Craig) Major
20 Mar 44

EXC

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F-40098	Pte	HAYES Angus William	2 CDN GEN PNR COY.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Sec.15(1)A.A. — 4 times.

For Sec.40 A.A. — 1 times.

For ____ — ____ times.

For ____ — ____ times.

Date of first entry in Field Conduct Sheet 16 Oct 42

Date of last entry in Field Conduct Sheet 22 Oct 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused has forfeited ____ days of service on account of ____ beginning on the ____ day of ____

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 3 days in military custody, i.e., NIL days in open arrest, 3 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 24

6. The date of his attestation is 18 Mar 42

7. The service which the accused is allowed to reckon is 2 years

8. The accused is in possession of† NIL DECORATIONS

†State the military decoration (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused was on the ____ day of ____ reduced to the present rank.

In the substantive rank of ____

In the war substantive rank of ____

In the acting rank of ____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W.L.4620/668. 100,000 4/42 A. & E.W.Ltd. Gp.698
W.L.2928/1873 60,000 9/42 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F.G.C.M.	Field 3 May 43	(1)Sec.15(1)A.A. (2) Sec.24 A.A.	150 days detention	39 days remission.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 21 ~~16~~ day of March 1944

A/Capt
A/Comd 2 Cdn Gen Base Coy.

NOD-113

PTE HAYES A.W.

P-40098 Pte. Angus William HAYES
2 Cdn. Gen. Pioneer Coy

DD-113

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this 2nd day of May, 1943

Whereas it appears to me, the undersigned, an officer in Command of "A" Group Canadian Reinforcement Units, Canadian Army (Overseas), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer]~~ *Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~[I command to appoint—~~

~~*(1. Three officers to form the Court)~~

~~*(2. A field officer as President)~~

~~for the following reasons, namely:—]~~ * Omit if not applicable.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	W.N. SHIELDS (L.Sup.R.)	2 C.I.R.U.

Members.

Rank.	Name.	Regiment.
Capt.	P.A. Brooks (R. Wpg. Rif.)	2 C.I.R.U.
Lieut.	S. Keddy (S. Sask. R.)	2 C.I.R.U.
Waiting Member Lieut.	R.C. Ross (Canadians of [illegible])	2 C.I.R.U.

*Signed G. Walter Barker Colonel

Commanding "A" Group Cdn. Rft. Units,

Convening Officer. C.A.(C)

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
F-40098 Pte. Augus William HAYES 2 Cdn.Gen.Pion.Coy.	FIRST CHARGE A.A. Sec. 15(1) SECOND CHARGE A.A.Sec. 24(2) (SEE CHARGE SHEET ATTACHED)	Guilty Guilty	Guilty To undergo 90 days detention and to be dismissed with ignominy. To forfeit all pay and allowances. To undergo 150 days detention and to be dismissed with ignominy. To forfeit all pay and allowances.	I confirm the findings and sentence of the Court. [illegible] Colonel.

I have satisfied myself that none of the officers detailed as members of this Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the charges before this Court Martial.

M.B.Shields Major
President of the Court.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) [illegible] Colonel (Signed) M.B.Shields Major
Commanding "A" Group Cdn.Rft.Units. *President.*
Convening Officer (*c*) C.A.(O).

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 3 day of May, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The interpreter~~ Nil
4. ~~The officers under instruction~~ Nil

were duly sworn.

* Omit if not applicable.

Signed this 3 day of May 1943.

[illegible] Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this Nil day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 7 day of May 1943

[illegible] Colonel.
Confirming Officer.

Promulgated and extracts taken in the case of F40098 Pte. HAYES, A.W.

(*a*) (Dated) 7 May 43 (Signed) [illegible] Capt. for
OFFICER COMMANDING
2 CDN. GEN. PIONEER COY.

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W.L. 4780/1937 25 M. 5/40 K.J.L./1656(2) Gp. 598.3

CHARGE SHEET

The accused F40098 Pte HAYES A.W. of No 2 Canadian General Pioneer Company, a soldier of the Canadian Army(Overseas) while on active service is charged with:

Absenting himself without leave

in that he

1ST CHARGE SEC. 15 (1) ARMY ACT. At Jasper Camp, Witley, Surrey absented himself without leave from 1200 hours 11 March '43 until he surrendered to the Metropolitain Police in London at 2200 hours 25 April '43. Total absence 45 days 10 hours.

2ND CHARGE SEC. 24(2) ARMY ACT. Losing by neglect his equipment clothing and regt'l necessaties

in that he

at Jasper Camp, Witley, Surrey on 29 April '43 was deficient of:

Battle-dress, blouse	1	£1. 7. 8	£1. 0. 9
Battle-dress, trouser	2	2.15.10.	2. 1.10½
Boots, ankle, prs	2	2. 3. 0	1.12. 3
Brasses, button	1	0. 0. 2	0. 0. 1½
Brushes, bt polishing	1	0. 0. 9	0. 0. 7
Brushes, button	1	0. 0. 8	0. 0. 6
" shaving	1	0. 1. 4	0. 1. 0.
" tooth	1	0. 0. 4½	0. 0. 3½
Caps Comforter	1	0. 1. 1½	0. 0.10½
Caps field service	1	0. 3. 8	0. 2. 9
Drawers woolen prs	1	0. 5. 3	0. 3.11½
Dressing first field	1	0. 1. 1	0. 0.10
Gloves woolen prs	1	0. 2. 7½	0. 2. 0
Knife clasp	1	0. 5. 2½	0. 3.11
Socks, prs	2	0. 3. 4	0. 2. 6
P.T. Shorts	1	0. 1.11.	0. 1. 5½
Bags ration	1	0. 0. 1½	0. 0. 1
Tins mess rect	1	0. 3. 1	0. 2. 4
Wallets, gas	1	0. 0. 9	0. 0. 7
Ointment gas	1	0. 0. 5½	0. 0. 4½
Resp. haversack	1	0. 6. 6	0. 4 10½
Helmet steel	1	0.10. 0½	0. 7. 6½
Total.		8.14.11½	6.11. 5½

Jasper Camp, Witley
2nd May 1943.

J.W. Craig major
(J.W. Craig) Major
Commanding
2 Cdn. General Pioneer Coy.

To be tried by Field General Court Martial.

G. Hedley Basher
(G. Hedley Basher) Colonel,
Commanding,
"A" Group Cdn. Rft. Units,
C.A. (O).
Convening Officer.

Witley, Surrey.
2 May 1943.

2 Canadian General Pioneer Company

MEDICAL OFFICER'S REPORT

I certify that No. F 40098 Pte Hayes A.W.
of 2 Cdn.Gen.Pnr.Coys in a good state of health,
and fit to undergo Trial by Court martial.

J B Neilson Capt
Medical Officer

Station Jasper Camp, Witley.

Date 3 May 43.

M. F. B. 246
2SM—9-41 (1763)
H.Q. 1773-39 680

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT 2 C.I.R.U WITHIN ON THE 3 DAY OF Nov 1943

TRIAL OF:-No.F. 400938 Pte August, William Hayes Unit 2 Can Gen Pioneer Coy

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Capt J.E.Kelsey 2 Can Gen Pioneer Coy (Unit)

Defending Officer:- (Name) Capt N.Bullock 2 Can P Coy (Unit)

At 1030 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 -

The President, members and judge advocate (if any) are duly sworn.

The following constitute the Court:

President..Major N.W.Wiebe L.S.R.(Unit)

Members ..Capt P.A.Brooks R.W.R.(Unit)

..Lieut S.Heady S.S.R.(Unit)

The officers under instruction are duly sworn.

Q2 Do you object to.....acting as shorthand writer? A2 -

~~The shorthand writer is duly sworn.~~

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Court is closed to consider its finding. Court is re-opened.

Name..T.A.F.Kelsey.....(Unit) 2 Can Gen Pioneer Coy, produces AFB 296 and MFM 6 and upon being questioned by the Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3 (To accused) - Do you wish to make any statement in mitigation of punishment? A3 - No

Q4 Do you wish to give evidence yourself or to call any witnesses as to character? A4 - No

---

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE.

(1)

/2

Defending Officer states:

I would like the court to consider this man's previous record. You will find that his convictions on A.W.L. charges have been for minor infractions. On top of that, this man is Category B-2, which goes to show that there is definitely somthing ailing him and which possibly tended to bring about his recent offence.

This man was due for an increase of pay, but as this offence occurred just at the time he was due for it, it has been withheld. This increase in pay required six months good conduct, so hi behaviour up to this last offence was fairly good.

I ask the court to consider these different factors. Further as a severe punishment in this case will involve considerable forfieture of pay, and will require considerable time to make good.

I appeal to the court to be as lenient as possible in order that this may be made up quickly, and not give the accused the imppession that he is being persecuted.

ABSENTEE REPORT. 2 CDN. GEN. PIONEER COY.

Exhibit "A"

Army No.	Rank	Name	When Absent	Company or Regt. or Depot	In what clothing
F 40098	Pte	HAYES A.W.	12-00 hrs. 11 MAR. 43.		

Date 11-3-43. Sgt. J. T. Toms Orderly Sergeant.

and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. F-40098 Pte. Hayes, A.W.

DECLARATION

The Court declare that No. F-40098 Pte. Hayes, A.W.

No. 2 Canadian General Pioneer Company, Canadian Army (Overseas)

illegally absented himself without leave from 1200 hrs 11 Mar 43

at Jasper Camp, Hilley on the 2nd. day of April 43.

that he is still so absent, and that on the 2nd April 43 he was deficient, and that he is still deficient of the following articles:—

ARTICLES		£.s.d.	VALUE £.s.d.
Battle-dress, blouse	1	1.7.6	1.0. 9
Battle-dress, trouser	2	2.15.10	2.0. 10½
Boots, ankle prs	2	2.3.0.	1.12 3
Brasses button	1	0.0.2	0.0. 1½
Brushes pt. polishing	1	0.0.2	0.0. 7
" button	1	0.0.8	0.0. 6
" shaving	1	0.1.4	0.1. 0
" tooth	1	0.0.4½	0.0. 3
Caps Comforter	1	0.1.1½	0.0. 10½
" field service	1	0.1.0	0.0. 9
Drawers woolen prs	1	0.3.3	0.3. 11½
Dressing first field	1	0.1.1.	0.0. 10
Gloves woolen prs.	1	0.0.7½	0.0. 0
Knife clasp	1	0.3.2½	0.3. 11
Socks, prs.	2	0.1.4	0.0. 6
U.T. Shorts	1	0.1.11	0.1. 5½
Bags ration	1	0.0.1½	0.0. 1
Flannels vest	1	0.1.1	0.0. 4
Wallets/gas	1	0.0.9	0.0.

ARTICLES		£.s.d.	VALUE £.s.d.
Ointment gas	1	0.0. 5½	0.0. 4½
Resp. haversack	1	0.0. 6	0.0. 10½
Helmet steel	1	0.10. 8	0.7. 0½
TOTAL		8.14.11½	6.11. 5½

H R Kelsey Capt President

I W Reed Capt Member

M Burbank Capt Member

Signed at Jasper Camp, Hilley

this 2nd. day of April 19 43

Signature of Commanding Officer J H Craig MAJOR

(J. H. CRAIG) Major

2 CDN. GEN. PIONEER COY.

Certified true copy J H Craig MAJ

Signature of Officer having custody of original record

2 CDN. GEN. PIONEER COY

M.F.B. 373
A.F.B. 113
5634—9-41 (1000)
H.Q. 1773-28-237

RECORD of the Declaration of a Court of Inquiry assembled at Jasper Camp, Aitley. on the 2 nd. day of April 19 43 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. F-40098 Pte. Hayes, A.W.

DECLARATION

The Court declare that No. F-40098 Pte. Hayes, A.W.

No. 2 Canadian General Pioneer Company, Canadian Army (Overseas)

illegally absented himself without leave from 1200 hrs 11 Mar 43

at Jasper Camp, Aitley on the 2nd. day of April 43.

that he is still so absent, and that on the 2nd April 43 he was deficient, and

that he is still deficient of the following articles:—

ARTICLES		£.s.d.	VALUE £.s.d.
Battle-dress,blouse	1	1.7.8	1.0. 9
Battle-dress,trouser	2	2.15.10	2.[illegible] 10½
Boots, ankle prs	2	2.3.0.	1.12 3
Brasses button	1	0.0.2	0.0. 1½
Brushes bt.polishing	1	0.0.9	0.0. 7
" button	1	0.0.8	0.0. 6
" shaving	1	0.1.4	0.1. 0
" tooth	1	0.0.4½	0.0. 3½
Cape Comforter	1	0.1.1½	0.1. 10½
" field service	1	0.1.0	0.0. 9
Drawers woolen prs	1	0.1.3	0.1. 11½
Dressing first field	1	0.1.1.	0.0. 10
Gloves woolen prs.	1	0.0.7½	0.0. 0
Knife clasp	1	0.1.2½	0.1. 11
Socks, prs.	2	0.1.4	0.0. 6
P.T. Shorts	1	0.1.11	0.1. 5½
Bags ration	1	0.0.1½	0.0. 1
Tinmess vest	1	0.1.1	0.0. 4
Wallets/gas	1	0.0.9	0.0.7

ARTICLES		£.s.d.	VALUE £.s.d.
Ointment gas	1	0.0. 5½	0.0. 4½
Resp.haversack	1	0.6. 6	0.4. 10½
Helmet steel	1	0.10. 8	0.7. 9½
TOTAL		6.14.11½	6.11. 5½

R.B. Macy Capt President

J.W. Reed Capt Member

M Buckerbe Capt Member

Signed at Jasper Camp, Aitley

this 2nd. day of April 19 43

Signature of Commanding Officer J.H. Macy MAJOR

2 CDN. GEN. PIONEER COY.

Certified true copy J.H. Macy MAJOR

Signature of Officer having custody of original record

2 CDN. GEN. PIONEER COY

M.F.B. 375
A.F.B. 115
(6/41—9-41 (7000)
H.Q. 1773-39-257

IMMEDIATE

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depots are shown in the Monthly Army List.

† NOTE.—Special instructions apply in war for the disposal of absentees and deserters from the Army, who surrender to the civil police; e.g., such personnel will be taken over from the civil authorities by the O.C. the nearest military unit or the O.C. Troops at the nearest military station. (A.C.I. 489/1940).

(20403) Wt.49435/452 25,000 3/42 A.& E.W.Ltd. Gp.698 Forms,O.1617/18.

I CERTIFY that the man whose personal description is given below surrendered himself to* P.C. 438 'K' Varney

at York Road, S.W.1. at (hour) 10pm on the 25th day of April 1943 being No. 2.40056

(Rank and Name) Pte. Hayes A.W.

a deserter (or absentee without leave) from 2nd Canadian General Pioneer Company.

and it appears to me from his confession that he is a deserter ~~or absentee without leave~~.

*After the word "to" to be inserted the name and rank of the police officer concerned.

Age 25 Height 5 Feet 5½ Inches

Complexion sallow Hair dark brown

Eyes green

Marks nil

In uniform or plain clothes plain clothes

Probable Date and Place of Attestation	18.3.43 New Glasgow. N.S.
Probable Date of Desertion or beginning of absence, and from what place	17.4.43 Whitley.

Signature of Officer of Police in charge of

METROPOLITAN POLICE KENSINGTON Station 8018

25-4-43 Date of Signature

Army Form O.1647
R.A.F. Form 1017

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies only in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

CERTIFICATE IN ACCORDANCE WITH P.C. 2707 of 10-[illegible]-42

I CERTIFY that No .....Rank.....Name.....

Unit.....Was Arrested at.....place.

at.....hours.....date.....and that at the time of his arrest he was wearing (Military Uniform) or (Civilian Clothes)

Signature of Provost Marshall, Assistant Provost Marshall or other Officer or the Commanding Officer of the portion of His Majesty's forces or the Officer Warrant Officer or Non Commissioned Officer in charge of the detachment of the Canadian Provost Corps, auxiliary Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable.)

.....Capt.

London .....(A.Pers.) D.A.P.M. London Area.

To C.O.

I was NCO i/c Guard Room at about 15.15 hrs 27 apl 43 when F40098 PTE Harper A.W. was brought in by the C.P.C. with accompanying documents.

C.O.

Pte Simpson J.
R.P.

(1) I hereby acknowledge that I have been served with a true copy of the summary of evidence taken at Jasper Camp, Witley, Surrey, preliminary to my Court-martial. I futher acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

Dated at Witley, Surrey,
this 29th day of
April, 1943

A W Hayes.

(2) I hereby acknowledge that I have been served with a true copy of an additional summary of evrdence taken at Jasper Camp, Witley, Surrey, preliminary to my Curt-martial.

(3) I hereby request that the Convening Officer a opoint an Officer to represent me at my trial.

I desire the services of A W A Hayes.
if he is available.

Dated at Witley, Surrey,
this 29th day of
April, 1943

LIST OF WITNESSES FOR THE PROSECUTION & DEFENCE

B.62579 C.S.M. GRAHAM, L.M.

B.35231 Sgt. ELPHINSTONE, A.V.

H.36703 C.Q.M.S. Luettge, F.T.

LIST OF EXHIBITS

"A" - - - Tattoo Report dated 11 Mar 43.

"B" - - - Declaration of Court of Inquiry dated 2 Apr 43.

"C" - - - Certificate of Surrender to Civil Police. Army Form 1617 dated 25 Apr 43.

File No. 12/20. . .

Officer Commanding,
GUN OP CAM. AREA No.2 PIONEER CORP.
Re:- 5-4-98 PTE. HAYES A.W. of above unit.

1. Forwarded for your information and necessary action, please, and disposal under O.A.R. . . No. 572 dated 20 Oct. 40.

London
26 APRIL 43. No Complaints

Capt.
(J.) D. A. F. M.,
London Area.

SUMMARY OF EVIDENCE

13

Jasper Camp,
Witley, Surrey
29 Apr 43.

(The accused was present at the Summary of Evidence when evidence of witnesses was taken in writing.)

Summary of Evidence in the case of F.40098 Private Angus William Hayes, No. 2 Cdn General Pioneer Company.

R.P.(F) The Commanding Officer directs that the evidence be takne under oath.

B.62579 A/C.S.M. Graham, L.M. of No. 2 C.G.P.C. stationed at Jasper Camp, Witley, Surrey, having been duly sworn states:-

I am B.62579 C.S.M. Graham, L.M. of No. 2 Cdn Gen Pioneer Coy., At approximately 1000 hrs 25 Feb 43, I issued travelling warrant ration cards, and pass to F.40098 Pte. Hayes, A.W. The duration of his pass was from 1200 hrs 25 Feb 43 to 1200 hrs 11 Mar 43. At 1400 hrs on 11 Mar 43 I checked the leave roster and noted that F.40098 Pte. Hayes, A.W. had not returned; further, he was reported absent on the Tattoo Absentee report dated 11 Mar 43 "Exhibit "A" which I submit as evidence. To my knowledge, he was not again seen by me until I paraded him to the Commanding Officer on a charge of absence without leave at 1700 hrs 27 Apr 43. I further submit a certified true copy of Declaration of a Court of Inquiry, dated 2nd Apr 43, assembled for the purpose of investigation the illegal absence and deficiencies of kit of F.40098 Pte. Hayes, A.W. "Exhibit "B", also Certificate of Surrender to the Civil Police of a deserter or absentee without leave. Army Form 1617 and attachments. (Exhibit "C")

A/C.S.M. Graham, L.M.

The accused declines to question the witness.

B.35231 Sgt. Elphinstone, A.V., of No. 2 Cdn Gen Pioneer Coy., having been duly sworn states:-

I am B.35321 Sgt. Elphinstone, A.V. of No. 2 Cdn Gen Pioneer Coy. Sir, on 12 Mar 43 at 0600 hrs I relieved Sgt. Toms of his duties as Orderly Sgt. Pte. Hayes, A.W. was on the absentee report. I did not see or hear of Pte. Hayes until 27 Apr 43, when it was reported to me that he was in the guard room.

B.35231 Sgt. Elphinstone, A.V.

The accused declines to question the witness.

H.36703 C.Q.M.S. Leuttge, F.T. of No. 2 Cdn Gen Pioneer Coy., having been duly sworn states:

I am H.36703 C.Q.M.S. Leuttge, F.T. of No. 2 Cdn Gen Pioneer Coy I certify that a kit inspection was held by myself and Cpr. Boscariol on 2 Apr 43 and immediately on his return to the unit. The following items of kit were found deficient:

Battle-dress, blouse	1	£1. 7. 8	£1. 0. 9
Battle-dress, trousers	2	2.15.10	2.1.10½ (2-1-10½)
Boots, ankle, prs	2	2. 3. 0	1.12. 3
Brasses, button	1	0. 0. 2	0. 0. 1½
Brushes, bt. polishing	1	0.0. 9	0. 0. 7
Brusnes, button	1	0. 0. 8	0. 0. 6
" shaving	1	0. 1. 4	0. 1. 0
" tooth	1	0. 0. 4½	0. 0. 3½
Caps comforter	1	0. 1. 1½	0. 0.10½
Caps field service	1	0. 3. 8	0. 2. 9
Drawers woolen prs	1	0. 5. 3	0. 3.11½
Dressing first field	1	0. 1. 1	0. 0.10
Gloves woolen prs.	1	0. 2. 7½	0. 2. 0
Knife clasp	1	0. 5. 2½	0. 3.11
Socks, prs	2	0. 3. 4	0. 2. 6
P.T. Shorts	1	0. 1.11	0. 1. 5½
Bags ration	1	0. 0. 1½	0. 0. 1
Pins mess rect	1	0. 3. 1	0. 2. 4
Wallets/gas	1	0. 0. 9	0. 0. 7
Ointment gas	1	0. 0. 5½	0. 0. 4½
Resp.haversack	1	0. 6. 6	0. 4.10½
Helmet steel	1	0.10. ½	0. 7. 6½
TOTAL		28.14.11½	6.11. 5½

Total values, Vocabulary price £8-14-11½. Unexpired value £6.11.5½

H.36703 CQMS Leuttge, F.T.

The accused declines to question the witness.

The accused having been duly cautioned in accordance with Rules of Procedure 4(E) reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence of the accused at Jasper Camp, Witley, Surrey on the 29 Apr 43 and that Rules of Procedure 4(C), (D), (E), (F), & (G) have been duly complied with.

A.H. Reed Capt

(T.H. Reid) Captain,
Officer taking the Summary

Jasper Camp,
Witley, Surrey
29 Apr 43.

Sec 15(1) 1 2

Nil
Not u/s.

Not previously convicted.

nil

7

nil

24

18 Mar 42

1 year 1 month 15 days

1 yr 1 mo.15 dys

1 yr 1 month 15 days

Not entitled.

Nil

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

J.H.Craig - Major
(J.H.Craig)
O.C. #2 Fin Gen Pnr Coy.
(Officer having custody of original documents).
2 May 43.

M.F.M. 6
(A.F.B. 122)
40/F & S/138 (5637)

No. F40098 Name Hayes A.W. Sqn., Battery, or Company Corps C.B.H. Date of enlistment 18 Mar 42. G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1. | Signature O.C. Company, etc. J.H. Craig Major. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
	Sheet destroyed 18 Sep 42. Date of last entry 15 Sep 42. No.cases of drunkenness - NIL. Sgd. R.W. SPURR, Lt.								
Field	16 Oct 42	Pte		Sec 40 AA - W.O.A.J. Conduct to the prejudice, etc., Absent from duty at 0800 hrs, 16 Oct 42.	L/Cpl McNutt Sgt Carney	3 days C.B.	17 Oct 42	Major A.C. Cerovan	
Field	26 Nov 42	Pte		Sec 15 AA - W.O.A.J. AWL from 2200 hrs 26 Nov 42 to 0630 hrs 27 Nov 42 (8 hrs 30 mins).	Sgt Ring	Admonished	27 Nov 42	Major P.A. Woods	Forf 1 Day's Pay FR&I 149 (1) (a)

Certified True Copy consisting of one Sheet
J.H. Craig MAJOR
1 CDN. GEN. PIONEER COY.
Officer having custody of original documents

(PTO)

4H – 128.
Plé. Hayes. C.A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D-P1920 Pte Hayes, C.A.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B353 or AF B296.)

Time in confinement awaiting present trial—a total of 16 days, of which 6 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be imprisoned with hard labour
for seventeen months.

(Sgd) P.K. McDougall, Capt — 22 Dec 44 — (Sgd) A.A. Telford Major
Judge-Advocate, if any. — Date awarded. — President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)
(1. AA 57A. Delete if not used.)

(Sgd) A.A. Telford, Lt-Col

Date 22 Dec 44 — Commanding C.A.A.S.F.O. 2 Cdn Inf Div, C.A.(A) — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D-P1920 Pte Hayes, C.A.R.	31 Dec 1944	T.Kerry, Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4M-128

CPA66 (To Hdq of APA1)
40/P.W.R./1668 (M1)

4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Col A.A. Telford Comd 2 Cdn Inf Div dated 20 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-P1920	Attested true Copy. Pte	Charles Arthur	Hayes	C.A.R.

A.D.J.A.,
Cdn Sec G.H.Q. 2 Echelon

Cdn. Sec G.H.Q. 2 Echelon
Date 31 Dec 44
Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 22 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RPs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appendixes or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc., which notes are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1530 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial (2) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO~~(2).
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to~~ as interpreter ? Ans —

The Interpreter is sworn.(1) Do you object to as shorthand writer ? Ans
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 35, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	A.A. Telford	2 Cdn Inf Div Tps Coy RCASC
Member	Capt	J. Fry	4 CIB Coy RCASC
Member	Lieut	R.T.W. Scott	HQ RCASC 2 Cdn Inf Div
Judge-Advocate	Capt	P.K. McDougall	HQ 2 Cdn Inf Div
Prosecutor	Lieut	A.R. Munford	5 CIB Coy RCASC
Defending Offr			

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 3.)

A8. The accused D-P1920 Pte Hayes, C.A.R. before arraignment make(s) (no) (a) plea(s) (3)
(1. If a special plea is made for separate trial on one or more charges (RP 62(5), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A64 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*D*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6); *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO. CTH.(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf AA* 46. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 84(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(*7*) (*b*). *RP* 45, 120(*A*). 2. *AA* 54(*7*), *RP* 45, *117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans. NO. CTH.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. C and Ex. D respectively.(3)

(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. YES.(2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(*6*). *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas HQ* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*B*), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A.A.F.
Pres

CHARGE SHEET

The accused D-81920 Pte Hayes, Charles Arthur Hayes, of 5 Cdn Inf Bde Coy RCASC., a soldier of the Canadian Army overseas, on Active Service charged with:-

FIRST CHARGE WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE? A.A. Sec 15(1)

in that he

in the field, did absent himself without leave from 0700 hrs 26 Nov 44 till 1500 hrs 4 Dec 44.

(Total absence 8 days 8 hrs)

SECOND CHARGE WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD A.A. Sec 15(1) ORDER AND MILITARY DISCIPLINE,

in that he

in the field, on 4 Dec 44, did improperly wear the badges of rank of a captain in the Canadian Army.

In the Field
9 December 1944

(sgd) J.W.G. Lanting, Capt.,
A/Officer Commanding,
5 Cdn Inf Bde Coy
R. C. A. S. C.

TO BE TRIED BY R.C.A.S.C.

In the Field
20 Dec 44

(sgd) R.T. Collins, Lt/Col
Comd
RCASC, 2 Cdn Inf Mxx Div

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-[illegible]	Pte		Charles Arthur	Hayes	4 Cdn Inf Bde Coy, RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 20 Dec 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	A.F. Telford	2 Cdn Inf Div Tps Coy RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J. Fry	4 Cdn Inf Bde Coy RCASC
Lieut	R.F.V. Scott	No 2 CASC, 2 Cdn Inf Div

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	D.F. Weir	No 2 CASC, 2 Cdn Inf Div

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	E.V. McDougall,	No 2 Cdn Inf Div

On Active Service in the Fd

in Holland (Country.)

W.H. Collins (Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

Date 20 Dec 44

Commanding 2 CASC, 2 Cdn Inf Div

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CF Adm (to limit of AFA) 40/P & S/1697 (4681)

(See overleaf for oaths and notes for use on trial.)

A.F.C.
Pres

MEDICAL OFFICER'S CERTIFICATE
K.R. (Army) Para 557

I certify that I have this morning examined No D-/1930 Pte Hayes, C.A. of 5 Cdn Inf Bde Coy ECASC and in my opinion he is fit to undergo trial by court-martial

In the Field
22 Dec 44

(sgd) [illegible] Capt
Medical Officer

"A" A.F.C.
Pres

SUMMARY OF EVIDENCE

SUMMARY OF EVIDENCE IN THIS CASE OF:- D-81920 Pte Charles Arthur Hayes of 5 Cdn Inf Bde Coy RCASC a soldier of the Canadian Army Overseas charged under A.A. Sec 15(1) A.A. Sec 40

The A/Officer Commanding directs that all evidence be taken on oath.

WITNESS FOR THE PROSECUTION

M-89864 L/Cpl Pateman, T.E. now Pte Pateman, T.E. of 5 Cdn Inf Bde Coy RCASC having been duly sworn states:

On the night of 25 Nov 44 at 2200 hrs I took the tatto roll call and found D-81920 Pte Hayes, C.A. present, and at that time I checked and reported all vehicles present. On the morning of 26 Nov 44 at 0700 hrs I took reveille roll call and found D-81920 Pte Hayes, C.A. absent without leave; I also found M.D. vehicle CL-42[illegible]9450 which was on charge to D-81920 Pte Hayes C.A. missing. I gave my report to the Col of the Guard D-106656 Cpl Niddrie, D.

(sgd) T.E. Pateman, Pte
M-89864

The accused declines to cross-examine the witness.

SECOND WITNESS FOR THE PROSECUTION:-

D-106656 Cpl Niddrie, D. of 5 Cdn Inf Bde Coy RCASC having been duly sworn states:

I was Cpl of "A" Transport Platoon Guard on the night of 25 Nov 44 At Tattoo roll Call M-89864 L/Cpl Pateman, T.E. reported his section and vehicles all present. At 0700 hrs roll Call 26 Nov 44 he reported D-81920 Pte Hayes, C.A. absent without leave also M.D. vehicle CL-42[illegible]9450 which was on charge to D-81920 Pte Hayes, C.A. missing. Thereupon I reported this to M-37168 Sgt Batty, R.V. my Platoon Sgt.

(sgd) D. Niddrie, Cpl
D-106656

The accused declines to cross-examine the witness.

THIRD WITNESS FOR THE PROSECUTION:-

M-37168 Sgt Batty, R.V. of 5 Cdn Inf Bde Coy RCASC having been duly sworn states:

On the morning of 26 Nov 44 at approximately 0700 hrs the Col of the guard D-106656 Cpl Niddrie D. reported to me that D-81920 Pte Hayes, C.A. was absent from reveille Roll Call, also M.D. CL-42[illegible]9450 on charge to D-81920 Pte Hayes, C.A. was missing from the vehicle park.

(sgd) R.V. Batty, Sgt
M-37168

The accused declines to cross-examine the witness.

FOURTH WITNESS FOR THE PROSECUTION

R.C.M. Roberts 242 HQ Provost Coy C.M. Police.

A written statement of this witness' evidence, purporting to be signed by him, has been read to the accused and is included in this summary attached as Exhibit "A" having regard to the exigencies of the service, the expense involved, and the loss of time the attendance of this witness cannot, in my opinion be readily procured.

The accused does not demand the attendance for cross-examination of this witness.

(sgd) F. . Wright, Capt
Off'r detailed to take summary

FIFTH WITNESS FOR THE PROSECUTION:-

Major N.I. Widdison 7 Group Civil affairs.

A written statement of this witness' evidence purporting to be signed by him, has been read to the accused and is included in this summary. Attached as Exhibit "B", having regard to the exigencies of the service the expense involved and the loss of time, the attendance of this witness cannot, in my opinion be readily procured.

The accused does not demand the attendance of this witness for Cross-examination.

(s-d) F.W. Wright Capt
Offr detailed to take summary

SIXTH WITNESS FOR THE PROSECUTION:

Lt. J.C. Steen Adjutant 5 Cdn Inf Bde Coy RCASC having been duly sworn states:

I present:

Certificate of apprehension purporting to be signed by C.S. 342 M.P. Provost Coy C.M.P. 4/4 Dec 44, attached as exhibit "C"

(sgd) J.C. Steen, Lt

The accused declines to Cross-examine the Witness.

The accused having been duly cautioned in accordance with R.P. 4 (2) States:-

" I do not wish to make a statement"

Certified that R.P. 4 Complied with

In the Field
9 Dec 44

(sgd) F. . Wright, Capt
Offr detailed to take
summary.

On completion of be arrested or in accord-
ance with K.R.s Para 542(b)

CHARGE Army Form B 252
(See King's Regulations)

The Royal Canadian Army Service Corps — Regiment

C. C. Coy Tpt Sqn Coy — Battery / Squadron / Troop or Company

CHARGE against No D-81920 Rank Pte

Name Hayes, C. .E.

Place Lille Date of Offence

OFFENCE S.C.A.O. (1) Absent from
until apprehended by the military police
at Provost Headquarters on 4 Dec 44 at
about 1500 hrs
(1) masquerading as an officer of the Can
adian Army wearing the badge of rank
of a Captain on his B.D. blouse.

Names of Witnesses:— Major Hilton, D.A.A.G. Gp
Civil affairs
S.S.M. Roberts, R. C.A. Police
Cpl Wrenn, T. (R.C.O.C. 1/c Guard.)

Signature of O.C. Battery, Squadron, Troop or Company ????2??? Capt D.A.A.

Punishment Awarded — M.O. No.15 L of C Sub Area

By whom Awarded

Adjutant.

P.T.O.

20M. 10-9[illegible]-1943. [illegible] 1942. K. & H. Ltd. 6625747.

Exhibit "A"

Statement of **EVIDENCE** in the case of
No. [illegible] Pte Vayes, [illegible] Co. 5 Can Inf
4 de Coy RCASC, 2 Can Inf Div.

Sir,

At Lille on 4 Dec 44 at about 1500 hrs I
was on duty at Provost Headquarters when the
a/m soldier was brought in by Major Winston
R.J.(statement attached) Pte Vayes was carrying
a bie tunic and it bore the bales of rank of
a captain. He admitted he had been wearing it
in order to change some money (Gulden). I established the fact that he was an absentee and
arrested him. He was conducted to the Town
Guard room, Lille where he was handed over to
the N.C.O i/c the Guard to be detained.
Handing over Certificate and Certificate of
Arrest attached.

Lille,
4 Dec 44

(sgd) W.Roberts, [illegible]
[illegible] Provost Company, [illegible] Pol
ice.

REMARKS

Exhibit "C"

CERTIFICATE UNDER SECTION (1)(j) OF THE ARMY ACT

I certify that No. D-81920 Rank. Pte Name Hayes, C.A.P.

2 Cdn Inf Bde Coy, RCASC, 2 Cdn Inf Div Regiment was arrested at Lille at 1700 hrs on 4 Dec 44 Date and that at the time of his arrest he was wearing military uniform.

Date 4 Dec 44 (sgd) W.Jeffery Capt
C.C. 242 W.P. Pr vcst Coy C.P

Exhibit "C"

Receipt by the N.C.O. i/c Guard of a soldier in arrest handed over to him by the military Police.

No. [illegible]-[illegible]5716 Rank Pte Name Lercher P.

Coy 5 CIU Unit R.C.A.S.C.

Station Fiel

Sir,

I was Commander of the Lille Town Guard, on the Dec 1st 1944 when about 2245 hrs the above named soldier was handed over to me by the military Police, He was Sober (Condition)

Station Lille
1/12/44

(sgd) R.C. Williams, Cpl
609 Coy C.A.P.
N.C.O. i/c Guard

EX "B"

Statement of Major R.J. Kidston, 7 CP Civil Affairs.

1. At 1450 hrs 4 Dec 44 I saw a soldier on the Rue National, Lille. He was wearing a Canadian Battle Dress without a "Canada" shoulder titles and a Khaki beret without a badge. On his shoulder tabs were the badges of rank of a Captain and he was wearing the Canadian Service Medal with Maple Leaf.

2. I asked the soldier for his identity card. He could not produce it and said that he had left it at his unit around the corner a short walk to get it. He ran down a street and turned a corner I followed him and found him hiding under a car in a garage.

3. I ordered him to remove his blouse, belt and cap badge. I took possession of these articles and escorted the soldier to 242 Provost Coy where I handed him over to D.S.M. Roberts for interrogation.

4. The soldier was identified as No. D-81920 Pte Hayes, C.A.R.

4 Dec 44 (sgd) R.J. Kidston, Maj

M.F.B. 355
22M—5-41 (372-0)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-51920	Pte	Hayes, C.A.J.	5 Cdn Inf Bde Coy R.C.A.S.C.

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For AA Sec 15(1)	2 times	9 times
For AA Sec 40	2 1 times	2 2 times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time

or,

The accused at the present time is under sentence for N/A beginning on the N/A day of N/A

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 18 days in Air Force military custody, making a total of 18 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is 23 Years

6. The date of his ~~commission~~ attestation specified in his record of service is attestation paper 1 Mar 40

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to~~ no air force decoration, or air force reward (or is in military military possession of or entitled to). State any air force decoration or reward.

CVSM and Clasp

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated N/A, and in his regiment (or corps), the rank of dated N/A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of N/A years.

In the rank of N/A years.

In the rank of N/A years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number Rank Unit

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22nd day of December 1944 (sgd) L.R. Munford Lt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

(sgd) A.E. Bedford,
President

No. [illegible] Name Hayes, C.A.H. Sqn, Battery, or Company [illegible] Corps R.C.A.S.C. Date of enlistment 3-7-40 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/FAS/198 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				New sheet on completion of 6 Months Service 1 July 43					(Duplicate old sheet destroyed 1 July 43
Montreal	20-7-40	Pte		AA Sec 15(1) AWL from 0845 hrs 21-7-40 till 0845 hrs 22-7-40	Sgt Wester	Admonished	20-7-40	Maj W Smith	2 dys pay CRO 149(1)a
Aldershot	10-8-40	Pte		AA SEC 15(1) AWL from 2330 hrs 19-8-40 to 0600 hrs 25-9-40	Documentary	21 days Det CRO 149(2)	26-9-40	Lt-Col Gulliford	17 dys pay CRO 149(1)a 1 dys pay for close arrest
Halifax	12-6-41	Pte		AA Sec 15(1) AWL from lecture 1300 hrs to 1700 hrs 12-6-41 (4 hrs)	Documentary	7 days C.B.			
Halifax	17-6-41	Pte		AA SEC 15(1) AWL from 1445 hrs 17-6-41 to 1200 hrs 22-6-41 (5 days 21 hrs and 15 min (2) Breaking out of Barracks whilst a defaulter		14 days Det		Signature of Original	10 days Pay

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or remarks dispensing with trial	By whom awarded	Remarks
Lingan	29-9-41	Pte		AA Sec 40 Neglect to the prej etc neglected to carry out an order given by his superior Officer	Sgt Tibbley	5 days C.B.	30-9-41	Capt L.C. Peers	
Lingan	2[illegible]-11-41	Pte		AA Sec 15(1) AWL from 2200 hrs 29-11-41 to 1730 hrs 30-11-41 (19hrs 30 mins	L/Cpl Stevens	14 dys C.B.	1-12-41	Lt-Col W.H. Alwart	1 dys pay PMAI 149(1)(a)
Lingan	1-1-42	Pte		AA Sec 15(1) AWL from 2250hrs 1-1-42 to 0600 hrs 2-1-42	Pte Morrison L/Cpl Stevens	168 hrs Det 7 dys pay	5-1-42	Lt-Col W.H. Alwart	1 dys pay PMAI 149(1)(a)
Fort South Barracks	14-[illegible]-42	Pte		AA Sec 15(1) AWL from 2130 hrs 14-[illegible]-42 to 0630 hrs 15-[illegible]-42 (8hrs 30 mins)	Pte Lipkins H	7 dys C.B.	[illegible]-42	[illegible]	1 dys pay PMAI 149(1)(a)
Fort Petrie	20-10-42	Pte		AA Sec 15(1) AWL from 2245 hrs 24-10-42 to 0600 hrs 25-10-42 (7hrs 15 mins)	L/Cpl Thompson	7 dys C.B.	26-10-42	F.M. Pipe	1 days pay PMAI 149(1) (a)
Farnham P.O.	27-2-43	Pte		AA Sec 15(1) AWL from 2350 hrs 27-2-43 to 0230 hrs 28-2-43 (7hrs 31 mins) Placed under open arrest	L/Cpl Godwin L/Cpl Clark				
				2. Neglect to the prej etc neglected to report forward room when ordered to do so AA Sec 40	Cpl Griffin L/Cpl Godwin	7 dys C.B.	1-3-43	Capt L.C. Griffin	1 days pay PMAI 149(1)(a)

No. 1020 Name: ayes, C.A.F. Sqn, Battery, or Company Corps RCASC Date of enlistment 5-1-40 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/PAS/126 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Fld14	17-8-43	Pte		AA Sec 40 Reclact to the Prej etc Documentary Deliberately operating S.D. Vehicle C1020C14 causing it to strike a civilian C.F.F. Faber causing injury to him		3 days pay Sec 149 (2)	4 Dec 43	Lt-Col Orlow	
Fld14	22Aug 44			FCAS Conduct to the Prej was in Documentary ing ribbon to which he was not ent itled AA Sec 40 FCAS Conduct to the Prej withhold ing infmn from CPO in London A40 FCAS Failing to obey Unit daily orders in London without a pass AA Sec 12 FCAS making a wilfully false statement AA Sec 39(4)		14 days Pay 44	24 Dec 44	Lt-Col J.A. Lotel Forf Orlow 14 days pay	

(PTO)

Place	Date of offence	Rank	Cause of detention	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8/Oct44	Pte		AA Sec 15(1) AWL from 2200 hrs 7 Oct 44 to 2215 hrs 8 Oct 44 (2 A 1 hr 15 mins)	Lt/Col Callain	14 days pay 14 days C.B.	9 Oct 44	Lt. Col. J.R. Callain	14 days pay forfeited Sec 149(2)
Field	28/Nov44	Pte		AA Sec 15(1) AWL 2 A 1 hr 45 Mins	Sgt Cook JC Cpl Love SW	28 days forf pay	29 Nov 44	Capt J.F.O. Vanting	28 days forfeited Sec 149(2)
				Certified true copy (sgd) J. F. O. Vanting, Capt A/Officer Commanding S.O.No.1 Fld Coy S.I.A.F.O.					

TRANSCRIPT OF EVIDENCE IN THE CASE OF THE TRIAL BY FGCM OF D-81920 PTE HAYES, C A, 5 CDN INF BDE COY, RCASC, HELD 22 DEC 44.

A-7

JA to accused.

You are entitled to have a Defending Officer if you wish. Do you not wish to have a Defending Officer?

Accused

No, sir.

E-3

The accused, D-81920 Pte Hayes, C A, 5 Cdn Inf Bde Coy, RCASC, makes the following statement in mitigation of punishment not under oath.

What I have to say is I was transferred to the Army Service Corps from Ordnance against my wishes. I was sent over to France and to 5 CIB Coy. After having been with the Coy for approximately one month I asked for a transfer which was refused. One night I asked for a pass and received a pass, and I missed the truck by a few minutes and got back to camp an hour and 15 minutes late. For this I was awarded loss of 28 days pay. I was watched for things like that. I know this because one time in Antwerp we were on the liberty truck to go to the show. We couldn't get into the Ensa Theatre but I got in, I knew the manager there, so I came back to the truck and then told three or four fellows around that I was going across the street to eat and would be back before the truck left. I arrived back about 15 second late, to see the truck pulling out. I immediately took the tram and proceeded towards the unit and was in before 12. I was told I was under open arrest and finally got before the OC who fined me 28 days pay For being 1 hour and 45 minutes late. And another fellow who missed the truck that same night I did got nothing. So this happened to me twice when I tried to get back. It didn't seem to work out to try to get back. So this time I didn't try to get back. That is all, sir.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-81920 Pte Hayes, C.A.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 45 and MML p 753, and re loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour

for seventeen months.

(Sgd) E.K. McDougall, Capt — Judge-Advocate, if any.
22 Dec 44 — Date awarded.
(Sgd) A.R. Tedford Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(1). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) NC

(1. AA 57A. Delete if not used.)

(Sgd) W.W. Colling, Lt-Col

Date 29 Dec 44

Commanding C.R.C.A.S.C. 2 Cdn Inf Div. C.A. (AF Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D-81920 Pte Hayes, C.A.R.	31 Dec 1944	T.Kermey, Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CPA66 (To face of AFA35 40/P.S.N.S./1908 5/43)

4388

Convened by Order of Lt-Col W.W. Colling Comd RCASC 2 Cdn Inf Div dated 26 Dec 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent alteration of rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-81920	Pte	Charles Aurthur	Hayes	C.A.R. Coy R.C.A.S.C.

Certified True Copy
W.W. Thompson Capt
A.D.J.A.
Cdn Sec G.H.Q. 2 Echelon 21 Army Gp.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 22 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OF JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RCs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1530 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ EKM

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to~~ as interpreter? Ans

The Interpreter is sworn.(1) Do you object to C.S. Bennett, RCASC as shorthand writer? Ans NIL
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A.R. Tedford	2 Cdn Inf Div Tps Coy RCASC
Member	Capt	J. Fry	4 CIB Coy RCASC
Member	Lieut	R.T.M. Scott	HQ RCASC 2 Cdn Inf Div
Judge-Advocate	Capt	E.K. McDougall	HQ 2 Cdn Inf Div
Prosecutor	Lieut	A.R. Munford	5 CIB Coy RCASC
Defending Offr			

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused D-81920 Pte Hayes, C.A. before arraignment make(s) (no) (a) plea(s) (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans NO SIR.(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 92 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114*, *115*.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF AP3, Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(E).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans NO SIR

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex Y and Ex Z respectively.(3)

(1. *AA 54(3), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES.(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A.R.T.
Pres

CHARGE SHEET

The accused D-81920 Pte Hayes, Charles Arthur Hayes, of 5 Cdn Inf Bde Coy RCASC., a soldier of the Canadian Army overseas, on Active Service charged with:-

FIRST CHARGE A.A. Sec 15 (1) WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE?

in that he

in the field, did absent himself without leave from 0700 hrs 26 Nov 44 till 1500 hrs 4 Dec 44.

(Total absence 8 days 8 hrs)

SECOND CHARGE A.A. Sec 40 WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

in the field, on 4 Dec 44, did improperly wear the badges of rank of a captain in the Canadian Army.

In the Field
9 December 1944

(sgd) J.H.G. Banting, Capt.,
A/Officer Commanding,
5 Cdn Inf Bde Coy
R. C. A. S. C.

TO BE TRIED BY F.G.C.M.

In the Field
20 Dec 44

(sgd) W.H. Colling, Lt/Col
Comd
RCASC, 2 Cdn Inf ~~xdx~~ Div

A.R.T.
Pres

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
D-81920	Pte		Charles Arthur	Hayes	5 Cdn Inf Bde Coy, RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 20 Dec 44 endorsed by me, (~~or by an offr of my staff (or me)~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	A.R. Tedford	2 Cdn Inf Div Tps Coy RCASC	

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	J. Fry	4 Cdn Inf Bde Coy RCASC	
Lieut	R.T.M. Scott	HQ RCASC, 2 Cdn Inf Div	

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	D.T. Weir	HQ RCASC, 2 Cdn Inf Div	

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	E.K. McDougall,	HQ 2 Cdn Inf Div	

On Active Service in the Fd

in Holland (Country.) — W.H. Colling (Signed personally. RP 105 fn 2.) — Lt-Col (Rank.)

Date 20 Dec 44 — Commanding RCASC, 2 Cdn Inf Div — Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

A.R.T.
Pres

MEDICAL OFFICER'S CERTIFICATE
K.R. (Can) Para 557

I certify that I have this morning examined No D-81920 Pte Hayes, C.A. of 5 Can Inf Bde Coy RCASC and in my opinion he is Fit to undergo trial by court-martial

In the Field
22 Dec 44

(sgd)??????????? Capt
Medical Officer

"A" A.R.T.
Pres

SUMMARY OF EVIDENCE

SUMMARY OF EVIDENCE IN THE CASE OF:- D-81920 Pte Charles Arthur Hayes of 5 Cdn Inf Bde Coy RCASC a soldier of the Canadian Army Overseas charged under A.A. Sec 15(1) A.A. Sec 40

The A/Officer Commanding directs that all evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION

M-87864 L/Cpl Pateman, W.E. now Pte Pateman, W.E. of 5 Cdn Inf Bde Coy RCASC having been duly sworn states:

On the night of 25 Nov 44 at 2200 hrs I took the tatoo roll call and found D-81920 Pte Hayes, C.A. present, and at that time I checked and reported all vehicles present. On the morning of 26 Nov 44 at 0700 hrs I took reveille roll call and found D-81920 Pte Hayes, C.A. absent without leave; I also found W.D. vehicle CL-4269450 which was on charge to D-81920 Pte Hayes C.A. missing. I gave my report to the Cpl of the Guard D-106656 Cpl Niddrie, D.

(sgd) W.E. Bateman, Pte
M-87864

The accused declines to cross-examine the witness.

SECOND WITNESS FOR THE PROSECUTION:-

D-106656 Cpl Niddrie, D. of 5 Cdn Inf Bde Coy RCASC having been duly sworn states:

I was Cpl of "A" Transport Platoon Guard on the night of 25 Nov 44 At Tattoo roll Call M-87864 L/Cpl Pateman,W.E. reported his section and vehicles all present. At reveille roll Call 26 Nov 44 he reported D-81920 Pte Hayes, C.A. absent without leave also W.D.vehicle CL-4269450 which was on charge to D-81920 Pte Hayes, C.A. missing. I reported this to M-37168 Sgt Batty, R.V. my Platoon Sgt.

(sgd) D.Niddrie, Cpl
D-106656

The accused declines to cross-examine the witness.

THIRD WITNESS FOR THE PROSECUTION:-

M-37168 Sgt Batty, R.V. of 5 Cdn Inf Bde Coy RCASC having been duly sworn states:

On the morning of 26 Nov 44 at approximately 0700 hrs the Cpl of the guard D-106656 Cpl Niddrie D. reported to me that D-81920 Pte Hayes, C.A. was absent from reveille Roll Call, also W.D. CL-4269450 on charge to D-81920 Pte Hayes, C.A. was missing from the vehicle park.

(sgd) R.V. Batty, Sgt
M-37168

The accused declines to cross-examine the witness.

FOURTH WITNESS FOR THE PROSECUTION

R.S.M. Roberts 242 HQ Provost Coy C.M. Police.

A written statement of this witness' evidence, purporting to be signed by him, has been rad to the accused and is included in this summary attached as Exhibit "A" having regard to the exigencies of the service, the expense involved, and the loss of time the attendance of this witness cannot, in my opinion be readily procured.

The accused does not demand the attendance for cross-examination of this witness.

(sgd) F.M. Wright, Capt
Offr detailed to take summary

FIFTH WITNESS FOR THE PROSECUTION:-

Major R.J. Kidston 7 Group Civil affairs.

A written statement of this witness' evidence purporting to be signed by him, has been read to the accused and is included in this summary, Attached as Exhibit "B", having regard to the exigencies of the service the expense involved and the loss of time, the attendance of this witness cannot, in my opinion be readily procured.

The accused does not demand the attendance of this witness for Cross-examination.

(sgd) F.M. Wright Capt
Offr detailed to take summary

SIXTH WITNESS FOR THE PROSECUTION:

Lt. J.G. Steen Adjutant 5 Cdn Inf Bde Coy RCASC having been duly sworn states:

I present:

Certificate of apprehension purporting to be signed by C.C. 242 F.Q. Provost Coy C.M.P. d/4 Dec 44, attached as exhibit "C"

(sgd) J.G. Steen, Lt

The accused declines to Cross-examine the Witness.

The accused having been duly cautioned in accordance with R.P. 4 (E) States:-

" I do not wish to make a statement"

Certified that R.P. 4 Complied with

In the Field
9 Dec 44

(sgd) F.M. Wright, Capt
Offr detailed to take
summary.

On completion to be disposed of in accordance with K.R.s Para 562(b)

CHARGE

Army Form B 252
(See King's Regulations)

The Royal Canadian Army Service Corps — Regiment / Battery / Squadron / Troop / Company

No. 5 Cdn Inf Bde Coy

CHARGE against No D-91920 Rank Pte

•Name Hayes, C.A.R.

Place Lille Date of Offence

OFFENCE W.C.A.S. (i) Absent from until apprehended by the military police at Provost Headquarters on 4 Dec 44 at about 1500 hrs
(ii) Masquerading as an Officer of the Canadian Army wearing the badges of rank of a Captain on his B.D. blouse.

Names of Witnesses:— Major Kidston, R.J.7 Gp Civil affairs
R.S.M. Roberts, H. C.M. Police
Cpl Finbow, J. (N.C.O. i/c Guard.)

Signature of O.C. Battery, Squadron, Troop or Company 22222222 Capt DAPM

Punishment Awarded W.O. No.15 L of C Sub Area

By whom Awarded

Adjutant.

P.T.O.

20188. Wt.W31274/1961. 2,000,000 10/42. K. & H., Ltd. 0657/47.

EXHIBIT "A"

Statement of **EVIDENCE** in the case of
No. D-81920 Pte Hayes, C.A.R. No. 5 Cdn Inf
Bde Coy RCASC, 2 Cdn Inf Div.

Sir,

At Lille on 4 Dec 44 at about 1500 hrs I was on duty at Provost Headquarters when the a/m soldier was brought in by Major Kidston R.J.(statement attached) Pte Hayes was carrying his tunic and it bore the badges of rank of a captain. He admitted he had been wearing it in order to change some money (Gulden). I established the fact that he was an absentee and arrested him. He was conducted to the Town Guard room, Lille where he was handed over to the N.C.O i/c the Guard to be detained. Handing over Certificate and Certificate of Arrest attached.

(sgd) H.Roberts, R.S.M.
Lille,
4 Dec 44 242 W.Q. Provost Company, C.M.Police.

REMARKS

EXHIBIT "C"

Receipt by the N.C.O. i/c Guard of a soldier in arrest handed over to him by the military Police.

NO. B-85716 Rank Pte Name Larcher P.

Coy 5 CIB Unit R.C.A.S.C.

Station Field

Sir,

I was Commander of the Lille Town Guard, on the Dec 1st 1944 when about 2245 hrs the above named soldier was handed over to me by the military police, He was Sober (Condition)
Station Lille
1/12/44

(sgd) P.G. Williams, Cpl
609 Coy C.M.P.
N.C.O. i/c Guard

CERTIFICATE UNDER SECTION (1)(j) OF THE ARMY ACT

I certify that No. D-81920 Rank. Pte Name Hayes, C.A.R.

5 Cdn Inf Bde Coy, RCASC, 2 Cdn Inf Div Regiment was arrested at Lille at 1500 hrs on 4 Dec 44 Date and that at the time of his arrest he was wearing military uniform.

Date 4 Dec 44

(sgd) H.Jeffery Capt
O.C. 242 W.Q. Provost Coy CMP

Exhibit "C"

EX "B"

Statement of Major R.J. Kidston, 7 CP Civil Affairs.

1. At 1450 hrs 4 Dec 44 I saw a soldier on the Rue National, Lille. He was wearing a Canadian Battle Dress without " Canada " shoulder titles and a Kaki beret without a badge. On his shoulder tabs were the badbes of rank of a Captain and he was wearing the Canadian Service Medal with Maple Leaf.

2. I asked the soldier for his identity card. He could not produce it and said that he had left it at his unit around the corner and would go to get it. He ran down a street and turned a corner I followed him and found him hiding under a car in a garage.

3. I ordered him to remove his blouse, belt and one boot. I took possesion of these articles and escorted the soldier to 242 provost Coy where I handed him over to R.S.M. Roberts for interrogation.

4. The Soldierx was identified as No. D-81920 Pte Hayes, C.A.R.

4 Dec 44

(sgd) R.J. Kidston, Maj

EX "Y" A.R.T.

M.F.B. 155 Pres

22M—5-41 (572-8)
H.Q. 1772-99-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-81920	Pte	Hayes, C.A.R.	5 Cdn Inf Bde Coy R.C.A.S.C.

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For AA Sec 15(1)	2 times	9 times
For AA Sec 40	2 1 times	2 2 times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for N/A beginning on the N/A day of N/A

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 18 days in military Air Force custody, making a total of 18 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is 23 Years

6. The date of his ~~enlistment~~ attestation specified in his record of service is attestation paper 1 Mar 40

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to wear the undermentioned decoration, or has forfeited~~ his military ~~right~~ to possession of or entitled to). State any air force decoration or reward.

CVSM and Clasp

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated N/A, and in his regiment (or corps), the rank of dated N/A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of N/A years.

In the rank of N/A years.

In the rank of N/A years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused. Number Rank Unit Regiment Name of

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22nd day of Decem ber 1944 (sgd) A.R. Munford Lt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

(sgd) A.R. Tedford,
President

"Z"

No. D81920 Name Hayes, C.A.R. Sqn, Battery, or Company — Corps R.C.A.C.C. — Date of enlistment 3-1-40 — GC Badges — Service or Proficiency Pay 3/17 MFM's A.R.T. Pres

(AFB 122) 40/P&S/108 (2412)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine N/A — Sheet No 1 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				New sheet on completion of 6 Months Service 3 July 40 (Duplicate			old sheet destroyed 1 july 43		
Montreal	20-7-40	Pte		AA Sec 15(1) AWL from 0845 hrs till 0845 hrs 22-7-40	Sgt Hester Documentary	admonished 21 days Det	20-7-40	MajLJ Smith	2 dys pay FR&I 149(1)a
Aldershot	19-8-40	Pte		AA SEC 15(1) AWL from 2230 hrs19 8-40 to 0600 hrs 25-9-40	Documentary	21 days Pay FR&I 149(2)	26-9-40	Lt-Col Guildford	37 dys pay FRI 149(1)a
									1 dys pay for close arrest
Halifax	12-6-41	Pte		AA Sec 15(1) AWL from lecture1300 hrs to 1700 hrs 12-6-41 (4 hrs)	Documentary	7 days C.B.			
Halifax	17-6-41	Pte		AA SEC 15(1) AWL from 1445 hrs 17-6-41 to 1200 hrs 27-6-41 (9 days 21 hrs and 15 min (2) Breaking outof Barracks whilst a defaulter		14 days Det	NC Signation on of Original		10 days Pay

(P770)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or whether dispensing with trial	By whom awarded	Remarks
Lingan	28-8-41	Pte		AA Sec 40 Neglect to the prej etc neglected to carry out an order given by his superior Officer	Sgt Bickley	5 days C.B.	30-8-41	Capt W.L. Keefe	
Lingan	29-11-41	Pte		AA Sec 15(1) AWL from 2200 hrs 29-11-41 to 1730 hrs 30-11-41 (19hrs 30mins	L/Bdr Stevens	14 dys C.B.	1-12-41	Lt-Col WW Alwart	1 dys pay FR&I 149(1)(a)
Lingan	1-1-42	Pte		AA Sec 15(1) AWL from 2250 hrs 1-1-42 to 0600 hrs 2-1-42	Sgt Morrison L/Bdr Stevens	168 hrs Det 7 dys pay	5-1-42	Lt-Col WW Alwart	1 dys pay FR&I 149(1)(a)
Fort South Barracks	14-6-42	Pte		AA Sec 15(1) AWL from 2130 hrs 14-6-42 to 0620 hrs 15-6-42 (8hrs 50Mins)	CSM McDonald Gnr Lipkins H	7 dys C.B.		notreadable	1 dys pay FR&I 149(1)(a)
Fort Petrie	20-10-42	Pte		AA Sec 15(1) AWL from 2245 hrs 24-10-42 to 0600 hrs 25-10-42 (7hrs 15Mins)	L/Sgt McPherson	7 dys C.B. H.G.	26-10-42	W.H.Pipe	1 days pay FR&I 149(1) (a)
Farnham P.Q.	27-2-43	Pte		AA Sec 15(1) AWL from 2359 hrs 27-2-43 to 0730 hrs 28-2-43 (7hrs 31mins) Placed under open arrest	L/Cpl Godwin L/Cpl Clark				
				P. Neglect to the prej etc neglected to report to guard room when ordered todo so AA Sec 40	Cpl McKibbin L/Cpl Godwin	7 dys C.B.	1-3-43	Capt L.O.M Tiffin	1 days pay FR&I 149(1)(a)

No. 1920 Name Hayes, C.A.R. Sqn, Battery, or Company Corps RC ASC Date of enlistment 3-1-40 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40(PAS)/36 (3433)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17-9-43	Pte		AA Sec 40 Neglect to the Prej etc Negligently operating W.D. Vehicle CMD90014 causing it to strike a civilian W.T.H. Baker causing injury to him	Documentary	3 days pay FRI 149 (2)	4 Dec 43	Lt-Col Triom	
Field	22 Aug 44			WOAS Conduct to the Prej was wearing ribbon to which he was not entitled AA Sec 40 WOAS Conduct to the Prej withholding infmn from CPC in London AA40 WOAS Failing to obey Unit daily orders in London without a pass AA Sec 11 WOAS making a wilfully false statement AA Sec 27(4)	Documentary	14 days Pay 44	24 Aug 44	Lt-Col R.J. Dufresne	total forf 14 days pay

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of Summary disposal with trial	By whom awarded	Remarks
Field	8Oct44	Pte		AA Sec 15(1) AWL from 2200 hrs 8 Oct 44 to 2315 hrs 8 Oct 44 (TTA 1 hr 15 mins)	L/CplDallain	14 days pay 14 days C.B.	9 Oct 44	Maj. A.R. Redford	14 days pay 149(2)
Field	25Nov44	Pte		AA Sec 15(1) AWL TTA 1 hr 45 Min	Sgt Cook JC Cpl Levy SM	28 days forf pay	25Nov 44	Capt J.H.C Banting	28 dys forf FRI 149(2)
				Certified true copy (sgd) J.H.C. Banting, Capt A/Officer Commanding 5 Cdn Inf Bde Coy R.C.A.S.C.					

TRANSCRIPT OF EVIDENCE IN THE CASE OF THE TRIAL BY FGCM OF D-81920 PTE HAYES, C A, 5 CDN INF BDE COY, RCASC, HELD 22 DEC 44.

A-7

JA to accused.

You are entitled to have a Defending Officer if you wish. Do you not wish to have a Defending Officer?

Accused

No, sir.

E-3

The accused, D-81920 Pte Hayes, C A, 5 Cdn Inf Bde Coy, RCASC, makes the following statement in mitigation of punishment not under oath.

What I have to say is I was transferred to the Army Service Corps from Ordnance against my wishes. I was sent over to France and to 5 CIB Coy. After having been with the Coy for approximately one month I asked for a transfer which was refused. One night I asked for a pass and received a pass, and I missed the truck by a few minutes and got back to camp an hour and 15 minutes late. For this I was awarded loss of 28 days pay. I was watched for things like that. I know this because one time in Antwerp we were on the liberty truck to go to the show. We couldn't get into the Ensa theatre but I got in, I knew the manager there, so I came back to the truck and then told three or four fellows around that I was going across the street to eat and would be back before the truck left. I arrived back about 15 second late, to see the truck pulling out. I immediately took the tram and proceeded towards the unit and was in before 12. I was told I was under open arrest and finally got before the OC who fined me 28 days pay. For being 1 hour and 45 minutes late. And another fellow who missed the truck that same night I did got nothing. So this happened to me twice when I tried to get back. It didn't seem to work out to try to get back. So this time I didn't try to get back. That is all, sir.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D81920 Pte. Hayes, C.A.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note : As to Findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn a.)

C/Sgt At present under sentences for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

to be imprisoned with Hard Labour for seventeen months.

(Sgd) "Errol K. McDougall" Judge-Advocate, if any. Capt. — 22 Dec 44 Date awarded. — (Sgd) "A. R. Tedford" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 572. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

CONFIRMED.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) w/r C.

(1. AA 57A. Delete if not used.)

Date 29 Dec 44 — (Sgd) "W.H.Colling" Lt.-Col. C.R.C.A.S.C. 2 Cdn.Div. C.A.(A.F.) Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D81920 Pte Hayes, C.A.R.	31 Dec 1944	T.O. Kearney "~~[illegible]~~" Major.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4M-128

FIELD GENERAL COURT-MARTIAL

CFA56 (In lieu of AFA3) 40/F & H/1898 (40/G) 4/38B

Convened by Order of Lt.Col. W. H. Colling, CRCASC (Comd) 2 Cdn Inf Div dated 20 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D81920	Pte		Charles Arthur	HAYES	5 CIB Coy, RCASC

"PROCEEDINGS REVIEWED" Certified true copy of original "PROCEEDINGS REVIEWED"
"F. DesRivieres Lieut" proceedings herein. DATE: 9 Jan 45, "W.M.Thompson"Capt.
27 Jan 45 "NCF" Reviewing Officer, JAG BRANCH, C.M.H.Q. Ottawa
J. Fry Capt Bde HQ 2 Can 21 Army Gp. A.D.J.A.
~~PROCEEDINGS ON TRIAL~~

Held in the Fd in (country) HOLLAND on (date(s)) 22 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns from ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number being reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which words are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 101-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 15.30 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to ..... as interpreter ?~~ Ans .....

The Interpreter is sworn.(1) Do you object to No 3470 S/SGT PARKS, R.V. 1 FD 2 CDN INF DIV as shorthand writer ? Ans No
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	A. R. Tedford	2 Div Tps Coy RCASC
Member	Capt	J. Fry	4 CIB Coy RCASC
Member	Lieut.	R.T.M. Scott	HQ RCASC 2 Cdn Inf Div
Judge-Advocate	Capt.	E.K.McDougall	HQ 2 Cdn Inf Div.
Prosecutor	Lieut.	A. R. Mumford	5 CIB Coy, RCASC
Defending Offr	———	———	———

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused D 81920 Pte HAYES C.A. before arraignment make(s) (no) (a) plea (s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37(*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 80(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witness by Court, etc, see RP* 75-79, 85, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans N/O S/E.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 23(B) fn 5 para 3; MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on EKM charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on .....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 25(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*) EKM

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....Do you intend to call witnesses on your behalf ?
Ans.....Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans N/O S/E
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 1 and Ex 2 respectively.(3)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans N/O S
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 1323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"A.F.T."

CHARGE SHEET

The accused D-81920 Pte Hayes, Charles Arthur Hayt
Coy RCASC., a soldier of the Canadian Army Overseas, 5 Cdn Inf Bde
charged with:- tive Service

FIRST CHARGE
A.A. Sec 15(I)

WHEN ON ACTIVE SERVICE ABSENTING HIMSE
WITHOUT LEAVE,

in that he

in the field, did absent himself without leave from 0700 hrs 26 Nov 44 till 1500 hrs 4 Dec 44.

(Total absence 8 days 8 hrs)

SECOND CHARGE
A.A. Sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,

in the field, on 4 Dec 44, did improperly wear the badges of rank of a Captain in the Canadian Army.

"J.H.G.Banting"
(J.H.G. Banting) Capt.,
A/Officer Commanding,
5 Cdn Inf Bde Coy
R. C. A. S. C.

In the Field
9 December 1944

TO BE TRIED BY F.G.C.M.

20 December 1944
In the Field

"W. H. Colling"
(W.H.COLLING) Lt-Col
Comd
RCASC, 2 Cdn Inf Div

"A.R.T."

CHARGE SHEET

The accused D-81920 Pte Hayes, Charles Arthur Hayes, of 5 Cdn Inf Bde Coy RCASC., a soldier of the Canadian Army Overseas, on Active Service charged with:-

FIRST CHARGE
A.A. Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE,

in that he

in the field, did absent himself without leave from 0700 hrs 26 Nov 44 till 1500 hrs 4 Dec 44.

(Total absence 8 days 8 hrs)

SECOND CHARGE
A.A. Sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,

in the field, on 4 Dec 44, did improperly wear the badges of rank of a Captain in the Canadian Army.

"J.H.G.Banting"
(J.H.G. Banting) Capt.,
A/Officer Commanding,
5 Cdn Inf Bde Coy
R. C. A. S. C.

In the Field
9 December 1944

TO BE TRIED BY F.G.C.M.

20 December 1944
In the Field

"W. H. Colling"
(W.H.COLLING) Lt-Col
Comd
RCASC, 2 Cdn Inf Div

ART

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D81920	Pte		Charles Arthur	HAYES	5 Cdn Inf Bde Coy, RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 20 Dec 44 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ". W/HC

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~) W/HC

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ W/HC

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	A R TEDFORD,	2 Cdn Inf Div Tps Coy, RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J FRY,	4 Cdn Inf Bde Coy, RCASC
Lieut	R T H SCOTT,	HQ RCASC, 2 Cdn Inf Div

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	D T WEIR,	HQ RCASC, 2 Cdn Inf Div

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	E K McDOUGALL,	HQ 2 Cdn Inf Div

On Active Service in the Fd

in HOLLAND (Country.) "W. H. COLLING" (Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

Dat 20 Dec 44 (W.H.COLLING)
Commanding RCASC, 2 Cdn Inf Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE "A.R.T."
K.R. (Can) Para 557

I certify that I have this morning examined No. D.81920 Pte. HAYES, C.A.R. of 5 Cdn Inf Bde Coy RCASC and in my opinion he is fit to undergo trial by court-martial.

In the Field

Date ....22 Dec 44....

"??????????" Capt
Medical Officer

TRANSCRIPT OF EVIDENCE IN THE CASE OF THE TRIAL BY GFCM OF D-81920 PTE HAYES, C.A., 5 CDN INF BDE COY, RCASC, HELD 22 DEC 44.

A-7

JA to accused.

You are entitled to have a Defending Officer if you wish. Do you not wish to have a Defending Officer?

Accused

No, sir.

E-3

The accused, D-81920 Pte Hayes, C.A., 5 Cdn Inf Bde Coy, RCASC, makes the following statement in mitigation of punishment not under oath,

What I have to say is I was transferred to the Army Service Corps from Ordnance against my wishes. I was sent over to France and to 5 CIB Coy. After having been with the Coy for approximately one month I asked for a transfer which was refused. One night I asked for a pass and received a pass, and I missed the truck by a few minutes and got back to camp an hour and 15 minutes late. For this I was awarded loss of 28 days pay. I was watched for things like that. I know this because one time in Antwerp we were on the liberty truck to go to the show. We couldn't get into the Ensa Theatre but I got in., I knew the manager there, so I came back to the truck and then told three or four fellows around that I was going across the street to eat and would be back before the truck left. I arrived back about 15 second late, to see the truck pulling out. I immediately took the tram and proceeded towards the unit and was in before 12. I was told I was under open arrest and finally got before the OC who fined me 28 days pay. For being 1 hour and 45 minutes late. And another fellow who missed the truck that same night I did get nothing. So this happened to me twice when I tried to get back. It didn't seem to work out to try to get back. So this time I didn't try to get back. That is all, sir.

SUMMARY OF EVIDENCE A "ART"

SUMMARY OF EVIDENCE IN THE CASE OF:/ D-81920 Pte. Charles Arthur HAYES, of 5 Cdn Inf Bde Coy RCASC a soldier of the Canadian Army Overseas charged under A.A. Sec 15(1) A.A. Sec 40

The A/Officer Commanding directs that all evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION: H-87864 L/Cpl Pateman, H.E. now Pte. Pateman, H.E. of 5 Cdn Inf Bde Coy RCASC having been duly sworn states:

On the night of 25 Nov 44 at 2200 hrs I took the tattoo roll call and found D81920 Pte Hayes, C.A.R. present, and at that time I checked and reported all vehicles present. On the morning of 25 Nov 44 at 0700 hrs I took reveille roll call and found D-81920 Pte Hayes C.A.R. absent without leave; I also found W.D. vehicle CL-4269450 which was on charge to D-81920 Pte Hayes C.A.R. missing. I gave my report to the Cpl of the Guard D-106656 Cpl Middrie, D.

"H.E. Pateman Pte"
H-87864 Pte. Pateman H.E.

The accused declines to cross-examine the witness.

SECOND WITNESS FOR THE PROSECUTION:- D-106656 Cpl. Middrie, D. of 5 Cdn Inf Bde Coy RCASC having been duly sworn states:

I was Cpl of "A" Transport Platoon Guard on the night of 25 Nov 44. At tattoo roll call H-87864 L/Cpl. Pateman, H.E. reported his section and vehicles all present. At reveille roll call 26 Nov 44 he reported D-81920 Pte. Hayes, C.A.R. absent without leave also W.D. Vehicle CL-4269450 which was on charge to D-81920 Pte. Hayes, C.A.R. to be missing. I reported this to M-37168 Sgt. Batty, R.V. my Platoon Sgt.

"D. Middrie Cpl"
D-106656 Cpl Middrie, D.

The accused declines to cross-examine the witness.

THIRD WITNESS FOR THE PROSECUTION:- M-37168 Sgt. Batty, R.V. of 5 Cdn Inf Bde Coy RCASC having been duly sworn states:-

On the morning of 26 Nov 44 at approximately 0700 hrs the Cpl. of the guard D-106656 Cpl. Middrie, D. reported to me that D-81920 Pte. Hayes, C.A.R. was absent from reveille Roll Call, also W.D. CL-4269450 on charge to D-81920 Pte. Hayes, C.A.R. was missing from the vehicle park.

"R.V. Batty Sgt"
M-37168 Sgt. Batty, R.V.

The accused declines to cross-examine the witness.

FOURTH WITNESS FOR THE PROSECUTION:- R.S.M. Roberts 242 HQ Provost Coy C.M. Police.

A written statement of this witness' evidence, purporting to be signed by him, has been read to the accused and is included in this summary attached as Exhibit "A" having regard to the exigencies of the service, the expense involved, and the loss of time the attendance of this witness, cannot in my opinion, be readily procured.

The accused does not demand the attendance for cross-examination of this witness.

"F.M. Wright Capt"
(F.M. Wright) Capt.,
Officer Detailed to take Summary.

FIFTH WITNESS FOR THE PROSECUTION:- Major R.J. Kidston 7 Group Civil affairs.

A written statement of this witness' evidence purporting to be signed by him, has been read to the accused and is included in this Summary, Attached as Exhibit "B", having regard to the exigencies of the service the expense involved and the loss of time, the attendance of this witness cannot, in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

"F.M. Wright Capt"
(F.M. Wright) Capt
Officer Detailed to take Summary

SIXTH WITNESS FOR THE PROSECUTION: Lt J.G. Steen Adjutant 5 Cdn Inf Bde Coy RCASC having been duly sworn states:-

I present:
certificate of apprehension purportint to be signed by O.C. 242 H.Q. Provost Coy C.M.P. d/4 Dec 44, attached as exhibit "C".

"J.G. Steen"
(J.G. Steen, Lt.

The accused declines to cross-examine the witness.

The accused having been duly cautioned in accordance with R.P. 4(e) states:-

"I do not wish to make a statement"

CERTIFIED THAT R.P. 4 COMPLIED WITH

In the field
9 Dec 44

"F.M. Wright Capt"
Officer Detailed to take Summary

On completion to be disposed of in accordance with K.Rs 1940 Para. 562(b)

Army Form B 252
(See King's Regulations)

CHARGE

THE ROYAL CANADIAN ARMY SERVICE CORPS — Regiment

No. 5 CANADIAN INFANTRY — Battery / Squadron / Troop or Company

CHARGE against No. D81920 Rank PTE

Name HAYES, C.A.R.

Place LILLE Date of Offence

OFFENCE W.O.A.S. (1) Absent from until apprehended by the Military Police at Provost Headquarters on 4 DEC 44 at about 1500 hrs.

(ii) Masquerading as an officer of the Canadian Army, wearing the badges of rank of a Captain on his B.D. blouse.

Names of Witnesses:—
MAJOR KIDSTON, R.J., 7 Gp. Civil Affairs.
R.S.M. ROBERTS, H., C.M.P.-POLICE.
CPL. FINBOW, J. (N.C.O. i/c Guard).

Signature of O.C. Battery, Squadron, Troop or Company ?? D.A.P.M. H.Q. No. 15 L of C SUB-AREA

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

EXHIBIT 'A'

STATEMENT OF **EVIDENCE** IN THE CASE OF:-

No. D81920 PTE. HAYES, C.A.R.,
No. 5 CANADIAN INFANTRY COMPANY
2nd CANADIAN INFANTRY DIVISION,
THE ROYAL CANADIAN ARMY SERVICE CORPS.

Sir,

At LILLE on 4 DEC 44 at about 1500 hrs I was on duty at Provost Headquarters when the a/n soldier was brought in by MAJOR KIDSTON R.J. (statement attached).

PTE HAYES was carrying his tunic, and it bore the badges of rank of a Captain. He admitted he had been wearing it, in order to change some money (Gulden).

I established the fact that he was an absentee and arrested him. He was conducted to the Town Guard Room, LILLE where he was handed over to the N.C.O. i/c the Guard to be detained.

Handing-over Certificate and Certificate of Arrest attached.

Lille
4 Dec 44

"H. Roberts" R.S.M.
242 H.Q. PROVOST COMPANY, C.M. POLICE

REMARKS

Exhibit "B"

Statement of Major R.J. KIDSTON, 7 Gp Civil Affairs

1. At 1450 hrs 4 Dec 1944 I saw a soldier on the Rue National, Lille. He was wearing a Canadian battle dress without "Canada" shoulder titles and a kaki beret without a badge. On his shoulder tabs were the badges of rank of a Captain and he was wearing the Canadian Service Medal with Maple Leaf.

2. I asked the soldier for his identity card. He could not produce it and said that he had left it at his unit around the corner and would go to get it. He ran down a street and turned a corner. I followed him and found him hiding under a car in a garage.

3. I ordered him to remove his blouse, belt and one boot. I took possession of those articles and escorted the soldier to 242 Provost Coy where I handed him over to R.S.M. Roberts for interrogation.

4. The soldier was identified as No. D81920 Pte Hayes C.A.R.

4 Dec 44

"R.J. Kidston Maj"

CERTIFICATE UNDER SECTION 163 (1) of THE ARMY ACT

I certify that No. D81920 Rank .... PTE ... NAME ... HAYES C.A.R. CDN INF COY, 2nd CDN INF DIV R.C.A.S.C. Regiment was arrested at LILLE ... at 1500 ... hrs on 4 DEC 44 (date), and that at the time of his arrest he was wearing military uniform.

Date..... 4 DEC 44

"H. JEFFERY" Capt.,
(H. JEFFERY)
O.C. 242 H.Q. PROVOST COMPANY C.M.P.

Exhibit "C"

Receipt by the N.C.O. i/c Guard of a soldier in arrest handed over to him by the Military Police.

No. B65716 Rank . Pte . Name . Larcher P.
Coy. 5 CIB .. Unit .... RCASC .....
Station.....Field

Sir,

I was Commander of the Lille Town ... Guard, on the Dec 1st 1944 when about 2245 hrs the above named soldier was handed over to me by the Military Police.
He was ... Sober ... (Condition).
Station ..... Lille .....

1/12/1944

Signature ..FF.C.Williams.Cpl?.....
Unit ..... 609 Coy CMP (B)

N.C.O. i/c Guard

"A.R.T."

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

"Y"	*Number.*	*Rank.*	*Name.*	*Regiment (or as the case may be).*
	D-81920	Pte	H.A Y E S, CAR	5 Cdn Inf Bde Coy RCASC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 15(1) Eleven times.

For A.A. Sec 40 three times.

For _____ _____ times.

For _____ _____ times.

Date of first entry in Field Conduct Sheet 20 Feb, 1940.

Date of last entry in Field Conduct Sheet 25 Nov 1944

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N/A

beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for no days in civil custody; and for 18 days in military custody, *i.e.*, no days in open arrest, 18 days in close arrest; of which no days were spent in hospital.

5. The present age of the accused is 23 years

6. The date of his ~~enlisting up for military service~~ attestation is 1 Mar 1940

7. The service which the accused is allowed to reckon is _____

8. The accused is in possession of† CVSM & Clasp

†State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of _____ _____

In the war substantive rank of _____ _____

In the acting rank of _____ _____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) W.L.8670/668 100,000 4/42 A. & E.W.Ltd. Gp.698
(22459) W.L.23216/1673 60,000 9/42 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
Nil	Nil	Nil	Nil	Nil

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 22nd day of December 1944

"A. R. Mumford Lieut"

Company Conduct Sheet | N/A. | No and date of last drunk | N/A | Corps R.C.A.S.C. | Date of enlistment | 3-1-40 | GC Badges | Service or Proficiency Pay | "A.R.T."

Period not reckoning towards freedom from extra fine | N/A | Sheet No 1 | Signature GC Company, etc

MFM 6 [AFB 122] 65/1156 (3438)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				New sheet on completion of 6 Months Service					1 June 43)
Montreal	20-7-40	Pte		AASec15(1)AWL from 0845hrs2-7-40 till 0845 hrs 22-7-40		3 July 40 (Duplicate - old sheet destroyed			
Aldershot	19-8-40	Pte		AASec15(1)AWL from 2230hrs 19-8-40 to 0600 hrs 25-9-40	Sgt.Heater	Admonished	20-7-40	Maj.J.L. Smith (FRAI 149(1)(a)	2 days Pay
					Documentary	21 dys det. 21 days Pay FRAI 149(2)	26-9-40	Lt. Col. Guildford	37 dys pay FRI 149(1)(a) 1 day pay for close arrest.
Halifax	12-6-41	Pte		AASec15(1)AWL from lecture,1300hrs to 1700 hrs 12-6-41 (4 hrs)	Documentary	7 days C.B.			
Halifax	17-6-41	Pte		AASec15(1)AWL from 1445 hrs 17-6-41 to 1200hrs 27-6-41 (9 days 21 hrs) and 15 min (2) Breaking out of Barracks whilst a defaulter.		14 days det	No Signature of Original		10 days Pay.

"A.R.T."

No D81920 Name Hayes, C.A.R. | Sqn, Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 3-1-40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 121) (c) PAS/138 (3488)

"Z" | Date of last entry in Company Conduct Sheet N/A. | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				New sheet on completion of 6 Months Service		3 July 40 (Duplicate - old sheet destroyed 1 June 43)			
Montreal	20-7-40	Pte		AASec15(1)AWL from 0845hrs 2-7-40 till 0845 hrs 22-7-40	Sgt. Heater	Admonished	20-7-40	Maj. J.L. Smith (FR&I 149(1)(a)	2 days Pay
Aldershot	19-8-40	Pte		AASec15(1)AWL from 2230hrs 19-8-40 to 0600 hrs 25-9-40	Documentary	21 dys det. 21 days Pay FR&I 149(2)	26-9-40	Lt. Col. Guildford	37 dys pay FRI 149(1)(a) 1 day pay for close arrest.
Halifax	12-6-41	Pte		AASec15(1)AWL from lecture, 1300hrs to 1700 hrs 12-6-41 (4 hrs)	Documentary	7 days C.B.			
Halifax	17-6-41	Pte		AASec15(1)AWL from 1445 hrs. 17-6-41 to 1200hrs 27-6-41 (9 days 21 hrs) and 15 min (2) Breaking out of Barracks whilst a defaulter.		14 days det	No Signature of Original		10 days Pay.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Lingan	28-8-41	Pte		AASec40Neglect to the prejudice etc. Sgt. neglected to carry out an order given) Bickley by his superior officer		5 days C.B.	20-8-41	Capt M.L. Keefe.	
Lingan	29-11-41	Pte		AASec15(1)AWL from 2200hrs29-11-41 to 1730hrs 30-11-41 (19hrs.30mins)	L/Bdr Stevens	14 days C.B.	1-12-41	Lt.Col.W.W. Alwart	1 days Pay FRI 149(1)(a)
Lingan	1-1-42	Pte		AASec15(1)AWL from 2250hrs 1-1-42 to 0600 hrs 2-1-42	Sgt.Morrison L/Bdr Stevens	168 hrs det 7 days Pay	5-1-42	LtCol WW Alwart	1 day Pay FRI 149(1)(a)
Fort South Barracks	14-6-42	Pte		AASec15(1)AWL from 2130hrs14-6-42 to 0620hrs 15-6-42 (8hrs 50 min)	CSM McDonald Gnr Lipkins,H.	7 days CB	Not readable		1 days pay FRI 149(1)(a)
Fort Petrie	20-10-42	Pte		AASec15(1)AWL from 2245hrs24-10-42 to 0600hrs 25-10-42(7hrs 15mins)	L/Sgt McPherson	7 days C.B. H.G.	26-10-42	W.H.Pipe	1 days pay FRI 149(1)(a)
Farnham PQ	27-2-43	Pte		AASec15(1)AWL from2350hrs27-2-43 to 0730hrs 28-2-43 (7hrs 31 min) Placed under open arrest.	L/Cpl Godwin L/Cpl Clark				1 days pay FR&I 149(1)(a)
				2.Neglect to the proj.etc. Neglected to report to the guard room when ordered to do so AA Sec 40	Cpl McKibbin L/c Godwin	7 days C.B.	1-3-43	Capt L.O.M. Tiffin.	

No D81920 Name Hayes, CAR. | Sqn, Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 3-1-40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/125 (3458)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17-9-43	Pte		AA Sec 40 Neglect to the prej etc negligently operating WD Vehicle CMD90014 causing it to strike a civilian W.T.H.Baker, causing injury to him.	Documentary	3 days pay FRI 149(2)	4 Dec 43	Lt Col P.M. Trevin	
Field	22 Aug 44	Pte		WOAS conduct to the prej was wearing ribbon to which he was not entitled AA Sec 40 WOAS conduct to the prej with holding infm from CPC in London AA Sec 40 WOAS failing to obey unit Daily Order in London without a pass AA Sec 11 WOAS making a wilfully false statement AA Sec 27(4)	Documentary	14 days Pay	24 Aug 44	L/Col R.J. Dufresne	Total forf 14 days Pay

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8 Oct 44	Pte		AA Sec 15(1) AWL from 2200 hrs 8 Oct 44 to 2315 hrs 8 Oct 44 (TTA 1 hr 15 min)	L/Cpl Dallain Sgt Sparkman H	14 days Pay 14 days C.B.	9Oct44	Major A.R.Tedford	14 days Pay 149(2)
Field	25 Nov 44	Pte		AA Sec 15(1) AWL TTA 1 hr 45 min	Sgt. Coot, J.G. Cpl Levy TM	28 days Forf Pay	25 Nov 44	Capt J.H.G. Banting.	28 days Forf FR&I 149(2)

CERTIFIED TRUE COPY - "J.H.G. Banting"
(J.H.G. Banting) Capt.,
A/Officer Commanding,
5 Cdn Inf Bde Coy.,
R.C.A.S.C.

LL-137
PTE HAYES D

A.6038 Pte. HAYES, Dennis
Royal Canadian Regiment
No. 3 Cdn. Infantry Reinforcement Unit.

LL-137

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this twenty-first day of July, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ G.C.M.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*O.C.M. not applicable.

* ~~[I am unable to appoint~~ :—

*(1. ~~Three Officers to form the Court~~) G.C.M.

*(2. ~~A Field Officer as President~~)

~~for the following reasons, namely:—~~]

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lieut-col.	D. L. Redman	Calg. Highrs.

Members.

Rank.	Name.	Regiment.
A Captain	to be detailed by O.C.	1 C.I.R.U.
A Lieutenant	to be detailed by O.C.	1 C.I.R.U.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

Brigadier
Commanding "D" Group, Cdn. Ref. Units.
Convening Officer.

SCHEDULE

Number, Rank (*a*) Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A.6038 Pte. HAYES, Dennis R.C.R. 3 C.I.R.U.	First Charge A.A. Sec.15(1) -!- Second Charge A.A. Sec.15(1) except that I surrendered myself to C. Provo at 2230 hrs. 15 June 1943 at Londons See Charge Sheet Attached.	Guilty Guilty	Guilty Guilty Sentence To undergo detention for a period of ~~Five~~ One Hundred and Fifty (150) days 22nd July 1943	Confirmed 23 July 43

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(*Signed*) E.W. Hardenbergh Brigadier. (*Signed*) [signature]
Commanding "D" Group, C.R.U.
Convening Officer (*c*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 22nd day of July 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The Interpreter)
*(4. The officers under instruction)
were duly sworn.

*Omit if not applicable.

Signed this 22nd day of July 19 43

[signature]
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (*b*) on page 702 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 670 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 23 day of July 1943.

E.W. Hardenbergh Brig
Confirming Officer.

Promulgated and extracts taken in the case of Pte Hayes Dennis *A6038.

(*a*) (Dated) 24 July 43 (Signed) [signature]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(20704) W1 47343/242 25,000 7/42 A.A.F.W.Ltd. Gp.698
(21795) W1 34666/1559 40,000 7/42

CHARGE SHEET

The accused, Regimental Number A.6038 Private HAYES, DENNIS, of The Royal Canadian Regiment, a reinforcement on the strength of 3 Cdn Inf Reinf Unit and a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
A.A. Sec. 15(1)

WHEN ON ACTIVE SERVICE, ABSENCE WITHOUT LEAVE

in that he

absented himself without leave from 1430 hours 7 Feb 43 until 1145 hours 16 Mar 43. Total absence 36 days 21 hours 15 minutes.

SECOND CHARGE
A.A. SEC. 15(1)

WHEN ON ACTIVE SERVICE, ABSENCE WITHOUT LEAVE

in that he

absented himself without leave from 0600 hour 13 May 43 until admitted to Charing Cross Hospital, London, at 2315 hours 15 Jun 43. Total absence 33 days 17 hours 15 minutes.

Signed, in-the-field,
this 19th day of July 1943.

J. A. McIntosh
(J. A. McIntosh) Colonel,
Commanding Officer,
3 CDN. INF. REINF. UNIT.

To be tried by Field General Court Martial.

E.W. Haldenby
(E.W. Haldenby) Brigadier
Commander
"D" Group, Cdn. Rft. Units

In the Field
21 Jul 43

Medical Officers Certificate.
K.R.(Can) para.557.

I certify that I have this morning examined No. A 6036
Pte. (rank) HAYES D. (name) R.C.R. and in my opinion he is fit to undergo trial by Court Martial.

Station. #3 CIBU.

Date. 22-7-43.

(Sgd) [signature] (Medical Officer)

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Corsenna 13 Hrs Redirected Hours
ON THE 22 DAY OF July 1943

The accused A6038 Pte Hayes D. Unit. RCR - 3 C I R U.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lt Col OL Redman Unit. HQ C R U.

Members. Capt A S Ivin Smith Unit. 1 C I R U.

Lt D.H. Mace Unit. 1 C I R U.

The officers under instruction are duly sworn:-

.....Unit.....

.....Unit.....

Prosecutor. Capt C.G. Kinney Unit. 3 C I R U

Defending Officer. Capt J.W. Burgess Unit. 3 C I R U.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces ~~AFB 295~~, AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

✓(a) Makes a statement in mitigation of punishment.
✓(b) Calls witnesses as to character.
~~(c) Calls witnesses in mitigation of punishment.~~
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

XX The accused pleas guilty to the second charge & asks that he surrended himself to Cdr Prov Corps at 2230 hrs 15 Jan 43 at Lowdow. The Pros. signifies that he had the concurrence of the Convening Officer to accept the plea The Court accepted and recorded the Plea accordingly.

1st Witness as to character: P17083. Sgt Cook, W. H. R.C.R. 3rd Bn. Sworn.

I am Provost Sgt. I have known the accused in 1931 in the P.F. He was stationed at St John P.Q. He has been a good soldier a little above the average. I understand he has had trouble at home in 1941 his wife had been neglecting his children.

Accused elects to remain silent.

Accused in his explanation at beginning of 1941 I had received cheque indicating that my wife had a child. I left Canada in 1939. She was sentenced to 1 yr in a Reformatory because the child died. Two children were put in a home. I made application to get home to care for my children. It was refused. I then applied again. I could not settle down as I missed my children. When first apprehended at the time I tried to settle down but I got no news of my children and was away the second time I deserted I got in with bad company.

The Sgt Major said he had nothing to add.

William Wood

RECORDS 5
HQ P & S/39

PART II D.O. EXTRACT FORM

Extracted from:

No:	Rank:	Name:	Unit:	
A 6038	Pte.	HAYES, D. (RCR)	D.O. No: 22	Date: 22 Mar 43.

Casualty: "S" absent without leave;(a)AWL from 1430 hrs 7 Feb 43."

Certified True extract from RCR Part II order 22 d/22 Mar 43.

C. M. H. Q.
Records Office

Entered by.....

Date.....

Card Index:

Shows Unit: (W.E. Thorne) Captain
Records Officer
3 Cdn Inf Reinf Unit

Date:

Final verification:

Section:.....

Where entered:

Unit.....

Exhibit "A"

Lieutenant Capt.

RECORDS 5
40/P & S/270

PART II D.O. EXTRACT FORM

Extracted from:

No: A.6038 Rank: Pte. Name: HAYES, D. Unit: R.C.A.M.C. D.O. No: 26 Date: 10 Apr 43

Casualty: "STRENGTH INCREASE (a) T.O.S. on app. from Gen. W.C.A. 1145 hrs 16 Mar 43."

Certified True extract from RCR Part II Order 26 d/10-Apr-43.

C. M. H. Q.
Records Office
Entered by.....
Date.....

Card Index:
Shows (W.E. THORNE) Captain
Unit: Records Officer
3 Cdn. Inf. Reinf. Unit.
Date:
Final verification:

Section:
Where entered:
Unit:

Exhibit "B"
Affirmed Capt.

RECORDS S
60 F & S/39

PART II D.O. EXTRACT FORM

Extracted from:

No:	Rank:	Name:	Unit:	D.O. No:	Date:
A.6038	Pte.	HAYES D. (RCR)	Royal Canadian Reg't	43	8 Jun 43

Casualty: "D. ABSENT WITHOUT LEAVE: A.W.L. from 0600 hrs 13 May 43. Still absent 0600 hrs 21 May 43. (8th day)."

Certified True extract from RCR Part II order 43 6/8 Jun 43.

C. M. H. Q.
Records Office

Entered by:

Date:

Section:

Where entered:

Unit:

Card Index:

Shows Unit:

(W.E. THORNE) Capt.
Records Officer
3 Can Inf Reinf Unit

Date:

Final verification:

Exhibit "C" Rumford Capt.

RECORDS 8
40/P & S/74

PART II D.O. EXTRACT FORM

Extracted from:

No:	Rank:	Name:	Unit:	D.O. No:	Date:
A.6038	Pte.	HAYES D. (RCR)	3 Cdn Inf Reinf Unit	121	28 Jun 43

Casualty: "B.(a) STRENGTH INCREASE: TOS from Fd Unit while in Charing Cross Hosp wef 16 Jun 43".

Certified True Extract from 3 C.I.R.U. Part II order 121 d/28 Jun 43

C. M. H. Q.
Records Office
Entered by.....
Date.....

Card Index:
Shows Unit:
(W.E. THORNE) Capt
Records Officer
3 Cdn Inf Reinf Unit
Date:
Final verification:

Section:.....

Where entered:

Unit:.....

Exhibit "D"

Warrant Cpl

TELEPHONE: TEMPLE BAR 5431.
TELEGRAMS:
OPERATIONS, LESQUARE, LONDON.

CHARING CROSS HOSPITAL,
LONDON, W.C.2.

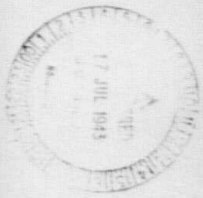
16th July, 1943.

Dear Sir,

re Pte. Hayns

This is to state that the above-named was admitted to this Hospital on the 15th June, at 11.15.p.m.

Yours very truly,





The Commanding Officer,
3 C.I.R.U.
Canadian Army,
England.

Exhibit "D"

SUMMARY OF EVIDENCE

in the case of

Regimental No. A.6038, Private Dennis Hayes, the Royal Canadian Regiment, a reinforcement on the strength of No. 3 C.I.R.U. and a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS
Prosecution

Capt. W.E. Thorne, C.M.S.C., Records Officer, No. 3 C.I.R.U. having been duly sworn states:-

"I am Capt. W.E. Thorne, C.M.S.C., Records Officer, No 3 C.I.R.U. and as such have full knowledge of the facts deposed hereto. I produce the following exhibits to this Summary:

Exhibit "A" Certified true extract of the 2nd Echelon, D.O. Part II (R.C.R.) No. 22 dated 4 Mar 43 showing the accused A.6038 Pte. Hayes, D., as absent without leave from 1430 hours, 7 Feb. 43.

Exhibit "B" Certified true extract of 2nd Echelon, D.O. Part II (R.C.R.) No. 26, dated 10 Apr 43 showing the accused Pte. Hayes, D., as having been taken on strength on apprehension with effect from 1145 hours, 16 Mar 43.

Exhibit "C" Certified true extract of 2nd Echelon, D.O. Part II (R.C.R.) No. 43, dated 8 Jun 43, showing the accused Pte. Hayes, D., as absent without leave from 0600 hours 13 May 43.

Exhibit "D" Certificate from Charing Cross Hospital, London showing that A.6038, Pte. Dennis Hayes was admitted to that institution on the 15th June 43 at 2315 hours.

The accused is the soldier referred to in the documents produced.

(W.E. Thorne) Capt. (CMSC)
Records Officer,
3 Cdn. Inf. Reinf. Unit.

The evidence is read to the witness
The accused declines to cross-examine the witness.

The accused was cautioned as follows:
Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused reserved his defence.

"I certify that Rules of Procedure 4 (c), (d),(e) and (f) have been complied with."

Taken by me in the field in the presence and hearing of the accused this 14th day of July, 1943.

(J.E. Farncomb) Captain,
General List,
Officer detailed to take this Summary of Evidence.

In the field
14 Jul 43

M.F.M. 6
(A.F. B.122)
40/P & /8136 (2963)

No. A-6038 Name HAYES D. | Sqn., Battery, or Company | Corps C.I.C. (RCR) | Date of enlistment 2 Sep 39 | O.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
20 July 43	ORIGINAL SHEET LOST, DUPLICATE SHEET ..... (J.A.McIntosh) Colonel.								
T.W.E.	19-8-40	Pte		A.A.15(1) AWL 3 days		168 hrs detn 7 days pay FR&I 149(1)(b)			Forf 3 dys pay FR&I 149(1)(a) Total forf 10 days pay.
Field	2-7-41	Pte		A.A.15(1) AWL 2 days		14 dys C.B.			Forf 2 dys pay FR&I 149(1)(a)
Field	5-9-41	Pte		A.A.15(1) AWL from 1200 hrs, 5-9-41 till 1230 hrs, 16-9-41. (11 dys, 30 min)		21 dys C.B.	20-9-41		Forf 12 dys pay FR&I 149(1)(a)
Field	4-3-42	Pte		A.A.15(1) AWL 19 days		21 dys F.P. 21 dys pay FR&I 149(1)(b)			Forf 19 dys pay FR&I 149(1)(a) Total forf 20 days pay.

....p.t.o.....

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23-4-42	Pte		A.A.15(1) AWL from 2230 hrs,23-4-42 till 1230 hrs, 1-5-42. AWL from 0600 hrs,4-5-42 till 1115 hrs, 20-5-42. Total absence 24 days		28 dys F.P. 28 dys pay FR&I 149(1)(b)	25-5-42		Forf 28 dys pay FR&I 149(1)(a). Forf 7 days pay FR&I 149(1)(c)(ii) Total forf 56 days pay,plus £3-2-2 cost of apprehension.
Field	16-3-43	Pte		Civil Charge (Larceny). In civil custody 7 days,21 hrs, 15 mins.		one month imprisonment 31 days pay FR&I 149(1)(b)	24-3-42	Civil Authority	Forf 8 days pay FR&I 149(1)(c)(i). Total forf 39 days pay.

I certify that the above entries have been extracted from MFM 4 and that MFM 6 is not available.

.....
(W.E.Thorne) Captain,
Records Officer - 3 CIRU
19 July 1943

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A-6038	Pte.	Hayes, D.	3 C.I.R.U. (R.C.R.)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, the necessary being given by the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec. 15 (1)	Nil times	Six times.
~~For~~	~~times~~	~~times.~~
~~For~~	~~times~~	~~times.~~
~~For~~	~~times~~	~~times.~~
~~For~~	~~times~~	~~times.~~

~~Number of instances of gallantry or distinguished conduct,~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, ~~summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence (or beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for No days in civil custody, and ~~#~~ 37 days in military custody, making a total of 37 days, of which 25 days were spent in hospital. C&K

5. The present age of the accused according to ~~his~~ record of service ~~attestation paper~~ is 26

6. The date of ~~his commission~~ attestation specified in the record of service ~~attestation paper~~ is 2 Sep 39.

7. ~~The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~

8. ~~The accused is entitled to deferred pay or gratuity in respect of service.~~

9. ~~The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

10. ~~The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of, or entitled to (state any military decoration or reward)).~~ The accused is in possession of, or entitled to, no military decoration or military award ~~(or is in possession of, or entitled to (state any military decoration or reward)).~~

11. ~~(If the accused is a warrant officer.)~~ The accused before he was made a warrant officer last held the regimental rank of

12. ~~(In the case of an officer.)~~ The accused holds in the army the rank of , dated , and in his regiment (or corps or department) the rank of , dated .

(*16540) Wt.30248/662 75,000 12/40 A.& E.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. A 6038 Rank Pte. Name HAYES, D. of 3 CIRU (R.C. Regiment) (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
Civil Authy.	16 Mar 43	Larceny - 2 charges	One month and One month Imprisonment (concurrent)	Nil

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from ~~the regimental books~~ M.F.N. 4 in my custody.

Signed this 22 day of Jul 43

Records Officer,
3rd Cdn. Inf. Reinf. Unit
Canadian Army (Overseas).

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of . . . . . Date of Promotion.

In the rank of . . . . . years, ...

In the rank of . . . . . years . . . . .

In the rank of . . . . . years . . . . .

(Instruction.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collated from such sources as are available and the paragraphs concerned amended accordingly.*)

3 CANADIAN INFINTRY REINFORCEMENT UNIT

I certify having received free of charge a copy of the charge sheet, Summary of Evidence, and List of Witnesses.

I ~~do not~~ do desire the services of an officer to represent me at my trial.

Major C.B. Clark, (R.C.R.)

D. Hayes

(A.6038 Pte. Hayes D.)
(RCR)

LIST OF WITNESSES - For the prosecution

Captain, W.E. Thorne, C.M.S.C. Records Officer, 3 C.I.R.U.

LIST OF EXHIBITS - For the Prosecution.

Exhibit "A" - Part II D.O. 2nd Echelon. No. 22 (RCR) d/4 Mar 43 (Certified true extract)

Exhibit "B" - Part II D.O. 2nd Echelon. No. 26 (RCR) d/10 Apr 43 (Certified true extract)

Exhibit "C" - Part II D.O. 2nd Echelon. No. 43 (RCR) d/8 June 43 (Certified true extract)

Exhibit "D" - Letter from Charing Cross Hospital, London stating the admittance of the accused to this hospital.

WW 52
PTE HAYES D.

WW-32

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 6 day of November, 19 43

Whereas it appears to me, the undersigned, an officer in Command of R.E.M.E. 1 Cdn. Div., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint :—

*(1.) Three Officers to form the Court.)

*(2.) A Field Officer as President.)

for the following reasons, namely :—]

Proceedings Reviewed

13 Dec 43 ..... Reviewing Officer (J.A.G.) C.M.H.Q.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name; or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	T.C. Graham	3 Cdn Inf Bde Wksp RCOC

Members.

Rank.	Name.	Regiment.
Captain	W.J. Armstrong	ADOS 1 Cdn Div
Lieut.	G.A. Schultz	2 C.I.B. Wksp RCOC
Lieut	E.F. Hendricks	3 C.I.B. Wksp RCOC.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed ..... Lt-Col

Commanding R.E.M.E. 1 Cdn Div

Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-110388 Pte D. HAYES 1 Canadian Inf Div Sub Park Royal Canadian Ordnance Corps.	First Charge. A.A. Sec 15.	not guilty	guilty	I confirm the finding & sentence of the court on the Second and third charges. I do not confirm the finding of the Court on the first charge. I reduce the sentence to 90 days detention with stoppage of pay in the sum of £9.3.8 for loss of kit
	Second Charge A.A. Sec 15(1)	guilty	guilty	
	Third Charge A.A. 24(2)	not guilty	guilty	
			120 days detention and £9-3-8 stoppage of pay for loss of kit	

14 Nov 43

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) [signature] Lt-Col (Signed) [signature] Major
(J.K. BRADFORD)
Commanding R.C.O.C. 1 Can Div — 3 Can Inf Bde H.Q. — R.C.O.C.
Confirming Officer (*d*) — President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 12 day of ~~Oct~~ Nov 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. ~~The officers under instruction~~)

*Omit if not applicable.

were duly sworn.

Signed this 12 day of Nov 1943.

[signature]
President of the Court Martial.

C. Certificate in case of death sentence.

*See footnote (i) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

[signature]
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this Fourteenth day of November 19 43.

[signature]
Confirming Officer.

Promulgated and extracts taken in the case of B 110388 Pte Hayes, D.

(*a*) (Dated) 19 Nov 43 (Signed) [signature] Major

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

33570: W1-46178-900 10,000 2-43 A.& E.W.Ltd. Gp.439

CRIME

1 Cdn Inf Div Sub Park, RCOC

SQUADRON, BATTERY OR COMPANY

CHARGE against No. B-110388 Pte. Hayes, D.

Place	Date of Offence	OFFENCE	Name of Witness	Punishment Awarded	By whom Awarded
The accused NO. B-110388 Pte. Hayes,D., SUB PARK, ROYAL CANADIAN ORDNANCE CORPS, a Overseas (CMF) while on Active Service, is			1 CANADIAN INFANTRY DIVISIONAL soldier of the Canadian Army charged with:-		
		FIRST CHARGE AA Sec 11 Neglecting to obey Cdn Army Overseas Routine Orders as republished in Unit Part I Orders in that he In the Field on 13 Oct 43 did leave unattended Cdn WD Vehicle No. L-4215495 he being the driver of the said vehicle, contrary to Cdn Army Overseas Routine Order No.272 dated 19 Aug 40 as republished in Unit Part I Order No. 41 dated 21 Jul 43.			
		SECOND CHARGE AA Sec 15(1) Absenting himself without leave in that he In the field, absented himself without leave from 2100 hrs 13 Oct 43 until he voluntarily surrendered himself to his Unit about 1810 hrs 16 Oct 43. (Time absent 2 days, 21 hrs, 10 Min)			

Service years

Number of good conduct badges

Date of last entry in company conduct book

Character

Date of last entry for an act of drunkenness

Number of cases of drunkenness within the last twelve months

Commanding

M. F. B. 264

WDe—6-4 1072-33
H.Q. 1772-35-99

CRIME

1 Cdn Inf Div Sub Park, RCOC

SQUADRON, BATTERY OR COMPANY

CHARGE against No. B-110388 Pte. Hayes, D.

Place	Date of Offence	OFFENCE	Name of Witness	Punishment Awarded	By whom Awarded
THIRD CHARGE AA Sec 24(2)		Losing by neglect his equipments, clothing and regimental necessaries in that he In the Field on 26 Oct 43 was deficient the following Artic les.			

ARTICLE	VOCAB PRICE £ S D	75 Vocab Prices £ S D
Anklets Web	0 4 4	0 [illegible] 3
Blouses Battle Dress	1 2 6	0 16 10½
Boots Ankle	1 2 6	0 16 10½
Puttees Short prs	0 2 4	0 1 6
Shorts K D Prs	0 5 3	0 3 11¼
Trousers Battle Dress	1 0 6	0 15 4½
Greatcoat	2 2 6	1 5 7½
Capes Anti Gas No.1	0 11 9	0 8 9½
Bags Kit Universal	0 5 3	0 3 11¼
Brushes Button	0 1 2	0 0 10½

(CONTINUED PAGE 3)

Service years

Number of good conduct badges

Date of last entry in company conduct book

Character

Date of last entry for an act of drunkenness

Number of cases of drunkenness within the last twelve months

Commanding

M. F. B. 264

9004—6-4 (372-3)
H.Q. 1772-26-99

CRIME

1 Cdn Inf Div Sub Park, RCOC

SQUADRON, BATTERY OR COMPANY

CHARGE against No. B-110388 Pte. Hayes, D.

Place	Date of Offence	OFFENCE	Name of Witness	Punishment Awarded	By whom Awarded
		(CONTINUED)			
		ARTICLE	VOCAB PRICE £ S D	75 VOCAB PRICES £ S D	
		Brushes Clothes	0 2 3	0 1 8½	
		Brushes Hair	0 2 6	0 1 10½	
		Brushes Shaving	0 1 2	0 - 10½	
		Brushes Shoe Blacking	0 0 8	0 0 6	
		Brushes Shoe Polishing	0 2 1	0 1 6¾	
		Drawers Cellular Shorts (2)	0 4 4	0 3 3	
		Drawers Woollen prs (2)	0 15 0	0 11 3	
		Holdall	0 0 9	0 0 6¾	
		Housewives	0 0 7	0 0 5¼	
		Jersey Pullover	0 6 9	0 5 2¼	
		Shirts Angola drab (1)	0 10 0	0 7 6	
		Socks Worsted ½ prs (2)	0 3 10	0 2 10½	
		Vests Woollen (2)	0 15 6	0 11 7¾	
		Belts Waist	0 3 9	0 2 9¼	
			(CONTINUED PAGE 4)		

Service years

Number of good conduct badges

Date of last entry in company conduct book

Character

Date of last entry for an act of drunkenness

Number of cases of drunkenness within the last twelve months

Commanding

M. F. B. 264

900s—6-4 (872-3)
H.Q. 1772-25-99

CRIME

1 Cdn Inf Div Sub Park, RCOC

SQUADRON, BATTERY OR COMPANY

CHARGE against No. B-110388 Pte. Hayes, D.

Place	Date of Offence	OFFENCE (CONTINUED)	Name of Witness	Punishment Awarded	By whom Awarded
		ARTICLE	VOCAB PRICE	75 VOCAB PRICE	
		Bottles Water Mk VII	0 32 32	0 1 72	
		Braces WE patt '37 left	0 1 8	0 1 3	
		" " " " right	0 1 10	0 1 4½	
		Carrier W E	0 1 11	0 1 5¼	
		Haversack WE patt	0 8 6	0 7 E	
		Packs	0 8 6	0 7 -	
		Straps shoulder haversack			
		WE patt 37 left	0 1 11	0 1 5½	
		" " " right	0 1 11	0 1 5¼	
		Straps web supporting (2)	0 1 4	0 1 -	
		Respirator Anti Gas complete	16 3	0 12 2½	
		TOTAL	12-13-3	9 -3 -8	

D. J. Wiley, Maj

Service

Number of good conduct badges

Date of last entry in company conduct book

Character

Date of last entry for an act of drunkenness

Number of cases of drunkenness within the last twelve months

TO BE TRANSMITTED BY FIELD GENERAL [illegible]

In the Fd
6 Nov 43

Commanding

M. F. B. 264

900m—6-4 (572-8)
H.Q. 1772-28-99

MEDICAL OFFICERS CERTIFICATE

I certify that No B-110388 Pte ~~Donald~~ Douglas Hayes of the 1 Cdn Inf Div Sub Pk, RCOC is fit to undergo trial by Court-Martial this twelfth day of November, 1943.

12 November, 1943.

R.R. Lewis Capt.
.....
(R.R. Lewis) Capt.
Medical Officer,
H.Q. D.M.A., 1 Cdn Div.

Accused B110388 (No.) PTE (Rank) ~~DOUGLAS~~ DONALD (Christian Names) HAYES (Surname) 1 CDN INF DIV SIG REGT (Unit)

Held in the Field in ITALY (Country) on 12 NOV. 1943 (Date)

	Rank	Name	Unit	
PRESIDENT:	MAJOR	T.C. GRAHAM	3 CDN INF BDE	W/S
MEMBERS:	CAPT	W.J. ARMSTRONG	1 CDN DIV HQ	
	LIEUT	G.A. SCHULTZ	2 CDN INF BDE	W/S

JUDGE ADVOCATE: (if any)

OFFICERS UNDER INSTRUCTION:

PROSECUTING OFFICER: LIEUT G.A. GROSE Lawyer? Ans NO

DEFENDING OFFICER: CAPT W.D. GILBERT Lawyer? Ans NO

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (RsP 17(E), 22(A)).

The President, in closed court (RP 22, fn 1), reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (AA 49; RP 105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (RP 106).

The accused is (are) brought before the Court, and at 0945 hrs, the trial commences.

The Prosecuting Officer produces a Medical Certificate under KR (Can) 557 (See CMHQ Circular Letter 173) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

President to accused:
Do you object to N/A as interpreter? Ans

The interpreter is duly sworn.

Do you object to N/A as Shorthand Writer? Ans

The Shorthand Writer is duly sworn. (Forms of Oath on Page 'D')
The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (RP 10)

President to accused
Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans NO

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (RP 26-27 (Forms of Oath on Page 'D'))

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused has (has not) elected trial by Court Martial (AA 46(8)).

(If special plea/s is/are made for separate trial on one or more charges (RSP 62(E), 108); or as to the jurisdiction of the Court (RP 34); or in bar of trial (RP 36); or as to accused's mental fitness to stand trial (AA 130, RP 57), record such pleas and evidence (if any) on separate sheet/s to be initialled by the President and attached to the proceedings.

Each Charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (RP 112). He pleads as follows:

First Charge NOT GUILTY

Second Charge GUILTY

Third Charge NOT GUILTY

Fourth Charge

Fifth Charge

Sixth Charge

Seventh Charge

Eighth Charge

(For procedure on alternative charges, see RP 37, fn 2)

Further proceedings are recorded on pages hereto attached.

(For use when there are pleas of 'Guilty' and 'Not Guilty')

(All printed matter not applicable to be struck out an all alterations, erasures and additions to be initialled by the President)

1. RP 35(B) is complied with, in respect to 'Guilty' pleas, by the President ascertaining that the accused understands the nature of the charges(s) (fn 3) and his plea thereto, explaining the difference in procedure by the plea (RP 37(B)) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:
Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby or that you have not had sufficient time for preparing your defence? (RP 39(A)).
Ans NO

3. The Prosecutor's opening address (if any) (RP 39(B) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto. (See RECORD OF EVIDENCE on Page 'D').

4. The Prosecution is closed. (If submission that no prima facie case established, see RP 40 fn 1; RP 70 fn 1).

5. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination. (RP 40, fn 2) or that he may, if he wishes make an unsworn statement upon which he can not be cross-examined. (RP 40(D)(ii)(a)).

6. President to accused:
Q. Do you apply to give evidence yourself as a witness? Ans YES
Q. Do you intend to call any other witnesses in your defence? Ans NO
Q. Is he a witness as to character only? (RP 40(B)) Ans N/A

7. The evidence for the defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

8. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses, see RsP 40, 41 and 42).

9. The Court is now closed to consider the finding. (RsP 43 and 117). (Record Finding on page 2 of AFA.3).

10. The Court being re-opened, the accused is again brought before it and the findings of 'Not Guilty' (if any) are pronounced. (RP 117(B)).

11. The charges, to which the accused pleaded 'Guilty' are read to the accused.

12. President to accused:
Q. Do you desire to make any statement of the circumstances in reference to the charge(s) to which you have pleaded 'Guilty'? (RP 37(B)) Ans YES

(Statement (if any) not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon).

13. Summary of Evidence is read aloud in the presence of the accused, initialled by the President and attached to the proceedings. (If not such Summary, it is necessary for determination of sentence

(cont'd)

that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings). RP 37(B).

14. President to accused:
Q. Do you wish to make any statement in mitigation of punishment? (RP 37(C)) Ans YES
No cross-examination.
(Statement (if any) is recorded on separate sheet, initialled by the President and attached hereto).

15. President to accused:
Q. Do you wish to give evidence yourself or call witnesses as to character? (RP 37(C)) Ans No

16. Statement of Character and Service (AFB.296) and Field Conduct Sheet (AFB.6), signed in the manner required by AA 163 (i) (h) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings. (RP 46; Overseas RO 3131).

17. President to accused:
Q. Do you wish to address the Court on the Statements of Character, Service and Conduct in mitigation of punishment? (RP 46(D)).
Ans No No cross-examination.

(Record address (if any) on separate sheet, initialled by the President and attached hereto).

18. The Court is now closed to consider the sentence. (Record on Page 2 of AFA.3).

(Punishments AA 44; MR (Can) 563 - 566; one sentence only awarded, RP 48. Sentence should be dated).

The sentence is not announced to the accused by the Court.

H.E. Graham Major
(Signature of President)

Trial of B110388 Pte Douglas Hayes

1 Cdn Inf Div Sub Park RCOC.

1st Charge

Prosecution - The Prosecutor made no opening address.

1st Witness for Prosecution

B 88502 Cpl G.A. Strouth, 1 Cdn Inf Div Sub Park RCOC, duly sworn, states: - On the 13 Oct 43, I was riding at the rear of our convoy. Near Volturara, vehicle number L4215485, driven by Pte Hayes, was stopped. An inspection indicated that it was a workshop job. Pte Hayes was ordered to stay with the vehicle until picked up by a Breakdown Lorry.

Cross Examined - Asked what he said when telling the accused to stay with the vehicle he replied "I told him to stay with the vehicle, Hayes asked about food but I told him to stay with the vehicle".

2nd Witness for prosecution

M 20927 Pte H Johnston, 1 C.I.B. Coy RCASC, duly sworn, states: - I was detailed to pick up a lorry near Volturara on 13 Oct 43. On arriving at this point I found a vehicle unattended. I took the vehicle to RCASC area on suspended tow.

On questioning by the prosecution it was stated that the vehicle number was L4215495, and that the back of the lorry was open showing repair parts to be the load. No personal kit was observed.

Cross Examined - The vehicle number was checked by reference to Orderly Room Records. Witness did not check contents of the vehicle and cannot swear that no personal kit was there

approx time of picking up vehicle 1930 hrs.

3rd Witness for Prosecution

M 20517. Pte J B. Barnhart, 1 CIB Coy. RCASC, duly sworn, states: "Along with Pte Johnston, I was detailed to pick up a vehicle near Volturara on 130ct 43." Vehicle number, condition, & disposal as given by Pte Johnston were corobarated. It was also established that the vehicle was an old style Chevrolet & had a broken tie rod. The pot light was on and the serial number was 654

Cross Examined — The vehicle number was recalled by checking Orderly Room Records. Witness would not swear that personal kit was not in vehicle.

Prosecution closed

Evidence for the Defense

Charge I.

8110388. Pte D. Hayes

Accused takes the stand – duly sworn, states: "I was driving in convoy when my vehicle broke down. The Cpl fitter told me to stay and direct traffic as it was a job for the workshop. After waiting for sometime I felt that no one was coming back so went to the village to contact the Military Police. The MP's advised getting a D.R to contact a workshop. I then returned to where the vehicle had been but it was gone."

Cross Examined – Q. Do you know the W.D number of your Veh.
A. No
Q. Did you order you not leave the veh unattended
A. Yes.

Questions by Court – At what time did you leave the veh
– 1930 Hours (approx)
– Returned at approx 1910 hrs
– Breakdown occured at approx 1600 hrs.

JCA.

Charge # 3.

First Witness for Prosecution.

L 7649. Sgt J Bean, 1 Cdn ~~Inf~~ Div. Sub Pool. RCOC, duly sworn, states: On 26 Oct 43 I held an Inspection of Pte Hayes kit, he had very little and was short the items as per the attached list (Exhibit A) The list of the shortages was made on the day of re-issue and agreed to by Pte Hayes who signed the list as made out.

Cross Examined - It was established that the unit was completely equipped when it left England, though, Pte Hayes equipment was not necessarily checked by Sgt Bean.

Prosecution Closed

Charge #3 Evidence for the Accused.

Accused. – B110388. Pte D. Hayes, duly sworn, states: After reiterating the statements about leaving the vehicle unattended, which he made when giving evidence on Charge I, added that the kit was not in the vehicle when he returned to camp on 16 Oct 43. and he reported this fact.

Cross Examined – by Pros. – Q. Did you have all your kit in your lorry prior to moving

A – Yes.

Accused also stated that the canvas was tied down & the "pot light" on when he left the vehicle but no extra precautions were taken.

by Court – Everything was gone on return to camp, including Blankets, except steel Helmet.

It was established that the vhl was returned to unit on 14 Oct 43, still on suspended tow.

Summing up by Prosecutor —

Pte Hayes admitted that he left the veh. unattended

... states his complete equipment, thereby admitting he had a complete kit, was left in a veh on the side of the road. - once again admitting that the loss was by negligence as he took no precautions to safeguard it.

Summing up by Defence Counsel —

In 1st Charge – it has not been proved that the O.R.O. was republished in Unit orders nor that Pte Hayes had been informed of this order. He did leave the veh. to see an M.P. but this was reasonable action under the circumstances, in that he had been waiting sometime to have the veh removed to W/S.

On 3rd Charge — Court has shown that he was deficient these articles at the time of Kit Insp. but evidence does show that the equipment was left in the veh. while Pte Hayes went to see the M.P. regarding having veh. removed to W/S. Pte Hayes tied down the canvas and this was a reasonable precaution for safeguarding the kit, in that he could not be expected to carry his complete kit + equipment with him on this errand.

AA Sec 24. (2) note 6., says that this sec + sub section is not intended to punish a soldier for deficiency in his kit occasioned by accident or mere carelessness but by culpable neglect. which was not proven.

Statement made by Pte Hayes in
relation to Charge 2, AA Sec 15(1)
on which he has pleaded guilty.

Regarding AWL - when I found the truck had been taken care of there was not much I could do that night so I returned to the village, had something to eat & started drinking. I fully intended to return the next morning but got some more wine and it remained a continual drinking party till I reported to the Orderly Room on the 16th

I was fed up with the conditions as they were at the time & that is why I acted this way.

Statement made by Pte Hayes
in instigation of punishment
relating to Charge # 2.

I was under the influence of liquor practically all
the time I was away whereas if I had been sober
I know I would have returned to camp. I do
like that to be taken into consideration.

1 CANADIAN INFANTRY DIVISION SUB PARK, RCOC

EXHIBIT A

LIST OF DEFICIENCIES & PRICE LIST

ITEM	£-S-D
Anklets Web	0 4 4
Blouses Battle Dress	1 2 6
Boots Ankle	1 2 6
Puttees short prs	0 2 4
Shorts K.D. prs	0 5 3
Trousers Battle Dress	1 0 6
Greatcoat	2 2 6
Capes Anti-Gas No.1	11 9
Bags kit universal	0 5 3
Brushes button	0 1 2
" clothes	0 2 3
" hair	0 2 6
" shaving	0 1 2
" shoe blacking	0 0 8
" " polishing	0 2 1
Drawers cellular shorts (2)	0 4 4
Drawers woollen prs (2)	15 0
Holdall	0 0 9
Housewives	0 0 7
Jersey Pullover	0 6 9
Shirts Angola drab (1)	10 0
Socks worsted prs (2)	0 3 10
Vests Woollen (2)	1 5 6
Belts Waist	0 3 9
Bottles Water Mk VII	0 2 2
Braces WE patt '37 left	0 1 8
" " " " right	0 1 10
Carrier W E	0 1 11
Haversack WE patt 37	0 8 6
Packs	0 8 6
Straps shoulder haversack WE patt 37 left	0 1 11
right	0 1 11
Straps web supporting (2)	0 1 4
Respirator Anti-Gas complete	16 3
TOTAL	12-13-3

D Hayes

.....

(B-110388 Hayes, D.) Pte.
1 Cdn Ind Div Sub Park, RCOC

GAG/WTS.

1 CANADIAN INFANTRY DIVISION SUB PARK, RCOC

5/Court Martial/4
26 Oct 43.

President of Court Martial

B-110388 Pte. Hayes, D.
1 Cdn Inf Div Sub Park, RCOC

1. Herewith list of witnesses for the DEFENCE:

N I L

2. Herewith list of witnesses for the PROSECUTION:

C-38478 Cpl. Weller, G.H.....1 Cdn Inf Div Sub Park, RCOC
B-88502 Cpl. Struth, G.A.....1 Cdn Inf Div Sub Park, RCOC
M-20927 Pte. Johnston, H.M.....1 CIB Coy, RCASC
M-20517 Pte. Barnhart, J.B.....1 CIB Coy, RCASC
C-15829 Sgt. Weeks, W.O.....1 Cdn Inf Div Sub Park, RCOC
L-7649 Sgt. Bean, [illegible].....1 Cdn Inf div Sub Park, RCOC

3. For your information please.

(M.J.Pratt) Major.
O.C. 1 Cdn Inf Div Sub Park, RCOC

WTS.

1 CANADIAN INFANTRY DIVISION SUB PARK, RCOC

5/Disc/1
3 Nov 43

President of Court Martial

GUARDING OF VEHICLES

1. Herewith a Certified Copy of an extract taken from Our Part I Order No.41 d/21 Aug 43 re the m/n.

1 " I am directed to state that, as many reports of vehicles being stolen while left unattended have been received at this HQ., Officers Commanding are to ensure that all drivers are to be instructed to immobilize vehicles whenever possible when it becomes necessary for the vehicles to be left unattended;

2 " Drivers are to be further instructed that only in the most exceptional cases will they leave their vehicles unattended"

2. For your information please.

M.J. Pratt

(M.J.Pratt) Major.
O.C. 1 Cdn Inf Div Sub Park, RCOC

WTS.

1 CANADIAN INFANTRY DIVISION SUB PARK, RCOC

SUMMARY OF EVIDENCE in the case of B-110388 Pte. Hayes, D. of the 1 CANADIAN INFANTRY DIVISION SUB PARK, RCOC of the CANADIAN ARMY, CMF, as taken by Lieut. G.A.Grose on 24 Oct 43.

FIRST WITNESS: C-38478 Cpl. Weller, G.H. 1 Cdn Inf Div Sub Park, RCOC
Having been duly sworn states: On 12 Oct 43 I detailed Pte. Hayes for maintenance and driving of WD No. L-4215495. On 13 Oct 43 at approximately 1130 hrs the Unit moved off in Convoy to a new location with Pte. Hayes driving the vehicle assigned to him. After passing through the town of Volturara, drove about a half a mile, when I came upon one of our vehicles which had broken down. Cpl. Struth and I stopped to inspect the vehicle but finding it a Workshop job, I told Pte. Hayes to stay with the vehicle and direct traffic on the road. I then left the vehicle under the care of the driver and proceeded on my way.

Q. Pte. Hayes do you wish to ask any questions?
A. No Sir.

G.H. Weller
(Weller,G.H) Cpl.
1 Cdn Inf Div Sub Park, RCOC

SECOND WITNESS: B-88502 Cpl. Struth, G.A. 1 Cdn Inf Div Sub Park, RCOC
Having been duly sworn states: I being the Unit Fitter for 1 Cdn Inf Div Sub Park, RCOC, was travelling at the rear of the Convoy. I passed through the town of Volturara and about a half a mile beyond, I came upon one of our vehicles WD No. L-4215495 driven by Pte. Hayes. The vehicle was stopped so I halted to see if I could repair it, but finding that it was a Workshop job, I told the driver to stay with his vehicle and direct traffic until such a time as when the workshops would send out a breakdown to pick up the vehicle. I then proceeded to our new location.

Q. Pte. Hayes do you wish to ask any questions?
A. No Sir

G.A. Struth
(Struth,G.A) Cpl.
1 Cdn Inf Div Sub Park, RCOC

THIRD WITNESS: M-20927 Pte. Johnston,H.W. 1 CIB Coy RCASC
Having been duly sworn states: On 13 Oct 43 at approximately 1900 hrs, I was detailed to proceed to a point a half a mile North of Volturara to pick up a lorry which was broken down. On arrival at the designated place, I found the vehicle without anybody in attendance. We hooked the vehicle on to ours and removed same vehicle to Camp. The vehicle was ~~XXX~~Serial 654. WD No. L-4215495.

Q. Pte. Hayes do you wish to ask any questions?
A. No Sir.

H.W. Johnston
H.W.
(Johnston)Pte.
1 CIB Coy, RCASC

FOURTH WITNESS: M-20517 Pte. Barnhart, J.B. 1 CIB Coy, RCASC
Having been duly sworn states: On 13 Oct 43 at approximately 1900 hrs, Pte. Johnston and myself were detailed to pick up a lorry half a mile North of Volturara. On arriving at the designated place I found the veh. with a pot light burning but with nobody in attendance. We raised the front end and proceeded back to our billet area, arriving back at approximately 2030 hrs. The serial number of the vehicle which we picked up was 654. WD No. L-4215495

Q. Pte. Hayes do you wish to ask any questions? J.B. Barnhart
A. No Sir
(Barnhart,J.B)Pte.
1 CIB Coy, RCASC.

FIFTH WITNESS: C-15829 Sgt. Weeks, W.O. 1 Cdn Inf Div Sub Park, RCOC
Having been duly sworn states: I am the Regt'l Sgt and as such I am in charge of all Admin matters relating to the Unit. In the courses of my duty, I reported Pte. Hayes as being AWL from 2100 hrs 13 Oct 43. Pte. Hayes was continuallly absent until he reported into me at the Orderly Room at approximately 1810 hrs 16 Oct 43.

Q. Pte, Hayes do you wish to ask any questions?
A. No Sir.

W.D. Weeks
(Weeks,W.O.) Sgt.
1 Cdn Inf Div Sub Park, RCOC

SIXTH WITNESS: L-7649 Sgt. Bean,F. 1 Cdn Inf Div Sub Park, RCOC
Having been duly sworn states: On 26 Oct 43 at approximately 1000 hrs, I held a kit inspection on Pte. Hayes. I found him to be deficient the articles as listed on his Charge Sheets Page 2,3,4. On the 30 Oct 43, I issued Pte. Hayes with as much as Kit as I could obtain from my QM Stores and issued him with a Part III Book.

Q. Pte. Hayes do you wish to ask any questions?
A. No Sir.

F. Bean
(Bean,F) QM Sgt.
1 Cdn Inf Div Sub Park, RCOC

THE FOLLOWING WAS THEN READ TO Pte. HAYES,D. B-110388
Do you wish to make any statement or to give evidence upon Oath? You are not obliged to do so, but, whatever you say or any evidence you give will be taken down in writing and may be given as evidence.

Pte. Hayes.....No Sir

Taken down by me at 1100 hrs this 24 day of October 1943 in the presence of the accused

G.A. Grose Lieut
(Lieut. G.A.Grose) Adjt.
1 Cdn Inf Div Sub Park, RCOC

WTS.

1 CANADIAN INFANTRY DIVISION SUB PARK, RCOC

STATEMENT OF PARTICULARS AND CHAR

1 CANADIAN INFANTRY DIVISION SUB PARK, RCOC

STATEMENT OF PARTICULARS OF SERVICE AND CHARACTER OF THE ACCUSED
B-110388 Pte. Hayes, Douglas.

1. DATE OF ENLISTMENT.....2 Apr 42.....

2. MARRIED OR SINGLE.....Married.....

3. AGE.....30 years.....

4. NUMBER OF DAYS IN CUSTODY from 1810 hrs 16 Oct 43 to date:...

5. ENTITLED TO...NIL.....DECORATIONS OR AWRDS.....NIL.....

I certify the above to be a true extract taken from the Regimental Books in my custody.

G.A.Grose

(G.A.Grose) Adjt.
1 Cdn Inf Div Sub Park, RCOC

The Field
12 Nov 43

GAG/EDG

5 Ri-100

Rt. Hayes, J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B110388 Pte Douglas HAYES 5 Cdn Armd Div Ord Fd Pk (RCOC) att 1 Cdn Disc Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of list see RP 44 fn 6.)

At present undergoing sentence for ..... beginning on (date) "NIL" (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 40 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of nine months.

(Sgd) ..... 5 June 45 (Sgd) "G G MACKENZIE" MAJOR

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

CONFIRMED

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) "JGS"

(1. AA 57A. Delete if not used.)

(Sgd) "J G Sprague"
(J G Sprague) Brigadier

Date 10 JUN 45 Commanding 2 Cdn Base Rft Gp

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B110388 Pte Douglas HAYES	12 Jun 45	"VSJ RICHMOND" Lt-Col Comdg 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CPA88 (To be printed on 40 lb Al Bl 1600)

Convened by Order of BRIG J S H LIND Comd 2 CBRD dated 31 MAY 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 192, 183, (ns, KR Con 308, 328, 332.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B110388	Pte		Douglas	HAYES	5 Cdn Armd Div Ord Fd Pk (RCOC) att 1 Cdn Disc Centre

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 5 JUNE 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 33/73

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fmn ROs. For guidance on procedure when a variation in this form arises, see Form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number therein. See back of Convening Order, CF A65, for words and usages on how to record addresses, evidence, etc, which entries are hereafter called "Notes". As to general provision for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1230 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court martial instead of being dealt with summarily by the CO (2).~~

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to ..... as interpreter ?~~ Ans .....

~~The Interpreter is sworn (1). Do you object to ..... as shorthand writer ? Ans .....~~
~~The shorthand writer is sworn (1).~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJOR	G G MACKENZIE MBE	FOR CDN C M CENTRE
Member	CAPT	P J POULIN	RCA CDN C M CENTRE
Member	LIEUT	G K BISSETT	CHofO CDN C M CENTRE
Judge-Advocate			
Prosecutor	LIEUT	K A MACKENZIE	CIC CDN C M CENTRE
Defending Offr	LIEUT	A J THOMPSON	CIC CDN C M CENTRE

Questions by President : Is the Prosecutor a lawyer ? Ans YES Is the Defending Offr a lawyer ? Ans YES (2)

19Jun45 JGS

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B110388 Pte Douglas HAYES before arraignment make(s) (no) (a) plea .....

(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13(2), RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF AF6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

he accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. 4).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for ... reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans N/C (5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p. 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a seperate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(B).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans N/C

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 2 and Ex 3 respectively.(3)

(1. MFB 355 or AFB 2960. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans N/C (2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 1323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Ref. [illegible]

CHARGE SHEET

The accused, H-110398 Pte Douglas [illegible], 5 Cdn Armd Div Ord Fd Pk (Base), attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas, is charged with-

FIRST CHARGE
Sec 15 (1)
Army Act

[illegible] OF ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

In the Field, absented himself without leave from 1930 hrs 29 Mar 45 until surrendering himself at 1400 hrs 25 Apr 45.

(Total absence: 27 days 22 hrs 30 minutes)

Forwarded for Summary of Evidence

In the Field
27 May 45

[illegible]
Commanding
1 Cdn Discipline Centre

Forwarded for Field General Court-Martial

In the Field
27 May 45

[illegible]
Commanding
1 Cdn Discipline Centre

To be tried by Field General Court-Martial

In the Field
31 May 45

"J S Lind"
(J S H LIND) Brigadier
Commanding
3 Cdn Base Ftt Gp

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/Fa3/1697 (2968)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-110338	Pte		Douglas	HAYES	5 Cdn Armd Div Ord Sd Pk (NOC) att 1 Cdn C Pn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 24 May 45 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	G G MACKENZIE	RCA CDN C M CENTRE

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
CAPT	F J FOULDS	RCA CDN C M CENTRE
LIEUT	G K BISSETT	CHorO CDN C M CENTRE

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

A C E LIND (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Date 31 May 45

Commanding 3 Cdn Base Ft Gp

Convening Officer.

(J S E Lind)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"WW"

MEDICAL OFFICER'S CERTIFICATE (W(Can)Para 557)

I certify that I have this day examined B110388 Pte HAYES D

and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station FIELD

Date 8 - 8 - 45

"A A TORS" CAPE (Sgd)
Medical Officer
1 Can Disc Centre
UNIT

CASE OF A10388 PTE HAYES D

MITIGATION PLEA

The accused had asked for leave prior to the absence charged and had been told by the paymaster that he could not on account of the state of his paybook. He could not even get an hour to go up town, although the unit was not busy at the time. Not having had any leave since March 1943 he became fed up and it was this that caused him to go AWL.

He stayed in the neighborhood of Verona where the unit was stationed, and a week later went to give himself up but found that the unit had moved. Eventually he went to see the Town Major with regard to surrendering, and the latter advised him to go to Venice and surrender himself, which he did.

The accused enlisted in 1942, and landed in Sicily in July 1943 with the 1st Division. He served in Italy until moved to Belgium in March 1945, and has served here since then. He is married and has 2 children, and I would point out that his family will suffer from any punishment he receives.

In conclusion, I would point out that he has already been in custody 40 days awaiting trial.

E4 A2

Summary of Evidence in the case of R-11[illegible] Pte BAKER D, 5 Cdn Armd Div Cad Pd Pk (HQDC), attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave

By direction of the O the evidence is taken on oath.

The following documents are read over to the accused, marked as exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of extract from Pt II Order No 10 dated 21 Aug 45

Exhibit "B" - Certificate of arrender dated 25 Aug 45

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that R 5 (6)(B)(C)(D) and (E) have been complied with.

J M Rousseau Capt
(Captain Rousseau)
Officer detailed to take Summary of Evidence

Dated in the Field
27 May 45

PART II ORDER EXTRACT FORM

TO AG

Can o2F/Units/ 5 Cdn Armd Div Ord Fd Pk/1 A5f

21 Apr 45

EXTRACTS FROM UNIT 5 Cdn Armd Div Ord Fd Pk (RCOC)

Part II Order No 10 dated 21 Apr 45

ABSENT WITHOUT LEAVE

(a) AWL from 1530 hrs 28 Mar 45 (1st day
B-110766 Pte HAYES D

(b) AWL from 1530 hrs 28 Mar 45 Still absent 1530 hrs 5 Apr 45 (8th day)
B-110766 Pte HAYES D

Certified to be a true extract from the regimental books and documents in my custody.

"M ONLY" Capt
Officer ic Records "f"
Cdn Sec 2 Mch HQ 21 A Gp

Certified true copy of Exh "A"

M Rousseau Capt

CERTIFICATE UNDER ARMY ACT SECTION 153(1) (1)

I Captain WFF Wallace certify that No B110788 Rank Pte Name HAYES D
of the 97 Ord Field Park Coy Royal Cdn Ordn Corps surrendered himself
to L cpl GLENSON CMA at Menin at about 1400 hrs
on the 25th day of April 1945 as an absentee without leave
Date 25/4/1945

"WFF WALLACE" Capt
Commanding 287 HQ Provost Coy

Certified true copy of Exh "B"

M. Rousseau Capt A

Ex B.
Rec

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 110365	Pte	HAYES D	ROOC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers which should be entered with the word 'nil' or words to the same effect, are necessary before giving in the next column offences in each entry, and to any recognised special mark of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For 15(1) AWL	2 times	10 times.
For 40	3 times	6 times.
For 19	1 time	2 times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct.~~ N/K

~~There are no entries in the conduct sheets of the accused.~~ N/K

2. ~~The accused has not been previously convicted.~~ or N/K

Previous convictions† of the accused by a court martial ~~or a civil court~~, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. ~~or The accused at the present time is under sentence for~~ N/K

N/A beginning on the N/A day of N/K

4. The accused has been in confinement, awaiting trial on the present charges, for N/K days in civil custody, and 40 days in military custody, making a total of 40 days, of which N/K days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 30 years 11 months old

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 2-5-42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, ~~or entitled to,~~ no military decoration ~~or military award (or is in possession of or entitled to state any military decoration or reward)~~. K

CUSH 16 days.

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated and in his regiment (or corps or department) the rank of dated

(P 15648) Wt. 57048/3062 75,000 12/40 A.& E.W.Ltd. Gp.675

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 3110388 Rank Pte Name HAYES B of 3000 Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
FOCM	GAS 14Nov43	(1) Sec 11 Neglect to obey overseas Routine Orders, left MD Veh unattended,	90 days detn stop. pay £9-3-6	no recd
		(2) 15(1) AWL 2 days 21 hrs 10 min		
		(3) Losing by neglect, deficient in kit 35 articles amt £9-3-6		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ..... day of .....

W/Cmde Lt
O/C Records

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(Instructions—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs completed accordingly.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field 8-8-43		Pte		(1) ~~xxxx~~ AA40 Conduct etc-disobeyed an order of Sup Offr	Lt Grose	7 dys pay 149(1e)	9-8-43	Major MJ Pratt	
				(2) AA 40 Conduct etc-disobeyed an order of Sup NCO	Cpl Borgford	7 dys pay 149(1e)	9-8-43	Major MJ Pratt	total for on 3 chgs 21 dys Pay
Field 8-8-43		Pte		(3) AA 40 Conduct etc- did strike & resist a guard while in perf. of a Military duty	Cpl Borgford	7 days pay 149(1e)	9-8-43	Major MJ Pratt	149(1e)
Field 27-8-43		Pte		15(1) AWL failed to appear at place of duty when ord. by Sup Offr	Cpl Forester	14 dys FP 14 dys pay 149(1e)	28-8-43	Major MJ Pratt	
Field 27-8-43		Pte		AA 19 Drunkenness (1st off)	Sgt Weeks	admonished	28-8-43	Maj MJ Pratt	tot forf 14 dys pay 149(1e)
OAS 4-9-43		Pte		15(1) AWL absent while serving 14 dys FP from 2100 hrs 4-9-43 to 1500 hrs 5-9-43 (15 hrs)	Pte Klein Documentary	21 dys pay 149(1e)	6-9-43	Maj MJ Pratt	1 dy py 149(1e)

No B110388 Name HAYES D | Sqn, Battery, or Company | Corps ROYC | Date of enlistment 2-4-42 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed on completion of 6 mos service					
Field	16-3-43	Pte		AWL from 1600 hrs 16-3-43 to 1900 hrs 17-3-43 (1 day 3 hrs) 15(1)	S sjt Hone	14 days CB	19-3-43	Lt EH Smeed	2 dys pay 149 (1a)
Field	26-4-43	Pte		AWL from 1200 hrs 26-4-43 to 1600 hrs 26-4-43 (4 hours)	Col Lucas	3 dys py 149 (2)	27-4-43	Capt LV Patrick	tot forf 3 3 dys pay
Field	17-5-44	Pte		15(1) AWL from 1300 hrs 17May44 to 2100 hrs 17May44(8 hrs)	Sgt Tone J	14 dys detn	21-5-44		
Field	15-5-43	Pte		15(1) AWL from 2300 hrs 15-5-43 to 1300 hrs 16-5-43 (2days 14 hrs)	Col Carr to Burns	14 dys CB & 14 dy py 149(1a) 3 dy py 149(1a)	19-5-43	J A Tindal	
Field	31-7-43	Pte		15(1)AWL from 1400 hrs 31-7-43 to 1600 hrs 1-8-43 (22 hrs)	Documentary	1 dys pay 149 (1a) 7 dys pay 149(1a)	4-8-43	Maj MI Pratt	auto forf 1 dy pay 149 (1a) tot 8 dy 149(1a &1e)

(PTO)

No. 110386 Name HAYES D Sqn, Battery, or Company Corps RAOC Date of enlistment 2-9-42 CC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/PAS/106(5418

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
OAB	11-9-43	Pte		15(1) AWL from 1600 hrs 11-9-43 Documentary to 1630 hrs 12 Sep 43 (24 hrs 30 min)		28 days FP	12-9-43	Maj Embury	2 dys pay 140(1a) & 26 dys pay 140(1b)
OAB	17Oct43	Pte		(1) Sec 11 Neglect to obey Overseas routine orders - left Cdn MP Veh unattended 0930 27Z d/19Aug43 7 Unit Pt 1 4814/21Jul		90 dys detn stop pay 19-3-8	18Nov43	F G C M	
OAB	17Oct43	Pte		(2) 15(1) AWL from 2100 hrs 17Oct43 to 1810 hrs 18Oct43 (2 days 21 hrs 10 min)					
OAB	17Oct43	Pte		(3) Losing by neglect-def in kit(35 articles) accused chrd 18-3-8				confirmed by Lt Col Bradford	

(FTO)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26-3-44	Pte		15(1) AWL from 2100 hrs 26-3-44 to 0900 hrs 27-3-44(12 hrs)	Cpl Hepworth	1dy forf pay 1A7(1a) & 6 days 1A9(2)	27-3-44		
Field	17-5-44	Pte		15(1) AWL from 300 hrs 17 May 44 to 2100 hrs 17 May44 (8 hrs)	Sgt Thome	28 days det	21-5-44		
Field	1 May44	Pte		An act to the prej etc, appeared on pde with dirty rifle	Lieut Saunders Cpl Weldman	3 dy forf pay	2 May44	Major K Winter	
Field	14 May44	Pte		Conduct etc became unfit for duty by reas of prev indulgence in alcholic stimulants	Sgt Boyer	27 dys detn	16May44	Lt col Lake forf 27 days pay	
Field	6 Jan45	Pte		Conduct etc-out of bounds Chg (2) AA 19 drunkenness	Doc	7 dys FP 14 dys forf pay			

Certified true copy of AFW 6 in my possession

A/Cadet O/C Records

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-110388 Pte Douglas HAYES 5 Cdn Armd Div Ord Fd Pk (ACOC) att 1 Cdn Disciplinary Centre

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA see 15(1)	Guilty	Guilty.	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to Findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 40 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a Period of nine months.

(Sgd) ..... Judge-Advocate, if any. 5 June 45 Date awarded. (Sgd) ~~W. Mackenzie Lt-Col~~ President (RP 43, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date 10 JUN 45 Commanding (J G Sprague) Brigadier, 2 Can Base Rft Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B110388 Pte Douglas HAYES	12 JUN 45	W. Richmond, Lt-Col. Comdg, 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AG 160 [illegible] 5M-100.

RECEIVED 25 JUN 1945 CMHQ

FIELD GENERAL COURT-MARTIAL

(Page 1 to [illegible] of AFA) 4/38B

Convened at [illegible] by Brig J J H LIND Comd 5 CDND dated 31 MAY 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-110388	Pte	Douglas	HAYES	5 Cdn Armd Div Ord Fd Pk (ACOC) att 1 CDM Disciplinary Centre

PROCEEDINGS REVIEWED 28 June 45 W. Mills Capt REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 5 JUNE 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns/ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO/Offr.~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans ~~Nil~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans Nil~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(2) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any; and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	~~Brig~~ Maj	G G MacKINTOSH MBE	FOE	Cdn C M Centre
Member	CAPT	P.J. POULIN	ACA	CDN CM CENTRE
Member	LIEUT	G.K. BISSETT	CHQ	CDN CM CENTRE
Judge-Advocate				
Prosecutor	LIEUT	M.A. MACKENZIE	CIC	CDN CM CENTRE
Defending Offr	LIEUT	A.J. THOMPSON	CIC	CDN CM CENTRE

Questions by President: Is the Prosecutor a lawyer? Ans ~~Yes~~ Is the Defending Offr a lawyer? Ans ~~Yes~~ (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused B-110388 Pte Douglas HAYES before arraignment make(s) (no) ~~a~~ plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRB Vol VII P. 107

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(D), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; see of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)*

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(1. *MFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. No, I B 3 .....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 364.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 367. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B-110388 Pte Douglas HAYES, 5 Cdn Armd Div Ord Fd Pk (RCOC), attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 1530 hrs 28 Mar 45 until surrendering himself at 1400 hrs 25 Apr 45.

(Total absence: 27 days 22 hrs 30 minutes)

Remanded for Summary of Evidence

In the Field
27 May 45

(J N Medhurst) Lt col
Commanding
1 Cdn Discipline Centre

Remanded for Field General Court-Martial

In the Field
27 May 45

(J N Medhurst) Lt col
Commanding
1 Cdn Discipline Centre

To be tried by Field General Court-Martial

In the Field
31 May 45

(J S E LIND) Brigadier
Commanding
2 Cdn Base Rft Gr

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court, RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-110382	Pte		Douglas	HAYES	5 Cdn Armd Div Ord Fd Pk (RCOC) att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 31 MAY 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	G G MacKENZIE MBE	Cdn G H Centre

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	F J FOULIS RCA	Cdn G H Centre
Lieut	G K BISSETT GR of O	Cdn G H Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

(Signed personally. RP 105 fn 2.) (J S H LIND) Brigadier (Rank.)

Date 31 May 45

Commanding 3 Cdn Base Rft Gr

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAAO 2 (2d Rev) of AFA31 40/P & S/1097 (4031)

(See overleaf for oaths and notes for use on trial.)

MFB 246

MEDICAL OFFICER'S CERTIFICATE

(KR(Can) Para 55)
(ANAIS CL 173)

I certify that I have this day examined A-110378 (No.)

Pte (Rank) HAYES P. (Name) and in my opinion he is

fit ~~unfit~~ to undergo trial by Court-martial.

Station Gibraltar (Medical Officer) Capt. (Med.)

Date 5-6-45 Unit 15th Cdn Sqdn RCAF

Case of B110388 Pte Hayes D. Ex 27

Mitigation Plea

The accused had asked for leave prior to the absence charged and had been told by the paymaster that he could not on account of the state of his pay-book. He could not even get an hour to go up town, although the unit was not busy at the time. Not having had any leave since March 1943 he became fed up and it was this that caused him to go A.W.L.

He stayed in the neighborhood of Ypres where the unit was stationed and a week later went to give himself up but found that the unit had moved. Eventually he went to see the town major with regard to surrendering, and the latter advised him to go to Mechin and surrender himself, which he did.

The accused enlisted in 1942, and landed in Sicily in July 1943 with the 1st Division. He served in Italy until moved to Belgium in March 1945, and has served here since then. He is married and has 2 children, and I would point out that his family will suffer from any punishment he receives.

In conclusion, I would point out that he has already been in custody 10 days awaiting trial.

A Mannyam Lt
Defending Officer

C & R

Summary of Evidence in the case of B-110388 Pte HAYES D, 5 Cdn Armd Div Ord Fd Pk (RCOC), attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave

By direction of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of extract from Pt II Order No 10 dated 21 Apr 45

Exhibit "B" - Certificate of surrender dated 25 Apr 45

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness

I certify that the foregoing Summary of Evidence consisiting of one page was taken down by me in the presence of the accused and that RP 4 (C)(D)(E)(F) and (G) have been complied with.

M Rousseau Capt
(Maurice Rousseau) Capt

Officer detailed to take Summary of Evidence

Dated in the Field
17 May 45

Exhibit A

PART II ORDER EXTRACT FORM

In Reference Capt

TO: A B

CAN. 02E/UNITS/ 5 Can Armd Div Crd Pd Pk/T AET

21 AUT 19 45

EXTRACT FROM: Unit 5 Can Armd Div Crd Pd Pk (RCOC)

Part II Order No. 10 dated 21 AUT 45

ABSENT WITHOUT LEAVE

(a) AWL from 1630 hrs 28 Mar 45 (1st day)

B-110380 Pte HAYES, D

(b) AWL from 1630 hrs 28 Mar 45 still absent 1630 5 Apr 45 (8th day)

B-110380 Pte HAYES, D

The following documents are: (attached. Please acknowledge receipt on attached duplicate.
(required. Please forward same.

Certified to be a true extract from the regimental books and documents in my custody.

Officer IC Records
Can. Sec. 2 Echn. HQ. 21 A Gp.

Originating Clerk's Initials .....

..... for
Officer in Charge
Canadian Section, G.H.Q., 2nd Echelon

ECH—6
40/P & S/1278

Exhibit B

CAPTURED T. WHITE ARMY NOT [illegible] (1)-1. Mr. Rousseau Capt

I, Captain W.F.F. WALLACE, [illegible] Tpt. Name HAYES. D

of 24 Cdn Field Park Coy
ROYAL CANADIAN ORDNANCE CORPS.

Sgt. CLEMSON C.M.A MENIN at about 1400 HRS

25th APRIL 1945

25/4/45

Capt.
W.F.F. Wallace Capt.
Commanding 247 H.Q. Provost Coy.

LIST OF WITNESSES

N/A

LIST OF EXHIBITS

Certified true copy of extract from Pt II Order No 10 dated 21 Apr 45	"A"
Certificate of surrender dated 25 Apr 45	"B"

I, B110388 Pte HAYES D acknowledge having received one copy of the Summary of Evidence and one copy of the Charge Sheet free of charge on 27 May 45.

D Hayes

B110388 Pte Hayes D

I, the undersigned request the Convening Officer to select an officer to represent me at my forthcoming trial by FGCM.

D Hayes

B-110388 Pte Hayes D

ARMY FORM B.200

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 110388	Pte	HAYES D	ROOC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial the summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not referred to in the proceedings.

† See para. 877, K.R., 1940.

* The entries before stated should comprise all entries in the conduct sheets, the manner being given in the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the details for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For 15(1) AWL	2 times	10 times.
For 40	3 times	6 times.
For 19	1 times	2 times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct. Nil

or Nil

~~There are no entries in the conduct sheets of the accused.~~ Nil

2. ~~The accused has not previously been convicted by~~ Nil

Previous convictions† of the accused by a court martial ~~or a civil court~~, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement. Nil

3. The accused is not under sentence at the present time. ~~or The accused at the present time is under sentence for~~ Nil

N/A ~~beginning on the~~ N/A day of Nil

4. The accused has been in confinement, awaiting trial on the present charges, for No days in civil custody, and 40 days in military custody, making a total of 40 days, of which No days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 30 years 11 months old

6. The date of his ~~commission~~ attestation Nil specified in his ~~record of service~~ attestation paper is 2-4-42 R

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, ~~or entitled to, no~~ military decoration ~~or military award (or is in possession of or~~ Nil

Nil ~~entitled to (state any military decoration or reward).~~ C.V.S.M. with Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated

and in his regiment (or corps or department) the rank of dated

(P16648) W1,20240,5/42 75,000 12/40 A.& E.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B140388 Rank Pte Name HAYES D of ACC Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	OAS 14Nov43	(1) Sec 11 Neglect to obey overseas Routine Orders , left WD Veh unattended.	90 days detn stop. pay £9-3-6	no recd
		(2) 15(1) AWL 2 days 21 hrs 10 min		
		(3) Losing by neglect, deficient in kit 35 articles amt £9-3-6		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this day of

W Woodhead
a/c Records

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of ////////// Date of Promotion

In the rank of ////////// years, //////////

In the rank of ////////// years, //////////

In the rank of ////////// years, //////////

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

MFM 6 Exc
(AFB 122 4m/PA&T/36 (3418))

No B110388 Name HAYES | D | Sqn, Battery, or Company | Corps RCOC | Date of enlistment 2-4-42 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc

	Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
OAS	11-9-43		Pte		15(1) AWL from 1600 hrs 11-9-43 to 1630 hrs 12 Sep 43 (24 hrs 30 min)	Documentary	28 days FP	1e-9-43	Maj Embury	2 dys pay 149(1a) & 28 dys pay 149(1b)
OAS	130ct43		Pte		(1) Sec 11 Neglect to obey Overseas routine orders - left Cdn WD Veh unattended CARO 272 d/19Aug40 & Unit Pt 1 #41d/21Jul		90 dys detn stop Pay £9-3-8	14Nov43	FGCM	
OAS	130ct43		Pte		(2) 15(1) AWL from 2100 hrs 130ct43 to 1810 hrs 160ct43 (2 days 21 hrs 10 min)					
OAS	130ct43		Pte		(3) Losing by neglect-def in kit accused chgd £9-3-8	(35 articles)		confirmed	by Lt col Bradford	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field, 26-3-44		Pte		15(1) AWL from 2100 hrs 26-3-44 to 0900 hrs 27-3-44(12 hrs)	CSM Hepworth	1dy forf pay 149(1a) & 6 days 149(2)	27-3-44		
Field 17-5-44		Pte		15(1) AWL from 300 hrs 17 May 44 to 2100 hrs 17 May44 (8 hrs)	Sgt Thoms	28 days det	21-5-44		
Field 1 Nov44		Pte		An act to the prej etc, appeared on pde with dirty rifle	Lieut Saunders AQMS Weldson	3 dy forf pay	2 Nov44	Major K Winter	
Field 14 Nov44		Pte		Conduct etc became unfit for duty by reas of prev indulgence in alcoholic stimulants	Sgt Boyer	27 dys detn	16Nov44	Lt col Lake forf 27 days pay	
Field 8 Jan45		Pte		Conduct etc-out of bounds	Doc	3 dys FP 14 dys forf pay			
				Chg (2) AA 19 drunkenness					
				Certified true copy of MFM 6 in my possession					

NW Cole Lt
Adc Bde.

MFM 6
(AFB 122)
10/PAS/130 (343)

No. B110386 Name HAYES D | Sqn, Battery, or Company | Corps RCOC | Date of enlistment 1-4-42 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	Offence	Award of Officer	Punishment Awarded	Date of award or of order directing trial	By whom awarded	Remarks
				Previous sheet destroyed on completion of 6 mos service					
Field	16-3-43	Pte		AWL from 1600 hrs 16-3-43 to 1900 hrs 17-3-43 (1 day 5 hrs) 15(1)	SQMS Dickey S sjt Hone	14 days CB	19-3-43	Lt EB Smeed	2 dys pay 149 (1a)
Field	26-4-43	Pte		AWL from 1200 hrs 26-4-43 to 1600 hrs 26-4-43 (4 hours)	Cpl Lucas	3 dys py 149 (2)	27-4-43	Capt LV Patrick	tot forf 3 3 dys pay
Field	17-5-44	Pte		15(1) AWL from 1300 hrs 17May44 to 2100 hrs 17May44(8 hrs)	Sgt Toms J	18 dys detn	21-5-44		
Field	15-5-43	Pte		15(1) AWL from 2300 hrs 15-5-43 to 1300 hrs 18-5-43 (2days 14 hrs)	Cpl Carr Pte Burns	14 dys CB & 14 dy py 149(1a) 3 dy py 149(1a)	19-5-43	J A Tindal	
Field	31-7-43	Pte		15(1)AWL from 1800 hrs 31-7-43 to 1000 hrs 1-8-43 (22 hrs)	Documentary	1 dys pay 149 (1a)	4-8-43	Maj MI Pratt	auto forf 1 dy pay 149 (1a) tot 8 dy 149(1a)&(1e)
						7 dys pay 149(1e)			

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 8-8-43		Pte		(1) ~~xxxx~~) AA40 Conduct etc-disobeyed an order of Sup Offr	Lt Grose	7 dys pay 149(1e)	9-8-43	Major MJ Pratt	
				(2) AA 40 Conduct etc-disobeyed an order of Sup NCO	Cpl Borgford	7 dys pay 149(1e)	9-8-43	Major MJ Pratt	total For on 3 chgs 21 dys Pay
Field 8-8-43		Pte		(3) AA 40 Conduct etc- did strike & resist a guard while in perf. of a Military duty	Cpl Borgford	7 days pay 149(1e)	9-8-43	Major MJ Pratt	149(1e)
Field 27-8-43		Pte		15(1) AWL failed toappear at place of duty when ord. by Sup Offr	Cpl Forester	14 dys FP 14 dys pay 149(1a)	28-8-43	Major MJ Pratt	
Field 27-8-43		Pte		AA 19 drunkenness (1st off)	Sgt Weeks Pte Klein	admonished	28-8-43	Maj MJ Pratt	tot forf 14 dys pay 149(1a)
OAS 4-9-43		Pte		15(1) AWL absent while serving 14 dys FP from 2100 hrs 4-9-43 to 1500 hrs 5-9-43 (18 hrs)	Documentary	21 dys pay 149(1e)	6-9-43	Maj MJ Pratt	1 dy py 149(1a)

000-23
SGT- HAYES DE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.29454 Sgt. Hayes, David Edward

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not guilty	guilty	
2nd	Not guilty	not guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of KIC see RP 44 fn 6.)

~~Ab~~ present unless sentence for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be severely reprimanded and forfeit all ordinary pay for a period of seven (7) days.

(Sgd) [signature] Capt. Judge-Advocate, if any. 1 June 44 Date awarded. (Sgd) [signature] Maj RCE President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) [signature] Brigadier

Date 5 Jun. 44. Commanding HQ Con CE WKS. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
Sgt Hayes B29454	7 June 44 1100 hours 2 Edn. Rd Const Coy	[signature] Maj

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 1804 - 0810-23

FIELD GENERAL COURT-MARTIAL (CFA96 (In lieu of AFA3) (O.P. & S. 1698 (28864))

Convened by Order of Brig D.H. Storrs Comd Edn. C.E. Works dated 27 May 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-29454	Sgt	DAVID, EDWARD	HAYES	2 Edn. Rd Const Coy

PROCEEDINGS REVIEWED

[signature] Capt. 14 June 44

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS REVIEWED Date 12 JUN 44 JAG HQ 2 Echn 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) U.K. on (date(s)) 31 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 7/41

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under instr, if any,~~ assemble, and the ~~Court~~ Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number thereon. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is open. The accused is (are) brought before the Court. At 1045 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~an interpreter? Ans~~

~~The Interpreter to swear.~~(1) Do you object to H.19560 FUTCH, S.IS. as shorthand writer? Ans No. The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member recites. RP 68(B). If objection, see procedure AA 31, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.F.J. MORAZAIN	3 BN R.C.E.
Member	Lt. F.E.	F.E. BARR	2 BN R.C.E.
Member	LT.	R.G. RAY	3 BN R.C.E. RCA - CDN SEC 3 CA
Judge-Advocate	CAPT.	B.W. HOWARD	1 BN - 21 A GP
Prosecutor	LT.	R.D. HONAN	2 Edn. Rd Const Coy R.C.E.
Defending Offr	CAPT.	J.W. BLATCHFORD	2 Engr Fort Wksp R.C.E. (6)

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instrs will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~his~~ plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 25(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the oaths/affirmations made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~were~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D & E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3, para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ..... , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (F).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans SEE ATTACHED ANSWER - NO (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (~~no~~) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st & 2nd charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 1st & 2nd charge(s), and ~~not allowed on the charges~~, and that, accordingly, the trial will proceed on the former, ~~but thereupon is (are) found Not Guilty on the latter(s) respectively~~.(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Giving evidence myself. Do you intend to call witnesses on your behalf ? Ans Yes. Are they witnesses as to character only ? Ans NO.
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1st charge(s), being subject to confirmation, will be promulgated later.(1)
~~Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of your Pay Book (Army Book 64) is signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(d) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes. through my Defending Officer.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its gravamen, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Appx FGCM.

CHARGE SHEET

The accused, B-29454, Sgt. David Edward HAYES, 2 Canadian Road Construction Company, Royal Canadian Engineers, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 15(1) A.A.

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field on 20 May 44, absented himself without leave from his company, 2 Canadian Road Construction Company, Royal Canadian Engineers, from 0730 hours on said 20 May 44 until apprehended by Metropolitan Police and handed over to Capt G.L. Kyle, 2 Canadian Road Construction Company, Royal Canadian Engineers, at 2145 hours on said 20 May 44. (Total absence 14 hours, 15 minutes.)

Second Charge
Sec 40 A.A.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field at approximately 2150 hours 20 May 44 created a disturbance by fighting in a public place, namely Fulham Palace Road, w.6 in the presence of civilians, thereby tending to bring the Canadian Army into disrepute.

In the Field
23 May 44

(G.M.CLARK) Major RCE
Officer Commanding
2 Cdn Road Const Coy RCE

To be tried by FGCM

(D.H. STORMS) Brig
Cdn CE Works (RCE)

In the Field
27 May 44

Pris FGCM

FIELD GENERAL COURT-MARTIAL

CFAAG (In lieu of AFAS)
40 F&N (1697 (53-02)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B23434	Sgt	Sgt	David Edward	Hayes	2 Cdn Road Constn Coy.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 27 May 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj (Rank.)	J.F.J. Mercadin (Must be named. RP 106.)		3 Bn RLE (Unit.)

MEMBERS.

~~Capt~~ Lt.	To be detailed by C.O.		3 Bn RLE
~~Capt~~ Lt. (Rank.)	To be detailed by C.O. (Named or detailed. RP 106.)		2 Bn RLE (Unit.)

WAITING MEMBER.

~~Capt~~ Lt. (Rank.)	To be detailed by C.O. (Named or detailed, if any. RP 106.)		2 Bn RLE (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.)	B.W. Howard. (Must be named, if any. RP 106.)	RCA.	AJA Corps Sec GHQ 1 Echelon (Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) (Rank.)

Date 27 May 44. Commanding C.E. Works, First Cdn Army. Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN) PARA 557

I certify that I have this morning examined B29454, Sgt. Hayes,D.E. of 2 Cdn Road Construction Company, R.C.E. and in my opinion he is fit to undergo trial by Court Martial.

Station Field

Date May 31/44

Medical Officer

Statement by the Defence

D1 Sir the following points are set forth for consideration by the court as having not been followed out. Namely Nos. 4C, 4D, 4E, 14A, 14E, 15A, 15B, and 15C. These have not been complied with. In the first place the summary of evidence is taken in the presence of all 7 NCOs.

The same evidence was retaken in the following day in the presence of each man. Evidently however, their rights were not properly explained to them. Sections 4C, D and E were not read and on the third day the original sworn statement of Capt Kyle was completely changed from this original form. This individual statement was read over to the accused men and they were told that they could not object to them. In the case of one man Cpl Ransom, he asked for a copy of the original and this was refused. All the above is in contravention of R.P. 4C, D and E.

No charge sheets were produced nor were the men informed of the charges on which they were definitely tried. Before approximately 1600 hours the 30 May 1944, which does not give the men the required 24 hours notice. The men were not informed as to their rights of calling witnesses. This is in contravention to the Rules of Procedure. The charge sheets produced by all the men with exception of Sgt Hayes sheets of two specimen sheets which I have here for the six men. They do not contain any number, rank or name and are not signed by the C.O. as required. No attempt was made to explain this charge sheet. This is in direct contravention of 15B. At 2300 hours on the 30 of May the men had not been informed as to whom the presiding officer would be. This had been asked for. As defending officer I personnally went to the Unit [illegible] and was informed that only the name of the presiding officer was known. The accused men claim that no list of witnesses were produced, nor were they satisfied that they had proper information on their rights. In desperation they sent for the padre. Monday 29 May at approximately 900 hours I was asked if I would undertake the defense. This I decided to do and I was shown a copy of the charge sheet, and a summary of evidence.
At approximately 1200 hours on the 30 of May I was informed by telephone that a change has been made in the second charge but that it was not known just what the change would be. On arriving at the 2 Cdn Road Construction Coy at 1500 hours on the 30th I saw the new charge sheet. I was not in possession of a summary of evidence or charge sheet nor were the men. I submit that the accused have been unfairly treated in regards to the Rules of Procedure. The summary of evidence on which the court martial is convened is definitely wrong and we are willing to prove it in an open court. The sworn statement from him and the second one which is now in the summary before the court is entirely misleading, and this statement except in the case of Sgt Hayes contains all evidence bearing to support this charge. I suggest that the court take into consideration all these things so that a proper investigation can be made of the whole situation. Despite the above statement we are satisfied to go on with the case today.

D2 Opening Address by the Prosecutor

It is the intention of the prosecution to bring all possible evidence to light both for and against the accused. Seven N.C.O.s are being charged separately with being absent from the same parade. The court will have to decide not only whether these men were AWL but why. By why I mean whether it was a deliberate breach of discipline. Possibly with or without provocation. In the second charge the court is concerned in the fact that these men while AWL did start a street fight in the presence of civilians thereby throwing the Canadian Army into disrepute, and a serious condition was only averted by the timely intervention of the civilian police. As stated the prosecution will endeavour to bring all possible evidence to light.

D3 1st Witness for the Prosecution

The witness duly sworn states: Sir, I am B-29053 Sgt Major Herron W.A.M. of 2 Cdn Rd Construction Coy. I was Sgt Major in charge of parade 0730 hours 20 May 1944. On checking M.T. section Sgt Hayes whom I recognise was absent from parade. He was still absent at 1700 hours which was at the end of the day.

Questions by the Prosecutor

(Q)1 On calling parade do you remember whether Sgt Hayes was the only man absent from role call.
(A)1 On the completion of role call on checking there were other men absent.

(Q)2 Will you tell the court whether any of these other men that you say were absent whether they were N.C.O.s?
Objection by defence.
Court grants objection.

Cross-Examination by Defence

(Q)1 When men break off at 1700 hours are they through for the day.
(A)1 All duties cease at 1700 hours but men are still available for duties.

(Q)2 Is there a tatoo role call at night.
(A)2 No sir.

No questions by the prosecutor.

In the opinion of the Court and the J.A. it is not considered necessary to comply with R.P. 83(B).

Second witness for the Prosecution

The witness duly sworn states: Sir I am Capt G.L. Kyle of 2 Canadian Road Construction Company.

(Q)1 Capt Kyle will you please tell the court from your own words exactly what evidence you may have in this case.
(A)1 On Saturday 20th of May I received certain information and instructions from the O.C. 2 Canadian Road Construction Company. In consequence of which I proceeded to Kingston and Hammersmith. At approximately 2130 hours I noticed some N.C.O.s of the 2 Canadian Road Construction Company on Fulham Palace Road Hammersmith in discussion with civil police. I recognized Sgt Hayes, Sgt Morissette, Cpl Evans, Cpl Ransom, Cpl Bakemeyer, L/Cpl Noland and L/Cpl Pratt. I ordered them to get into the truck. They were obviously under the influence of liquor and a fight broke out which involved a number of civilians and other military personnel.
The police van came up and assisted getting the N.C.O.s into my vehicle with the exception of Sgt Hayes whom they took in custody to their Van. I drove around with the N.C.O.s until I picked up Sgt Hayes at the Hammersmith Police Station. The D.A.P.M. London released him in my care. I returned with the N.C.O.s to Coy H.Q. at approximately 0230 hours 21 May. That is all.

Cross Examination by defence

(Q)1 Capt Kyle is it true that you made two definite sworn statements to the summary of evidence which are different and that the first one was taken out and the second inserted.
The prosecution objects to this question.
Court overule the objection.
(A)1 On the original summary of evidence I gave my evidence in such a manner that it covered each case collectively. When it became known that each accused was to be tried individually, I was asked to change my evidence accordingly.

(Q)2 Capt Kyle you state that at 2130 hours you noticed some the units N.C.O.s in front of the public house and in discussion with the civilian police. Then you state that you recognized a few of the men.

(Q)2 Cont. Is it not true that a few minutes previous to that you had these same men in your protection in your vehicle.

(A)2 No, it is not true. I stopped the truck and in a few minutes all the N.C.O.s were there.

Defence to the court

Sir this witness is definitely hostile and this is not fair to the accused.

Prosecution to the Court

Sir may I ask that Capt Kyle give an exact statement of everything that happened and the facts.

Defence to the Court

Sir, this thing is bigger than it looks. These men are definitely being railroaded and if this witness can stand there and say they did this when they did another thing, it is unfair to the men.

Cross Examination by the Defence continues

(Q)3 Capt Kyle the first two men that met you were in front of the Angel Pub and who were they.

(A)3 Sgt Hayes and I don't know. In two or three or three minutes they were all there.

(Q)4 What happened from the time that you saw these men in front of the Angel Pub.

(A)4 They were in discussion with the civil police so I got out of the truck and asked the police what the trouble was. There was already some civilian spectators standing in the street and the situation was causing trouble and the police suggested to me that I get the N.C.O.s away from there and to their unit so I went over to the truck as some of the N.C.O.s had gathered around. They all got in the truck I think that they were all there I could not swear definitely but I think that they were all there. We moved down the street about 200 yards where everybody got out the truck, at the side street of another pub. They all felt very high obviously under the influence of liquor. If I had not stopped the vehicle they would have gotten out in any case because an H.U.P. has two side doors and a back door. In a few minutes there was a fight going on, I was informed by a civilian. I went up round a corner to see what the trouble was and I asked somebody to tell me. I ordered the men into the truck while doing so the fighting carried on. More civilians became involved. Some military personnel and the police van came up. The inspector asked me if I was trying to get my men and I said yes. So he said we will help you, and the crowd was larger. It was about 2150 hours. We moved the truck farther up the street with some of the N.C.O.s already in. I stopped again. Civilians came up and the police said it looks as if all this was getting out of control. They said: "You had better take what you can and we will take what is left and you can pick them up later" and I said alright. So I drove off with the N.C.O.s I had and later called at Hammersmith Palace Station and picked up Sgt Hayes. This is all it is, more detailed.

(Q)5 Why did you go to London with a different idea of procuring these men. Did you put them under arrest.

(A)5 No they were not under arrest.

(Q)6 Why did you stop at the bar.
(A)6 Because if I did not stop they would have piled out in any case.

(Q)7 May I accept that fact that you were responsible for those men after they were in the truck.

(A)7 No they had been drinking.

(Q)8 You admit that there was a definite attempt made to cover your actions at the expense of these men.
(A)8 I most certainly do not admit that fact.

(Q)9 Where are the other men that are involved in that statement.
(A)9 I consider military personnel as being involved.

(Q)10 You admit that other men were there and yet only 7 men are present on charge for a courts martial charge.
The prosecution objects: Sir, is it any concern of the witness how many men there were.
Court states that the defence is allowed to ask any question.
(A)10 When we stopped at the second pub I realized that it was 2140 hrs and that in about 20 minutes the pubs would be closed. Their frame of mind was such that my concern was to get them home the easiest way. I walked into the pub and was in the pub for a period I should say about 4 or 5 minutes.

(Q)11 Where were you when the fight started.
(A)11 I was standing by the truck on the side of the pub.

(Q)12 Did you attempt to arrest the men.
(A)12 Certainly, I went around to the front of the pub quite a number of civilians had become involved and I did give orders that they were to get into the truck.

(Q)13 Do you consider a Canadian soldier is entitled to defend himself against a civilian who strikes him.
(A)13 Certainly.

(Q)14 Do you consider that in so doing he is fighting in a public place, because he struck back or is a man not entitled to defend himself.
(A)14 Well certainly, but that is for somebody else to decide.

Cross Examination by Prosecution

(Q)1 Capt Kyle why did you go up to Hammersmith.
(A)1 I was primarily concerned in the welfare of the N.C.O.s of the 2 Cdn Rd Constr Coy. I went up there to keep them out of trouble that I might be able to do and return them to their unit with a minimum of exposure to an unfortunate incident.

(Q)2 In your opinion you feel quite certain that you used the easiest possible way to get these men back to their unit.
(A)2 I used my methods to get people out of trouble.

(Q)3 The men the defence referred to, that have not been included in this court martial have they been dealt with to your knowledge.
(A)3 Yes.

The prosecution rest

Questions by the Court

(Q)1 Where were you when you were given information by C.O. in relation to this incident.
(A)1 At Liphook.

(Q)2 Where were the billets of the accused at the time.
(A)2 Liphook.

(Q)3 Did you actually see Sgt Hayes strike anybody else.
(A)3 I could not actually state that I saw Sgt Hayes strike anybody but there was a general mix up pushing and pulling and arguing and a general scrum.

(Q)4 Then it was not actually a fist fight.
(A)4 On the part of anyone I could not say.

(Q)5 You answered twice that the men were under the influence of liquor could definitely say that Sgt Hayes was under the influence of liquor.
(A)5 Obviously when they were engaged in a street brawl.

Questions by the J.A.

(Q)1 You told the court a moment ago that you could not say positively that Sgt Hayes was actually mixed up in this disturbance.
(A)1 No sir.

(Q)2 You could not state positively as to what part Sgt Hayes played in it.
(A)2 No sir because there were more than 300 people.

(Q)3 The difficulty is that Sgt Hayes is charged with creating disturbance in a public place and as I understand it that you could not actually say that Sgt Hayes had been fighting.
(A)3 Well I could not say because there were so many and I could not say just what he did to any civilian.

(Q)4 Did you see Sgt Hayes strike anyone.
(A)4 No, you see some of the N.C.O.s were getting in and out of the truck and they thought that somebody was trying to boot somebody back. I don't know whether Sgt Hayes was trying to look after the civilians or after the N.C.O.s.

(Q)5 Then in fairness of Sgt Hayes he may have been trying to protect.
(A)5 Yes sir.

(Q)6 The reason that I am asking these questions is because the summary of evidence which I have here before me says that a fight broke out and it involved Sgt Hayes.
(A)6 The statement is changed in the summary of evidence because the court martial was to be handled individually and I had to give it for each particular case. The statement was general in the first case. Then I had to say for each case because each case was handled individually. They were equally responsible.

In the opinion of the Court and the J.A. it is not considered necessary to comply with R.P. 83 (B)

Third witness for the Prosecution

The witness duly sworn in states: Sir I am Frank Wood, Police Inspector, Metropolitan Police (F) Division, Hammersmith Station.

(Q)1 Will you please tell the court in your own words exactly the evidence you may have in this case.
(A)1 At 9.50 P.M on the 20 of May 1944 I with other police officers went to the Greyhound Public House Fulham Palace Road Hammersmith and standing in Greyhound Road when I arrived was a Canadian Army truck and around the truck and in the roadway was approximately ten or a dozen Canadian soldiers. They were fighting and struggling and I saw an officer whom I know now to be Capt Kyle standing by the truck. I spoke to him and he said he was trying to get the men away and I then offered to assist him myself and my police officers did in fact get the soldiers back into the truck. All this time there was a crowd of people between 400 and 500. They were hostile to the soldiers but when the truck drove off we dispersed the crowd as far as we could. The truck drove off about 50 yards into Fulham Palace Road and stopped. The soldiers struggled out again and recommenced the fight. I went there with my men and could then see that they were completely out of control with the crowd against them. Three of them were arrested, one Sgt Hayes was not arrested. They were taken to Hammersmith Police Station where they were detained until picked up by the Canadian Army authorities. Had I not intervened at the time I did the situation from a public point of view would have been very grave. The soldiers collectively had been drinking heavily and in my opinion were drunk.

Prosecution rest

Cross-examination by the Defence

(Q)1 Did you see Sgt Hayes strike anybody.
(A)1 No sir.

(Q)2 He wrestled on the ground.
(A)2 No sir.

(Q)3 He could have been rescuing somebody.
(A)3 Yes sir.

In the opinion of the Court and the J.A. it is not considered necessary to comply with R.P. 83 (B).

Fourth witness for the Prosecution

The witness duly sworn in states: Sir I am Frederick Ford police constable 596 (F) Division Metropolitan Police Force.

(Q)1 Will you tell the court in your own words the evidence you possess.
(A)1 At 9.30 P.M. on the 20 of May 44 in response to a telephone message I proceeded to Fulham Palace Road in company with other officers in the police van. On my arival I saw an army truck standing in Greyhound Road and a number of Canadian soldiers were fighting and struggling around. One section were struggling and endeavouring to get about a dozen men, who were obviously under the influence of liquor, into the truck. I and the other officers assisted them to get them into the truck, which we managed to do. The truck drove away along Fulham Palace Road about 50 yards down the road. It stopped and a number of men came out again and commenced to fight and struggle. I saw Sgt Hayes lying on the footway struggling with another soldier. I went to his assistance and endeavoured to get Sgt Hayes into the truck. This I was unable to do. With the assistance of another officer I took him into custody. He was taken to Hammersmith Police Station in the police van. That is my evidence.

(Q)2 Constable Ford do you recognize the accused Sgt Hayes.
(A)2 The witness points to the accused.

Cross-examination by the defence

(Q)1 Constable Ford did you see Sgt Hayes strike anybody.
(A)1 It was a wrestling match. The other sergeant had blood on his face but I could not say he hit anybody.

Questions by the Court

(Q)1 Constable will you say that Sgt Hayes was under the influence of liquor.
(A)1 Yes sir.

(Q)2 You said you went to the assistance of Sgt Hayes.
(A)2 I went to the assistance of the other sergeant.

(Q)3 How many men were taken into the police van.
(A)3 There were 4.

(Q)4 Can you recall any words that may have been exchanged by the soldiers to include a reason of the struggle.
(A)4 No sir.

In the opinion of the Court and the J.A. it is not considered necessary to comply with R.P. 83 (B)

D4 The defence officer submits

In the second charge particularly there is no evidence to show that Sgt Hayes was fighting, that is, taking a swing at somebody. There is no evidence to show that he was not trying to uphold his rank as Sgt,and the fact is, that he was not drunk.
The statement made by the Sgt Major is that a normal day ends at 1700 hours. I would ask that the court adjourn on those two points.

Court closes to consider the submission

Court reopens

The submission presented by the defence is disallowed on both charges.

D6 The accused duly sworn takes the stand.

(Q)1 On about 2130 hours on 20 May 44 you were in front of the Angel Pub Fulham Road Hammersmith. You were talking to Capt Kyle who entered the bar and at his suggestion you went to another pub.
(A)1 Yes sir.

(Q)2 Some time during approximately 2145 hours or 2150 hours there was a fight started. Were you in that fight. Were you in that disturbance.
(A)2 No sir.

(Q)3 Were you in the original disturbance.
(A)3 No sir.

(Q)4 Were you in the bar or in the street where this disturbance started at the time.
(A)4 No sir.

(Q)5 It has been said that you were wrestling on the ground. Were you struck first.
(A)5 Yes sir.

(Q)6 After you were struck what did you do.
(A)6 I put my arms around him and threw him to the ground and was holding him on the ground when the police came.

(Q)7 Did Capt Kyle give you a direct order stating that you were under arrest or give you a direct order to get into the vehicle.
(A)7 No sir.

Cross-examination by the Prosecutor

(Q)1 Sgt Hayes had you much to drink on the 20th of May.

Objection by defence
Objection overruled

(A)1 I would not say I had an awful lot to drink.

(Q)2 What time did the pub open that you were at.
(A)2 Do you mean in the evening sir.

(Q)3 How long were you in it.
(A)3 Since 5 o'clock.

(Q)4 It was about 9.30 when Capt Kyle arrived on the scene was it not.
(A)4 No sir, it was approximately 9 o'clock.

(Q)5 That is approximately 4 hours. In that 4 hours were you in the pub all that time.
(A)5 No sir.

(Q)6 These 4 hours you did have an opportunity to indulge in quite a few drinks.
(A)6 Yes sir.

(Q)7 Then shall we say at 9 o'clock you had quite a few drinks.

Objection by defence
Objection overruled

(A)7 Normally no sir.

(Q)8 What were you drinking.
(A)8 Bitters.

(Q)9 Were you present on the job at Liphook at 1800 hours.
(A)9 No sir.

(Q)10 You admit then Sgt Hayes, that you were not there at role call. Would you care to tell me where you were.
(A)10 In bed.

(Q)11 Where
(A)11 In Hammersmith.

(Q)12 Were there any other members of 2 Cdn Rd Constr Coy.

Objection by defence
Objection granted

(Q)13 Were you in possession of a pass when you were at Hammersmith.
(A)13 No sir.

(Q)14 You admit then that you were AWL when you were in Hammersmith. Could tell the court about what time the police put you in custody.
(A)14 About 10 o'clock sir.

(Q)15 The vehicle in which Capt Kyle came in do you recall seeing it at the same time as you saw Capt Kyle or did you see the vehicle before you saw Capt Kyle, or did you see both the vehicle and Capt Kyle at the same time.
(A)15 Yes sir, at the same time.

(Q)16 In the street fighting that went on, or shall we say disturbance that was created yourself in your own opinion do you honestly think that

Objection by defence
Objection granted

(Q)17 You claim that you were not there when the disturbance started, would you mind telling the court where you might have been.
(A)17 Yes sir, I was in another bar talking to two girls.

(Q)18 When you did finally go after talking to the girls was this disturbance still going on.
(A)18 To a certain extent.

(Q)19 To what extent.

Objection by defence
Objection granted

(Q)20 Sgt Hayes you say that when you did go out of the pub the disturbance was going to a certain extent would mind telling the court then what your reaction was to it.
(A)20 When I came out of the pub I walked over to the vehicle and they were putting some of the soldiers into the vehicle and I was going to assist them but one of them took a poke at me and I put him down.

(Q)21 Was that when the police came along.
(A)21 Yes sir.

(Q)22 Why did you go AWL.
(A)22 Well sir, I have been a confirmed Sgt for some time. I always looked after myself got treated well. No crime for four years and I tried to do my best. I was sent to a job and an officer under whom I was under got riding me and treated my like a child, more or less. So I got fed up and went for a drink.

Questions by the Court

(Q)1 Were you alone when you came out of the pub.
(A)1 Yes sir.

(Q)2 Were you ordered by police to get into the truck.
(A)2 Yes sir.

(Q)3 Did you refuse.
(A)3 No sir.

(Q)4 Were you ordered by the police to get into the truck by the first pub or the second.
(A)4 At the second pub where I was lying holding the man.

(Q)5 It took place between the time that you arrived there with Capt Kyle and the time that you moved away. At least the time that you were arrested.
(A)5 Right sir.

(Q)6 Do you know of anything that happened at the first pub.
(A)6 Yes sir. We were sitting in the first pub drinking and there was a disturbance and we were the only Canadians there and the lady would not give us any more drinks. The police came along and asked what the trouble was. I said no trouble at all. So he said he explained to me that the woman was on her own and was scared of anything happening in her pub because she could not handle it. She would not serve us any more drinks and told us to go home.

(Q)7 What happened then.
(A)7 Just then Capt Kyle drove up in a H.U.P. at approximately 9 o'clock.

(Q)8 What happened then.
(A)8 Capt Kyle told us to go to another pub and we would talk things over.

(Q)9 As you drove down that road what happened.
(A)9 We went down Fulham Palace Road.

(Q)10 What happened from the time you left the Angel until you got in the truck.
(A)10 Nothing.

(Q)11 Was there a disturbance inside the truck just after you left the Angel.
(A)11 No sir.

(Q)12 The truck was stopped.
(A)12 Yes sir.

(Q)13 But nobody started jumping before it stopped.
(A)13 No sir.

Questions by J.A.

(Q)1 We understand the evidence of the police inspector to be that at the time an H.U.P. stopped at the Greyhound the people were fighting before they got out. What do you have to say about that.
(A)1 No sir.

(Q)2 When it stopped at the Greyhound everybody stopped and there was no trouble at all. Then you say when you personally got out the Greyhound you saw people struggling around a truck. What about this fact that has just been read that everybody got into the H.U.P. at the Greyhound. When somebody hit you in the face that was in front of the Greyhound.
(A)2 Yes sir.

(Q)3 Then would say that you were not in the H.U.P. after it left the Greyhound.
(A)3 No sir, I was in the H.U.P. after it left the Angel.

(Q)4 After the Greyhound in which you were with girls before 9.50 you were attracted to a disturbance outside and you went.
(A)4 Yes sir.

(Q)5 The H.U.P. drove around for about 50 yards stopped again and then the struggle started.
(A)5 Yes sir.

(Q)6 Where were you holding this man on the ground exactly in front of the pub.
(A)6 Yes sir.

(Q)7 You did go from the Angel to the Greyhound.
(A)7 Yes sir.

(Q)8 Evidence of the Police Inspector what do you say to that. You just told me Sgt Hayes that you were fighting in front of the pub.
(A)8 The accused states that the Greyhound Public House is situated at the intersection of Greyhound Road and Fulham Palace Road and that the pub has entrances from both sides and that when the H.U.P. drove up from the Angel pub it parked on Greyhound Road.

Questions by Prosecutor

(Q)1 Sgt Hayes you stated that you did not appear on parade on the morning of 20 May and you state it was due to the condition you were under at Liphook.
(A)1 Yes sir.

(Q)2 You say that your record has been good in the army and I understand that it is only since you have been at Liphook that you are not satisfied with conditions.
(A)2 Right sir.

(Q)3 Is it the officer under whom you are serving. Is it the first time you have been serving under him.
(A)3 Yes sir.

(Q)4 How long does it take approximately to drive from the Angel to the Greyhound.
(A)4 2 minutes.

(Q)5 Did Capt Kyle say anything to you about being under arrest.
(A)5 No sir.

(Q)6 Did Capt Kyle suggest that you were under arrest or did he not make any mention about it.
(A)6 No sir.

(Q)7 Was any conversation held in the truck between anybody and yourself.
(A)7 No sir.

In the opinion of the Court and the J.A. it is not considered necessary to comply with R.P. 83 (B)

Second witness for Defence

Witness duly sworn states, Sir I am B-29047 Spr Pennell, M.J. of 2 Cdn Rd Constr Coy, RCE.

Defence points out that at the time of the alledged disturbance Spr Pennell was a Cpl and that his reversion had no relation to the case.

(Q)1 Spr Pennell on the 20 of May you went with Capt Kyle to Fulham Palace Road you made two or three stops and eventually wound up at the Angel. Then Cpl Pratt, Bakemeyer and Sgt Hayes came along. Did any of these men get into the vehicle.
(A)1 Yes sir.

(Q)2 And you drove into Greyhound.
(A)2 Yes sir.

(Q)3 Where did you park your car at the Greyhound.
(A)3 At the side of the street of Greyhound Road.

(Q)4 In your own words what happened then.
(A)4 We went into the Greyhound I had a couple of drinks and then trouble arose in another part of the bar.

(Q)5 Did you move the truck from Greyhound Road.
(A)5 I was not there when the truck was moved.

(Q)6 But it was moved from Greyhound Road. Did Capt Kyle at any time order you to place any of these men under arrest. Did you hear him order the men at any time into the vehicle.
(A)6 No sir.

(Q)7 Was there any attempt from the time you left the Angel in which you came into the Greyhound.
(A)7 Not that I recall.

(Q)8 When you came out of the Greyhound the vehicle was on Fulham Palace Road.
(A)8 Yes sir.

(Q)9 Was there a disturbance around the vehicle.
(A)9 Yes sir.

(Q)10 What did you do.
(A)10 I went down to the vehicle where the disturbance was and tried to get it quietened down a little. Shortly after that there was quite a doing. The civilian police got there. I don't know how they got there but they were trying to get everyone into the vehicle but some were getting in and some were getting out.

(Q)11 What eventually happened to you.
(A)11 Well Sgt Hayes was trying to get inside the vehicle and a fight started and Sgt Hayes defended himself and the police interfered and then I tried to get back the Sgt from the van and I landed in the police station.

(Q)12 After you left the police station did you have any talks with the police.
(A)12 No sir.

(Q)13 There was no method of getting transport to your unit.
(A)13 No sir.

Cross-examination by Prosecution

(Q)1 When you saw Sgt Hayes trying to get some of the men into the vehicle and somebody hit him, was it a civilian or a soldier.
(A)1 A soldier sir.

Questions by the Court

(Q)1 When you asked the police for Sgt Hayes how did you go about it. Did you ask them or what.
(A)1 The police were more or less standing around and I spoke to them about transfering Sgt Hayes to our vehicle. But the police would not have any part of it and said I could not have him. I don't know exactly what happened.

(Q)2 You went to the police and you asked for the release of Sgt Hayes and the police said you could not have him. Then what happened.
(A)2 Things were moving fast.

(Q)3 As far as you can make out there is no reason why you got shoved in.
(A)3 No sir.

(Q)4 When you were travelling with Capt Kyle to Hammersmith did you have any idea what you were going down for.
(A)4 A fairly good reason.

(Q)5 What happened then.
(A)5 I don't know. There were some police men there. There was no fighting then.

(Q)6 Did you hear Capt Kyle say anything at that moment.
(A)6 Yes he said to me something about everyone getting in the truck and we went down to the Greyhound.

(Q)7 While you were in the truck after leaving the Angel was there any suggestion made to stop at the Greyhound.
(A)7 Yes some of the fellows that were in said to stop at the Greyhound.

(Q)8 What were Capt Kyle's reactions then.
(A)8 Not very good.

(Q)9 Do you remember words to the fact that Capt Kyle would have suggested that the soldiers would move to the Greyhound to discuss the matter.
(A)9 There seems to be something like that but I am not quite sure.

(Q)10 You are not very sure.
(A)10 No sir.

(Q)11 When the lorry left the Angel did it appear that it was going to drive straight home.
(A)11 No it did not appear that way before the vehicle pulled away.

In the opinion of the court and the J.A. it is not considered necessary to comply with R.P. 83 (B)

Capt Kyle is recalled as witness by the defence with the consent of the court.

The witness duly sworn states: Sir I am Capt Kyle G.L. of 2 Cdn Rd Constr Coy, RCE.

Prosecutor

The defence Capt Kyle have a few more questions to ask.

Questions by the Defence

(Q)1 Capt Kyle in the original statement this morning you said that you saw
(A)1 (Interrupted by Capt Kyle) In a matter of a few minutes I recognized all these N.C.O.s.

(Q)2 You said that you ordered them into the truck and while doing so a fight broke out amongst them.
(A)2 The statement is not in detail.

(Q)3 Then they were twice put into the truck.
(A)3 I pulled the truck down the side of the street and that is where the fight broke out.

Questions by the Court

(Q)1 You say that you went first to the Angel got into the H.U.P and some got into trouble and then you drove along Fulham Palace Road and parked the H.U.P and the troops went into the pub.
(A)1 They are both along Fulham Palace Road.

(Q)2 They came out of the Greyhound and went into Fulham Palace.
(A)2 No, the idea is that they did not get into the H.U.P at the Angel they did not get there with any idea of going home and I knew that it was only about 20 minutes to ten and it would be easy.

(Q)3 The lads new that they were not going straight home.
(A)3 For one thing I did not put them under arrest or anything else. Some of them were talking with the police and others were in discussion so I got out and already a few had started gathering around and farther down the street we went to the Greyhound. I was trying to make the situation as easy as possible for all concerned. I went up there to help the boys, not as a provost.

In the opinion of the Court and the J.A. it is not considered necessary to comply with R.P. 83 (3).

Defence makes a Statement

D6 It looks that the more witnesses you call the more foolish it looks. The only evidence you may have that Sgt Hayes was AWL is Sgt Major Herron's statement, that he was not able to locate Sgt Hayes. The other evidence has nothing to do with this. At 1700 hours a man is automatically off duty. There is no mention that there was a 5 o'clock or a tatoo role call. Actually it is one man's statement that he checked the M.T. lines himself against another man's statement that he was in bed. There is no evidence on the second charge. The prosecution had to prove that this man was fighting definitely, definitely started a fight and was indulging in a fight. The police said that they did not see Sgt Hayes strike a blow. They both said that it was quite likely that he was trying to protect himself. Therefore there is no evidence at all that he was fighting. It is not always easy for a sergeant to control his men. However if these men once they were placed in the vehicle, the first time in front of the Angel by Capt Kyle, if the right thing had been done they would have never stopped in front of the Greyhound pub. The normal procedure is, after a man is off AWL he is warned. I do not think this man has anything to do with this second charge. On the former plea I ask that both of these charges be thrown out. Once they were loaded into that vehicle it was out of their hands. That is all.

The Prosecution Replies

Sir, the evidence that has been submitted both for and against the accused has established the fact that the accused absented himself from 0730 hours 20 May until he was apprehended by the police. This is established by evidence of C.S.M. Herron and the accused himself. The defence states that the accused could not have been AWL after 1700 hours, if he was AWL at all. But, when a man goes AWL he is shown AWL on the role call regardless of whether he has actually either returned to his unit or is apprehended. This N.C.O. was engaged on a priority war job at a time when the invasion of the continent was for all practical purposes imminent. This again on the part of the N.C.O. becomes a much more serious offence. True this N.C.O. had been working long and steady hours previously to this and possibly was in need of a rest himself. The way he went about procuring this rest constitutes a serious breach of military discipline not to mention the reaction it must have had in the lowering of morale amongst the remainder of the Coy. The action by Capt Kyle in attempting to find this N.C.O. and return him to his unit with the minimum of trouble to anyone concerned is in my opinion admirable. He has administered to this N.C.O.s needs and wants for a long time and he knows this N.C.O. very well.

Objection by defence
Objection overruled

He went to Hammersmith consciously believing that if he found him he could bring him back. The second charge is mainly concerned with the fact that by the action of this man the Canadian army was being thrown into disrepute while the general disturbance so created can only be credited to the general attitude of both the civilian and public and this man Sgt Hayes.

Statement by J.A.

In summarising the evidence and the law I wish to make it clear that the facts are to be discerned by the court entirely. The members of the Court in dealing with charges that come before them are entitled to use all their military knowledge, i.e., as officers of experience in general you know how the army operates, and you are entitled to use that knowledge. I also point that the onus of proving charges is with the prosecution at all times. These charges, the first charge is under AA Sec 15 (1) AWL Evidence of the Sgt Major is that the accused did not answer his name on role call at 0750 hours 20 May 44. He says the accused was not present at 1700 hours on the same day and that the accused was in London around about 2145 hours on the same day. What the prosecuting officer said with regard to records is true. A man who is AWL at 1700 hours does not cease to be an AWL at that time simply because the normal routine of the day is over, and is absent until such time as he returns or is apprehended. However, I would remind the court that this is one of the instances in which the court can bring in a special finding. That is, if a court in deliberation concludes that the absence either started at the time stated on the charge or at a later time, and that the absence terminated at such time or at an earlier time. I think that the facts with regard to the first charge are reasonably clear and there should be no difficulty with that charge.
On the second charge the court must be satisfied that whatever was done by the accused must be to the prejudice of good order and military discipline. In deciding, the court is entitled to use its military knowledge. I would personally have no hesitation in feeling that a brawl of Canadian soldiers in the presence of English civilians was prejudice to good order and military discipline. The question is whether the accused was taking part in the fighting under these circumstances. The evidence is confusing and that is a matter for the court to decide. The witnesses I think, have been most fair. There seems to be no question that the accused, Sgt Hayes, was in physical contact with other soldiers whose identity is not known, and Sgt Hayes says that there was a skirmish about the vehicle and other soldiers who were members of the party and that he undertook to assist in getting these soldiers into the vehicle so as to prevent any further disturbance. Capt Kyle says that he cannot say that he did see Sgt Hayes strike anybody. Spr Pennell says that Sgt Hayes was definitely not fighting. If the court accepts this story then it would appear that the accused should be acquitted. The onus is upon the prosecution to prove that Sgt Hayes created a disturbance by fighting in the presence of civilians. I must point out to you that if there is any reasonable doubt that doubt must go in favor of the accused. Reasonable doubt is one not engendered by whim but must be the doubt which reasonable men would have in the conduct of their own affairs. The President, Prosecuting & Defending Officers advise the J.A. that there are no other points which they desire him to deal with.

E1 Witness as to Character

Witness duly sworn states: Sir, I am R.29063 CSM Herron of 2 Cdn Rd Constr Coy.

(Q)1 Sgt Major Herron I would like you to give the court your knowledge of the character of Sgt Hayes.

(A)1 I have known Sgt Hayes since he came over with us in June 1940 and he has been with this Coy ever since. His character has been excellent. He has been our MT Sgt for the last 15 months.

In the opinion of the court and the JA it is not considered necessary to comply with R.P. 83 (B).

83 Address by Defence

Sir, in mitigation for this charge against Sgt Hayes, his character is given by Major Clarke as excellent and he has done a remarkable job as an NCO, and while convicted the evidence has not been too strong and I think that he definitely had a very case. After a man who has reached the rank of full Sgt, confirmed, and held that rank for some months he does not just go off for no reason at all. I do not agree with his method of trying to draw attention to this condition. I think that had a little more care been taken in the handling of his men by the officer whom he was working under, this matter would not have arisen. I would ask that the court take these things into consideration when deciding what punishment is thought necessary.

Page 1

Summary of Evidence in the case of B-29454 Sgt. Hayes, David Edward, on strength of No 2 Can. Road Construction Coy. R.C.E., a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the summary of evidence is taken on Oath.

First witness for the prosecution

B-29053 C.S.M. Herron; William Alvin Michael of No. 2 Can. Road Construction Coy. having been duly sworn states:

I am B-29053 C.S.M. Herron, W.A.M. of No 2 Can. Road Const. Coy R.C.E. I was C.S.M. in charge of the morning parade for No 2 Can. Road Const. Coy. detachment on the 20th of May 1947. On calling the parade at 0730 hours I saw that the M.T. Section was without a senior N.C.O. I checked the M.T. Sec. and found that Sgt. Hayes, the accused, whom I recognize here, was absent. Sgt. Hayes should have been on duty from 0730 hours until 1700 hours as M.T. Section Sergeant. he did not appear on the job during these hours.

C.S.M. Herron C.S.M.

The accused declines to cross-examine this witness

2nd witness

for the prosecution

Capt. G L Kyle of No 2 Can Road Const Coy having been duly sworn states:

I am Capt. G L Kyle of No 2 Road Construction Coy. On Sat 20th of May 1944 I received certain information & instructions from the O C No 2 Canadian Road Const. Coy. In consequence of which at about 1430 hours I proceeded to Kingston & Hammersmith. At approximately 2130 hours I noticed some of the unit N.C.Os on Fulham Palace road in front of a Public House in discussion with civilian police. I recognized, Sgt Hayes, Sgt Morissette, Cpl. Pickemeyer, Cpl Evans Cpl Lamrom, L/Cpl Roland and L/Cpl Pratt. Sgt Hayes was obviously under the influence of drink. I ordered them to get into the truck. While doing so a fight broke out amongst all these N.C.Os. which involved Sgt Hayes, It attracted a large crowd, civilians and other military personnel became involved. A police van came up and they assisted in getting all the N.C.Os into my vehicle except Sgt Hayes whom they took in custody in their van. I drove around until I went to the Hammersmith police station to pick up Sgt. Hayes at about 2400 hours. the R.A.M.P. London released him in my care. I returned with the N.C.Os to coy HQ at about 0230 hours

The accused declines to cross-examine this witness

G L Kyle Capt

3rd witness for the prosecution — Frank Wood, Police Inspector, Metropolitan Police, Hammersmith Station "F" Division

A written statement of this witness's evidence, purporting to be signed by him has been read to the accused & is included in this summary of evidence
(Statement marked exhibit "A")

Having regard to the loss of time and the expense involved, attendance of this witness cannot in my opinion be readily procured

R.L. Paris Capt
Officer detailed to take the Summary

4th witness for the prosecution — Fredrick Ford Police Constable 596 "F" Metropolitan Police, Hammersmith Station "F" Division

A written statement of this witness's evidence, purporting to be signed by him has been read to the accused & is included in this summary of evidence
(Statement marked exhibit "B")

Having regard to the loss of time and the expense involved, attendance of this witness cannot in my opinion be readily procured.

R.L. Paris Capt
Officer detailed to take the Summary

Nil. The accused does not require the attendance of either of the above witness's for cross examination

The accused was cautioned as follows in accordance with Rules of Procedure 4(E) Do you wish to make any statement or to give evidence upon oath? You are not obliged to ~~give~~ say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence on oath

The accused reserves his defence

I certify that the foregoing summary of evidence consisting of three (3) pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.

In the Field
7th May 1944

K Le Patourel Capt
2 Bn RCE
Officer detailed to
take the Summary

EXHIBIT A

METROPOLITAN POLICE.

No. 902.

STATEMENT OF WITNESS.

...ammersmith Station. 'F' Division.

20th, May, 19 44.

Name Frank Wood.

Address

Age . Occupation Police Inspector.

Statement: At 9.50pm, 20th, May, 1944, in response to a telephone message, I went, with other officers, to the Greyhound Public House, Fulham Palace Road, W.6.

On arrival I saw a Canadian Army truck standing in Greyhound Road. There were about a dozen Canadian soldiers struggling and fighting round it. A large crowd of people had congregated in the vicinity. I saw a Canadian Army Captain with the truck and he said he was trying to get some of the men into the truck. This we assisted him to do and the truck drove away into Fulham Palace Road for about 50 yards. It then stopped and the soldiers struggled out of the van and again commenced to fight and struggle. By this time they were completely out of control and the Officer admitted he could nothing with them. We were forced to arrest the three most violent and to take them into custody, to stop what may have developed into an ugly situation in view of the hostility of the crowd against the Canadian soldiers. The three soldiers were:- Sapper Arthur Nodwell, No B.89023, Sergt David Hayes. B. 20464 and Sapper Raymond Stack. No B. 89061, all of No 2 Road Construction Co. R.C.E., were taken to Hammersmith Police Station where they were detained for a Canadian Military Escort.

All the soldiers had been drinking heavily and were drunk. The remainder of the Canadian soldiers were taken away by the truck in question after the above three had been arrested.

Signature [illegible] Inspector 'F'

Signature witnessed by [illegible]

W.P. 19165/200,000 Oct./1939 s6 (8)

EXHIBIT B

METROPOLITAN POLICE.

No. 902.

STATEMENT OF WITNESS.

Hammersmith Station. "F" Division.
20th May 1944

Name Frederick Ford

Address

Age . Occupation Police Constable 546F

Statement: At 9-45 pm 20th/44 I was conveyed in Police van in company with other Officers to the "Greyhound" public House, Fulham Palace Road, W6. On arrival I saw a Canadian Army truck standing in Greyhound Road, and about a dozen Canadian soldiers fighting and struggling around; a number of these men had apparently been drinking heavily and were under the influence of drink including No B29454 Sergeant David Edward Hayes, of the Royal Canadian Engineers. Other Canadian soldiers were endeavouring to get these men in to the truck, we assisted them to do so, and they then drove away along Fulham Palace Road, but a few yards down the road a number of the men again got out of the truck and commenced to fight again one of these being Sergeant Hayes. It became obvious to me that the men were beyond control, so I took Hayes in to custody, and he was conveyed to Hammersmith Station in Police van

Signature Frederick Ford 546F

Signature witnessed by O'Owen 562F

W.P. 12165 200,000 Oct./1939 66 (8)

25 May 44.

I desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

I desire the services of ~~Capt Edmison~~ Capt Edmison if he is available.

2/ ~~Lt Col Carriere J.A.G.~~ Lt Col Carriere J.A.G.

3/ Capt S.D. Stephens 55 Bn. Coy. R.C.A.S.C.

4/ Capt. Wm. Dill.

Signed ~~D.C. Hayes Lt~~ D.C. Hayes Lt

EXHIBIT B

METROPOLITAN POLICE.

No. 902.

STATEMENT OF WITNESS.

Hammersmith Station. "F" Division.

20th May 1944

Name Frederick Ford

Address

Age . Occupation Police Constable 596F

Statement: At 9-45 pm 20th/44 I was conveyed in Police van in company with other Officers to the "Greyhound" public House, Fulham Palace Road, W6. On arrival I saw a Canadian Army truck standing in Greyhound Road, and about a dozen Canadian soldiers fighting and struggling around; a number of these men had apparently been drinking heavily and were under the influence of drink including No B29454 Sergeant David Edward Hayes, of the Royal Canadian Engineers. Other Canadian soldiers were endeavouring to get these men in to the truck, we assisted them to do so, and they then drove away along Fulham Palace Road, but a few yards down the road a number of the men again got out of the truck and commenced to fight again one of these being Sergeant Hayes. It became obvious to me that the men were beyond control, so I took Hayes in to custody, and he was conveyed to Hammersmith Station in Police van

Signature Frederick Ford 596F

Signature witnessed by [illegible] 562F

P.P. 19165/200,000 Oct./1939 46 (8)

+ Over

Ref Mayes

Kept Safe -

At appeal costs has ~~was~~ may
to pay Dept (Barnett) Proceed
to have Ref Mayes & document
turned over to ~~Settlement~~ Est for
disposal

LIST OF WITNESSES

For the Prosecution

A/Capt. G.L. Kyle - 2 Cdn Road Construction Coy. R.C.E.

B29053, CSM Herron, W.A.M. - 2 Cdn Road Construction Coy. R.C.E.

Frank Wood, Police Inspector - Metropolitan Police, Hammersmith Station, "F" Division.

Frederick Ford, - Police Constable 596, "F" Metropolitan Police, Hammersmith Station, "F" Division.

For the Defense

N I L

LIST OF EXHIBITS
(included in Summary of Evidence)

Exhibit "A" - Written statement of evidence - Frank Wood, Police Inspector, Metropolitan Police, Hammersmith Station, "F" Division.

Exhibit "B" - Written statement of evidence - Frederick Ford, Police Constable 596 "F" Metropolitan Police, Hammersmith Station, "F" Division

Exhibit "N"

M.F.B. 355
22M—5-41 (572-0)
H.Q. 1772-99-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B.29454	Sgt.	Hayes, D.E.	2 Cdn Road Construction Coy R.C.E.

In the following table and the summary of entries [illegible] conduct sheet [illegible] general [illegible] Canadian [illegible] conduct [illegible] court, [illegible] month. [illegible]

	Within last 12 months	Since enlistment or appointment
For	..... times	..... times
For	..... times	..... times
For	..... times	..... times
For	..... times	..... times

Number [illegible]

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

[illegible] Air Force [illegible] section [illegible]

3. The accused is not under sentence at the present time.

[illegible]

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and EIGHT days in military custody, making a total of EIGHT days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is 27 years 4 months

6. The date of his attestation specified in his record of service is 6 June 1940

7. [illegible]

8. [illegible]

9. The accused is in possession of [illegible] military [illegible] military decoration or reward. Cdn Voluntary Service Medal and Clasp

10. [illegible]

11. [illegible] the accused holds in the [illegible] Unit

[illegible]

[illegible]

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

20 December 1941 Date of promotion.

In the rank of Lance Corporal 4 years Months

In the rank of Corporal 1 years 7 months

In the rank of Sergeant 7 months Months

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 31st day of May 44 [illegible] A.A.C.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

M.F.M. 6

No. B. 29454 Name Hayes, D.E. | Sqn., Battery, or Company | Corps | Date of enlistment 6 June 40 | G.C. Badges | Service or Proficiency Pay | (A.F.B. 122) 40. P & S/136 (2637)

Date of last entry in Company Conduct Sheet: NIL | No. and date of last drunk: NIL | Period not reckoning towards freedom from extra fine: N.A. | Sheet No. 4 | Signature O.C. Company, etc.: G.M. CLARK Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
No entries from previous sheet destroyed 12 May 44 on confirmation inrank of Sergeant									

"CERTIFIED TO BE A TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY"

31 May 44 J.D. Harnett Lt.
(J.D. HARNETT) Lt.
A/Adjutant
2 Can Road Construction Coy RCE

Exhibit "O"

(P.T.O.)

4T-93

Pte Hayes F.A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F 67651 Pte Frederick Arlen Hayes 22 Ind Coy RCHMC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st QO 15 (1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)~~ beginning on (date) (1)

Time in confinement awaiting present trial—a total of 42 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court:

① To undergo detention for a period of 24 months

② To pay cost of apprehension $21/81/7

(Sgd) Judge-Advocate, if any. 11 Jan 45 Date awarded. (Sgd) President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

(Sgd) LT COL.

Date 13 JAN 45

Commanding A/CRA 3 CDN INF DIV.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F 67651 Pte HAYES F A	15 January 45	M. R. Overfield Lt Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160

FIELD GENERAL COURT-MARTIAL

CFA66 (1st Revn of AFA31) 40-P-M-8/1944 (6081)

4388

RECEIVED 5 JAN 1945 CMHQ

Convened by Order of HQ 3 Cdn Inf Div dated 2 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F67651	Pte	Frederick Arlen	Hayes	22 Indep Coy RCHMC

PROCEEDINGS REVIEWED

Rutherford Capt

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 11 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1450 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ as interpreter? Ans

The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans no.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	G.H. STEVENS	C.H.Q.(MG)
Member	CAPT	T.J. BELL	12 Fd. Regt RCA
Member	LIEUT	J.R. WRIGHT	13 Fd. Regt RCA
Judge-Advocate			
Prosecutor	MAJOR	E.A. WILLIS.	22nd Fd. Amb. RCAMC
Defending Offr	CAPT	J.W.B. BARR.	22nd Fd Amb. RCAMC

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 2.)

A8. The accused F-67651 Pte Frederick Arlen Hayes before arraignment make(s) ~~no~~ (a) plea Gal (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule. Gal

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

LT Sheardown was not available and his place was taken by the waiting member.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 85, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), to call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. no (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Make the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. no

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. F1 and Ex. C respectively.(3)

(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. yes through defending Offr (2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(C) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Guel

C H A R G E S H E E T

The accused No. F 67651 Pte Fredrick Arliss Hayes 22 Cdn Fd Amb RCAMC, a soldier of the Canadian Army Overseas, is charged with:-

Sec 18(1) Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 2359 hrs 24 Mar 44 until he surrendered to the civil police at Bournemouth, England at 1215 hrs 30 Nov 44, incurring costs of apprehension and return to his unit in the amount of £1.6.7.(Absent 250 days, 12 hrs, 16 minutes.)

In The Field
5 Jan 45

(W R Caverhill) Lt Col
Commanding Officer
22 Cdn Fd Amb RCAMC

In the field
9 Jan 45

To be tried by FD Cts

(H.S. Griffin) Lt.-Col.,
A/CRA 3 Cdn Inf Div.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F67651	Pte		Frederick Arthur	Hagar	22 Can Fd Amb RCAMC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has [illegible] committed the offence(s) set forth in the Charge Sheet [illegible] attached and on (date) 9 Jan 45 endorsed by me, [illegible]. To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial : [illegible]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Maj	G.H. STEVENS		CH of O (MG)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by OC	12 Cdn Fd Regt RCA
Lt	To be detailed by OC	16 Cdn Fd Coy RCE

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	To be detailed by OC	13 Cdn Fd Regt RCA

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland
(Country.)

Dat 9 Jan 45

(Signed personally. RP 106 fn 8.)
(H.S. Griffin)
Lt.-Col.
(Rank.)
Commanding A/CRA 3 Cdn Inf Div.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S REPORT

I certify that No. F 67651 Pte Hayes, F A

of 22 Can Fd Amb is in a Good state of health,

and Fit to undergo Trial by Court martial.

Medical Officer

Station PIELI

Date 11 Jan 45

M. F. B. 246

30M—2-40 (4390)
H.Q. 1172-39-480

Statement in Mitigation of ~~Punishment~~ Sentence

in the case of

F 67681 Pte Hayes F.A. 22 cdn Fd Amb Reserve.

The Court is respectfully requested to consider the following points when deciding the ~~punishment~~ sentence to be awarded to the accused, Pte Hayes, F.A.

1. Age. The accused is a man of forty-three years, well past his prime. While his health is good, yet it is reasonable to assume that he cannot stand rigorous punishment as well as a man half his age, the age of the majority of first class soldiers.

2. Marital Status. During the past eighteen months, the accused has had a great deal of distress in his family. His wife, whose health has never been good, has been hospitalized and although she is now at her home yet she is far from well. Their eldest daughter, which before the commission of his offence, died from diphtheria. His youngest daughter was at this time also in hospital with diphtheria. Hardships which may be the lot of the family of the accused are brought to the attention of the Court.

3. Length of Service. This man enlisted on the 2 Sept 39, before date of war was actually declared. He embarked for England in July 1941. He has been with the 22 cdn Fd Amb throughout. During his service in Canada he was absent without leave on two occasions and on both occasions he applied for leave and returned to his former station and was found at his home. At the completion of offering ~~himself~~ himself for service overseas, he was charged on the strength of his willingness to serve. From July 1941 when he arrived in England until now 44, he was charged only one day. He is not apparently a chronic absentee.

4. Time under arrest. The accused has been under close arrest since 26 Nov 44, a total of forty-three days. The Court is requested to consider this period when awarding sentence.

5. Finally, may it be brought to the attention of the Court that the accused voluntarily surrendered to the civil police, and did not wish to be apprehended. He is a soldier of five years service, has represented the Dominion of his offence and has served a good part of it overseas; and is quite prepared to serve his sentence without

the Court would accept.

In view of the above facts, it is requested that the Court should dismissing the writ as prayed.

John B Thompson Esq

Exhibit A

M.F.B. 188
(22M—5-41 (572-3)
H.Q. 1772-39-620)
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F 67651	Pte	Hayes, F. A.	22 Cdn Fd Amb RCAMC

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and Squadron Battery mac Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ mac of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Nil	times	AWL	3 times
For		times		times
For		times		times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~ mac

~~or~~ mac

~~There are no entries in the conduct sheets of the accused.~~ mac

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~xxx~~ mac

~~Previous conviction of the accused by a court-martial or a civil court, of summary awards under~~ mac ~~Air Force Act~~ mac ~~Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out on the Schedule~~ mac ~~annexed to this charge.~~ mac

3. The accused is not under sentence at the present time.

~~xxx~~ mac

~~The accused at the present time is under sentence to xxxxxxxxxxxx beginning on the~~ mac

~~day of~~ mac

4. The accused has been in confinement awaiting trial on the present charges, for one days in civil custody, and 39 days in military custody, making a total of ~~40~~ 43 days in custody, ~~Air Force~~ mac of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 42 years ~~attestation paper is~~ mac

6. The date of his ~~enlistment~~ mac attestation specified in his record of service is 2 Sep 39 ~~attestation paper~~ mac

7. ~~The service which the accused is allowed to reckon on his discharge is~~ mac

8. ~~The accused is entitled to reckon xxxxxxxx service (for the purpose of determining his pension, etc.~~ mac

9. The accused is in possession of or entitled to ~~no Air Force~~ mac military decoration, or ~~Air Force~~ mac military reward (~~which the accused is in possession of or entitled to~~). State any ~~Air Force~~ mac military decoration or reward. C.V.S.M. and Clasp

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held ~~Air Force~~ mac the regimental rank of ~~mac~~

11. (In the case of an officer.) ~~The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank ..... Unit ..... Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18th day of January 45

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

SUMMARY OF EVIDENCE

in the case of

F 67651 Pte Hayes,F.A., HQ Coy 22 Cdn Fd Amb RCAMC, CAO

charged with absenting himself without leave.(A.A.Sec 15(1)).

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness

Lieut J.L.Healip, 22 Cdn Fd Amb,sworn,states:-

"I am Lieut J.L.Healip of the 22 Cdn Fd Amb. I can identify the accused as F 67651 Pte Hayes,F.A.

I have read the documents presented to me, Namely:-

(a) ~~Army Form W 4098 - combined pass and rail ticket, with return portion still attached~~.

(b) Declaration of a Court of Inquiry held at the 22 Cdn Fd Amb on 15 Apr 44.

(c) Army Form C 1617 showing F 67651 Pte Hayes,F.A. ~~apprehended by the~~ civil authorities at 1215 hrs 30 Nov 44.

I identify the accused as the person referred to in these documents". J.L. Healip, Lt.

The accused declines to cross examine this witness.

~~The Army Form W 4098~~, produced as documentary evidence, was read over to the accused, marked exhibit "A", signed by me and attached hereto.

E A Willis

(E A Willis) Major

The declaration of Court of Inquiry held at the 22 Cdn Fd Amb on 15 Apr 44 produced as documentary evidence, was read over to the accused, marked exhibit "B", signed by me and attached hereto.

E A Willis

(E A Willis) Major

The Army Form C 1617, produced as documentary evidence, was read over to the accused, marked exhibit "C", signed by me and attached hereto.

E A Willis

(E A Willis) Major

The accused was cautioned as follows:-

Q - "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

A - "I would like to make a statement".

Q - "On oath or not on oath".

A - " On oath."

The accused, sworn states:-

"I am F 67651 Pte Hayes,F.A. of 22 Cdn Fd Amb, I applied for compassionate ~~xxxxxx~~ leave to Canada, on the grounds that my wife and two children were in hospital. My oldest girl of 15 passed away. I waited at least four months before I got any reply and then the Colonel told me that he had an answer to my leave. He said it wasn't granted because my wife and daughter were better. That has been playing on my mind ever since".

F.A. Hayes.

(F A Hayes)

The accused does not call any witness.

" I certify that the foregoing ~~xxxxxxxx~~ summary of evidence, consisting of ~~three~~ two pages, was taken down by me in the presence of the accused and that R.P.4(c),(d),(e),(f) and (g) have been complied with.

Eric A. Willis Lt.

(Eric A Willis) Major
22 Cdn Fd Amb RCAMC

In The Field
7 Jan 45.

Expense Voucher Re 84 "A" Ref: KR & O (Can) 539

Reg No 16750 Rank Hc Name Hayes, F.A Unit 22 Fld. Amb.

The following expenses were incurred in apprehending and returning the M/N Soldier to his ~~Unit~~ from London from Bournemouth

Date	Particulars	Amount		
Dec 44	Escorts return fare from LONDON To Bournemouth		16	6
	Prisoners single fare to LONDON From Bournemouth		8	3
	Prisoners fare from to			
	Escorts & ~~Prisoners~~ expenses for ~~Bed~~, Meals, Bus fares		3	10
	Total £	1	8	7

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

J. A. THOMSON. A/LIEUT
J. A. THOMSON.
ADMIN. OFFICER D.P.M. Dept
C. M. H. Q.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London

1/35 CMHQ 100-55 40/P & S/489 (6762)

Ex "B"

IMMEDIATE. Army Form O.1617.

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Soldier's Unit,* stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military custody. Where a soldier's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Depot, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depots are shown in the Monthly Army List.

(817X) Wt.WP1287/6858 4000 9/28 H. J. R. & L. Ltd. Gp.121 Forms/O.1617/5

I CERTIFY that the man whose personal description is given below surrendered himself to* P.C. 94 Balcolp

at Bonnemarch at (hour) 12-15 pm on the 30th day of November 1944 as being No. F64651

(Rank and Name) L/Cpl. Frederick Arden Rogers

a deserter (or absentee without leave) from R.C.A.M.C. Regiment, and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 42 yrs Height 5' 4" Feet 4 ins Inches

Complexion Fresh Hair Brown TG Eyes Hazel

Marks Rear bridge of nose

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	Dec September 1939 Halifax N.S.
Probable Date of Desertion or beginning of absence, and from what place	Oct 2nd 1944 from Southampton

---

Signature of Officer of Police in charge of Bonnemarch Station.

Lt/Cpl Leckie 4453

30th November 1944 Date of Signature.

Army Form O.1617.

PART 2

This portion of the Form should be completed and forwarded to the Officer Commanding the soldier's unit to whom Part 1 of this Form is sent, as soon all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army Funds incurred by the Police in the case of No.

of the Regiment, who surrendered to the Police

at on

Payable to

CERTIFIED that this statement of expenses is correct.

(Superintendent or Officer in charge of Police Station (at

Date of Signature.

Record of the Declaration of a Court of Inquiry assembled at Field on the 15th of April 1944, for the purpose of investigating and recording the ~~x~~ absence, without leave from his duty, and deficiency if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries, or Clothing of:-

F-67651 Pte. Hayes, F.A.

DECLARATION

The Court declare that No. F-67651 Pte. Hayes, F.A.

22 Canadian Field Ambulance, RCAMC

illegally absented himself without leave from his unit at 2359 hrs on the 24th day March 1944, and that on the 15 day of April 1944 he was still so absent, on the 15 April 1944 he was deficient, and that he is still deficient of the following articles:-

ARTICLES		VALUE (Vocab Prices)	Value (at 75% Vocab prices)
Boots, ankle	1	5.46	5.60
Boots, leather, high	1	7.35	5.51
Caps, field, service	1	.56	.42
Drawers, cell, short	1	.43	.32
Drawers, woollen	1	1.20	.90
Gloves, nitted	1	.47	.35
Socks	1	.37	.28
Vests, woollen	1	1.20	.90
Blouses, B/D	1	5.25	3.94
Trousers, B/D	1	5.39	4.04
Badges, cap	1	.09	.07
Badges, shoulder, Canada	2	.06	.05
Braces	1	.28	.21
Brass, cleaning	1	.04	.03
Brush, button, brass	1	.26	.20
Brush, clothes	1	.48	.36
Brush, Hair	1	.34	.26
Brush, shaving	1	.37	.28
Brush shoe blacking	1	.08	.06
" " polishing	1	.28	.21
Brush, tooth	1	.11	.08
Cap Comforter	1	.34	.26
Comb, hair	1	.04	.03
Discs, set	1.	.03	.02
Fork, table	1	.07	.05
Knife, table	1	.15	.11
Patches, disting-uishing	prs 1	.06	.05
Towel, hand	1	.32	.24
Bag, ration	1	.05	.04
Belts, waist	1	.74	.56
Bottles, water	1	.82	.62
Braces WE Left	1	.30	.23
Carriers waterbottle	1	.37	.28
Packs	1	1.84	1.38
Cape A/G	1.	2.64	1.98
Ointment A/G	1	.15	.11
Mug drinking	1	.13	.10
Total		38.12	28.13

[signature] President

H.G. Aitken Capt Member

J.L. Heaslip Lieut Member

Signed at In The Field

This 15th day of Apr 19 44

Signature of Commanding officer M.R. Caverhill Lt.-Col

I hereby certify that the above declaration is a true copy of the entry made by me in Military book 68 on 15 Apr 44 and that I am custodian of said book.

M.R. Caverhill Lt Col

SIGNATURE RANK

22 Canadian Field Ambulance, R.C.A.M.C.

(Previous sheet destroyed 2 May 40)

No F67651 Name Hayes, F. A. | Sqn, Battery, or Company | Corps R. C. A. M. C. | Date of enlistment 2 Sep [illegible] | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122 10/P&S/156 (2)) 4/41

Date of last entry in Company Conduct Sheet: nil | No and date of last drunk: nil | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc: J. A. Wright, Maj | Character Exhibit "C"

Fines	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Debert, N.S.	17 Nov 40	Pte		AWL from 0700 hrs 17 Nov 40 to 0630 hrs 25 Nov 40.	S/Sgt Janes, R.W.	Forf 5 days pay	26 Nov 40	E.F.Ross, Lt Col	
Debert, NS	13 Jan 41	Pte		AWL from 0700 hrs 13 Jan 41 to 1800 hrs 21 Jan 41	Cpl Smith, L. Sgt Arsenault, M.	14 days det.	23 Jan 41	E.F.Ross, Lt Col	
Field	12 Jun 42	Pte		AWL from 2230 hrs 12 Jun 42 to 2230 hrs 13 Jun 42.	Sgt MacQuigan, W. Cpl Smith, M.	Forf 2 days pay & 14 days C.B.	14 Jun 42	E.F.Ross, Lt Col	

Certified true copy,

[illegible] Lt Col

(PTO)

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F 67651 Pte Fredrich Arlen HAYES 22 Cdn Fd Amb RCAMC

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA See 15(1)	guilty	guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (2)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 42 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court :

1.To undergo detention for a period of 24 months
2.To may cost of apprehension £1-8-7-

(Sgd) ..... 11 Jan 45 ..... (Sgd) ?????????Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally, AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) (HS Griffin) Lt Col

Date 13 Jan 45 Commanding A/CRA 3 Cdn Inf Div
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F 67651 Pte Hayes FA	15 Jan 45	(MR Coverhill) Lt Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4-73

FIELD GENERAL COURT-MARTIAL

CF AMS (To Issue of AFA3) 40-P-36-B-1898 (40/10)

4/38B

Convened by Order of HS Griffin Lt Col Comd A/CRA 3 Cdn Inf Div dated 9 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 67651	Pte	certified true copy [illegible] D.J.A.	Fredrich Arlen	HAYES	22 Cdn Fd Amb RCAMC

Extn Sec Cdn 2 Feb 21 [illegible]

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 11 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

19/67

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AMS, for oaths and notes on how to record addresses, evidence etc, which notes are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (A) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 2400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO~~ (2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to be interpreted ? Ans~~
~~The Interpreter is sworn. Do you object to the shorthand writer is sworn~~ (1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	GH Stevens	CH of O (MG)
Member	Capt	TJ Bell	12 Fd Regt RCA
Member	Lieut	JB Wright	13 Fd REgt RCA
Judge-Advocate			
Prosecutor	Major	FA Willis	22 Fd Amb RCAMC
Defending Offr	Capt	JWB Barr	22 Fd Amb RCAMC

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See Dil p 3.)

A8. The accused F 67651 Pte Hayes FA before arraignment make(s) (no) ~~an~~ plea (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 36, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references as fns to RoP cited. Delete if not used and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If objection, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at [illegible] of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

~~It~~ Drumgold was not available and his place was taken by the waiting member.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*ii*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) and call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(E).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 55B. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes through my defending officer. (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 208, 320, 563-566, Overseas RO 809, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Ehpl

CHARGE SHEET

The accused F 67651 Pte Hayes FA 22 Cdn Fd Amb RCAMC, a soldier of the Cdn Army Overseas, is charged with:-

1st Charge WHEN ON ACTIVE SERVICE , ABSENTING HIMSELF WITHOUT LEAVE

s 15(1) Army Act

in that he

In the Fiedl, absented himself without leave from 2359 hrs 24 Mar 44 until he surrendered to the civil police at Bournemouth, England at 1215 hrs 30 Nov 44, incurring costs of apprehension and return to his unti in the amount of £1-8-7.(Absent 250 days 12 hrs, 16 minutes.

"WR Carverhill"
(WR Carverhill) Lt Col
Comd 22 Cdn Fd Amb RCAMC

In the Field
8 Jan 45

To be tried by Fiedl General Court Martial.

"HS Griffin"
(HS Griffin) Lt Col
A/CRA 3 Cdn Inf Div.

In the Field
9 Jan 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 67651	Pte		Fredrick Arliss	HAYES	22 Cdn Fd Amb RCAMC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 7 Jan 45 endorsed by me, (~~or by authority of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint no Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G.R. Stevens	CH of O (MG)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC	12 Cdn Fd Regt RCA
Lieut	to be detailed by OC	16 CGn Fd Coy RCE

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	to be detailed by OC	13 Cdn Fd Regt RCA

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

"H.S. Griffin"
(HS Griffin)
(Signed personally. RP 105 fn 2.)

Lt Col (Rank.)

Dat 9 Jan 45

Commanding A/CRA 3 Cdn Inf Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

G44

MEDICAL OFFICER'S REPORT

I certify that F 67651 Pte Hayes FA of 22 Cdn Fd Amb is in a good state of health and fit to undergo trial by Court Martial.

(SP Ganton) Major
Medical Officer

Field
11 Jan 45

Exhibit B

SUMMARY OF EVIDENCE

in the case of

67651 Pte Hayes, F.A. HQ Coy 22 Fd Amb RCAMC, CAO

Charged with absenting himself without leave. AA Sec 15 (1).

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness Lt J.L. Heallip, 22 Cdn Fd Amb, sworn, states:-

I can identify the accused as F 67651 Pte Hayes F.A.

I have read the documents presented to me, namely:-

(a) Voucher re-cost of apprehension.

(b) Declaration by the Court of Inquiry held at the 22 Fd Amb on 15 Apr 44.

(c) Army form O 1617 showing F 67651 Pte Hayes, F.A. as surrendering to civil authorities at 1215 hrs 30 Nov 44.

I identify the accused as the person referred to in these documents.

(JL Hearty) Lieut.

The accused declines to cross-examine this witness.

Voucher re-cost of apprehension, produced as documentary evidence was read over to the accused, marked ex A, signed by me attached hereto.

(E.A. Willis) Major

The declaration of Court of Inquiry held at the 22 Cdn Fd Amb on 15 Apr 44 produced as documentary evidence, was read over to the accused, marked Ex B, signed by me and attached hereto.

(E.A. Willis) Major

The Army Form O 1617, produced as documentary evidence, was read over to the accused, marked Ex C, signed by me and attached hereto.

(E.A. Willis) Major

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence yo give will be taken down in writing and may be given in evidence,

I would like to make a statement.

On oath, or not on oath?

On oath.

The accused, sworn states:-

I am F 67561 Pte Hayes F.A. of 22 Cdn Fd Amb, I applied for compassionate leave to Canada, on the grounds that my wife and two children were in hospital. My oldest girl of 18 passed away. I waited at least four months before I got any reply and then the Colonel told me that he had an answer to my leave. He said it wasn't granted because my wife and daughter were better That has been playing on my mind ever since.

(F.A. Hayes)

The accused does not call any witnesses;

I certify that the foregoing summary of evidence, consisting of two pages, was taken down by me in the presence of the accused and that RP 4 (c) (d) (e) (f) and (g) have been complied with.

In the Field
7 Jan 45

(Eric A Willis) Major
22 Cdn Fd Amb RCAMC.

Ex "A"

EXPENSE VOUCHER RE-

F 67651 Pte Hayes, F.A. 22 Cdn Fd Amb

London to Bournemouth.

1 Dec 44	Return fare From London to Bournemouth		16.6
	Single fare to London to	Bournemouth	8.3
		Total	1[illegible].7

(JA Thompson) Lieut
Adm Officer DPM, CMHQ

"B" 3"

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army Lists.

(15888) Wt. 27432/787 25,000 8/40 A.& R.W.Ltd. Gp.498 Forms/O.1617/13

I CERTIFY that the man whose personal description is given below surrendered himself to *Pte G.Bishop

at Bournemouth at (hour) 1215 hrs on the 30 day of Nov 44 as being No. F 62651

(Rank and Name) L/Cpl Frederick Arless Hayes

a deserter (or absentee without leave) from RCAMC

and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word " to " to be inserted the name and rank of the police officer concerned.

Age 42 yrs Height 5" 4' Feet 7" Inches

Complexion Fair Hair Brown Eyes Hazel

Marks Scar bridge of nose

In uniform or plain clothes uniform

Probable Date and Place of Attestation	2 Sep 39 Halifax, N.S.
Probable Date of Desertion or beginning of absence, and from what place	24 Mar 44 from Southampton

??????????Sgt

Signature of Officer of Police in charge of Bournemouth Station.

30 Nov 44 Date of Signature.

Army Form O.1617
R.A.F. Form [illegible]617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of

No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

Ex "C"

RECORD of the Declaration of a Court of Inquiry assembled at

on the 15 day of April 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. F 67651 Pte Hayes F.A.

DECLARATION

The Court declare that No. F 67651 Pte Hayes F.A.

illegally absented himself without leave from his unit at 2359 hrs on the 24 day of March 44, that he is still so absent, and that on the 15 Apr 44 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE
SEE ATTACHED PAGE			

CP Banton Major President

HG Aitken Capt Member

JL Heaslip Lieut Member

Signed at In the Field

this 15th day of Apr 19 44

Signature of Commanding Officer MR Caverhill Lt Col

Certified true copy MR Caverhill Lt Col

Signature of Officer having custody of original record

M.F.B. 373
A.F.B. 118
20M—6-43 (750)
H.Q. 1772-39-287

ARTICLES		VALUE (Vocab Prices)	VALUE (75%)
Boots, ankle	1	5.40	3.60
Boots, leather high	1	7.35	5.51
Caps, field service	1	.56	.42
Drawers, sell, short	1	.43	.32
Drawers, woolen	1	1.20	.90
Gloves, knitted	1	147	.35
Socks	1	.37	.28
Vests, woolen	1	1.20	.90
Blouses, B/D	1	5.25	3.94
Tro sers B/D	1	5.39	4.04
Badges, cap	1	.09	.07
Badges, shoulder Cdn	2	.06	.05
Braces	1	.28	.21
Brass, cleaning	1	.04	.03
Bruch, button, brass	1	.26	.20
" clothing	1	.48	.36
" Hair	1	.34	.26
" shaving	1	.37	.28
" shoe blacking	1	.08	.06
" tooth	1	.11	.08
Cap Comforter	1	.34	.26
Comb, hair	1	.04	.03
Discs, set	1	.03	.02
Fork, table	1	.07	.05
Knife, table	1	.15	.11
Patches, distinguishing	1	.06	.05
Towel, hand	1	.32	.24
Bag, ration	1	.05	.04
Belts, waist	1	174	.56
Bottles, water	1	.82	.62
Braces WE left	1	.30	.23
Carriers water bottle	1	.37	.28
Packs	1	1.84	1.38
Cape A/G	1	2.64	1.98
Ointment A/G	1	.15	.11
Mug drinking	1	.13	.10
Total		38.12	28.13

(Previous sheet destroyed 2 May 40)

No. F 67651 Name Hayes F.A. Sqn, Battery, or Company Corps RCAMC Date of enlistment 2 Sep 39 OC Judges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) (20-130 (5418

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc JA Wright Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order diverging with effect	By whom awarded	Remarks
Debert N.S.	17 Nov40	Pte		AWL from 0700 hrs 17 Nov 40 to 0630 hrs 25 Nov 40	S/Sgt Janes R.W.	forf 5dys pay	26 Nov40	E.F. Ross	Lt Col
Devert N.S.	13 Jan41	"		AWL from 0700 hrs 13 Jan 41 to 1800 hrs 21 Jan 41	Cpl Smith L Sgt Arsenault M.	14 days Detn.	23 Jan41	E.F. Ross	Lt Col
Field	12 Jun 42	"		AWL from 2230 hrs 12 Jun 42 to 2230 hrs 13 Jun 42	Sgt MacQuirm W. Cpl Smith W.	forf 2 dys pay & 14 days CB	14 Jun42	E.F. Ross	Lt Col

Certified true copy

(M.R. Coverdill) Lt Col

Exhibit "C"

(PTO)

ARMY FORM B.296

Statement as to Character and Particulars of Service of Acc

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F-67651	Pte	Hayes, F.A.	22 Cdn Fd Amb RCAMC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL 3 times.

For _____ _____ times.

For _____ _____ times.

For _____ _____ times.

Date of first entry in Field Conduct Sheet _____

Date of last entry in Field Conduct Sheet _____

2. [illegible]

*Strike out if not applicable.

*3. [illegible]

4. The accused has been awaiting trial on the present charges for one days in civil custody; and for 39 days in military custody, *i.e.*, _____ days in open arrest, _____ days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 42 years

6. The date of his attestation / calling up for military service is 2 Sep 39

7. [illegible]

†State the military decorations of any held by accused.

8. The accused is in possession of† C.V.S.M. & Clasp

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of N/A _____

In the war substantive rank of _____ _____

In the acting rank of _____ _____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through*

(PENTO) WL30721/3701 M2,000 9-41 A.& E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 11th day of January 1945

"M.R. Coverhill" Lt Col
OC 22 Cln Fd Amb.

Statement in mitigation of sentence in the case of F 67651 Pte Hayes FA 22 Cdn Fd Amb RCAMC.

The Court is respectfully requested to consider the following points when decidin the sentence to be awarded to the accused.

1. Age The accused is a ma of forty three years, well past his prime. While his health is gone, yet it is reasonable to assume that he cannot stand rigorous punishment as well as a man half his age, the age of the majority of first class soldiers.

2. Marital States During the past eighteen months the accused has had a great deal of distress in his family. His wife whose health has never been good has been hospitalized, and although she is now at her home yet she is far from well. His eldest daughter, shortly before the commission of his offence died from Diphtheria. His youngest daughter was a this time also in hospital with diphtheria. Hardships which may be the last of the family of the accused are brought ot the attention of the Court.

3. Length of Service This man enlisted on the 2 Sep 39 before state of war was actually declared. He embarked for England in Jul 41. He has been with the 22 Cdn Fd Amb throughout. During his service in canada he was absent without leave on ten occasions and in these occasions he applied for leave to attend to his family affairs and was refused. He went absent from his unit to straighten up affairs which were beyond the scope of his ailing wife. From Jul 41 when arrived in England until Mar 44, he was absent only one day. He is not, apparently, a chronic deserter.

4. Time under arrest The accused has been under close arrest since 30 Nov 44 a total of forty three days. The Court is requested to consider this period when awarding sentence.

5. Finally, may it be brought to the attention of the Court that the accused voluntarily surrendered to the civil police, and that did not resist to be apprehended. As a soldier of five years service he appreciates the seriousness of his offence and has desired to plead guilty and is quite prepared to serve the sentence which the Court will award.

In view of the above facrs it is requested that the Court show such leniency as lies within its powers.

(John E. Barr) Capt.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F 67651 Pte Fredrich Arlen HAYES 22 Cdn Fd Amb RCAMC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	guilty	guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 9.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 42 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

1.To undergo detention for a period of 24 months
2.To may cost of apprehension £1-8-7-

(Sgd) ..... 11 Jan 45 (Sgd)??????????Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) (HS Griffin) Lt Col

Date 13 Jan 45

Commanding A/CRA 3 Cdn Inf Div
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F 67651 Pte Hayes FA	15 Jan 45	(MR Coverhill) Lt Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CPA81 (In lieu of AFA3)
40/P & S/1098 (40/01)
4/38B

47-73

Convened by Order of HS Griffin Lt Col Comd A/CRA 3 Cdn Inf Div dated 9 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 67651	Pte	certified true copy	Fredrich Arlen	HAYES	22 Cdn Fd Amb RCAMC

D J A

Cdn Sec G.H.Q. 2 Feb 21 Army O

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 11 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 19/69

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to ..... as interpreter ? Ans~~
~~The Interpreter is sworn.~~ (1) To you object to ..... as shorthand writer ? Ans
~~The shorthand writer is sworn.~~ (1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans NO (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	GH Stevens	CH of O (MG)
Member	Capt	TJ Bell	12 Fd Regt RCA
Member	Lieut	JR Wright	13 Fd REgt RCA
Judge-Advocate			
Prosecutor	Major	FA Willis	22 Fd Amb RCAMC
Defending Offr	Capt	JWB Barr	22 Fd Amb RCAMC

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournement when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused F 67651 Pte Hayes FA before arraignment make(s) (no) ~~no~~ plea. (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AT Shierfield was not available and his place was taken by the waiting member

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*D*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*ii*), *RP* 45, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex C respectively.(3)
(1. *MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes through my defending officer (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas AO* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(*1*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused F 67651 Pte Hayes FA 22 Cdn Fd Amb RCAMC, a soldier of the Cdn Army Overseas, is charged with:-

1st Charge WHEN ON ACTIVE SERVICE , ABSENTING HIMSELF WITHOUT LEAVE

Sec 15(1) Army Act

in that he

In the Fiedl, absented himself without leave from 2359 hrs 24 Mar 44 until he surrendered to the civil police at Bournemouth, England at 1215 hrs 30 Nov 44, incurring costs of apprehension and return to his unti in the amount of £1-8-7.(Absent 250 days 12 hrs, 16 minutes.

"MR Cavarhill"

In the Field
8 Jan 45

(MR Cavarhill) Lt Col
Comd 22 Cdn Fd Amb RCAMC

To be tried by Fiedl General Court Martial.

"HS Griffin"

In the Field
9 Jan 45

(HS Griffin) Lt Col
A/CRA 3 Cdn Inf Div.

E183

FIELD GENERAL COURT-MARTIAL

Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 47, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 67651	Pte		Fredrick Arliss	HAYES	22 Cdn Fd Amb RCAMC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above is the accused, being subject to military law, has (~~been~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 9 Jan 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G.H. Stevens	CH of O (MG)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC	12 Cdn Fd Regt RCA
Lieut	to be detailed by OC	16 Cdn Fd Coy RCE

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	to be detailed by OC	13 Cdn Fd Regt RCA

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

"HS Griffin" (HS Griffin) (Signed personally. RP 105 fn 2.)

Lt Col (Rank.)

Dat 9 Jan 45

Commanding A/CRA 3 Cdn Inf Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA 65 (In lieu of AFA 3) 40/P & S/1697 (E143)

(See overleaf for oaths and notes for use on trial.)

Q.A.G.S

MEDICAL OFFICER'S REPORT

I certify that F 67651 Pte Hayes FA of 22 Cdn Fd Amb is in a good state of health and fit to undergo trial by Court Martial.

(SP Ganton) Major
Medical Officer

Field
11 Jan 45

Exhibit B

SUMMARY OF EVIDENCE

in the case of

F 67651 Pte Hayes, F.A. HQ Coy 22 Fd Amb RCAMC, CAO

Charged with absenting himself without leave. AA Sec 15 (1).

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness Lt J.L. Heallip, 22 Cdn Fd Amb, sworn, states:-

I can identify the accused as F 67651 Pte Hayes F.A.

I have read the documents presented to me, namely:-

(a) Voucher re-cost of apprehension.

(b) Declaration by the Court of Inquiry held at the 22 Fd Amb on 15 Apr 44.

(c) Army form O 1617 showing F 67651 Pte Hayes, F.A. as surrendering to civil authorities at 1215 hrs 30 Nov 44.

I identify the accused as the person referred to in these documents.

(JL Hearty) Lieut.

The accused declines to cross-examine this witness.

Voucher re-cost of apprehension, produced as documentary evidence was read over to the accused, marked ex A, signed by me attached hereto.

(E.A. Willis) Major

The declaration of Court of Inquiry held at the 22 Cdn Fd Amb on 15 Apr 44 produced as documentary evidence, was read over to the accused, marked Ex B, signed by me and attached hereto.

(E.A. Willis) Major

The Army Form O 1617, produced as documentary evidence, was read over to the accused, marked Ex C, signed by me and attached hereto.

(E.A. Willis) Major

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence,

I would like to make a statement.

On oath, or not on oath?

On oath.

The accused, sworn states:-

I am F 67651 Pte Hayes F.A. of 22 Cdn Fd Amb, I applied for compassionate leave to Canada, on the grounds that my wife and two children were in hospital. My oldest girl of 18 passed away. I waited at least four months before I got any reply and then the Colonel told me that he had an answer to my leave. He said it wasn't granted because my wife and daughter were better That has been playing on my mind ever since.

(F.A. Hayes)

The accused does not call any witnesses.

I certify that the foregoing summary of evidence, consisting of two pages, was taken down by me in the presence of the accused and that RP 4 (c) (d) (e) (f) and (g) have been complied with.

In the Field
7 Jan 45

(Eric A Willis) Major
22 Cdn Fd Amb RCAMC.

Ex A

EXPENSE VOUCHER RE-

F 67651 Pte Hayes, F.A. 22 Cdn Fd Amb

London to Bournemouth.

1 Dec 44	Return fare from London to	Bournemouth	16.6
	Single fare to London to	Bournemouth	8.3
		Total	24.9

(JA Thompson) Lieut
Adm. Offr DPM, CMHQ

E & B*

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army Lists.

(15088) Wt.27429/757 25,000 9/40 A.& E.W.Ltd. Gp.498 Forms/O.1617/18

I CERTIFY that the man whose personal description is given below surrendered himself to* Pte G. Bishop

at Bournemouth at (hour) 1215 on the 30 day of Nov 44 as being No. F 62651

(Rank and Name) Pte Frederick Arless Hayes

a deserter (or absentee without leave) from RCAMC

and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word " to " to be inserted the name and rank of the police officer concerned.

Age 42 Height 5' Feet 7" Inches

Complexion Fresh Hair Brown Eyes Hazel

Marks Scar bridge of nose

In uniform or plain clothes uniform

Probable Date and Place of Attestation	2 Sep 39 Halifax, N.S.
Probable Date of Desertion or beginning of absence, and from what place	24 Mar 44 from Southampton

??????? ??????Sgt

Signature of Officer of Police in charge of Bournemouth Station.

30 Nov 44 Date of Signature.

Army Form O.1617
R.A.F. Form [illegible]617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

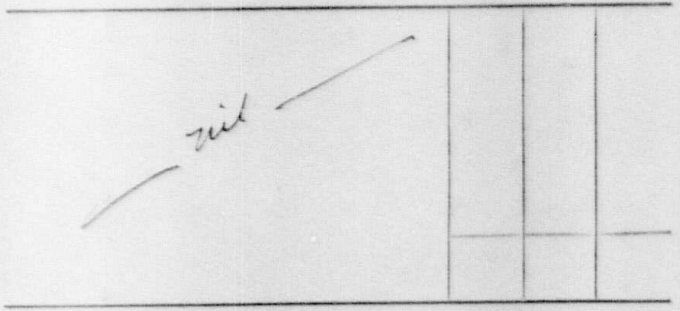
(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of

No.

who surrendered to the Police at on

Payable to



CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

Ep C

RECORD of the Declaration of a Court of Inquiry assembled at

on the 15 day of April 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. F 67651 Pte Hayes F.A.

DECLARATION

The Court declare that No. F 67651 Pte Hayes F.A.

illegally absented himself without leave from his unit at 2359 hrs on the 24 day of March 44, that he is still so absent, and that on the 15 Apr 44 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE
SEE ATTACHED PAGE			

GP Banton Major President

HG Aitken Capt Member

Signed at In the Field

JL Heaslip Lieut Member

this 15th day of Apr 19 44

Signature of Commanding Officer MR Caverhill Lt Col

Certified true copy MR Caverhill Lt Col

Signature of Officer having custody of original record

M.F.B. 175
A.F.B. 118
2534—6. 43. (750)
H.Q. 1772-39-257

ARTICLES		VALUE (Vocab Prices)	VALUE (75%)
Boots, ankle	1	5.40	3.60
Boots, leather high	1	7.35	5.51
Caps, field service	1	.56	.42
Drawers, cell, short	1	.43	.32
Gloves, knitted	1	.47	.35
Drawers, woolen	1	1.20	.90
Socks	1	.37	.28
Vests, woolen	1	1.20	.90
Blouses B/D	1	5.25	3.94
Trousers B/D	1	5.39	4.04
Badges, cap	1	.09	.07
Badges, shoulder Cdn	1	.06	.05
Braces	1	.28	.21
Brass, cleaning	1	.04	.03
Brush, button, brass	1	.26	.20
" clothing	1	.48	.36
" hair	1	.34	.26
" shaving	1	.37	.28
" shoe blacking	1	.08	.06
" tooth	1	.11	.08
Cap comforter	1	.34	.26
Comb, hair	1	.04	.03
Discs, set	1	.03	.02
Fork, table	1	.07	.05
Knife, table	1	.15	.11
Patches, distinguishing	1	.06	.05
Towel, hand	1	.32	.24
Bag, ration	1	.05	.04
Belts, waist	1	.74	.56
Bottles, water	1	.82	.62
Braces WE left	1	.30	.23
Carrier water bottle	1	.37	.28
Packs	1	1.84	1.38
Cape A/G	1	2.64	1.98
Ointment A/G	1	.15	.11
Mug drinking	1	.13	.10
Total		38.12	28.13

(Previous sheet destroyed 2 May 40)

No. F 67651 Name Hayes F.A. Sqn, Battery, or Company — Corps RCAMC — Date of enlistment 2 Sep 39 — CC Badges — Service or Proficiency Pay — 3/17 MFM 6 (AFB 122)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No 2 — Signature OC Company, etc JA Wright Major — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (discontinuance with fine)	By whom awarded	Remarks
Debert N.S.	17 Nov40	Pte		AWL from 0700 hrs 17 Nov 40 to 0630 hrs 25 Nov 40	S/Sgt Janes R.W.	forf 5dys pay	26 Nov40	E.F. Ross	Lt Col
Devert N.S.	13 Jan41	"		AWL from 0700 hrs 13 Jan 41 to 1800 hrs 21 Jan 41	Cpl Smith L Sgt Arsenault M.	14 days Detn.	23 Jan41	E.F. Ross	Lt Col
Field	12 Jun 42	"		AWL from 2230 hrs 12 Jun 42 to 2230 hrs 13 Jun 42	Sgt MacGuigan W. Cpl Smith W.	forf 2 dys pay & 14 days CB	14 Jun42	E.F. Ross	Lt Col

Certified true copy

(M.R. Coverhill) Lt Col

(PTO)

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F-67651	Pte	Hayes, F.A.	22 Cdn Fd Amb RCAMC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL 3 times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. XXXX

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 11th day of January 1945

"M.R. Coverhill" Lt Col
OC 22 Cdn Fd Amb.

C48

Statement in mitigation of sentence in the case of F 67651 Pte Hayes FA 22 Cdn Fd Amb RCAMC.

The Court is respectfully requested to consider the following points when decidin the sentence to be awarded to the accused.

1. Age The accused is a ma of forty three years, well past his prime. While his health is gone, yet it is reasonable to assume that he cannot stand rigorous punishment as well as a man half his age, the age of the majority of first class soldiers.

2. Marital States During the past eighteen months the accused has had a great deal of distress in his family. His wife whose health has never been good has been hospitalized. and although she is now at her home yet she is far from well. His eldest daughter, shortly before the commission of his offence died from Diphtheria. His youngest daughter was at this time also in hospital with diphtheria. Hardships which may be the last of the family of the accused are brought ot the attention of the Court.

3. Length of Service This man enlisted on the 2 Sep 39 before state of war was actually declared. He embarked for England in Jul 41. He has been with the 22 Cdn Fd Amb throughout. During his service in canada he was absent without leave on two occasions and in these occasions he applied for leave toattend to his family affairs and was refused. He went absent from his unit to straighten up affairs which were beyond the scope of his ailing wife. From Jul 41 when arrived in England until Mar 44, he was absent only one day. He is not, apparently, a chronic deserter.

4. Time under arrest The accused has been under close arrest since 30 Nov 44 a total of forty three days. The Court is requested to consider this period when awarding sentence.

5. Finally, may it be brought to the attention of the Court that the accused voluntarily surrendered to the civil police, and that did not resist to be apprehended. As a soldier of five years service he appreciates the seriousness of his offence and has desired to plead guilty and is quite prepared to serve the sentence which the Court will award.

In view of the above facrs it is requested that the Court show such leniency as lies within its powers.

(John B. Barr) Capt.

S.P. 70
S.P. 71
S.P. 72
S.P. 73

S/Sgt. Hayes, F.H.
Pte. Baker, D.E.
Cpl. Hull, J.R.
Pte. Mercer, J.S.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B23218 SISGT HAYES F.H. ALL OF 2 CDN TK TPS WKSP RCEME
B58050 CPL HULL J.R.
F24337 PTE MERCER S.S.

Charge. (Insert "alternative" where applicable.)	All Plead (See Instrs p 2.)	All Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 40	NOT GUILTY	GUILTY	
2nd			
~~and~~ F7089 ~~F24337~~	CFN	PORTER D.E 2 CDN TK TPS WKSP	
4th PLEADED AND WAS FOUND NOT GUILTY OF THE FI			
5th CHARGE LAID UNDER AA SEC 40			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; Findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or MF B296.)

Time in confinement awaiting present trial—a total of 51 days, of which Nil days were spent in hospital.(2)
(2. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

1. B23218 SISGT HAYES F.H. TO BE REDUCED TO THE RANKS AND TO UNDERGO DETENTION FOR SIXTY (60) DAYS.
2. B58050 CPL HULL J.R. TO BE REDUCED TO THE RANKS AND TO UNDERGO DETENTION FOR SIXTY (60) DAYS
3. F24337 PTE MERCER SS TO UNDERGO DETENTION FOR THIRTY (30) DAYS

(Sgd) J K Kidd Capt — 4 JUL 45 — (Sgd) [illegible] Maj
Judge-Advocate, if any — Date awarded. — President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Questions after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the findings and sentences of the Court.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

(Sgd) [illegible]

Date 8 Jul 45 — Commanding Army Tps Area — Confirming Officer. — Brigadier

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 573, 577.)

Accused.	Date.	Signature of Offr.
B23218	13 July 45	[illegible] Major
B58050	13 July 45	[illegible]
F24337	13 July 45	[illegible]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

R.C.M.C.

FIELD GENERAL COURT-MARTIAL

CPA96 (To item of AFA81, 40-P & B-2nd Edition)

4/388

Convening Order of BRIG W N BOSTOCK Comd A TPS AREA FIRST CDN ARMY dated 26 JUN 45

ACCUSED.

(If more than one accused of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number	(a) Rank	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B23218	SISGT		FREDERICK HUMPHREY	HAYES	ALL OF
B58050	CPL		JOSEPH RAYMOND	HULL	2 CDN TK
F7089	CFN		DOUGLAS EARLE	PORTER	TPS WKSP
F24337	PTE		SAMUEL SPURRELL	MERCER	RCEME

PROCEEDINGS REVIEWED [illegible] Capt 24 July 45 REVIEWING OFFICER, NO BRANCH 6

PROCEEDINGS OF TRIAL.

Held at the Fd Ambulance, [illegible] BELGIUM on (date(s)) 4 JUL 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 121.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused ~~is~~ (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused ~~is~~ (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused ~~is~~ (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (2).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 562(c). Delete, if not applicable.)

A5. President to accused: Do you object to LIEUT G DuBois A TPS AREA RT CDN ARMY interpreter? Ans NO SIR

~~The Interpreter is sworn.(1) Prosecutor to accused: Do you object to the shorthand writer as sworn? Ans.~~

(1. RP 72. Delete, if not employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused(1). President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	A O DRYSDALE	1 CDN ARMY TPS WKSP RCEME
Member	CAPT	W K GRAY	3 CDN SVY INT Sec CMHQ
Member	LIEUT	C J JAMIESON	2 CDN FD SVY COY RCE
Judge-Advocate	CAPT	J K KIDD	HQ 1 CDN ARMY
Prosecutor	LIEUT	G B CARTER	2 CDN TK TPS WKSP RCEME
Defending Offr	LIEUT	G H MIKKELBORG	4 ARMD TPS WKSP

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dil p 2.)

A8. The accused SISGT HAYES, CPL HULL, CFN PORTER, PTE MERCER before arraignment make(s) (no) ~~a~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13; RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused ~~is~~ (are) arraigned (separately) on all charges in the charge sheet.(1) The accused ~~is~~ (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 67; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D + E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; securing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(D), and of witnesses see RP 85-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 80, 116 ; use of Summary of Evidence at Trial see RP 47(A) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. ~~The President or JA, if any, complies with RP 36(B) by explaining to the accused the nature and meaning~~ of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 37(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded~~ by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. ~~As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8~~ inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras C1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using~~ Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record. 3

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO SIR.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (a) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 91(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. ~~The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the.....charge(s) (2). The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. NONE IF THE ACCUSED WISH TO GIVE EVIDENCE. Do you intend to call witnesses on your behalf ? Ans. YES. Are they witnesses as to character only ? Ans. NO.....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 66(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the FIRST charge is being subject to confirmation, will be promulgated later.(1) AND The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

SJSGT HAYES, CPL HULL, PTE MERCER

CFN4 PORTER

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X1 X2 X3 and Ex Y1 Y2 Y3 respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. BY OUR DEFENDING OFFICER.....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B 23218 S/Sgt Frederick Humphrey, HAYES, B 58050 Cpl Joseph Raymond, HULL, F 7089 Cfn Douglas Earle, PORTER, F 24337 Pte Samuel Spurrell, MERCER all of 2 Cdn Tk Tps Wksp RCEME, soldiers of the Canadian Army Overseas are charged with:

FIRST CHARGE
A.A. Sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that they

in the field on the night of 22/23 Apr 45 did create and were involved in a disturbance in the civilian premises known as "Hotel De Dennen" at Casterlee, Belgium.

In the field
10 Jun 45.

(J.W. Blatchford) Major,
Officer Commanding
2 Cdn Tk Tps Wksp, RCEME

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(W.N Bostock) Brig
Comd A Tps Area, First Cdn Army

Field
26 Jun 45

MEDICAL OFFICER'S CERTIFICATE

K.R. (Can) Para 557

I certify that I have this morning examined:

B-23218	S/Sgt	Hayes F H
B-58050	Cpl	Hull J R
F-7089	Cfn	Porter D E
F-24337	Rte	Mercer S F

of 2 Can Tank Troops Wksp, RCEME. and in my opinion he is fit to undergo trial by court-martial

Station Tunbridge

Date 4 July 44

D C Fraser Capt
Medical Officer

DCF

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 1a, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-23218	S/Sgt		Frederick Humphrey	HAYES	all of 2
B-58050	Cpl		Joseph Raymond	HULL	Cdn Tk Tps
F-7089	Cfn		Douglas Earle	PORTER	Wksp RCEME
F-24337	Pte		Samuel Spurrell	MERCER	

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Jun 45 endorsed by me, (~~or by an offr of my staff for me~~) "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
MAJOR	A C DRYSDALE		1 Cdn Army Tps Wksp RCEME

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	W K GRAY		3 Cdn SW/WI Sec C Int C
Lieut	C J JAMIESON		2 Cdn Fd Svy Coy RCE

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt	H S ASPINALL		1 Cdn Gen Tps Wksp RCEME

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	J.K. KIDD		HQ First Cdn Army

On Active Service in the Fd

in Holland (Country.)

(Signed personally. RP 105 fn 2.)

(W H Bostock)

Brigadier (Rank.)

Dat 26 Jun 45

Commanding A Tps Area, First Cdn Army

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

1.

FIRST WITNESS FOR THE PROSECUTION

Maria Magdalena Barrevoets - 2 Lieutenant-Coloneel van Castricum Sworn States. On Sun Nite 22 apr about 2400 hrs, we heard a Truck coming on the road, there was Knocking at the door, are cafe was closed. They broke the window. I said to My husband I will go to the door to see what they want. They say they are Soldiers. I recognize S/Sgt, Hayes, Cpl Hull + Pte Rimmer. I said we were closed but would sell you champagne if you have Money. They said they wanted bottles to take to Germany. Cpl Hull then took a chair + broke it. Then I said To My Son to go to cellar + get champagne + give it to them My Son Name is Paul. S/Sgt. Hayes went to follow Son to cellar I stood in front of door To prevent him from going + he struck me on the face. S/Sgt then broke everything To pieces in the cafe. They broke the glasses, the doors, the gramophone records. My other son Marcel He came from his bedroom as He heard me shouting. They struck Him + threw him on the ground. My Son as well. Then S/Sgt followed My Son Marcel upstairs I went to the garden then. I saw a mirror + lamp broken. The S/Sgt broke that + chairs. Later I went upstairs + I saw that a Door To one of the rooms had been broken into.

Cross Examin. On the Sun Nite 22 apr I looked out the Window it was about Midnite. I recognized one of the Soldiers, It was dark out. My bedroom is on the ground floor. It was possible To recognize One of them. I recognized His voice. They didnt offer Me any Money. My Son went for the champagne. After I was struck I went To the garden I was afraid I didnt see anyting the went on upstairs.

COURT -

II

Court. I was on the first floor when I saw the Sgt coming upstairs. Cafe + Restaurant on the ground floor. I was on ground floor first, then after I was struck I went upstairs to see My daughter with the baby. When I saw them coming upstairs I went down + out to garden. When I saw them breaking stuff upstairs I went down + out. I saw Cpl. Hull test a chair. The other soldiers I don't see break anything. One of them took a wireless set We have at home. Never had the radio. I could see the Tunnel from the garden. The Tunnel was in the garden. It was separate from Me. Lights were On in House. I claim at Hotel De Dimanche at Castellen Belgium it is a civilian premises. Cafe + Boarding House. I saw three Soldiers come into the Cafe. My Husband Fernand Barrevoets was in the cafe with Me when the Soldiers came in. My Son Marcel was in bed on ground floor. Paul's bedroom on 1st floor, there were 8 other people upstairs a Dr. + His Wife (guests), My daughter Fernande + her baby. There were four other people upstairs I don't know there names they were guests. I recognised the voice of Cpl Hull when the Soldiers 1st came. He had been there before twice. The soldiers in the cafe were quite drunk. They were rude When they spoke to them They shook Me. I recognised Cpl Hull outside the Cafe. I recognise three in court after Pte Schmidt the Cafe. I recognise them by their general appearance. Pte Munn took the Radio

RP 83 B Corporal Hull

III SECOND WITNESS FOR THE PROSECUTION

EXAM Franciscus Spaenendonck 2 Hollandschedreef Costerlee Belgium Sworn States: I am husband of M Barracks I recognize two soldiers Cpl Hull + S/Sgt Hayes, a third one came into the House I am Not certain of him. At about 24.00 hrs I heard a lorry or car stopping at the back of the house. I can't say exactly the date it was a Sunday. I heard some noise + thought they were repairing the Tirret. I heard a window break. I got up + went to door To see what happened. I switched the lights on + recognized one of Soldiers called Burke (Cpl Hull). He said To me that he must have champagne. The they came in + at this moment my wife asked for Money. My Son went down Stairs To get champagne. Poland broke was going To cellar door. Cpl Hull took a Knife + Pistol. At the moment I was with the door + the S/Sgt struck me on the face. The my Son Paul came + S/Sgt struck him too. My wife came between them + she was struck. I tried To pacify them but it was No use. S/Sgt Hayes was busy breaking everything. The we all ran away. I saw they were looking in the Sideboard + I went into house + saw Son Marcel. S/Sgt was pulling Marcel on the ground. I told Son To Run away. Burke told me to go back To the room. I saw a soldier they carried out of house by soldiers + he was put in the Tirret. I saw 4 soldiers 3 free Soldiers came in + one was out near the Tirret. I like them S/Sgt Hayes Cpl Hull & Pte Marcus I recognize fairly well + I am Not sure of the 4th. I like the 4th was Poster + I like the head the radio I am Not sure. Son Paul came when wife screamed. I told Paul to go To the cellar.

Cross Exam

I didn't see soldiers give Money to My wife. I saw S/Sgt Hayes strike My wife. I didn't see S/Sgt upstairs

IV

Court – When I opened door Bartel (Cpl Hull) asked for champagne. Then fighting & Struggling ensued When I opened door 3rd time in later 3 Soldiers went to Garden. S/Sgt Evans was there. One Soldier sat on Table. What it was porter. I saw Pte Reuter in Cafe Standing by Table. I saw Him only once Small Soldier I am Not Sure of (Small Soldier Porter). I never saw Reuter do anything. I recognized Reuter by His Curly Hair. I dont know really Who the Soldier was I suppose it Was the Small one (Porter). S/Sgt Hayes & Cpl Hull were drunk they were told. Cpl Hull Broke a chair. S/Sgt Hayes broke record & gramophone & glasses. The other two Soldiers behaved Very Well in My Cafe.

RP. 83 B complied Wed

V THIRD WITNESS FOR THE PROSECUTION

Paul Spaenmborgh. / Luchtaardsoldaan, / Casteler Belgium Swan States

Expan. I live at "Hotel De Demen" Casteler Belgium I recognise S/Sgt Hayes, Cpl Hull I am not sure of the other two about 2 or 3 hrs on Nite of Sunday Apr 22. I heard noises + shouting, I opened My bedroom Window + asked what it My mother said Soldier called Butch said he wanted Someby To drink. I said We are closed. I think the S/Sgt broke the Door Kindly then I heard a window break. My parents said they were going To open the door or Soldiers would break out the Windows. When I came down Stairs I saw them in the Kitchen then they asked for Champagne I was going To get Champagne + I saw Soldier following Me. Father Stopped Soldier I went down cellar got Champagne + put it out in other cellar. I then Came upstairs + saw a chair broken + soldiers were fighting in agst themselves They pushed us into the Kitchen + tried To Strike Me. My Mother Stepped between Us + she was struck. Two of the soldiers went to the cellar + I went To the door. S/Sgt told us to Sit down on Sofa by the Hall. I said to My Mother + brother We go away + try To get help. I went away myself I heard them busy in Cellar. I went to road Saw a person there + asked him to warn the policemen. Then I came back To our ~~Father~~. I saw Cpl Hull + another one. Cpl Hull said Come back. I went To Hotel + got other Soldiers as I arrived back The other Soldiers left. When Truck first stopped outside I recognised Butch (Cpl Hull) I don't Know How many Soldiers outside. There were two in Cafe Standing My Mother, there were two other Soldiers standing by in the Cafe laughing. My father told Me to go + get Champagne + the Soldiers wanted ~~them~~ I took 12 bottles of champagne + put them in cellar. I heard them

VI

the Soldiers in cellar. I saw Cpl Hunt break a chair. Four open doors were broken + gramophone + records. When they tried To kick My Mother Come over. The S/Sgt + Cpl were Talking Re. Two Soldiers went out, I saw Butch + another outside. I was Throwt I saw My brother being Hit. I saw My brother Paul pushed on the ground We where then supposed To Set down in Hall. I never Shot any Soldiers upstairs. I went upstairs after they left. There was a lamp, 2 chairs floor panel + Mirror broken upstairs. There was blood on the Wall.

CROSS EXAM I came downstairs When Soldiers were in the Kitchen. We thought we could speak Soldiers by query Then what they asked for. The Sgt took the chair I didn't See Him break it I only saw Him with a piece Of the chair in His Hand. I saw the Sgt Hit My Mother in the corner of Kitchen. No body offered To pay for Champagne.

RE EXAM NONE.

COURT I saw 4 Soldiers in cape I recognise two The other two Soldiers I could recognise were Younger than S/Sgt + Cpl. When I came back Hunt had cellar. There were 8 bottles of champagne Missing + two door smashed

RP 83 to 61 Compiled Staff

VII. FOURTH WITNESS FOR THE PROSECUTION

Marcellus Spaenmbergh. Nationality Belgian.
Castulen Belgium Sworn. States.

Exam. I recognize S/Sgt Hayes + Cpl Hully I dont recognize any others. On 24 apr about 24 oclock I was woke up, My Mother was screaming. I got up + went to the door. I the S/Sgt + Cpl entered there. S/Sgt took me by the arm + struck me on the Nose + it began to bleed. The Cpl Hit me on the head. The Cpl pulled me into the Hall. He took me by the arm + pulled me into the door room + gave me a violent blow I fell on the floor. They struck me on floor. My father tried to help me + soldiers let him off floor. I ran to my room + locked door. I washed myself as I had blood on me. I heard somebody go upstairs. I heard noise of broken glass upstairs. My room being on ground floor I opened Window + jumped out + hid in the woods. I then saw them go away. I saw somebody carry something to truck but I dont know who it was or what it was. When I came out of my room I saw the two soldiers & recognized. When they pushed me to Kitchen I noticed another one. It is difficult to recognize Him.

Cross Exam. I never saw anyone give my Mother any money.

RE Exam Non

Court. I saw one of the Soldiers either the S/Sgt or Cpl push the grenades on the ground. I saw a third Soldier there. The third one stood by a door to the Kitchen. The third Soldier was tall slim and began to pray. The third Soldier in Cape looks like a German but I am Not sure.

RP 83 B Completed Well.

VIII

Prosecuting officer states ~~although~~ Dr Dupuis & his Wife Marie Louise Bonnel were to be waived as witnesses for the Trial the Brussels Provost Where Unable To Contact them in Time & they would not be available as Witnesses Until Jan 15. Defending Officer does Not require their attendance for the purpose of Cross examination

Prosecuting officer state he desires to Call 14270918 Sgt Surfo T. 81515 CAP & Asks the Court to adjourn Until Sgt Surfo is available. Defending officer stat He does not desire Sgt Surfo for purpos of cross examination.

Court is closed to Consider Motion of prosecuting officer & on reopening President states the Motion for adjournment is disallowed

IX FIRST WITNESS FOR THE DEFENCE

D167574 Cpl Dove R.D. 2 Bde Type 22 W Sqn Surrey
State [illegible] was contained [illegible] Not
On the Night of 22 apr 45 about
Exam about 2400 hrs I was in the back of
the Truck I heard a Noise in the Cafe
I went inside S/Sgt Hayes, Cpl Hull
+ Pte Mercer were inside They asked for
Champagne - Madam of Cafe had a piece
of paper + figured out price This was
a window broken + she figured out
price of window as well They wanted
12 bottles of champagne she said they
didnt have enough money Cpl Hull
gave her all Money he had let me see
over 6000 francs We went inside
the bar room They Talked for
awhile about it Madam went out
Curtis started To Pass up on
rest of them Cpl Hull, S. Hayes +
Pte Mercer The soldiers pushed Mr
Curtis To one side that apparently
was a slight commotion Then I
went outside Cpl Hull + Pte Mercer
came out afterwards While outside
I heard a Noise upstairs I went
inside + went upstairs + then
went Anyone upstairs That I could
see I called for Staff got No answer
I tried all the doors with Cpl
Hull + Mercer Came upstairs
They had found staff in a bedroom
Cpl Hull led Staff to Top of Stairs
+ he went down in front of me
but was unable To walk down
He fell I took him by arm + foot
then outside To Truck Cpl Hull
+ Pte Mercer followed me - Then
we left I saw Cpl Hull give Money
To Madam I did not see Anyone Strike
Madam.

Cross Exam I thought Staff was upstairs
as I heard Noise upstairs Cpl
Potter was in the Truck Staff
Sgt fell down Stairs fell down stairs
as He had a wound on His head

" When He went in Cafe He did not Have Wound When He Came out He died. When we went Home there was a Radio in the Truck.

RE Exam. None

COURT. There were 4 civilians in Cafe & 3 Soldiers. Madam Her Husband & Two Sons were in Cafe. 3 Soldier were Staff Hayes, Cpl Hull & Pte Mercer. Cpl & Mercer were trying to break up fight between Staff & Civilians. Thought they Had been drinking but does not think they were drunk.

RP. 83 B Complete Mid.

Summing up by defence - Lieut Middleton

When men are charged with creating a disturbance under M.A. Act 40 the statements taken from the civilians and then men and the evidence given in Court is contradictory and it is for the Court to decide whether or not the men are guilty

Lieut Middleton

In summing up the prosecution for this case I would like to point out that it has been shown in evidence by the four civilian witnesses, Marie Barrevoets, Franciscus Spaenenborgh, Marcellus Spaenenborgh and Paulus Spaenenborgh and the witness called in defence (Sgt Love) that these four accused, three of whom have been conclusively identified were present at Café de Dennen at 2400 hours 22-23 April 45 and did engage in a disturbance which resulted in damage to civilian property

Lt B Gaskin Mil.

JJK

J. A. Sums Up.

Explains to Court ① Function of J. A.
② Court Sole Judge of facts.
③ Analysis of charge

FIRST CHARGE. Army Act 40.
① Conduct Must be to prejudice of Best good order & Military Discipline.
② Court May Use other Knowledge as regimental officers to assist them in coming to a finding.
③ Drunkness as an offence for a Crime MML Page 25 para 48 And MML Page 106 para 9.
④ The fact of a witness being an accomplice, accessory or principal detracts very materially from his credit. It is for the court to decide whether a witness is an accomplice or Not.
An accomplice is a person who does some overt Act in Committing the crime of which the accused is charged with. He is a subordinate partner in the crime. An accomplice evidence must be Corroborated by independent testimony direct or Circumstantial tending to show that a crime has been Committed & Connecting the accused with it.

Address Court Re
① Credibility of Witness
② Innocent Until proven guilty.
③ Onus of Proof
④ Reasonable doubt

The Prosecutor, Defending Officer & Court do Not request any further addition any Matter

Exhibit

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-99-620
A.F.B. 256

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number B 23218 Rank S/Sgt Name Hayes, F. Regiment (or unit) 2 Canadian Tank Troops Wksp, ACME

1. The following is a fair and true summary of the entries in the Field Regimental ~~Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For Absence without leave	1 time	X Absence without leave 1 time X
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct Nil

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

3. The accused is not under sentence at the present time.

or,

4. He cannot be tried by Court Martial for 65 days 51 days — Absent without leave & 14 days after arrest Nil days — Hospital

5. The present age of the accused according to his record of service is 39 attestation paper is

6. The date of his commission specified in his record of service is attestation attestation paper

7. The service which the accused is allowed to reckon towards discharge is 4 years 10 months

8. The accused is entitled to reckon 4 years 10 months service for the purpose of determining his pension, etc.

9.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of
Permanent Force
unit
..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

17 Mar 1941
Date of promotion.

In the rank of L/Cpl 6 months years. S/Sgt 3 years
In the rank of A/Cpl 3 months years.
In the rank of A/Sgt 3 months years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force
Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank .....
Unit
Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15 — 4 day of June 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

No. B 23218 Name HAYES, F.H. Sqn., Battery, or Company } Corps R.C.E.M.E. Date of enlistment } 16 Aug 40 C. Badges } Tradesmen's Rates of Pay }

No. and date of last drunk } Period not reckoning towards freedom from extra fine } Sheet No. Signature O.C. Company, etc. } C.O. Paint Character Major

M.F.M. 6 (A.F.B. 122) 500M—11/41 (2416) H.Q. 1772-99-1652

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23 Apr 45	S/Sgt		WOAS - AWL from 0800 to 1200 23 Apr 45 Total time absent 4 hrs		Severe Reprimand	24 Apr 45	Major J.W. Blatchford	

Certified true copy.....
(J.W. Blatchford) Major
OC 2 Cdn Tk Tps Svsp RCEME
Officer having custody of original document

(P.T.O.)

M.F.D. 386
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number B 58050 Rank Cpl Name Hull, J.R. Regiment (or unit) 2 Canadian Tank Troops ksp, RCEME

1. The following is a fair and true summary of the entries in the Field Service and General Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	Absence without leave 1 time	Absence without leave 1 time
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct Nil

or,

There are no entries in the conduct sheets of the accused.

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

3. The accused is not under sentence at the present time.

or,

The accused has been Confined for 65 days

5 days Close Arrest + 14 days open arrest Nil days — Hope

5. The present age of the accused according to his record of service is 36 attestation paper is

6. The date of his commission specified in his record of service is attestation attestation paper

7. The service which the accused is allowed to reckon towards discharge is 3 years 5 month

8. The accused is entitled to reckon 3 years 5 months service for the purpose of determining his pension, etc.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated ..., and in his regiment (or corps), the rank of ... dated ...

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

5 May 44 Date of promotion.

In the rank of Cpl 1 years.

In the rank of ... years.

In the rank of ... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ... Rank ...

Name ... of ... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Lieutenant 4 day of June 1945 [illegible] Major

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ... signed by the president, and annexed to the proceedings.

M.F.M. 6
(A.F.B. 122)
500M—11-41 (1409)
H.Q. 1772-99-1552

No. B 58052 Name HULL, J.R. Sqn., Battery, or Company Corps R.C.E. Date of enlistment 20 Jan 42 G.C. Badges Tradesmen's Rates of Pay

No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 2 Signature O.C. Company, etc. [illegible] Pearnwell Lieut Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Old sheet destroyed on completion of two years service 20 Jan 44					
Field 23 Apr 45		Cpl		WOAS Absenting himself without leave from 0800 hrs to 1200 hrs 23 Apr 45. (4 hrs)		Severe reprimand	24 Apr 45	Major J.W. Blatchford	
				Certified true copy..... (J.W. Blatchford) Major OC 2 Cdn Tk Tps wksp RCE/E Officer having custody of orginal document					

(P.T.O.)

No. F 24337 Name MERCER, S.S. Sqn., Battery, or Company — Corps C.I.C. Date of enlistment 29 May 40 C.I.C. Badges — Tradesmen's Rates of Pay — M.F.M. 6 (A.F.B. 122) 20OM—11-41 (2458) H.Q. 1772-39-1941

No. and date of last drunk Nil — Period not reckoning towards freedom from extra fine — Sheet No. 1 — Signature O.C. Co., etc. W. Hodge Lieut — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed (2 years service with no crime) 25			Jul 44	W.G. Thomas Lieut	
								J.D. Clark	
Brampton 9	Apr 44	Pte		A/L from 1145 hrs 9 Apr 44 until		Forfs 5 days			forfs
				0700 hrs 10 Apr 44 (Absent	Cpl George	pay	10 Apr 44	Major	1 day Pay
				21 hrs 15 min) AA Sec 15 (1)					FR&I
Ripon 9	Mar 45	Pte		AA Sec 15 (1) A/L from 2230 hrs	Bdr Langdon G		10 Mar 45		
				9 Mar 45 until 2345 hrs 9	CSM Martin A	Forfs 5 days		L. Foldomets	
				Mar 45. (Absent 1 hrs 15 mins)		pay FR&I 149 (2)		Capt	

Certified true copy..... Major
(J.W. Blatchford) Major
O.C. 2 Can Tk Tps Wksp RCEME
Officer having custody of original document

(P.T.O.)

Exhibit X3 JMK

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number: F 24337 Rank: Pte Name: Mercer, S.S. Unit:

2 Canadian Tank Troops Wksp, RCEME

1 The following is a fair and true summary of the entries in the Field Conduct Sheets of the accused, exclusive of convictions by a Court Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

Within last 12 months		Since enlistment	
For Absence without leave	1 times	For Absence without leave	times
For	times	For	2 times
For	times	For	times
For	times	For	times

Number of instances of gallantry or distinguished conduct Nil

or

~~There are no entries in the conduct sheets of the accused~~

NOTE: If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2 The accused has not been previously convicted

or

~~Previous convictions of the accused by court martial or a civil court, or summary awards under Section 47 of the Army Act and dispenses with trial under R.O. are set out in the Schedule annexed to this statement.~~

3 The accused is not under sentence at the present time

or

~~The accused is at the present time under sentence for~~ beginning on the ~~day of~~

4 ~~The accused has been in confinement awaiting trial on the present charge for days in civil custody, and days in military custody, making a total of days in custody, of which days were spent in hospital.~~

Remit — Confined 65 days 51 days Close arrest + 14 days open arrest But 5 days in Hospital

5 The present age of the accused according to his attestation paper is: 24

6 The date of his attestation specified in his attestation paper is: 29 May 1940

7 The service which the accused is allowed to reckon towards discharge is: 5 years 13 days

8 The accused is entitled to reckon 5 years 13 days service for the purpose of determining his pension etc.

9 The accused is in possession of entitled to no military decoration, ~~or~~ ~~any~~ reward. Nil

~~and~~ The accused before he was ~~of~~

11 (In the case of an officer) The accused holds in the Permanent Force the rank of:

.....dated....., and in his regiment(or corps), the rank of:

.....dated.....

12 The accused has served as a non-commissioned officer continuously, without reduction, to the present date:-

.....Date of promotion.

In the rank of.....years

In the rank of.....years

In the rank of.....years

NOTE: If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number.....Rank.....

Name.....of.....Regiment

NOTE: A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of by which tried	Ct Date & Place of Trial	Charge upon which convicted	Sentence of Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a ~~true~~ true extract from the regimental books in my custody.

Signed this 4th day of Jul-[illegible] 1945 [illegible]

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with)is read, marked.....signed by the President, and annexed to the proceedings.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B 23218 S/Sgt HAYES, F., B 58050 Cpl HULL J.R., F 7089 Cfn PORTER, D.E., F 24337 Pte MERCER, S.S. ~~#1 Spec Rep Coy etc~~ 2 Cdn Tank Troops Wksp, RCEME Canadian Army Overseas. Charged with conduct to the prejudice of good order and military discipline, in that they did on 22 April 1945 maliciously damage private property, i.e. Cafe operated by Madam Barrevoets in Casterlee near Turnhout, Belguim (A.A. Sec 40) (1)

By direction of the Commanding Officer the evidence is taken on oath. (2)

FIRST WITNESS 14270918 Sergeant SWIFT, T. 81 S.I.S. C.M.P.
I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, including the time and expense involved, not readily procurable and a written statement of his evidence purported to be signed by him has been read to the accused and is attached hereto as exhibit "A" (3)

J. T. Brennan
(J.T. Brennan) Lieut

I do not require the attendance of Sgt SWIFT, T. for the purpose of cross-examination.

F Hayes
B 23218 S/Sgt Hayes, F

B 58050 Cpl Hull, J.R.

F 7089 Cfn Porter, D.E.

F 24337 Pte Mercer, S.S.

SECOND WITNESS BARREVOETS, Marie Magdalena, 2 Lichtaertschebaan, Casterlee.
I certify that in my opinion, the attendance of this witness is, owing to the expense and loss of time, not readily procurable; a written statement of her evidence, purported to be signed by her, has been read to the accused and is attached hereto as exhibit "B" (4)

J. T. Brennan
(J.T. Brennan) Lieut.

The accused does not require the attendance of this witness for cross-examination.

F Hayes
B 23218 S/Sgt Hayes, F.

B 58050 Cpl Hull, J.R.

F 7089 Cfn Porter, D.E.

F 24337 Pte Mercer, S.S.

THIRD WITNESS SPAENENBORGH, Marcellus, Ludevicus 1 A Ossengaar, Casterlee.

I certify that in my opinion the attendance of this witness is, owing to the expense and loss of time involved, not readily procurable; a written statement of this evidence, purported to be signed by him, has been read to the accused and is attached hereto as exhibit "C"(4)

(J.T. Brennan) Lieut

The accused does not require the attendance of this witness for cross-examination.

B 23218 S/Sgt Hayes, F.

H 58050 Cpl Hull, J.H.

F 7089 Cfn Porter, D.E.

F 24337 Pte Mercer, S.S.

FOURTH WITNESS SPAENENBORGH, Franciscus, 2 Lichtaertachbaan Casterlee.

I certify that in my opinion the attendance of this witness is, owing to the expense and loss of time involved, not readily procurable, a written statement of the evidence, purported to be signed by him, has been read to the accused and is attached hereto as exhibit "D" (5)

(J.T. Brennan) Lieut

The accused does not require the attendance of this witness for cross-examination.

B 23218 S/Sgt Hayes, F.

H 58050 Cpl Hull, J.H.

F 7089 Cfn Porter, D.E.

F 24337 Pte Mercer, S.S.

FIFTH WITNESS SPAENENBORGH, Paulus Emilius 1 A Lichtaertschebaan, Casterlee.

I certify that in my opinion the attendance of this witness is owing to the expense and loss of time involved, not readily procurable; a written statement of the evidence, purported to be signed by him, has been read to the accused and is attached hereto as exhibit "E" (6)

(J.T. Brennan) Lieut.

FIFTH WITNESS (Cont'd)

The accused does not require the attendance of this witness for cross-examination.

J Hayes.
B 23218 S/Sgt Hayes, F.

B 58050 Cpl Hull, J.E.

F 7089 Cfn Porter, D.E.

F 24337 Pte Mercer, S.S.

SIXTH WITNESS

Doctor DUPUIS 81 Avenue Michel-Ange BRUSSELS.

I certify that in my opinion the attendance of this witness is, owing to the expense and loss of time involved, not readily procurable; a written statement of the evidence, purported to be signed by him, has been read to the accused and is attached hereto as exhibit "F" (7)

J. T. Brennan
(J.T. Brennan) Lieut

The accused does not require the attendance of this witness for cross-examination.

J Hayes.
B 23218 S/Sgt Hayes, F.

B 58050 Cpl Hull, J.E.

F 7089 Cfn Porter, D.E.

F 24337 Pte Mercer, S.S.

SEVENTH WITNESS:

BONNET, Marie/Therese 81 Avenue Michel/Ange Bruxelle.

I certify that in my opinion the attendance of this witness is, owing to the expense and loss of time involved not readily procurable; a written statement of the evidence, purported to be signed by her, has been read to the accused and is attached hereto as exhibit "G" (8)

J. T. Brennan
(J.T. Brennan) Lieut

The accused does not require the attendance of this witness for cross-examination.

J Hayes.
B 23218 S/Sgt Hayes, F.

B 58050 Cpl Hull, J.E.

F 7089 Cfn Porter, D.E.

F 24337 Pte Mercer, S.S.

The accused was warned as follows:-

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down and my be given in evidence. (9)

A. I have nothing to say at this time. (10)

J Hayes.
B 23218 S/Sgt Hayes, J.

B 58050 Cpl Hall, J.R.

F 7089 Cfn Porter, D.S.

F 24337 Pte Mercer, S.S.

The accused does not call any witnesses. (11)

I certify that R.P. 4 has been complied with. (12)

Taken by me in the field in the presence and hearing of the accused this 5 day of June 1945.

J. T. Brennan
(J.T. Brennan) Lieut)
Officer detailed to take Summary of Evidence.

H.Q. 81 Special Investigation Section,
Corps of Military Police,
Att. 7 Base Sub Area. B.L.A.

5th May, 1945.

Ref. 81/SIS/ANT/525/45.

SUBJECT: Alleged burglary and malicious damage.

TO: D.A.P.M.
81 Special Inventigation Section,
Corps of Military Police.

Sir:

I have to report that on the 24th April, 1945, in consequence of a complaint received at this office, in company with C.S.M. Dunn and Sergt. Whell, of this branch, I visited Hotel "Dennen", Casterlee, near Turnhout, and from the occupier Mdm. Barrevoets, Maria, learned the following facts.

On the night of the 22nd and 23rd of April, 1945. sometime around midnight, Mdm. Barrevoets was in herbedroom which is situated immediately above the cafe-premises, when she heard a vehicle stop at the rear of her premises. A few moments later she heard the sound of breaking glass and looking out of her window saw several soldiers standing at the back-door, one of whom she recognized as a Canandian soldier known to her as "BODGE".

Although Mdm. Barrevoets had no intentions at that particular moment of allowing these soldiers to enter her cafe, she alleged that she afterwards decided to do so, as she believed that further damage would be committed had she remained upstairs. Consequently she went to the back-door and upon opening it saw four Canadian soldiers who were apparently under the influence of drink, at the same time she noticed that the kitchen window has been broken.

Mdm. Barrevoets permitted the soldiers to enter in order to ascertain their requirements. Immediately these men arrived in the bar of the cafe, they demanded champagne. Mdm. Barrevoets endeavoured to pacify these men and a slight altercation arose. The Canadian known as "BODGE" then picked up a chair and crashed it down onto a table causing the chair to break. The remaining three soldiers having witnessed this incident commenced to do likewise and this resulted in quite a considerable amount of damage being committed to the cafe furniture.

Upon hearing the commotion in the cafe below and the screams of Mdm. Barrevoets, her son andhusband arrived on the scene. I might point out that the reason for Mdm. Barrevoets screams was due to the fact that she had been punched in the face by one of the Canadians (the Sergeant).

The son seeing his mother's condition immediately went to her assistance and whilst doing so was set upon by the soldiers in question. Being a person who had for a long period been under medical care, he was soon overpowered and, in consequence, when the opportunity presented itself ran from the scene of the disturbance and hid.

It was apparent to Mdm. Barrevoets that the only method that could be adopted under such extenuating circumstances, was to give to these soldiers the champagne they had asked for in the first instance. Whilst endeavouring to do this the Sergeant made his way upstairs to the sleeping quarters. This was brought to the notice of Mdm. Barrevoets by hearing a terrific crash of glass being broken and the sounds of angry voices.

Mdm Barrevoets immediately left her wine cellar and ran up the stairs to see what was occurring. On arrival she noticed that a large mirror on the wall had been broken and observed the Canadian Sergeant struggling with one of her guests, a doctor Dupuis, whose room had been forcibly entered by bodily pressure.

Realizing the seriousness of the situation Mdm. Barrevoets attempted to assist Doctor Dupuis and his wife, and it was while this fight between the doctor and the Canadian Sergt. was ensuing the Sergeant attempted to strike the doctor with the leg of a chair. Before the blow could materialize the doctor's wife warded it off and the chair/leg fell to the ground. Taking advantage of this change of events the doctor's wife picked up the chair-leg and struck the Sergeant on the head with it. The Sergeant was then ejected from the bedroom to the passage.

Eventually the remaining soldiers came upstairs and conveyed the Sergeant to the truck, which was stationary at the rear of the cafe. They then came back into the cafe and stole 8 bottles of champagne and a wireless set and then drove away.

Statements were taken by the official interpreter from the agrieved persons and witnesses, which are attached hereto. It will be seen upon perusing these statements that they corroborate each other in most of the details, and all the soldiers can beidentified.

Enquiries were commenced and numerous persons interviewed, the results of which enabled me to ascertain the identity of the Canadian soldier known as "BODGE." Consequently arrangements were made to have this soldier together with his accomplices brought to these Headquarters for interrogation.

Whilst awaiting the arrival of the soldiers in question viz. W. B 23218 S/Sergeant HAYES, No . B 58050 Corporal HULL, No 7089 Craftsmen PORTER, No F 24307 Private MEMOER, all of the 2nd Canadian Tanks Troops Workshops R.C.A.M.E., I again visited the attacked premises and there caused photographs to be taken of the damage to property and personal injury to Mdm. Barrevoets, (Photographs attached).

On Tuesday, 1st May, 1945, I interviewed Cpl. HULL (BODGE) told him who I was and that I had reasons to believe he was concerned with other soldiers in stealing and damaging certain property at the Hotel "Dennen" at Casterlee, near Turnhout. He replied, "Was there much damage done?" I cautioned him and he volunteered a statement which I took down in writing and which he afterwards read over and signed. (Statement attached, marked "A")

It will be seen in the statement made by this N.C.O. that he admits being in the Hotel on the night in question with other members of his Unit, and taking part in an affray which occurred therein. He alleges, however, that the champagne which had been taken by him had been drunk paid for. This I might point out is contrary to the statement made by Mdm. Barrevoets. He goes on to say that the window was broken by one of his colleagues by means of a broom.

I later interviewed S/Sergt. HAYES, told him who I was, the nature of my enquiry and cautioned him. He replied, I&ll help you all I can, but I was very drunk." He then volunteered a statement which is attached and marked "B"

HAYES in his statement admitted being with other soldiers of his Unit in a cafe in the Turnhout area, when a disturbance occurred, whereby he received a blow on the head. He alleged that he was very drunk at the time and did not know exactly what transpired.

Craftsman PORTER was then interviewed by me and a statement obtained under caution. (Attached marked"C"). This soldier alleges that the first he knew of the incident was when he was awakened by a noise coming from a cafe. He was asleep in the back of a W.D. truck at the time. He entered the cafe and saw Cpl HULL assisting S/Sergt. HAYES, who was bleeding from a cut in the head. He then alleges that he returned to the truck and went asleep.

Private MERCER was interviewed and after explaining to him who I was and the nature of my enquiry he volunteered a statement under caution which is attached, marked "D".

It will be observed upon perusing the statement that he not only corroborates the statements made by the other soldiers involved, but goes further and admits stealing the wireless-set and conveying it back to his Unit's location.

In consequence of arrangements made, the wireless-set in question was brought to this office and subsequently identified by Mdm. Barrevoets as her property and that which was stolen from her hotel on the night of the 22nd/23rd April, 1945.

A detailed list of damage is enumerated hereunder :

1 automatic radio-gram broken, together with an unknown number of gramophone records.
4 chairs.
1 table
1 door-panel
1 mirror (small)
1 mirror (large)
1 China vase.
  picture frames.
1 table lamp.
2 chair-seats.
1 door.
1 window-pane
1 electric bell.

I understand that Mdm. Barrevoets has submitted a claim to the value of 34.650 francs for property damaged and stolen from her hotel.

At this stage may I respectfully bring to your notice the fact that this investigation has been successfully concluded mainly through the assistance rendered by the Officer Commanding 2nd Canadian Tanks troops Workshops.

In view of the fact that the claim submitted by Mdm. Barrevoets is now in the hands of Claims & Hirings, I respectfully suggest that copy or this report be forwarded to this departement for their information.

(sgd) T. SWIFT Sergt.
81 S.I.S. C.M.P.

5 May 1945
Field

To: A.P.M.
7 B.S.A.
B.L.A.

Submitted.

(Sgd)Capt D.A.P.M.
81 S.I.S. C.M.P.

5 May 1945
Field

Certified true copy.....

H.Q. 81 Special Investigation Section,
Corps of Military Police,
Att. 7 Base Sub Area, B.L.A.

4th May 1945.

Statement of No 14270918 Sergt. Swift, T.
81 S.I.S. C.M.P.

Who saith:

As a result of enquiries made, on Tuesday, 1st May, 1945, I saw No B 58050, Cpl HULL, 2nd Canadian Tank Troops Workshops at this office.

I told him who I was and that I had reason to believe that he was concerned with others in the larceny of a radio and 8 bottles of champagne, and damage to property at the Hotel "Dennen" Casterlee, Nr. Turnhout.

He replied, "Was there much damage done?"

I immediately cautioned him and he then elected to make a voluntary statement which I took down in writing at his dictation and after he had read it over he signed it. (Produced)

(Sgd) T. Swift, Sergt.
81 S.I.S. C.M.P.

Certified true copy.....

H.Q. 81 Special Investigation Section
Corps of Military Police
Att. 7 Base Sub Area, B.L.A.
1st May, 1945.

Statement of : No B 58050 Cpl. HULL, J.R.
2nd Cdn Tanks Troops Workshops.

Who saith:

I understand that I am not obliged to say anything unless I wish to do so but that anything I do say will be taken down in writing and may be given in evidence.

(sgd) Joseph R. Hull

I am employed as a mechanic at the above unit.

On Sunday, 2nd April, 1945, accompanied by S/Sgt HAYES and Ptes MERCER and PORTER of my unit, I left my present location in a three ton lorry. After we had got the spare parts we went into different cafes and had some drinks. When the cafes in Turnhout had closed, I remembered that I had previously visited the cafe "Deumen." It was decided that we should go on to this cafe. Upon arrival it was discovered that the cafe was closed. One of the men with me hit a rear window with a broom. The window broke. A few minutes later the proprietress came to the door and asked what we wanted. I told her we wanted twelve bottles of champagne as we had money to pay for it. The Madam then let us go inside the kitchen where an argument took place about the price. We counted our money and found we had enough to get about ten bottles. She took the money, while I was waiting for the champagne I noticed a bit of a scuffle in the bar. I went over and separated them. I don't know exactly who was there but I did see Madam's husband, her two sons and the staff Sergeant and two Privates who had come to the cafe with me. They were not exactly fighting then. Things seemed to calm down a bit and I then went to the lavatory. When I returned to the cafe, about five minutes. I joined the two Privates, Mercer and Porter, but the Staff Sergeant and the civilian had gone somewhere. I started looking and eventually found the staff sergeant in an upstairs empty room. He had a bad cut in his head and seemed to be bleeding rather badly. I called to one of the boys to give me a hand to get the sergeant downstairs as I did not know how badly he was hurt. Pte. MERCER came upstairs and gave me a hand and together we got the sergeant downstairs and into the truck. I then went back into the cafe to getthe champagne. I looked down the cellar and saw nine bottles on a table at the bottom of the stairs. I took these bottles and returned to the truck. We then drove back to our unit. I am certain that I left the money for the champagne with the madam. at least I did not get it back I did not see a radio at all.

The champagne has since been drunk.

(Sgd) Joseph. R. Hull

Statement taken by me and signature witnessed in the presence of Corp. Wheel, 81 S.I.S., C.M.P. on Tuesday 1st May 1945.

(sgd) T. SWIFT, Sergt.
81 S.I.S. C.M.P.

Certified true copy

H.Q. 81 Special Investigation Section,
Corps of Military Police.
Att. 7 Base Sub Area, B.L.A.

4 May 1945.

Statement of : No 14270918 Sergt. SWIFT, T.
81 S.I.S. C.M.P.

"ho saith:

As a result of enquiries made, on Tuesday, 1st May, 1945, I saw No. B 23218 S/Sergt. HAYES, 2nd Canadian Tank Troops Workshop, at this office.

I told him who I was and that I had reason to believe that he was concerned with others in the larceny of a radio and 8 bottles of champagne and also to causing damage at the Hotel "Dennen" Casterlee, Nr. Turnhout.

He replied, "I'll help you all I can but I was very drunk."

I immediately cautioned him and he then elected to make a voluntary statement which I took down in writing at his dictation and after he had read it over he signed it. (produced)

(Sgd) T. SWIFT, Sergt
81 S.I.S. C.M.P.

Certified true copy

H.Q. 81 Special Investigation Section
Corps of Military Police
Att. 7 Base Sub Area, B.L.A.
1st May, 1945.

Statement of : No. B 23210 S/Sgt HAYES,
2nd Can Tank Troops Workshops, R.C.A.M.E.

Who saith:

I understnad that I am not obliged to say anything unless I wish to do so but that anything I do say will be takne down in writing and may be given in evidence.

(Sgd) F. Hayes

On Sunday, 22nd April, 1945, I left my unit location to goto Turnhout in order to get some spare parts. I was accompanied by Cpl. HULL and C/Sgt PORTER and Pte MERCER of my unit. After we had got the spare parts we had a few drinks in different cafes in Turnhout. When the cafes had closed in Turnhout, Cpl HULL said he knew a place where we could get some champagne. We went to this cafe. When we got there the cafe was closed. I was very drunk at this time and I am not clear on what really happened after this. However I do remember being in the cafe and that a disturbance happened. I do remember having a struggle with someone and that I received a blow on the head. After that, everything went black.

I did not see anyone take any champagne from the cafe but I did drink some a day or two after. I don't know where the champagne came from. It is possible that I did some damage in the cafe but I do not remember. I am not denying it.

(sgd) F. Hayes.

Statement taken and signature witnessed by me on Tuesday 1st May, 1945.

(Sgd) T. SWIFT, Sergt.
81 S.I.S. C.M.P.

Certified true copy. [signature]

H.Q. 81 Special Investigation Section,
Corps of Military Police.
Att 7 Base Sub Area, B.L.A.

4th May 1945.

Statement of : No 14270918 Sergt. SWIFT, T.
81 S.I.S. C.M.P.

Who saith:

As a result of enquiries made on Tuesday, 1st May, 1945, I saw No. F 7089 Craftsman PORTER, 2nd Canadian Tank Troops workshops, at this officer.

I told him who I was and that I had reason to believe that he was concerned with others in the larceny of a radio and 8 bottles of champagne and also to causing damage at the Hotel "Deamen", Casterlee, Nr. Turnhout.

He replied, "I don't know much, I was asleep in the track."

I immediately cautioned him and he then elected to make a voluntary statement, which I took down in writing at his dictation and after he had read it over he signed it. (produced)

(sgd) T.SWIFT, Sergt.
81 S.I.S. C.M.P.

Certified true copy Jack Stobbs Major.

H.Q. 81 Special Investigation Section
Corps of Military Police
Att. 7 Base Sub Area, B.L.A.
1st May, 1945.

Statement of : No F 7089 Cftsm PORTER, D.E.
2nd Cdn Tanks Troops Workshops, R.C.E.M.E.

Who saith:

I understand that I am not obliged to say anything unless I wish to do so but that anything I do say will be taken in writing and may be given inevidence.

(sgd) D. Porter

On Sunday, 22nd April, 1945, I left my unit to go to Turnhout to get some spare parts. I went with S/Sgt HAYES, Cpl Hull and Pte. MERCER and we travelled in a three ton lorry. After getting the spare parts we had a few drinks in Turnhout at different cafes. When these cafes closed we left Turnhout. I was in the back of the truck with MERCER and I went to sleep. I was woke up by a noise and when I got out of the truck I found it had been parked at the back of the cafe. There was no sign of the staff sergeant, the Cpl or Mercer. MERCER shouted to me and said the staff sergeant had gone. I went into the cafe. A few minutes later I saw Cpl. HULL coming out of one of the doors. I gave Cpl HULL a hand to get the sergeant into the truck. I got in the back of the truck and lay down. About five or ten minutes after the truck started on the way back to the unit. When I saw the sergeant he was bleeding from a cut in the head. On the way back to my unit we took the wrong road and in turning round the truck backed into a ditch and we would have to get a tow out. We then looked for the champagne in order that we could have another drink. We found the champagne some of the bottles were broken. I also saw a radio of some sort in the back of the truck. This radio is now in a closet at my unit.

When I went into the cafe I remember seeing some damage but I can't just remember what it was.

(sgd)Cfn. D. Porter

Statment taken and signature witnessed on Tuesday, 1st May, 1945.

(sgd) T. SWIFT, Sergt.
81 S.I.S. C.M.P.

certified true copy.....

H.Q. 81 Special Investigation Section,
Corps of Military Police,
Att. 7 Base Sub Area, B.L.A.

4th May, 1945.

Statement of : No. 14270918, Sergt. Swift, T.
81 S.I.S. C.M.P.

Who saith:

As a result of enquiries made on Tuesday, 1st May, 1945, I saw No. F 24237 Pte. MERCER, 2nd Canadian Tank Troops Workshops, at this office.

I told him who I was and that I had reason to believe that he was concerned with others in the larceny of a radio and 8 bottles of champagne and also causing damage at the Hotel "Demnen", Casterlee, Nr. Turnhout.

He replied, "I took the radio."

I immediately cautioned him and he then elected to make a voluntary statment which I took down in writing at his dictation and afte he had read it over he signed it. (produced)

(sgd) T. SWIFT, Sergt.
81 S.I.S. C.M.P.

Certified true copy.....

H.Q. 81 Special Investigation Section
Corps of Military Police
Att. 7 Base Sub Area, B.L.A.
1st May, 1945.

Statement of : F 24337 Pte. MERCER, S.S.
2nd Cdn Tank Troops Workshops, R.C.E.M.E.

Who saith:

I understnad that I am not obliged to say anything unless I wish to do so but that anything I do say will be taken down in writing and may be given in evidence.

(sgd) S.S. Mercer

On Sunday, 22nd April, 1945, accompanied by Sergt HAYES, Cpl. HULL and Oftsm PORTER, I left my unit to go to Turnhout in order to get some spare parts. We travelled in a three ton lorry. After we had got the spare parts we went into different cafes and had some drinks. When the cafes closed Cpl. HULL said he would take us to another cafe where we could get some champagne. When we got to this cafe we find it was closed. Either the sergeant corporal or myself tapped on a windowX and it broke. A few minutes after a lady came and asked us what we wanted. We told her we wanted some champagne and she let us in the kitchen. Cpl. HULL and myself were talking to this lady about the champagne. I don't know where the staff sergeant went. We gave her the money and then we heard a noise upstairs and went to look for the sergeant. We found him lying in an upstairs room bleeding from the head. We carried the staff out and put him in the truck and then Cpl. HULL and myself went back and got the champagne. At the same time I took the radio from the cafe and put it in the truck. This radio is now at my unit. On the way back to the unit we took the wrong road and got stuck in a ditch. We could not get out without a tow so we looked for the champagne so that we could have another drink. At least one bottle of champagne was broken.

I am not really clear on what did happen at the cafe because I was very drunk at the time but I did see a little "pushing around" going on.

(sgd) S.S. Mercer

Statement taken and signature witnessed by me on Tuesday 1st May 1945.

(sgd) T. SWIFT, Sergt.
81 S.I.S. C.M.P.

certified true copy

H.Q. 81 Special Investigation Section
Corps of Military Police
Att. 7 Base Sub Area, B.L.A.
14th April 1945.

Statement of : BARREVOETS, Marie Magdalena,
Address: 2, Lichtaertschebaan, Casterlee.

Who saith:

On the night of 22nd to 23rd April, 1945 at about 24 hrs, I heard a truck stopping at the back of my house. Suddenly I heard some noise. I opened the window of my bed-room and I saw four soldiers, in front of the door of my kitchen. I recognized the face of one of these men, because I had already seen him before in my establishment. This soldier is called DODGE. At first I did not intend to open the door, but when I heard that these soldiers broke a window-pane, I got up and went down to the kitchen. DODGE was the first who entered this room. He asked me for some bottles of champagne because, as they said, they were thirsty. I gave him to understand that it was too late in the night to go and fetch these bottles in the cellar, but I offered him some sandwiches. DODGE did not answer but he seized a chair and broke it into pieces on the table. This action was immediately imitated by the other three soldiers. The four went then into my bar. As I saw that they were drunk and furious I promised them to fetch some bottles of champagne. Suddenly and without warning I was struck by one of the men, by a sergeant. Alarmed by my screaming, my son Marcel came out of his bed-room, when he was in the bar the four men set upon him. My son tried to escape by hiding himself behind my hsuband, who stood behind the counter. The sergeant struck him in his eye. In the menatime my son locked himself in his bed-room situated on the ground floor. The sergeant ran upstairs thinking to find my son hding in a room. He began with his acts of vandalism in breaking a mirror. In the meantime the three other Canadian soldiers remained in the cellar. DODGE was amongst them.

On a certain moment, the sergeant opened the door of a bed-room, which was occupied by doctor DUPUIS and his wife, both of these persons are residing in Brussels. A fight took place in which the Canadian sergeant was injured by the doctor's wife. As I heard, the sergeant fall on the ground, the doctor pushed him in another room, whilst he escapted with his wife in another bed-room which looks out on the small terras.

The three other soldiers stole a radio-set in my bar and eight bottles of champagne from my wine-cellar. A little while later DODGE went upstairs and called the sergeant, bothof these men went back to the ground-floor where they joined their comrades After that, they loaded the radio-set and the bottles on the truck and rode away.

I am able to recognize these four soldiers, at the least DODGE and the sergeant.
I have read over the above statement and it is true.

(sgd) M. Barrevoets.

The list of objects stolen or damaged is attached:

8 bottles of champagne	worth frs	2.400
1 radio-set PHILIPS		7.000
Damaged in the bar		
1 automatic radiogram (trade mark capehart, the radio apparatus of this radiogram and some records	frs	20.000
4 chairs		2.000
1 table		300
1 door panel		250
1 mirror damaged.		

Damage on the first floor:

1 large mirror size 2.5- cm x 1 m	frs 2.500
1 piedstal in china	
some frames of engravings	
1 foot lamp	500
1 door smashed	
some china and glass baubles	
1 window pane broken (kitchen)	100
1 electric bell	

I certify that the above statment is a true translation from the one taken in Frency by me, M. Rowet, Official Interpreter, SI S.I.S, in the presence of Sergeant Swift, il S.I.S.

(Sgd) M. Rowet,
Official interpreter.

Certified true copy .....

H.Q. SI Special Investigation Section,
Corps of Military Police,
Att 7 Base Sub Area, B.L.A.

4 May 1945.

Statement of : Barrewaerts, Maria,
Lichtaertschebaan, 2, Casterlee.

Who saith:

I declare that the present radio is the one which as been stolen at my care during the night of the 22nd/23rd April, 1945, by four Canadian soldiers. This radio is the same which Sergeant Swift did show me to-day. I can easily recognize this radio as being mine, then it is of a special and unusual make, that I bought in France. This radio is very precious to me and 'll keep it in my possession. If, for any reason, it has to be produced at the inquest, I immediately will hand it over to the English Military Police.

(sgd) M. Barrewaerts.

I certify the above is a correct translation from Frech into English.

(sgd) E. Fryters,
Official Interpreter,
att. SI S.I.S. C.M.P.

Certified true copy .....

H.Q. 81 Special Investigation Section
Corps of Military Police
Att. 7 Base Sub Area, B.L.A.
25th April, 1945

Statement of : SPAENENBORGH, Marcellus, Ludovicus,
born at Turnhout 31 Aug 1913.
residing No 1 A Ossengaar, Casterlee.

Who saith:

In the night of 22nd to 23rd April, 1945 I was in my bed-room when at about midnight I heard suddenly some noise. I went out my roomand entered the bar. There, one of the four soldiers, the one called BODGE, grasped me by my jacket and struck me on the face. When I stood in the bar I noticed my mother and my brother were injured. BODGE struck a violent blow with his rist on the nose, another just above the left eye and on theupper lip. As I bled abundantly, my pyjamas was soon covered with blood. Immediately afterwards the three other soldiers set on me, striking me from all directions. In the thick of the fight I noticed that BODGE wore 2 stripes. I tried to ward off the blows in hiding myself behind my father, who stood on the counter, but the sergt. seized may arm and pulled me back inthe bar, he threw me on the ground. I fell under a table in the right corner of the room, the brutally he struck me different times on the army. Ina moment of confusion I escaped, and locked myself in my bedroom, I intended to jump through the window in order to go and find some assistance by neighbours, whilst dressing I heard noise on the first floor. I opened the door ajar in order to see what happened, but I could not see anybody in the bar. In the meantime I heard somebody sacking the first floor. I shut my door, opened the revolving shutters of my bed-room and I escaped outside. When I stood in the garden, I saw the truck belonging to the four Canadians, this vehicle was parked behind my hotel, but the engine and the cabin stuck out. At a certain moment, I noticed one of the soldiers loading some articles in the cabin, but I cannot say which soldier loaded them.

The vehicle left at about 1 o'clock in the morning, in the direction of Kasterlee. The four soldiers were drunk. I am able to recognize these four men.

I have read over the above statement and it is true.

(sgd) Spaenenborgh

I certify that the above statement is a true translation from the oen taken in French by me, ROWET m., Official Interpreter, 81 S.I.S in the presence of Sgt. SWIFT, 81 S.I.S.

Sgd) M. ROWET,
Official Interpretor

Certified true copy. [signature]

H.Q. 81 Special Investigation Section
Corps of Military Police,
Att. 7 Base Sub Area, B.L.A.
14th April. 1945.

Statement of: SPAENENBORGH, Franciscus, born at Turnhout, 4 Nov 1887. address 2 Lichtaertechebaan, Oosterlee.

Who saith:

On the night of 22nd to 23rd April, 1945, at about midnight, when I was with my wife in my bed-room, I heard some noise on the ground-floor, As I looked through the window, I saw some soldiers, in the darkness, suddenly I heard that they broke a window-pane. I went with my wife downstairs in order to open the door of the kitchen, Four Canadian soldiers went in, they asked me for some champagne, but I refused as it was too late. I offered them some sandwiches. I was incline to sell some bottles of champagne but when I spoke about money the soldiers answered, "money, money, always money." It was then that one of the soldiers [redacted] seized a chair and broke it to pieces, that was the beginning of the squabble. The three other soldiers did the same, seeking everything they could find in my bar. A sergeant struck my wife and my son, Marcel, the latter escaped and locked himself in his bed-room. The sergeant chased him but could not find him, the men ran upstairs and broke all the doors open, entered a bed-room, occupied by a doctor and his wife. The sergeant fought even with the doctor. The sergeant was injured by the doctor's wife and fell on the ground, he was bleeding. In the meantime I went to the cellar where the three other soldiers were stealing champagne. I did not stay with them but went outside where I saw their truck. I could see the index number L 52829447 on it.

Afterwards the four soldiers loaded the bottles of champagne and the radio-set on the truck.

They left my house at about 1 o'clock in the morning.

I am able to recognize these soldiers.

I have read over the above statement and it is true.

(sgd) Spaenenborgh

I certify that the above statement is a true translation from the one taken in French by me, ROWET H. Official interpreter, SI S.I.S., in the presence of Sgt Swift, SI S.I.S.

(sgd) [redacted]
H. ROWET
Official Interpreter.

Certified true copy [signature]

H.Q. 81 Special Investigation Section
Corps of Military Police
Att. 7 Base Sub Area, B.L.A.
24th April 1945

Statement of / SPAENENBORGH, Paulus, Emilius,
born at Turnhout, 19 Nov 1920
address : i A. Lichtaertschebaan., Kasterlee.

Whosaith:

On the night of 22nd to 23rd April, 1945, when I was in my bed-room, I heard some noise. It was then about 24 hrs. I went out, when I heard my parents in the kitchen. There I saw four Canadian soldiers. They asked to have some bottles of champagne my parents refused at first, but afterwards they asked these soldiers' if they were in the position to pay for these bottles. One of these soldiers, the one called BODGE seized a chair and broke it to pieces, that was the beginning of a squabble, during which the soldiers broke everything they could find. They struck my mother and my brother and I received some blows as well. One of these soldiers obliged us, me and my brother, to sit on a sofa, but I was able to escape and I ran outside. I went to different places in order to find aid. I even stopped some passers-by, but they refused to go with me because they were afraid. I went even to another hotel, but when I came back home the soldiers were gone.

I know that these soldiers stole a radio-set and broke other things on the ground - and on the first floor. The four soldiers were drunk. I am convinced I am able to recognize these four men.

I have read over the above statement and it is true.

(sgd) P. Spaenenborgh

I certify that the above statement is a true translation from the one taken in French by me, ROWET M., Official Interpreter, 81 S.I.S. in the presence of Sergeant SWIFT, 81 S.I.S.

(sgd) M. ROWET
Official interpreter

Certified true copy. [signature] Major

H.Q. 81 Special Investigation Section
Corps of Military Police
Att. 7 Base Sub Area, B.L.A.
24th April, 1945.

Statement of : Doctor DUPUIS,
residing 81 Avenue Michel/Ange, Brussels/

Who saith:

In the night of 22nd to 23rd April, 1945 I heard some noise outside the hotel "De Dennen" at about 24.30 pm. We i.e. I and my wife, had rented a room on the first floor. At a certain moment I heard an unknown voice shouting "Charlie". I suppose they were calling for somebody in the hotel, whilst looking outside I saw soldiers throwing some tiles on the dog, which was in its kennel, a bit later I heard a window-pane crash. Somebody opened the kitchen door afterwards I heards cries. From that moment I know the visitors were Englishmen or Canadians, because I heard speaking English. I did not go downstairs for I ignored these men were armed. I supposed it was much safer to stay upstairs.

One of the two sons of the hotel owner, came upstairs, and knocked at the doors, but nobody answered. Somewhat later somebody else went on the first floor and broke everything which was in the passage. This person stopped in front of our door, went away and came later on, knocked brutally in order to open it. I ordered my wife to dress herself, whilst I covered myself with a raincoat, at the very moment the door was broken open. We saw a Canadian sergeant before us, he was very excited and pale his eyes were glittering and his mouth dry, he brandished a heavy seat-leg in his right hand. I approached him and told who I was but he seized me by the left arm and pulled me out of the bed-room, the sergeant raised the seat-leg, my wife warded off the blow and esteeming to be in lawful defence, took the wooden leg and knocked it several times on the sergeant's head, he fell heavily on the floor and rose again. I seized him by his hair and pushed him against the door of an opposite bed-room; the door gave way and the sergeant fell in the bed-room. Fearing the arrival of the other soldiers, who were still downstairs. We, I and my wife, escaped in another bed-room and locked the door.

A few moments later somebody else knocked at our door, but I did not open it. I was looking after my wife who was in a state of nervous depression.

I heard the truck leaving the garden at about 1 am. Somewhat later, one the sons of the hotel owner, asked me to convey him to the C.M.P. post at Turnhout. I am convinced that the Sergeant was drunk. I am able to recognize this man.

I have read over the above statement and it is true.

(sgd) Dr. Paul Dupuis

I certify that the above statement is a true translation from the one taken in French, by me, M. ROWET, Official interpreter, 81 SIS in the presence of Sergeant SWIFT, 81 S.I.S.

(sgd) M. ROWET,
Official interpreter.

Certified true copy [illegible] Major

H.Q. 81 Special Investigation Section
Corps of Military Police
Att. 7 Base Sub Area, B.L.A.
26th April, 1945.

Statement of : BONNET, Marie/Therese
address : 81 Avenue Michel-Ange, Brussels.

Who saith:

husband

As we, I and my ~~XIFX~~ were sleeping in our bed-room of the hotel "De Dennen", in the night of 22nd and 23rd April, 1945, I heard suddenly some noise outside the building between 24 pm and 1 am. A truck stopped at the back of the hotel, then afterwards I heard somebody throwing any instruments on the dog, which was looked up in its kennel. An unknown voice shouted, "Charlie, Charlie, but I did not hear any answer.

A few minutes later I heard the crash of a window pane. Somebody opened the kitchen-door and later I heard the cries, "help help, they will kill Marcel." these alram cries were distinctly audible and wereimmediately followed by noise. My husband ordered me to dress because he foresaw that the situation became more and more alarming. Whilst waiting we heard somebody coming upstairs, that person stood still in the passage and touched the door, he then by rough fits and starts succeeded in opening it.

I saw a sergeant before us, he was tall and well built, had dark brown hair (curled) his complexion was tauny. My husband approached him and siad, "I am doctor." but I suppose that the man did not understand what my husband said, because he grumbled "no, no" At once he threatened my husband with a thick seat-leg, which he held in his right hand, seized my husband with his left hand, a fight ensued in which my husband tried to stop his aggression At a certain moment the sergeant raised the seat-leg and would strike my husband, I warded off the blow and the instrument fell on the ground. I picked it up and struck the sergeants head, but as he resisted I dealt another blow. At the very moment my husband seized him and pushed him in the passage, in the meantime we fled in another room and locked the door behind us. The sergeant bled.

A few moments later we heard somebody ascending the stair case. This person spoke to the sergeant and both of them went again downstairs. At about I am I heard the truck leaving the garden.

I have read over the above statement and it is true.

(sgd) M.A. Bonnet

I certify that the abovestatement is a true translation from the one taken in French by m, M. Rowet Official Interpreter, 81 S.I.S. in the presence of Sergeant SWIFT, 81 S.I.S.

M. ROWET,
Official interpretor

Certifiedtrue copy.....

I do not desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General Court-Martial.
I desire the services of Lieut A.J. Handley I Gen Tps WASP if he is available.

F Hayes.
.....
(B 23218 S/Sgt Hayes, F.H.

J R Hull
.....
(B 58050 Cpl Hull, J.R.)

.....
(F 7089 Cfn Porter, D.E.)

.....
(F 24337 Pte Mercer, S.S.)

I acknowledge that I have been notified that it is proposed to detail an officer with legal qualifications to act as Prosecutor at my forthcoming trial by Field General Court-Martial.

.....
(B 23218 S/Sgt Hayes, F.H)

.....
(B 58050 Cpl Hull, J.R.)

.....
(F 7089 Cfn Porter, D.E.)

.....
(F 24337 Pte Mercer, S.S.)

In the field
12 Jun 45.

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number B 58050 Rank Cpl Name Hull, J.R. Regiment (or unit)
2 Canadian Tank Troops ksp, RCEME

1. The following is a fair and true summary of the entries in the Field Service and General Regimental and Record Pay Conduct sheets ~~Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~of summary awards under Section 47 of the Air Force Act~~ and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	Absence without leave 1 time	Absence without leave 1 time
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct Nil

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~previously convicted as follows by a court-martial or a civil court, of summary awards under Air Force Act, A.F.A. 71 Section 71 of the Army Act and dispensations under A.A. 71 are set out in the Schedule attached hereto.~~

3. The accused is not under sentence at the present time.

or,

~~The accused is under sentence of~~ beginning on the day of

4. ~~The accused has been in confinement awaiting trial on the present charge, for days in civil custody, and days in military custody, making a total of days in custody, of which days were spent in hospital.~~

5. The present age of the accused according to his record of service is 36
attestation paper is

6. The date of his commission specified in his record of service is
attestation attestation paper

7. The service which the accused is allowed to reckon towards discharge is 3 years 5 months

8. The accused is entitled to reckon 3 years 5 months service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of an authority for the wearing of the~~ military ~~Air Force~~ ~~decoration of~~ military ~~or is entitled to~~ ~~State any Air Force decoration or reward~~ military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated , and in his regiment (or corps), the rank of dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

5 May 44 Date of promotion.

In the rank of Cpl 1 years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13 day of June 1946

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

No. B 58050 Name HULL, J.R. Sqn., Battery, or Company } Corps R.C.E. Date of enlistment } 20 Jan 42 C.C. Badges } Tradesmen's Rates of Pay }

M.F.M. 6
(A.F.B. 122)
500M—11-41 (3459)
H.Q. 1772-99-1552

No. and date of last drunk } N/A Period not reckoning towards freedom from extra fine } N/A Sheet No. 2 Signature O.C. Company, etc. } Charlottetown Barnwell Lieut

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Old sheet destroyed on completion of two years service 20 Jan 44					
Field	23 Apr 45	Cpl		WOAA Absenting himself without leave from 0800 hrs to 1200 hrs 23 Apr 45. (4 hrs)		Severe reprimand	24 Apr 45	Major J.W. Blatchford	

certified true copy.....
(J.W. Blatchford) Major
OC 2 Can Tk Tps Wksp RCEME
Officer having custody of orginal document

(P.T.O.)

M.F.R. 385
22M—9-41 (372-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number B 23218 Rank S/Sgt Name Hayes, F. Regiment (or unit) 2 Canadian Tank Troops Wksp, RCE[illegible]

1. The following is a fair and true summary of the entries in the Field [illegible] Conduct sheets [illegible] of the accused, and of Convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	Absence without leave 1 time	X Absence without leave 1 time X
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct Nil

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

[illegible]

3. The accused is not under sentence at the present time.

or,

[illegible]

4. [illegible]

5. The present age of the accused according to his record of service is 39 attestation paper is

6. The date of his commission specified in his record of service is attestation attestation paper

7. The service which the accused is allowed to reckon towards discharge is 4 years 10 month

8. The accused is entitled to reckon 4 years 10 months service for the purpose of determining his pension, etc.

9. [illegible]

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

17 Mar 1941
Date of promotion

In the rank of L/Cpl 6 months years. S/Sgt 3 years

In the rank of A/Cpl 3 months years.

In the rank of A/Sgt 3 months years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank .....

Unit

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13 day of June 1945 Foster Bickford Major

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

No. B 23218 Name HAYES, F.H. Sqn., Battery, or Company — Corps R.C.E.M.E. Date of enlistment 16 Aug 42 Badges — Tradesmen's Rates of Pay

M.F.M. 6 (A.F.B. 122) 100M—11-41 (2408) H.Q. 1772-39-1452

No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc. G. . Saint Major — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	23 Apr 45	S/Sgt		WOAB - A.W.L. from 0800 to 1200 23 Apr 45 Total time absent 4 hrs		Severe Reprimand	24 Apr 45	Major J.W. Blatchford	

Certified true copy.....
(J. . Blatchford) Major
OC 2 Cdn Tk Tps -kap RCEME
Officer having custody of original document

(P.T.O.)

M.F.B. 358
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number F 7089 Rank Cfn Name Porter, D.E. Regiment (or unit) 2 Canadian Tank Troops ~~Regt~~, RCASC

1. The following is a fair and true summary of the entries in the field Service and General Regimental and Squadron, Battery Conduct sheets ~~according to the records~~ of the accused, exclusive of convictions by ~~Field General Court Martial or District Court Martial~~ ~~Summary Courts~~ under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	Nil	times	Wilfull disobedience of a	times
For		times	lawful command AA Sec 9 (1)	times
For		times	Wilfull disobedience of a	times
For		times	lawful command AA Sec 9 (2)	times

Number of instances of gallantry or distinguished conduct

Using insubordinate language to his superior officer AA 8 (2)

There are no entries in the conduct sheets of the accused.

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court martial or civil court of ordinary grade under section 47 of the Army Act and declarations with trial under AA 77 by are set out in the Schedule hereto.~~

3. The accused is not under sentence at the present time.

or,

~~The accused is under sentence of ... for ... months ... days.~~

4. ~~The accused has been in ... custody awaiting trial on the present charge for ... days, viz. ... days in civil custody and ... days in military custody, making a total of ... days in custody of which ... days were spent in hospital.~~

5. The present age of the accused according to his record of service is attestation paper is 34

6. The date of his commission specified in his record of service is attestation attestation paper

7. The service which the accused is allowed to reckon towards discharge is 5 years 9 months 9 days

8. The accused is entitled to reckon 5 years 9 months 9 days service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of ... military ... decoration, or as ... has been brought to the notice of ... military authority for ... conduct in the field.~~

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number..... Rank.....

Name..... of..... Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13 day of June 1945 Jack D. Battleford Major

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked..... signed by the president, and annexed to the proceedings.

No. F 703? Name PORTER, [illegible] Sqn., Battery, or Company } Corps RCE/E Date of enlistment } 4 Sept 41 G.C. Badges } Tradesmen's Rates of Pay }

No. and date of last drunk } Nil Period not reckoning towards freedom from extra line } Sheet No. 1 Signature O.C. Company, etc. R[illegible] ault Capt Character

M.F.M. 6
(A.F.B. 122)
300M—11-41 (2496)
H.Q. 1772-35-1652

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
		Two years service 4 Sept 41. Certified no entries.							
Field 24 Mar 42		Pte		AA Sec 9 (1) Wilfully disobeying a lawful command etc. - refused to repair brakes on a vehicle when ordered and threw down his tools.	Lt D.W. Hunt S/S Moxon A.J.	7 days C.B. 24 Mar 42		R.C. Faucult Capt	
Field 27 Aug 42		L/Cpl		A.A. 9 (2) Disobeying a lawful command, when ordered to build two wooden brackets by S/Sgt Edmonds, refused. AA 8 (2) using insobordinate language to his superior officer, when officer said "if you cannot do that job you are not worth trade pay" he replied "you are not worth nothing."	A/S/S Edmonds Lt RA Bowler	Reduced to rank of Pte and forfs trade pay	23 Aug 42	R[illegible] Faucult Major	

(over)

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified true copy..... (J.W. Blatchford) Major OC 2 Cdn Tk Tps Wksp RCEME Officer in custody of original document.					

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number: F 24337 Rank: Pte Name: Mercer, S.S. Unit:

2 Canadian Tank Troops wksp, RCEME

1 The following is a fair and true summary of the entries in the Field Conduct Sheets of the accused, exclusive of convictions by a Court Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

Within last 12 months		Since enlistment	
For	Absence without leave 1 time	For	Absence without leave times
For	times	For	2 times
For	times	For	times
For	times	For	times

Number of instances of gallantry or distinguished conduct Nil

or

~~There are no entries in the conduct sheets of the accused~~

NOTE: If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2 The accused has not been previously convicted

or

~~Previous convictions of the accused by a court martial or a civil court, of summary awards under section 47 of the Army Act and dispensations with trial under AA 72 are set out in the Schedule annexed to this statement.~~

3 The accused is not under sentence at the present time

or

~~The accused at the present time is under sentence for ... beginning on the ... day of ...~~

4 ~~The accused has been in confinement awaiting trial on the present charge for ... days, in civil custody, and ... days in military custody, making a total of ... days in all.~~

5 The present age of the accused according to his attestation paper is: 24

6 The date of his attestation specified in his attestation paper is: 29 May 1940

7 The service which the accused is allowed to reckon towards discharge is: 5 years 13 days

8 The accused is entitled to reckon 5 years 13 days service for the purpose of determining his pension etc.

9 The accused is in possession of entitled to no military decoration, or military reward. Nil

10 (If the accused is a warrant officer) The accused before he was made a warrant officer last held the regimental rank of.....

11 (In the case of an officer) The accused holds in the Permanent Force the rank of:

.....dated....., and in his regiment(or corps), the rank of:

.....dated.....

12 The accused has served as a non-commissioned officer continuously, without reduction, to the present date:-

.....Date of promotion.

In the rank of.....years

In the rank of.....years

In the rank of.....years

NOTE: If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number.....Rank.....

Name.....of.....Regiment.

NOTE: A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of by which tried	Ct	Date & Place of Trial	Charge upon which convicted	Sentence of Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a ~~true~~ true extract from the regimental books in my custody.

Signed this 13 day of Jan 1943 [illegible] Lieut. Major.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked.....signed by the President, and annexed to the proceedings.

No. F 24337 Name MERCER, S.S. Sqn., Battery, or Company C.I.C. Corps Date of enlistment 29 May 40 G.C. Badges Tradesmen's Rates of Pay

No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Unit, Company, etc. W. Hodge Lieut Character

M.F.M. 6 (A.F.B. 122) 500M—11-41 (2400) H.Q. 1772-40-1151

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed (2 years service with no crime) 25			Jul 44	W.O. Thomas	Lieut
						Forfs 5 days		J.D. Clark	Forfs
Brampton	9 Apr 44	Pte		AWL from 1145 hrs 9 Apr 44 until 0900 hrs 10 Apr 44 (Absent 21 hrs 15 min) AA Sec 15 (1)	Cpl George	pay	10 Apr 44	Major	1 day Pay FR&I
Field	9 Mar 45	Pte		AA Sec 15 (1) AWL from 2230 hrs 9 Mar 45 until 2345 hrs 9 Mar 45. (Absent 1 hrs 15 mins)	Bdr Langdon G C/M Martin A	Forfs 5 days pay R&I 149 (2)	10 Mar 45	L. Poldomets Capt	

Certified true copy.....

(J.M. Blatchford) Major

O.C. 2 Cdn Ck Tps Wksp RCEME

Officer having custody of original document

(P.T.O.)

~~LIST OF WITNESSES~~

In the case of R [illegible] S/Sgt Frederick Humphrey, [illegible], R [illegible] Cpl Joseph Raymond, [illegible], F [illegible] Cpl Douglas Harold, FOSTER, and F [illegible] Pte Samuel Spurrell, [illegible] all of 2 Can Tp Wksp RCEME soldiers of the Canadian Army Overseas.

(For the Prosecution)

1. 14270918 Sgt [illegible], T. — 81 S.I.S. C.M.P.
2. Marie Magdalena BAMEVORTS, — 2 Lichtaertsebeaan Casterlee, Belgium.
3. Marcellus, Ludevicus, SPANNENBURGH, — 1A Casseniaar, Casterlee, Belgium.
4. Franciscus, SPANNENBURGH, — 2 Lichtaertsebeaan Casterlee, Belgium.
5. Paulus, Emilian, SPANNENBURGH — 1A Lichtaertsebeaan, Casterlee, Belgium.
6. Dr. DUPUIS — 81 Avenue Michel-Ange Brussels, Belgium.
7. Marie Therese, DUPUIS — 81 Avenue Michel-Ange Brussels, Belgium.

(For the Defence)

Nil

LIST OF EXHIBITS

In the case of B 23218 S/Sgt Frederick Humphrey, HAYES, B 58050 Cpl Joseph Raymond, HULL, F 7089 Cfn Douglas Earle, PORTER, and F 24337 Pte Samuel Spurrell, MERCER all of 2 Cdn Tk Tps Wksp RCEME soldiers of the Canadian Army Overseas.

(For the Prosecution)

1. Documentary evidence marked Exhibit "A" on Alleged burglary and malicious damage caused by the accused, signed by Sgt Swift T 81 S.I.S. C.M.P.
2. Documentary evidence marked Exhibit "B" on Alleged burglary and malicious damage caused by the accused, signed by Marie Magdalena, 2 Lichtaertschebaan Casterlee.
3. Documentary evidence marked Exhibit "C" on Alleged burglary and malicious damage caused by the accused, signed by Marcellus, Ludovicus, Spaenenborgh, 1 A Ossengaar, Casterlee.
4. Documentary evidence marked Exhibit "D" on Alleged burglary and malicious damage caused by the accused, signed by Franciscus, Spaenenborgh, 2 Lichtaertschebaan, Casterlee.
5. Documentary evidence marked Exhibit "E" on Alleged burglary and malicious damage caused by the accused, signed by Paulus, Emilius, Spaenenborgh, 1 A Lichtaertschebaan, Casterlee.
6. Documentary evidence marked Exhibit "F" on Alleged burglary and malicious damage caused by the accused, signed by Dr Dupuis, 81 Avenue Michel Ange, Brussels.
7. Documentary evidence marked Exhibit "G" on Alleged burglary and malicious damage caused bythe accused, signed by Marie-Therese, Bonnet, 81 Avenue Michel-Ange, Brussels.

(For the Defence)

Nil

5 11 84

Pte Hayes F. W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B100525 PTE. FREDERICK WILLIAM HAYES — 8 FD REGT RCA.

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 41	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 2 days, of which None days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for sixty (60) days.

(Sgd) Judge-Advocate, if any — 4th April 1945 Date awarded. (Sgd) President. (RP 45/50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

My decision on the finding(s) and sentence set forth in Part I is:

Not confirmed

Date 4 Apr 45 (Sgd) Commanding CRA 5 Cdn Armd Div

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd)

Date Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

B100525 Pte Hayes, F.W. 18 Apr 45 A.H. Birks LT.-COL. R.C.A. COMDG, 8 CDN. FIELD REGIMENT (S.P.) R.C.A.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5H-84

FIELD GENERAL COURT-MARTIAL (PAM 4 To Item of AF A3) (1808 (2864))

RECEIVED 18 MAY 1945 Nijmegen JAG BRANCH C.M.H.Q.

Convened by Order of Lt.-Col A.H. Birks Comdg 8th Cdn Fd Regt RCA dated April 2nd 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit
B100525	Pte.	Frederick William	Hayes	8th Fd Regt RCA

PROCEEDINGS REVIEWED [illegible] Date 18 May 45

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Held at (place) Belgium on (date(s)) 4th April 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 30/57

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereto. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Roger Popeur as interpreter? Ans No

The Interpreter is sworn.(1) ~~Do you object to the shorthand writer? Ans~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 187/MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.W. Greenwood	4th Cdn Armd Regt RCA
Member	Capt	I.D. Stout	4th Cdn Armd Regt RCA
Member	Capt	W.E. Thompson	8th Cdn Fd Regt RCA
Judge-Advocate			
Prosecutor	Lieut	G.E. Therman	8th Cdn Fd Regt RCA
Defending Offr	Lieut	P.W. Leacock	8th Cdn Fd Regt RCA

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ~~stands~~ B100525 Pte Hayes F.W. before arraignment make(s) (no) ~~or~~ plea (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (GB), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~does~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 'D'

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in defence to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of the ... in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D6 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s)n(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans as a witness Do you intend to call witnesses on your behalf ?
Ans Yes Are they witnesses as to character only ? Ans No
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1st Charge charge(s), being subject to confirmation, will be promulgated later.(1) ~~(Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith), and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(1. AA 54(3) (6), RP 45, 122(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes Lt Col A H Birks C.O. 3rd Fd Regt RCA.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex #3 and Ex A respectively.(3)
(1. MFB 355 or AFB 294. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RD 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B.100525 Pte Frederick William HAYES - RCASC att 8 Cdn Fd Regt (SP) RCA a soldier of the Canadian Army Overseas is charged with:-

1st Charge
AA Sec 41.

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, BEING IN POSSESSION OF STOLEN GOODS,

in that he,

at COMINES on 29 Mar 45 was in possession of five wheels and tires, the property of Abel CATRY of WERVICQ, BELGIUM.

A H Birks

(A H Birks) Lt Col RCA
Comd 8 Cdn Fd Regt (S.P.) R.C.A.

1 Apr 45
In the Field
BELGIUM.

To be tried by Field General Court Martial.

A H Birks Lt Col RCA

2 Apr 45
In the Field
BELGIUM.

FIELD GENERAL COURT-MARTIAL

CF A95 (In lieu of [illegible])
40/PAS/1007 (1-43)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B100525	Pte		Frederick William	HAYES	8 Cdn Fd Regt (SP) (RCA)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 2 Apr 45 endorsed by me, [redacted] "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	J W Greenwood		4 Cdn A Tk Regt RCA

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	T D Stout		4 Cdn A Tk Regt RCA
Capt	W T Thompson		8 Cdn Fd Regt (SP)(RCA)

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium
(Country.)

(Signed per [redacted] RP 105 fn 2) (Rank.)

(A H Birks) Lt-col

Date 2 Apr 45

Commanding 8 Cdn Fd Regt (SP)(RCA)
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

DECLARATION

FOR SUSPENSION OF RULES UNDER RULE OF PROCEDURE 104

In my opinion:-

(i) Military exigencies, namely:-

(a) This unit commences on 4 Apr 45 to move forward to deploy in active operations against the enemy.

(b) The evidence of civilian witnesses is necessary. These civilian witnesses are resident in our present area. It would not be practicable to bring these civilians forward to give evidence in our position in action. Nor would it be practicable to excuse the officers comprising the Court from operations, in order to return to this area to obtain civilian evidence.

and (ii) Necessities of Discipline, namely:-

(a) It is most important that these cases be disposed of as soon as possible as one of the accused holds authority and command over men.

render it inexpedient to observe the provisions of Rule 4

on the trial of

B.100525 Pte Frederick William HAYES
8 Cdn Fd Regt (S.P.) R.C.A.

by Field General Court Martial assembled on the third day of April 1945 pursuant to order.

Signed in the field this second day of April 1945.

(A H Birks) Lt Col RCA
Comd 8 Cdn Fd Regt (S.P.) R.C.A.

MEDICAL OFFICERS CERTIFICATE

This is to certify that I have today examined B.100525 Pte HAYES, F W, RCASC att 8 Cdn Fd Regt (SP) RCA and found him free from infectious diseases and fit to undergo trial by Field General Court-Martial.

(J Margolis) Capt RCAMC

4 Apr 45. Medical Officer 8 Cdn Fd Regt (SP) RCA.

Pte F. W. Hayes

1st witness for prosecution

Raymond Vandamme sworn states: — as per Summary of Evidence

Q by defence: Did you buy these tires?

A: No

Q: Did you pay money for them and how much?

A: I advanced 5000 fr.

Q: Did you receive the tires in exchange for the money?

A: No.

Q: When you looked for the tires in the evening, did you see Gnr Hay?

A: No, it was ~~[redacted]~~ sgt I saw.

Q: by pros: Did Gnr Hayes say he had been given the tires by another person.

A: NO.

Q: ~~What is part that this is~~ Were the tires advanced as security?

A. Yes, I kept the tires as a guarantee for my money.

2nd witness

Lt S A Kerr sworn states as per summary of evidence

After having examined the tires with Capt Cattry ~~The following day~~ at the Police and establishing that they were his, I ~~came~~ went to the Cafe Duc de Brabant and spoke to Hayes who accompanied Cattry, the Gendarmes and myself to Wervick where with a gendarme from Wervick we went to the house of the girl who had given Hayes the tires. This girl admitted

giving Hayes the tires for nothing. ~~Hayes~~ later he went next door to the girls sister-in-laws where he had actually picked up the tires.

Q (defence) Did you see Pte Hayes when you were at the Cafe ~~on~~ the evening of the 29 Mar
A: At no time did I see Pte Hayes

Q (by pros.) Were you in the Cafe Du de Brabant on the night of 29 Mar?
A: I did not enter the cafe at all.

3rd witness
Alfred Cathy sworn states as per summary
I am Alfred Cathy of Warwick

Q (by court) How did you identify the tires?
A: by the paint on the wheels and the type of valves

1st witness for defence
Pte Hayes sworn
Q: ~~How~~ How did you obtain the tires in question?
A: I obtained them in Warwick from a girl who said that they were taken off a vehicle that the Germans had confiscated in 1940
Q Did you ~~not~~ suspect the tires were stolen?
A — I did not.
Q At the time you received the tires did you give anything in exchange.
A ~~No~~ I did not
Q What did you do with the tires?
A I brought them to Comines where I sold

them to Vandamme.
Q: Did you give Vandamme the tires.
A: No, I kept them in the vehicle in the yard.
Q: Was Vandamme satisfied with this arrangement?
A: He was.
Q: Were you in Belgium, Europe in Dec 1944?
A No

Q just now did you transport the tires from Warwick?
A In a Jeep
Q Did you drive the jeep yourself?
A I had a driver, Gnr May.

2 end witness for defence
Gnr May sworn states I am Gnr May W.
~~Q to it~~
Q - did you ~~accompany~~ Pte Hayes on the afternoon of Mar to Warwick
A yes sir
Q what did you do in Warwick?
A: We went to Warwick with ~~Gnr~~ Pte Hayes & picked up five civilian tires.
Q From whom did you get the tires?
A - A civilian lady.
Q. Did she sell the tires
A. No sir
Q. Did you ask her if the tires had been stolen
A: no sir, I asked ~~Gnr H~~ Pte Hayes previously to going to Warwick
Q. What was his answer
A: He they were not stolen.
Q ~~what did you~~ What was done with the tires

when you returned to the cafe ?
A: I put them in the yard sir
Q: Were the tires left in the yard or given to someone
A: No they were put in a truck.
Q: Where did you go then
A: Where did you go then ?
Q: Did you see Pte Hayes in the evening
A: Yes sir
Q: At what time
A: approximately 1730 hrs
Q: Did you see him again that night
A: Yes sir
Q: When ?
A: 2030 or earlier
Q: Where was he at that time ?
A: Inside the bar at the cafe Dude Brabant
Q: Were you speaking to him ~~after that~~
A: Yes sir
Q: How long ?
A: I'm not sure there was a crowd in the cafe
Q: Did ~~you~~ Pte Hayes leave the cafe
A: Not to my knowledge sir.

#1 Prosecution
Q: Where the tires given to you or Pte Hayes ?
A: Pte Hayes sir

Defense Address
The evidence of the witnesses, Vandamme & Pte Hayes
Le Kerr states that they did not see ~~Hayes~~
in the evening that the tires were found
in the jeep. Vandamme states that he ~~received~~
gave money with the tires as security

but that he did not receive the tires. Therefore the tires were not his and evidence has shown that the tire were given to Pte Hayes therefor to all intents & purposes the ~~tires~~ tires belonged to Pte Hayes & were his property, not Vandamme. Evidence of Lt Ker, Com Maj, & the accused under oath has shown that the tires were given to the accused & the accused was informed that the tires were not stolen property. The tires were taken from the original owner in Dec 44 before the accused arrived in this country. ~~To the knowledge~~ To the knowledge of the accused the tires were not stolen, He was in the cafe at the time they were removed from the truck & the tires were the property of the accused & not Vandamme.

Lt Col F H Birks sworn states

~~P to H~~ The accused has been under my comd for appro 3 months During that time he has carried out his duties satisfactorily and has never been charged with any offence previous to this offence for which he is being tried now.

MFM 6
(AFB 122)
40/PAS/136 (3438)

No. B100525 Name Pte. Hayes F. | Sqn. Battery or Company | Corps RCA | Date of enlistment 12-1-41 | GC Badges | Service or Proficiency Pay

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character ?????? (1 out)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				OLD SHEET DESTROYED 22 Oct 43	ENTRIES NIL				
				CERTIFIED TRUE COPY	???????? Lt.				
				Awarded the Cdn Volunteer Service Medal & Clasp	W.E.F. 15 Jan 44			H.P. Heward Lt.	
Field	11 Jul 44	Pte	1	DRUNKENESS - AA SEC 19	Cpl Harding RW Cpl Brown FA	7days pay 7days F.P.	12 Jul 44	P.B. Kennedy Major	

CERTIFIED TRUE COPY
of particulars of
records available.

Capt. RCA
(T.A. Lemoyne)
Adjt. 8 Cdn Fd Regt., (SP) RCA

(PTO)

Ex 15

M.F.B. 355
40/F & S/678

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B.100525	Pte	HAYES, F W	RCASC att 8 Cdn Fd Regt (SP)

1. The following is a fair and true summary of the entries in the [redacted] Conduct sheets [redacted] of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	Drunkenness	1 times		1 times
For		times		times
For		times		times
For		times		times

[redacted]

or,

There are no entries in the conduct sheets of the accused.

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or

[redacted]

Section 47 of the Army Act, and dispensations with trial made [redacted] are annexed to this statement.

3. The accused is not under sentence at the present time.

or

[redacted]

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and Nil days in military custody, making a total of Nil days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is / attestation paper is 28

6. The date of his commission specified in his record of service is / attestation paper is 12 Jan 41

7. The service which the accused is allowed to reckon towards discharge is [redacted]

8. The accused is entitled to reckon [redacted] service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no [redacted] military decoration, or [redacted] military reward (or is in possession of or entitled to). State any [redacted] military decoration or reward. Cdn VSM & Clasp

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N.A.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank Permanent Force unit N.A. dated ....., and in his regiment (or corps), the rank of N.A. dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Air Force

Name B.100525 Pte HAYES, F W of 8 Cdn Fd Regt (S.P.) R.C.A. Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
N.A.	N.A.	N.A.	N.A.	N.A.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this second day of April 45

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked B signed by the president, and annexed to the proceedings.

T A Lemoyne

(T A Lemoyne) Capt RCA
Adjt 8 Cdn Fd Regt (S.P.) R.C.A.

SUMMARY OF EVIDENCE in the case of B.100525 Pte Frederick William HAYES RCASC att 8 Cdn Fd Regt (SP) RCA, Canadian Army Overseas charged with AA Sec 41.

The Commanding Officer directs that the evidence be taken on oath.

1st Witness — Raymond VANDAMME
"Au Vieux Duc de Brabant"
78 Rue de la Gare, COMINES, BELGIUM having been duly sworn states:-

" I am Raymond VANDAMME lesee of the cafe "Au Vieux Duc de Brabant" 78 Rue de la Gare, COMINES, BELGIUM. On 29 Mar 45 two Canadian soldiers whom I now identify as being M.2150 Gnr MAY, W and B.100525 Pte HAYES, F W asked me if I would be interested in five automobile tires. They assured me that the tires were not stolen. An arrangement was made whereby upon delivery of these five tires I would loan these soldiers the sum of five thousand francs. I would hold the tires as security for this loan. My wife informed me that shortly after 1630 hrs 29 Mar 45 these two soldiers arrived at my place by jeep with five tires. The tires were delivered to me and I later gave each of the two soldiers the sum of twenty five hundred francs. The tires were stored in an army truck which is permanently stationed in the back yard of my cafe. At about 2030 hrs I discovered that the tires had been removed from their storage place. Upon making a search I found them in the back of a jeep parked in the lane beside my cafe. A third Canadian soldier, whom I now identify as H.59524 Sgt McFADDEN, F L joined me at the jeep as did M.2150 Gnr MAY, W and B.100525 Pte HAYES, F W. I asked to have the tires returned to me as they were my security for the money I had advanced. The N.C.O. threatened me and said he would report me to the police. I said that was alright but the police should be brought here. H.59524 Sgt McFADDEN, F L and M.2150 Gnr MAY, W then got into the jeep and drove away. I could not stop them. I stood in front of the jeep but they drove forward and I had to jump aside to prevent myself being run over. B.100525 Pte HAYES, F W returned with me to my cafe and gave me back the twenty five hundred francs which I had loaned him. M.2150 Gnr MAY, W has not as yet returned the money I gave him. About twenty minutes after McFADDEN and MAY had left, MAY returned with the jeep and the tires. He said he would return the twenty five hundred francs I had given him if I would accompany him in the jeep to his billet. I went out to go with him when an officer stopped me. "

Certified true translation
of original [illegible] (Raymond Vandamme)

The accused declines to cross-examine this witness.

2nd Witness — Lieut S A KERR - 8 Cdn Fd Regt (SP) RCA having been duly sworn states:-

" I am Lieut S A Kerr, 8 Cdn Fd Regt (SP) RCA. At approximately 2100 hrs 29 Mar 45 I saw a jeep drive up and park near the cafe "Au Vieux Duc de Brabant" in COMINES. The driver left the jeep, entered the cafe and returned with a civilian. I can now identify the driver as M.2150 Gnr MAY, W and the civilian as Raymond VANDAMME, lessee of the cafe. I heard MAY say to VANDAMME in French "Have you a good place to hide these tires ? " A moment

...../

SUMMARY OF EVIDENCE in the case of B.100525 Pte Frederick William HAYES.

2nd Witness (continued)

..... A moment later the two re-entered the cafe and I examined the jeep and found that it contained five automobile tires. I stood aside to await developments. In due course MAY and VANDAMME came out of the cafe and got into the jeep and were about to drive off. I stopped them. Upon being questioned VANDAMME stated that he had bought the tires from M.2150 Gnr MAY, W and B.100525 Pte HAYES, F W and had paid them a total of five thousand francs for them. He stated that the tires had been removed and that HAYES had returned his share of the money. Gnr MAY stated that he had obtained the tires from WERVICQ. I asked him what he was doing with the tires and he said that he would not talk. I asked him if he had authority for driving the jeep at this time and he said that he did not have such authority. I placed MAY under arrest, had the tires stored at the Regimental Command Post and had the jeep returned to the vehicle park.

On 30 Mar 45 the tires were examined in my presence by Abel CATRY of WERVICQ, a Belgian citizen who identified them as his property stolen from his premises in WERVICQ on the night of 19/20 Dec 44."

(S A Kerr)

The accused declines to cross-examine this witness.

3rd Witness

Abel CATRY of WERVICQ
Belgian citizen having been duly sworn states:

" On the night of 19/20 Dec 44 five automobile tires were stolen from my premises in WERVICQ. On 30 Mar 45 in the company of a Gendarme from COMINES I inspected five tires in the premises of a Canadian unit. I identified these tires as mine which had been stolen in December.

Certified true translation of original

(Abel Catry)

The accused declines to cross-examine this witness.

The accused was warned as follows:-

"Do you wish to make any statement or to give evidence upon oath ? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused: I have nothing to say at this time.

(F W Hayes)

I certify that R.P. 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this 2nd day of April 1945.

...../3.

SUMMARY OF EVIDENCE in the case of B.100525 Pte Frederick William HAYES.

G E Thorman

(G E Thorman) Lieut RCA
Officer directed to take Summary of Evidence.

REQUEST FOR DEFENDING OFFICER

I desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

I desire the services of LIEUT P W LEACOCK, if he is available.

F W Hayes

(F W Hayes)

1st Witness

"Je suis Raymond VANDAMME, locataire du café "Au Vieux de Brabant" 78 Rue de la Gare COMINES, BELGIQUE. Le 29 Mars 45 deux soldats canadiens qui j'indentifie maintenant comme M.2150 Gnr MAY, W. et B.100525 Pte HAYES, F; W. m'a demandé si je serais intéressé en cinq pneus d'auto. Ils m'ont assuré que les pneus n'étaient pas volés. Un arrangement a été fait à sur delivrance de ces cinq pneus je prêterais à ces deux soldats le montant de cinq milles francs: Je tiendrais les pneus comme garanté pour ce prêt. Ma femme m'a informé qu'un peu aprés 1630 heures 29 Mars 45 ces deux soldats ont arrivé à ma place en jeep avec cinq pneus. Les pneus ont été délivrer à moi et j'ai donné a chacun des deux soldats le montant de deux milles cinq francs. Les pneus ont été placés dans un camion de l'armée qui est stationné tout le temps dans la cour de mon café. Ce transaction ayant été completé les deux soldats ont rentré dans le bar de mon café. LÀ ils ont été joigné par un sous-officier qui j'indentifie maintenant comme H.59524 Sgt McFADDEN, F.L. Un peu plus tard j'observé McFADDEN quitter MAY and HAYES et sortir du café par la porte de derriére. Un peu après cela, ma femme m'a approché et a dit que quelques unsdes pneus avaient été enlevé de la cour. J'ai sorti dans la cour et j'ai trouvé qu'il manquait trois pneus et que les deux autres pneus avaient été deplacer. J'ai rentré dans ma place pour une lampe de poche et quand j'ai retourné à la cour les deux autres pneus étaient aussi partis. J'ai trouvé McFADDEN dans la cour. J'ai sorti par la grande porte de la cour et j'ai trouvé un jeep stationné là dans lequel il y avait les cinq pneus. J'ai retourné dans le café et ressorti avec HAYES, MAY et ma femme. J'ai demandé d'avoir les pneus retourner a moi parce qu'ils étaient mon garanti pour l'argent que j'avais avancé. Le sous-officier m'a menacé et a dit qu'il allait me rapporter a la police. J'ai dit que j'étais d'accord mais que la police devait être appellé ici. Alors H. 59524 Sgt McFADDEN, F.L. et M.2150 Gnr MAY, W., ont embarqué dans le jeep et se sont partis. Je ne pouvais pas les arrêter. Je me suis placé devant le jeep mais ils ont commencé à filer et j'ai été forcé de sauter ainsi que je ne ferais pas frapper. B.100525 Pte HAYES, F.W.? a rentré avec moi dans le café et il m'a retourné le 2500 francs que je lui avais prêté. M.2150 Gnr MAY, W., n'a pas encore retourné l'argent que je lui ai donné."

(Raymond Vandamme)

Vandamme

2 d WITNESS

" Je suis Marie Louise VANDAMME, la femme de Raymond VANDAMME. J'habite au café "Au Vieux Duc de Brabant", 78 Rue de la Gare, COMINES. L'après-midi du 29 Mars 45 cinq pneus d'auto ont été delivrés à mon mari et ont été deposés dans un camion qui est dans la cour de notre café. Vers 2030 heures j'avais l'occasion de sortir dans la cour et j'ai vu que quelques un des pneus manquaient. J'ai informé mon mari. Un peu après j'ai trouvé mon mari se tenant à côté d'un jeep dans la petite rue derrière le café. Les cinq pneus étaient dans le jeep. Trois soldats étaient dans le jeep. Je peux maintenant les indentifier come avec mon mari. H. 59524 Sgt McFADDEN, F.L., M.2150 Gnr MAY, W., et B.100525 Pte HAYES, F.W. Mon mari a demandé de retourner les pneus. Le sous-officier a menacé mon mari et a dit qu'il irait chercher la police. Alors le sous-officier H.59524 Sgt McFADDEN, F.L., et M.2150 Gnr MAY, W., ont embarqué dans le jeep et ont commencé à filer. Mon mari a essayé de les arrêter mais a été forcé de sauter du devant du jeep. L'autre soldat B.100525 Pte HAYES, F.W., a retourné au café avec mon mari.".

(Marie Louise Vandamme)

M.me R. Vandamme

LIST OF WITNESSES

in the case of B.100525 Pte Frederick William HAYES - RCASC att 8 Cdn Fd Regt (SP) RCA

1st Witness — Raymond VANDAMME
"Au Vieux Duc de Brabant"
78 Rue de la Gare, COMINES, BELGIUM.

2nd Witness — Lieut S A Kerr
8 Cdn Fd Regt (SP) RCA
Canadian Army Overseas

3rd Witness — Abel CATRY
WERVICQ, BELGIUM.

LIST OF EXHIBITS

~~EXHIBIT "A"~~ ~~Wheel and tire~~
~~EXHIBIT "B"~~ ~~Wheel and tire~~
~~EXHIBIT "C"~~ ~~Wheel and tire~~
~~EXHIBIT "D"~~ ~~Wheel and tire~~
~~EXHIBIT "E"~~ ~~Wheel and tire~~

85. Pte Vaye. P. A.

C-11374 Pte. Hayes, G.A.
No.1 Cdn A.S.C. Hldg Unit

Army Form A.3.

Correspondence to be PINNED here.

PROCEEDINGS REVIEWED

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 13th day of September, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reasons which appear to me to be sufficient~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*~~I am unable to appoint~~
*~~(1. Three Officers to form the Court.)~~
*~~(2. A Field Officer as President.)~~
*~~(3. Three Officers having more than one year's service.)~~

~~for the following reasons, namely:~~

President.

Rank.	Name.	Regiment.
Major	E. Carson	No.1 Cdn Gen Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	A.S. Whitemore	No.1 Cdn M.G. Hldg Unit
Lieutenant	M.J. Gray	No.1 Cdn Gen Hldg Unit
Lieutenant	R.S.J. Sealy	No.1 Cdn M.G. Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier

Commanding Cdn Base Units, Cdn Army.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
C-11374 PTE. HAYES, G.A. No.1 Cdn A.S.C. Hldg Unit.	First Charge A.A. sec 15(1)	GUILTY	GUILTY TO UNDERGO DETENTION FOR A PERIOD OF FIVE MONTHS.	Finding & sentence confirmed but ~~sentence~~ two months of sentence remitted. [illegible] Brig
	See charge sheet attached.			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [illegible] Brigadier (Signed) [illegible] Major
Commanding C&n Base Units, C&n Army.
Convening Officer (*c*) *President.*

(*a*) Appointment acting rank or* acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 18th day of September, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 18th day of September 1941.

[illegible] Major
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (*b*) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

Signed this day of 19 .

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 26th day of Sept. 1941.

[illegible] Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of C 11374 Pte Hayes G.A. 1 Cdn A.S.C. Hold Units.

(*a*) (Dated) 30 Sep 41 (Signed) [illegible] Lt.
OFFICER I/C RECORDS
1 R.C.A.S.C. HOLDING UNITS

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(41729) Wt. 40113—893 200 M 1/40 P.St. G.Inc.

CHARGE SHEET

The accused, C-11374 Pte.Hayes, George,Albert of No. 1 R.C.A.S.C. Holding Unit, Canadian Army,(Overseas.) is charged with, when on Active Service,

SEC 15(1) A.A

ABSENTING HIMSELF WITHOUT LEAVE

in that he, at New Martinique Barracks, Bordon, Hants,absented himself without leave from 2230 hrs 30-6-41 until 1225 hrs 2-9-41 when he voluntarily surrendered himself to the guard room at Blenheim Barracks, Farnborough,Hants.

(J.M.Pocock)Lt. Col.
Commanding,
No.1 R.C.A.S.C. Holding Unit,
Canadian Army,(Overseas.)

Blenheim Barracks,
Farnborough?Hants.
10 Sept 41.

To be tried by Field General Court Martial

(F.R. Phelan)Brigadier
Commanding Cdn Base Units.

Bordon,Hants
This 13th day of Sept 41.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT Aldershot ON THE 18th DAY OF Sept. 41.

TRIAL OF:- No. C-11374, Pte. Hayes, G.A., No. 1 RCASC Holding Unit
The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.
The Court satisfy themselves as provided by R.P. 22 & 23.
The accused is brought before the Court.
Prosecutor:- (Name)Lt. W.D. Careless (Unit) No. 1 RCASC H.U.
Defending Officer:- (Name)F/Lt. J.B.K. Wilson (Unit) "
At 1000 hrs the trial commences.
The order convening the Court is read, signed by the President and attached to the proceedings.
The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.
Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1- No, sir.
The President, members and Judge Advocate (if any) are duly sworn.
The officers under instruction are duly sworn.
Q2. Do you object to acting as shorthand writer?
A2.-
The shorthand writer is duly sworn.
The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(b) is duly complied with.
The summary of evidence is read, signed by the President, and attached to the proceedings.
Q3. Do you wish to make any statement in mitigation of punishment?
A3.- Yes, sir.
Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4.- Yes, sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER.

Lieut. W.D. Careless (sworn) produces A.F.B. 296 and N.F.B. 6.

C-11374, Pte. Hayes, G.A., being duly sworn, is examined by the defending officer.

Would you tell the Court your story from the time of enlistment?
A5 - On the 5th September, 1939, I enlisted in the A.S.C. and posted to No. 1 Corps Petrol Pk. and completed my training and came overseas with the Corps Pet. Pk. and landed February 10, 1940. I was taken ill some time after I got over here and taken to hospital. After being released from hospital I was reboarded on 1st April, 1940. I was C-2. Then on the 26th April, 1940, I was transferred to Canadian Base Depot. From there I went to the General Holding Unit and when the RCASC holding unit was formed I was automatically transferred to them. Since then I have been in almost constant hospitalization. My work consisted mostly of room orderly and at times I worked in company orderly rooms. Because I was C-2 I was told that I was a crock and no use and my one ambition was to get back to the field and soldier and get a re-board and there was nothing they could do for me. During a moment of weakness I went A.W.L. from the RCASC holding unit. When I left I was afraid to go back. This is the first time I have been tried and it is the finest offence I have committed in the army. I realize now I made a very bad mistake. While I was away I was thinking of my people all the time and the distinguished service of my father who won the D.C.M. in the last war and so I came back and gave myself up.

Cross-examination by the prosecutor.

Q6 - When you were in the A.S.C. at Borden you made the statement that you were working in the orderly room and were nearly always room orderly?
A6 - Yes, sir.
Q7 - Did you or did you not request to be put into the R.A.P. as clerk there?
A7 - Yes, sir, I did.

Q8 - How long were you working there?
A8 - I don't know, sir; about a week.
Q9 - Did you like the work there?
A9 - No, sir, I didn't.
Q10 - You asked to go on that job and then you went a.w.l. from the job? You didn't have permission to leave the camp, did you?
A10 - No, sir.
Q11 - You were working in the R.A.F. when you went a.w.l?
A11 - No, sir.

Second witness for the defence, Major K.K. Thompson, No. 1 M.T.V.R.D., No. 1 R.C.A.S.C. Holding Unit, being duly sworn, is examined by the defending officer.

Q12 - Would you tell the Court what you know of Hayes' record and service and character?
A12 - Hayes enlisted in the unit of which I was adjutant, The Corps Petrol Park, on the 5th September, 1939. While he was with me he was employed in my orderly room. I have nothing but the very best to say for his character. His associations and family are excellent. All the time he was with me in the Corps Petrol Park and when I was company commander in the A.S.C. Holding Unit his character was exemplary. Had it not been that he was a category man I would have had him in my own unit. I think that is all I have to say. It is a pleasure for me to come as character witness. This soldier was an excellent one.

The prosecutor declines to cross-examine.

The Court is closed for the consideration of the sentence.

Prosecutor

Defender

SUMMARY OF EVIDENCE in the case of C-11374 Pte. HAYES, G.A., of No. 1. R.C.A.S.C. Holding Unit, Canadian Army (Overseas), Blenheim Barracks, Farnborough, Hants.

The Commanding Officer, Lt-Colonel J.M.Pocock of No. 1. R.C.A.S.C. Holding Unit, Blenheim Barracks, Farnborough, Hants, directs that the evidence shall be taken down on oath:-

---

1st WITNESS

C-30190 Cpl. Corr, L.F.,having been duly sworn states:-

I am C-30190 Cpl. Corr L.F., of No. 4 Training Coy., No.1.R.C.A.S.C. Holding Unit, Blenheim Barracks, Farnborough, Hants. I was Company Orderly Corporal on the 30th June 1941. I called the roll at 2230 hours. C-11374 Pte. Hayes, G.A., did not answer his name. I marked him absent. He did not answer his name on any subsequent tattoo.

The accused declined to cross-examine witness.

L. F. Corr.
(C-30190 Cpl. Corr, L.F.)

2nd. WITNESS

U-1737 Private Appleton D.M. having been duly sworn states.

I am U-1737 Pte. Appleton D.M. Orderly Room clerk of No. 4 Coy., No. 1 R.C.A.S.C. Holding Unit, Blenheim Barracks, Farnborough,Hants. At Approximately 1325 hrs 2 Sept 41 C-11374 Pte. Hayes, G.A. reported to me and was told to report to the Regimental police which he did.

The accused declined to cross-examine witness.

D. M. Appleton
(U-1737 Pte. Appleton,D.M.)

C-11374 Pte. Hayes, G.A. of No.1 R.C.A.S.C. Holding Unit, Blenheim Barracks, Farnborough, Hants. is duly cautioned under Rules of Procedure 4 (e).

Do you wish to make any statement or to give evidence upon oath ? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement.

I hereby certify that the foregoing Summary of Evidence was taken down by me on the ninth of Sept. 1941 in the presence of the accused. Rules of Procedure 4 (c) (d) (e) and (f(have been complied with.

(R.E. Viscount)2/Lieut.
Officer taking Summary.

I C-11374 Pte. Hayes, G.A. desire the assignment of an officer to defend me at my Court Martial.

G.A Hayes
(C-11374 Pte. Hayes, G.A.)

List of Witnesses

C-30190 Cpl. Corr, L.F.
U-1737 Pte. Appleton ,D.M.

Date. 18/9/41.....

This is to certify that Regt. No. C-11374 Rank Pte. Name HAYES G.A.

is ..... to undergo Court-Martial.

Signed .....

Statement as to Character and Particulars of Service of Accused.

C 11374 Pte. Hayes G.A. of the No. I RCASC Holding Unit C.A.O.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

	*Within last 12 months.	*Since Enlistment.
For	NIL times	NIL times.
For	times	times.
For	times	times.
For	times	times.

~~NEARLY OF EXCESS OF QUARTERS OF DISORDERLY CONDUCT.~~ A.D.M.

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted.

or.

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18th day of Sept, 1941

C.K. MacFarlane Lt
OFFICER I/C RECORDS
I.R.C.A.S.C. HOLDING UNIT.

W.W. Rowlands Lieut
RCASC

Army Form B.296.

Statement as to Character and Particulars of Service of Accused.

C 11374 Pte. Hayes G.A. of the No. 1 RCASC Holding Unit C.A.O.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of which particulars are given in the schedule of convictions and dispensations with trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For	NIL	times	NIL	times
For		times		times
For		times		times
For		times		times

OR.

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted.

OR.

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time,

or,

~~The accused~~ at the present time is under sentence for ~~xxxx~~ A.R.M.

beginning on the ~~xxxxxxxxxxxx~~ day of ~~xxxx~~ A.R.M.

4. The accused has been in confinement, awaiting trial on the present charges

for 0 *nihil* days in Civil Custody,

and 16 *nihil* days in Military Custody.

Total 16 *nihil* days.

Of which 6 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper A.R.M. is 22

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper A.R.M. is 5-9-39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of years' service.

9. The accused is entitled to reckon years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion.
In the rank of	years,	
In the rank of	years,	
In the rank of	years,	

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or name of Officer dispensing with trial, or dispensing the award	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority	Punishment remitted

A.R.M.

(*Continued overleaf.*)

No. C11374 Name Hayes, G.A. Sqn./Battery/or Company Corps Petrol Park Date of enlistment 5/9/39 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Nil					

Certified true Copy
A.R. MacFarlane Lt
OFFICER I/C RECORDS
I.R.C.A.S.C. HOLDING UNIT.

(P.T.O.)

No. C11374 Name Hayes, C.A. Sqn., Battery or Company Corps Petrol Park Date of enlistment 5/9/39 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Nil					

Certified true copy
A.K. MacFarlane Lt
OFFICER I/C RECORDS
1 R.C.A.S.C. HOLDING UNIT.

(P.T.O.)

TTT-191

Pte Hayes GA

RECEIVED 14 AUG 1944 JAG BRANCH C.M.H.Q.

Correspondence to be PINNED here.

RECORDED AT CMHQ IN AB

I-73

TT-191 - X

C. de Bellevance

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Seventh day of June, 19 44.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~I am unable to appoint —~~

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

~~for the following reasons, namely —~~

*Omit if not applicable.

PROCEEDINGS REVIEWED 16 Aug 44

JAG

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be authorised by him.

President.

Rank.	Name.	Regiment.
Major	C Bellevance	R 22e R

Members.

Rank.	Name.	Regiment.
[illegible]	[illegible]	[illegible]
Lieut	E H Hollaney	Nest MGR
Captain	J W Normandeau MC	Carit & York R

*Signed (J P E Bernatchez), Brigadier, *Commanding* 3 Cdn Inf Bde

Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F60182 Pte George Austin HAYES, Carlt & York R	First Charge Sec 12(1)(a) AA	Not Guilty	Guilty. To be imprisoned with hard labour for 2 years. Signed in the field This 9th day of June 1944 Charles Ballance Major President	Finding and sentence returned for revision. See new finding and sentence on Proceedings of Revision attached. E Linnett-Hay Lieut 16 June 44

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) — No sir.

(Signed) ____ (Signed) Charles Ballance Major OF
(J P E Bernatchez), Brigadier Royal 22 Regiment
Commanding 3 Cdn Inf Bde
Convening Officer (c) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 9th day of June 44, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

*Omit if not applicable.

*(3. ~~The Interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

Signed this 9th day of June 1944.

Charles Ballance Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this ____ day of ____ 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 24th day of June 1944

E Linnett-Hay Lieut
Confirming Officer.

Promulgated and extracts taken in the case of F60182 Pte Hayes, G.A.

(a) (Dated) 27 June 1944 (Signed) Charles Ballance Lt.-Col. Comd Carlt & York R.

Promulgated and extracts taken in the case of

(Dated) ____ (Signed) ____

Promulgated and extracts taken in the case of

(Dated) ____ (Signed) ____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

53679 W1-46178/650 20,000 2-43 A & E.W.Ltd. Gp.698

REVISION

At In the Field 0420 hrs on the 19 day of June 1944 at 0930 hrs o'clock, the Court re-assemble by order of Brigadier J P E Bernatchez, DSO, OBE, Commanding 3 Can Inf Bde for the purpose of re-considering their finding and sentence.

Present, the same members as on the Convening Order.

The letter ~~(order or memorandum)~~ directing the re-assembly of the Court for the revision, and giving the reasons of the confirming authority for requiring a revision of the finding(finding and sentence) (~~sentence~~) is read, marked "C", signed by the President, and attached to the proceedings.

The Court having attentively considered the observation of the confirming authority, and the whole of the proceedings

(a) do now revoke their finding and sentence, and find the accused not guilty of Desertion but guilty of Absence without leave and sentence the accused to be imprisoned with hard labour for 2 years.

(b) ~~do now revoke their sentence, and now sentence the accused.~~

or

(c) ~~do not respectfully adhere to their sentence(or finding and sentence).~~

Signed at In the field, this 19 day of June 1944.

~~Judge Advocate~~

C. Charles Bellhouse Maj.
President

Finding and sentence confirmed
26 June 44
R Judge Advocate Brig

C by Bellevance Hqrs.

3 CIB/A/S-8
18 Jun 44

Major C Bellevance, R 22e R
Capt C B C Cochran, West NSR
Lieut E H Holleway, West NSR
Capt F W Normandeau MC, Carlt & York R

F G C M - 9 Jun 44
F60182 Fte Hays C A
Carlt & York R

1. I direct that the President and Members of a FGCM as set out above, which assembled on 9 Jun 44 for the trial of F60182 Fte Hays C A, Carlt & York R, be re-assembled for a revision of the finding for the following reason:

"I am of the opinion that it was not proven beyond reasonable doubt that the accused was warned of the impending attack on the HITLER LINE as set out in the Charge Sheet."

(J P E Bernatchez), Brigadier,
Commanding 3 Can Inf Bde.
Confirming Officer.

B 2

Charge Sheet

C Bellamy Wop

The accused D60182 Pte George Austen Hayes, a soldier of the Carleton & York Regt - Canadian Army Overseas - C.M.F. when on Active Service is charged with:

First Charge Sec 21 (a) AA — Term on Active Service deserting his Majesty's Service

in that he,
in the Field, at about 0530 hrs. 23 May 44. when under orders to attack the Hitler Line, absented himself without leave from his company until apprehended by C.M. Police at Junction of Routes 6 and 634 at 1030 hrs. on 25 May 44, with intent to avoid active proceeding into the attack.
Total Absence: 2 days 5 hrs.

In the Field
Date 3 June 44

D Wardy
Lt. Col.
Comd Carleton & York Regt

To be tried by Field General Court Martial.

In the Field
Date 8 June 44

E Gunnstone
Lt. Col.
Comd 3 Can. Inf Bde

MEDICAL OFFICERS CERTIFICATE

KR(C&N) PARA 357

I certify that I have this morning examined

No. F 60182 Pte Hayes. G.A.

of the Carleton & York Regiment and in my opinion he is

fit / ~~unfit~~ to undergo Drill by Court Martial

Station Brockville

Date 9 Jun 44

.....Capt.,
Medical Officer
R.M.O. Carleton & York Regiment

Bellonne Major

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at In the field on the 9th day of June 1944 by order of Brigadier J. P. E. Bernatchy DSO OBE

Commanding 3 Cdn Inf Bde

dated the 7 day of June 1944

President.

Major Charles Bellonnon R 22 R.

Members.

Captain C.B.C. Cochran West NSR

Lieut E.H. Holloway West NSR

Trial of* F. 60182 Pte Lenga Austin Hayes Judge Advocate CB

Capt 4 Fmk Regt.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that is not available, CB to serve owing to~~ CB

~~, waiting member takes his place as a member of the Court.~~ CB

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt L.A. Humphries Capt 4 Fmk Regt

Counsel‡ or defending officer† Major C.R. MacAlpine Staffs Fmk

At 1330 o'clock the Trial commences.

The order convening the Court is read, and is marked X signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

2057 Wt 9848/2[illegible] 10,000 pds 12/43 E. & S. Ltd [illegible] Forms A9,A

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No Sir

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution.

being duly sworn, is examined by the prosecutor.

✓ C Battalion troops

Record of Evid of 6 60189 Pte Hayes. W. A.

Civil Witness for Prosecution

6 22047 Sgt Black, H J having been duly sworn was examined by the Prosecutor.

6 22047 Sgt Black H J recalls the accused. The 23rd May 44 I attended an "O" Group at the Coy H.Q. acting Platoon Commander 18 Platoon 2nd Battalion Royal Regiment. We met found to make a recce to the place we were going next morning I returned from the recce and informed the Platoon collectively that we were making an attack on the Caen Line the following morning 24th May 44. We had breakfast at 0400 hrs the Platoon lined in their usual tanks, the assault off to the start line Pte Hayes was then when we moved off and moved off until we arrived at the start line I checked the Platoon and found Pte Hayes absent I did not see Pte Hayes the 2nd June 44.

Cross examined by Harper

Sgt Black H J you say you checked your Platoon collectively. Was Pte Hayes present then. Yes sir. Was one form or five men I left him on. Do you know of your own knowledge that Pte Hayes was warned. Not by me sir.

(2) C Bellamy Resp

Re examined

Just about that night you warned the Natives, will you tell the Court by how you warned them

Our slip tender was in a semi-circle and ~~he~~ passed the word that all the natives on ~~the~~ shore ~~were~~ smoking on ~~their~~ the following morning the message went around from man to man and back to me ~~Pam~~ also brought to him it being passed from man to man.

Is he in that circle on the Map?

He was right at the end.

How far from you was he?

Three Yds.

Do you remember who ~~first~~ went to him?

Yes sir But ~~many~~ all of them were killed

No defence objects to the last two questions

~~[illegible]~~ not

Was the account of it that all went running?

Yes sir. I moved off with us.

Did the warning order get around the empty and the night before?

Yes sir. I heard it and the boys around but I could not swear if the account was there at the time.

Certified that R.P. 83(1) has been complied with

(3)

Second witness
for
Prosecution

2. Lt. Col. Proctor certified of identification under Army Act 63 (1) (2) Marked Exhibit "A" and attached to the proceedings. The certificate relating to the accused F. C. of 2 DC Hoyle. 4 L.

Plea by the Defence

The Prosecution has not proved against the accused that the accused has any personal knowledge of the shooting affray or the Police and without the personal knowledge the accused could not be guilty of desertion & therefore submit that no Prima Facie case has been made against the accused.

Ruling by Presidents

Sir, the plea made by the defence is one which the tribunal is bound to consider. It has definitely been proved that the man was A.W.L. That in itself constitutes a Prima Facie case as A.W.L. is an alternative charge to desertion.

Closing Address by Prosecutor

Sir it has been definitely proved that the man is A.W.L. Now although this man on account of a technicality will probably not be found guilty of desertion yet I uphold that he did desert his comrades at a critical time, making void such a section of men who depended on him. There is no doubt but that the man did receive the warning & he must certainly received credit of it

C. Bellevance resp

V

so he was up promptly at reveille. If he meant so he must have advised the ~~order~~. He certainly must have turned Cowardly. The accused ~~was not guilty of~~ did & testify correct and due as other witness of the Court cannot find it clear & find the man guilty of desertion I submit that it was definitely one of the worst cases of A.W.L. and the man should be punished severely & present and ~~warden~~ ~~warden~~ serving again.

Proper

The Prosecution says that was for him a technicality A man's reputation and his whole future good name is involved in this case and I submit that unless the Court is convinced upon all records doubt that the accused was duly warned and definitely had full knowledge of the attack that the case be dismissed as the very most treated as an ordinary case of A.W.L.

C. Bellamy Mop

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No Sir

Question. Do you intend to call any other witness in your defence?

Answer. No Sir

Question. Is he a witness as to character only? *Answer.*

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (i[a]) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. No Sir

The accused in his defence says†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused F-60152 Pte George Austin Hayes Can't Inf Regt is guilty of the charge.

Signed in the field this 9th day of June 1944

C. Ho. Bellamy Maj.

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Capt L A Singleton Can't Inf Regt is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes I produce M.F.M. 6 + M.F.B. 3/5

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked L signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes Sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes Sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes Sir

Cross-examined by the accused.

No Question

Instruction.—If by reason of the nature of the advice of the accused to a departmental expert, or otherwise, the framing of the Court considers him liable to any exceptional punishment, or any addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.

Question to the accused.

Do you wish to address the Court? *Answer.* No Sir.

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused F.60182 Pte George Sentence.
Preston Harper Cmlt & pnk Regt.
To be imprisoned with hard labour
for 2 years.

Imprisonment with hard Labour 2 years.

Signed in the field this 9th day of June 1944

C Charles Bellamy Maj
President

Certificate of Apprehension under Sect 163(1)(33) A.A.

I certify that No. F 60182 Rk. Pte. Name Hayes G.A.

Unit 'A' Coy, Carlton & Yorks Regt. was arrested at Junct. Routes 6/624

on the 25 May 1944 at 1030 hrs.

He was dressed in uniform/civilian clothes.

Date 25 May 44.

.....

.....

Officer into whose custody the a/n was taken on arrest.

C to Pellarine Wop

M.F.B. 355

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment(or unit)
F60182	Pte	Hayes. W.A.	Carleton & York

1. The following is a fair and true summary of the entries in Service ~~and General Regimental and Squadron, Battery Conduct sheets~~ Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

Within last 12 months	Since enlistment or appointment
For ..... times	For SIC 15(1)AA ..... 2 times
For ..... times	For ..... times
For ..... times	For ..... times
For ..... times	For ..... times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE. - If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted.~~

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under~~ Air Force Act A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for ..... days in civil custody, and ..26.. days in Military Air Force custody, making a total of ..26.. days in custody, of which ..... days were spent in hospital.

5. The present age of the accused according to his record of service is 21 yrs attestation per j.

6. The date of his ~~commission~~ attestation specified in his record of service is 4 Jun 40 attestation per

7. The service which the accused is allowed to reckon towards discharge is 4 yrs

8. The accused is entitled to reckon 4 yrs. service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). Military State any air force decoration or reward. CVSM & clasp

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the permanent rank of .....~~ Air Force

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of

.....

.....d ted ..... and ..... re'ai nt (or corpl)
the r nk of ..... dated .....

12. The accused was served as a non-commissioned officer continuously without reduction, to the present date:-

In the rank of ..... years.

In the rank of .....years .

In the rank of .....years.

Note:- If any entry in one of the above paragraphs cannot be verified from the regimental books, the paragraph should be struck out.

SCHEDULE.

Date of conviction	Offence of which convicted	Punishment awarded	Confirmation or remission of the punishment awarded by the Court

Th re ..... fore ..... ng sc edule of conv ct ons a
d s ex ct one w th the ori nal ..... true extract from the regimental books of the accused.

Signed t is 2nd day of June 1944. E Smith Capt.

The above statement (with the schedule of convictions and of cases in which the accused has been dismissed with) is read, marked ..... and signed by the president, and annexed to the proceedings.

.....

M.F.M. 6
(A.F.B. 122)
175M—7-41 (1215-20)
H.Q. 1772-39-1

No. 60182 Name HAYES, G.P. | Sqn., Battery, or Company | Corps | Date of enlistment 5.6.40 | G.C. Badges | Service | Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or order for summary trial	By whom awarded	Remarks
HARTSHORN	4.9.41	PTE		ABSL WOF 5.9.41 TO WOF 6.9.41 SASH LWR	CPL EYRE	6 DAYS FAT	4.9.41	Maj Mr Donald	6 days pay F.F.R.I. (A.F.B. 1249 (11))
	27.12.41			ABSL WOF 27.12.41 TO 01.59/ 5 JAN 42 SASH (S) LWR	SGT MACKENZIE	7 DAYS C.B.	5.1.42	Maj Sir Parker	10 days pay F.F.R.I. (A.F.B. 1249 (11))
EXETER	1.8.43			WAS ABSENT WITHOUT LEAVE FROM QUARTERS 1.8.43 TO 1.8.43 (1 DAY)	SGT CHRISTIE	7 DAYS C.B.	2.8.43	Capt Small	7 days pay F.F.R.I. (A.F.B. 1249 (11))

Certified true copy of M.F.M. 6
1/60182 Pte Hayes G.P.
D. E. Smith Capt
Major Officer i/c Records

(P.T.O.)

Summary of Evidence in the Declaratory Case of D60182 Pte Hayes - G.A. - a soldier of the Carleton & York Regt - Canadian Army Overseas - C.M.F.

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness for Prosecution

G32047 Sgt. Ullock - H.Q. - Carleton & York Regt - C.A.O. having been duly sworn states:

I am G32047 Sgt Ullock - H.Q. - 'A' Coy Carleton & York Regt - C.A.O. On the morning of 22 May 44 at approx. 2015 hrs after attending a Coy Group I returned to #7 platoon which I was then commanding and warned them collectively that our company was participating in an attack on the following morning. On the morning of 23 May 44 at 0445 hrs. my platoon lashed in their small packs and formed up to proceed to our start line. After arriving at the start line I checked my platoon and found Pte Hayes was not present. There were no shells falling in the area at the time so I knew Pte. Hayes had not become a casualty. The next time I saw Pte. Hayes was at 1000 hrs 3 June 44.

Q. Was Pte Hayes present at 2015 hrs 22 May 44 when you issued the warning order?

A. Yes Pte Hayes was present at that time.

Q 2 Was Pte Hay is present at 0445 hrs
23 May 44 when you left the Coy
area for the 1st Unit?

A 2 Yes.

H J Ullock

Accused declines to cross examine
this witness.

Second Witness
for Prosecution

Capt Smith, D E. Carleton & York Regt
C A O having been duly sworn states:
I am Capt Smith, D E. Adj. Carleton
& York Regt. C A O. I produce
documentary evidence, Certificate of
Arrest under A A. Sec 165 (1) (j)
marked 'A' and attached to the
Summary.

D. E. Smith Capt

The accused declines to cross
examine this witness.

The accused was cautioned as follows:
Do you wish to make any statement
or give evidence on oath?
You are not obliged to say anything or
to give evidence unless you wish to do
so but whatever you say or any evidence
you give will be taken down in
writing and may be given in evidence

The accused declines to make a statement
and reserves his defence.

Bellamy

Certified that Rule of Procedure 4 (c) (1) (a) and (f) have been complied with.

Taken down by me in the presence of the accused this 3 day of June 44 in the field.

H J Hanning Lt.

List of Witnesses in the case of D60182
Pte Hays - G A
Per Prosecution G22047 Sgt Allock H J
Capt Smith, D. E.

Nil

Per Defence:

List of Exhibits in case of D60182 Pte Hays G A
Exhibit A Certificate of Arrest.
A.A. 163 (a) J

Certified that I have received free of charge a copy of the Summary of Evidence and all the documents relating to my trial by Court Martial.
Certified that I have received free of charge a true copy of the charge sheet upon which I am being tried by this Court Martial.

I desire the services of an officer to represent me at my trial.

H A Hays

Correspondence to be PINNED here.

CERTIFIED TRUE COPY

(D.M. Owen), Lieut.

C. Bellevance Major

RECORDED AT CMHQ IN AB 160

TTT-191

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Seventh day of June, 19 44.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to obtain the attendance at a Court Martial of officers exercising superior command]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

"JPEB"

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [I am unable to appoint—

*(1) Three Officers to form the Court;

*(2) A Field Officer as President]

for the following reasons, namely:— "JPEB"

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	C. Bellevance	R. 22e R.

Members.

Rank.	Name.	Regiment.
Captain	C.B.C. Cochran	West NSR
Lieut.	E.H. Hollaway	West NSR
Captain	F.W. Normandeau MC	Carlt & York R.

Waiting

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed "J.P.E. Bernatchez"
(J.P.E. Bernatchez), Brigadier
Commanding 3 Cdn Inf Bde.
Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
F.60182 Pte George Austin HAYES, Carlt & York R.	FIRST CHARGE AA Sec 12 (1)(a)	Not Guilty	Guilty To be imprisoned with hard labour for 2 years	Finding and sentence returned for revision See new finding and sentence on Proceedings of Revision attached.
			Signed in the Field this 9th day of June 1944 "Charles Bellevance" Major President.	"J.P.E. Bernatchez" Brigadier 26 Jun 44.

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :— No Sir.

(Signed) "J.P.E. Bernatchez" (J.P.E. Bernatchez) Brigadier
Commanding 3 Cdn Inf Bde
Convening Officer (*e*)

(Signed) "Charles Bellevance" Major R. 22e R.
President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 9th day of June 44, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The Interpreter~~ "CB"
4. ~~The officers under instruction~~

were duly sworn.

*Omit if not applicable.

Signed this 9th day of June 19 44.

"Charles Bellevance" Major
President of the Court Martial.

C. Certificate in case of death sentence.

*See footnote (*b*) on page 762 M.M.L. 1929.

~~I certify that the terms of A.C.I. 370 of 1918 have been complied with.~~ "CB"

~~Signed this day of 19~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~I direct that the soldier named in the margin be committed to prison or detention barrack until further orders.~~ "CB"

Signed this 26th day of June 19 44.

"J.P.E. Bernatchez" Brig.
Confirming Officer.

Promulgated and extracts taken in the case of F.60182 Pte Hayes, G.A.

(*a*) (Dated) 27 June 1944 (Signed) "E.D. Danby" Lt.-Col. Comd. Carlt & York R.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

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REVISION

At In the Field on the 19 day of June 1944 at 0930 hrs o'clock the Court re-assemble by order of Brigadier J.P.E. Bernatchez, DSO, OBE, Commanding 3 Cdn Inf Bde for the purpose of re-considering their finding and sentence.

Present, the same members as on the Convening Order.

The letter directing the re-assembly of the Court for the revision, and giving the reasons of the confirming authority for requiring a revision of the finding (finding and sentence) in read, marked "C", signed by the president, and attached to the proceedings.

The Court having attentively considered the observation of the confirming authority, and the whole of the proceedings:

(a) do now revoke their finding and sentence, and find the accused not Guilty of Desertion but guilty of Absence Without leave and sentence the accused to be imprisoned with hard labour for 2 years.

Signed at: In the field this 19 day of June 1944.

"Charles Bellevance" Major
President.

Finding and sentence confirmed.

"J.P.E. Bernatchez"
Brigadier.

26 Jun 44.

"Charles Bellevance" Major.

3 CIB/AG/5-6
16 Jun 44.

Major C. Bellevance, R 22e R,
Capt. C.B.C. Cochran, West NSR
Lieut. E.H. Holloway, West NSR
Capt F.W. Normandeau MC, Carlt & York R.

F.G.C.M. - 9 Jun 44
F.60182 Pte Hayes, G.A.
Carlt & York R.

I direct that the President and Members of a FGCM as set out above, which assembled on 9 Jun 44 for the trial of F.60182 Pte Hayes, G.A., Carlt & York R, be re-assembled for a revision of the finding for the following reason:

"I am of the opinion that it was not proven beyond reasonable doubt that the accused was warned of the impending attack on the HITLER LINE as set out in the Charge Sheet."

Sgd: "J.P.V. Bernatchez"
(J.P.V. Bernatchez), Brig.
Commanding 3 Cdn Inf Bde
Confirming Officer.

B.2

"C[illegible] Bellevance"
Major

CHARGE SHEET

The accused F.60182 Pte George Austin HAYES, a soldier of the Carleton & York Regt, Canadian Army Overseas - C.M.F. when on Active Service is charged with:

FIRST CHARGE
Sec 12 (1)(a) AA

WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE

in that he

in the Field, at about 0630 hrs 23 May 44, when under orders to attack the Hitler Line, absented himself without leave from his company until apprehended by C.M. Police at Junction of Routes 6 and 624 at 1030 hrs on 25 May 44, with intent to avoid so proceeding into the attack. Total Absence: 2 days 5 hrs.

In the Field
Date: 3 June 44

"E.D. Danby" Lt.-Colonel
Comd. Carleton & York Regt.

To be tried by Field General Court Martial.

In the Field
8 Jun 44.

"[illegible].P.E. Bernatchez" Brig.
Comd. 3 Cdn Inf Bde.

"C Bellevance Major

MEDICAL OFFICERS CERTIFICATE
KR (Can) Para 357

I certify that I have this morning examined No. F.60182 Pte HAYES, G.A. of the Carleton & York Regiment and in my opinion he is FIT to undergo trial by Court-Martial.

In the Field
9 Jun 44

"H.R. Giberson" Capt.
Medical Officer RMO
Carleton & York Regiment.

"C. Bellevance" Major.

A Army Form A 9

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a F.G. Court-Martial held at In the field on the 9th day of June 1944 by order of

Brigadier J.P.E. Bernatchez, DSO, OBE.

Commanding 3 Cdn Inf Bde.

dated the 7th day of June 1944

President.

Major Charles Bellevance R. 22e R

Members.

Capt C.B.C. Cochran West N.S.R.

Lieut. E.H. Hollaway West N.S.R.

, "CB"

Trial of* F.60182 Pte George Austin HAYES
Carleton & York Regiment.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

"CB" "C 6"

"CB"

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. L.A. Duplisea, Carlt & York Regt

Counsel‡ or defending officer* Major C.R. MacAlpine St John Fusiliers.

At 1330 o'clock the Trial commences.

The order convening the Court is read, and is marked X, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

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"C Bellevance" Major

B

The President, members and judge-advocate are duly sworn.

[redacted] "CB"

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read ? *Question to the accused.*

Not Guilty *Answer.*

[redacted] *Question.* "C B"

[redacted] "CB"

Answer.

[redacted] *Question.* "C B"

[redacted] "CB"

Answer.

[redacted] *Question.* "C B"

[redacted] "CB"

Answer.

[redacted] "C B"

[redacted] "CB"

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

Proceedings on Plea of Not Guilty.

Instruction (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No Sir

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution.

being duly sworn, is examined by the prosecutor.

"C. Bellevance" Major.

RECORD OF TRIAL OF F.60182 Pte HAYES, G.A.

FIRST WITNESS for Prosecution

C.22047 Sgt. Allock, H.J. having been duly sworn is examined by the Prosecutor.

I C.22047 Sgt. Allock, H.J. recognize the accused. The 22nd May 44 I attended an "O" Group, at the time I was acting platoon Commander, 7 Platoon "A" Coy, Carleton and York Regiment, we went forward to make a recce to the place we were going next morning. I returned from the recce and informed the Platoon collectively that we were making an attack on the Hitler line the following morning 23rd May 1944. We had reveille at 0430 hrs, the platoon turned in their small packs, then moved off to the start line. Pte Hayes was there when we moved off and moved off with us, when we arrived at the start line I checked the Platoon and found Pte Hayes absent. I next saw Pte. Hayes the 3rd June 44.

"C. Bellevance" Major (2)

Cross-examine by Defence.

Sgt Allock, H.J. you say you checked your Platoon collectively. Was Pte Hayes present then? Yes Sir, there are four or five men I keep tabs on. Do you know of your own knowledge that Pte Hayes was warned? Not by me Sir.

"C. Bellevance" Major (1)

Re-examined

Sgt Allock that night you warned the platoon, will you tell exactly how you warned them?

Our slit trenches were in a semi-circle and I passed the word that reveille was 0430 hrs and we were making an attack the following morning, the message went around from man to man and back to me, I was close enough to hear it being passed from man to man.

Where in that circle was Pte Hayes?

He was right at the end.

How far from you was he?

Approx. 20 yards.

Do you remember who stood next to him?

Yes Sir, but all of them were killed.

The defence objects to the last two questions.

Was the accused up at reveille next morning?

Yes Sir, he moved off with us.

Did the warning order get around the complete circle the night before?

Yes Sir, I heard it go all the way around but I could not swear if the accused was there at the time.

Certified that R.P. 83(b) have been complied with.

SECOND WITNESS for the Prosecution

I hereby produce certificate of apprehension under Army Act 163 (1)(j) Mark Exhibit "A" and attached to the proceedings. The certificate relating to the accused F.60182 Pte HAYES, H.A.

Plea by the Defence

The Prosecution has not proved beyond a reasonable doubt that the accused had any fare knowledge of the pending attack on the Hitler line and without this fare knowledge the accused could not be guilty of desertion. I therefore submit that no Prima Facie case has been made against the accused.

By Prosecution:

Sir, the plea made by the defence is somewhat reduction, it has definately been proven that the man was A.W.L. that in itself establishes a Prima Facie case, as A. .L. in an alternate charge to desertion.

Closing Address Prosecutor

Sir, it has been definately been proved that the man is A.W.L. Now although this man on account of a technicality will probably not be found guilty of desertion, yet I uphold that he did desert his comrades at a critical time, making much weaker a section of men who depended on him. There is no doubt but that the man did receive the warning as he most certainly received one half of it, as he was up promptly at revaille. If he received one half, he must have received the other. We certainly must have turned cowardly. The accused didn't testify himself and had no other witness. If the Court cannot find it clear to find the man guilty of desertion, I submit that it was definately one of the worst cases of A.W.L. and the man should be punished severely to prevent such incidents occuring again.

Defence.

The Prosecutor says that there has been a technicality a man's reputation and his whole future good name is involved in this case and I submit that unless the Court is convinced upon all reasonable doubt that the accused was duly warned and definately had fare knowledge of the attack that the case be dismissed or at the very most treated as an ordinary case of A.W.L.

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness ?

Answer. No Sir

Question. Do you intend to call any other witness in your defence ?

Answer. No Sir

Question. Is he a witness as to character only ? *Answer.*

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence ?

Answer. The accused in his defence says† No Sir

[hands in a written address which is read, marked

signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused F.60182 pte George Austin HAYES, Carlt & York Regt is Guilty of the Charge.

Signed in the
Field this 9th day of June 1944

"Chs Bellevanse" Major.

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Capt. L.A. Duplisea, Carlt & York R[illegible] duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes, I produce M.F.M. 6 and M.F.B. 355.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked L. , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes Sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes Sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. Yes Sir

Cross-examined by the accused.

No Question.

[illegible] If in issue as the nature of the service of the accused in a supplemental note or otherwise, the finding of the Court contains any recommendation to mitigation of punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must record and the nature and amount of the additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No Sir

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused F.60182 Pte George Austin *Sentence* HAYES, Carlt & York Regt.

To be imprisoned with hard labour for 2 years

Imprisonment with hard labour 2 years.

Signed in the Field this
9th day of June, 1944.

"Charles Bellevanse" Major
President.

"C. Bellevance" Major

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
J.60182	Pte	HAYES, W.A.	Carleton & York Regt.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 477, K.R., 1940.

* The maximum award which could be awarded in respect of the same offence by the method most favourable to the accused should be entered. Where no award is authorized, or is not recognized by the rules governing the award, the fact should be stated. Mitigating circumstances should not be entered.

Instructions.—If the character is drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	Sec 15(1) A.A. times. 2 times
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry and distinguished conduct

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted *or*

Previous convictions† of the accused by a court martial or a civil court, summary punishments under section 47 of the Army Act, with particulars with trial under section 47 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. *or* The accused at the present time is undergoing sentence of [illegible]

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 15 days in military custody, making a total of 15 days, of which days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 19 yrs

6. The date of his commission / attestation specified in his record of service / attestation paper is 4 Jun 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 years

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon 4 years service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*) G.V.S.M. & Clasp.

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the rank of [illegible]

12. (*If the case of an officer.*) The accused holds in the army the rank of [illegible], and is in regimental (*or corps*) employment the rank of [illegible]

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Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. [redacted] Rank [redacted] Name [redacted] of [redacted] Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 9th day of June, 1944

"D. F. Smith" Capt.

18 Has accused had no previous or non-commissioned officer conviction without reduction, to the present date

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years

In the rank of ..... years.

(Instruction—If any entry in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except in the case of a trial by field general court-martial the information may be obtained from such sources as are available and if necessary enquiries instituted accordingly.)

"A"

MFM 6
(AFB 122)
60/PAS/136 (3428)

No F60182 Name HAYES, GA | Sqn, Battery, or Company A | Corps | Date of enlistment 5-6-40 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character "Exemplary Bellevance" Major

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bothwood	4-9-41	Pte		AWL 0800 hrs 5-9-41 to 0600 hrs Sec 15 (1) A.A.	4-9-41 Cpl Fyfe	6 days pay	4-9-41	Major MacDonald	2 days pay FRI 149 (1)a
"	29-12-41	Pte		AWL 0800 hrs 29-12-41 to 0159 hrs 8 Jan 42 AA Sec 15 (1)	Sgt MacKenzie	7 days C.B.	8-1-42	Major DesRoches	10 days pay FRI 149 (1)a
Field	1 Oct 43			WOAS AWL from 2130 hrs 1 Oct 43 to 1030 hrs 2 Oct 43	Sgt Christie	7 days, CB	2 Oct 43	Capt Small	1 day pay FRI 149 (1)A

Certified true copy of M.F.M. 6 of F.60182 Pte Hayes, G.A.

"D.E. Smith" Capt
Adjutant and O i/c Records.

(PTO)

C. H. O. F. — 1-28

Pb. Hayes, S. D.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F.60182 Pte HAYES. George Austin 3/Nth N.Highrs "CAOF

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 15-1-A-A.	Guilty	Guilty	
2nd 24-2-A-A.	Guilty	Guilty.	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

2 years imprisonment with hard labour

At present under sentence for A.W.O.L. Sec. 15(1) A.A. beginning on (date) 9 June 44 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 27 days, of which 5 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for SIX Months. and to be placed under stoppages of pay until he has made good the time lost 18.27 in respect of Leave.

(Sgd) ..... Judge-Advocate, if any. Date awarded: 5 Sep 45 (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 8 Sept 45 (Sgd) Lindsay Bt

Commanding 49 Cdn Inf Bde C.A.O.F. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F60182 Pte Hayes G.A.	8 Sept 45	(H.J. Cashaback) Capt & Adjt 3/Nth NS Highrs

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED OCT 1945 JAG BRANCH G.H.Q.

FIELD GENERAL COURT-MARTIAL

CPA96 (To lieu of AFA81) 40/P & S/1088 (1441) 4/388

Convened by Order of Brig. W.J. McGibb Comd 79 Cdn Inf Bde dated 3 Sep 45 C.A.O.F.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
F60182	Pte	George Austin	Hayes	3/Nth N Highrs

PROCEEDINGS REVIEWED

Date 4 Oct 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) GERMANY on (date(s)) 5 / Sept / 45.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1032 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn(1). Do you object to ..... as shorthand writer? Ans .....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt/Col. J. FAWCETT	3/HLI of C
Member	Capt. A.W. LEGAN	3/SD & Glegrs
Member	Lieut. F.W. ARCHIBALD	3/HLI of C
Judge-Advocate		
Prosecutor	Capt F.M. MURRAY	3 North N. Highrs
Defending Offr	A/Maj. O Wilkerson	3/N Shore R.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (2) and fn 2 were not followed. See D1 p 2.)

A8. The accused F 60182 Pte. HAYES. George Austin before arraignment make(s) (~~not~~ (a)) plea

(1. If a special plea in mode for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~not~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CAOF 106/1 p 13

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NIL.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~the~~ charge(s). The accused is (not) so informed, and he (they) change(s) his (their) plea(s) on ~~that~~ charge(s). ~~Part I of the Schedule is amended accordingly~~.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty (is/are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 112(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. YES.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement~~s~~ as to Character and Particulars of Service(1), and certified true ~~copy~~ (copies) of Conduct Sheet~~s~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)
(*1. MFR 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement~~s~~ and Conduct Sheet~~s~~, and in mitigation of punishment?(1) Ans. YES.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 42. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323. RP 48. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(10), 68(1), KR Can 564. 2. RP 52. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F 60182 Pte. Hayes, Geroge Austin, 3/Nth NS Highrs CAOF, a soldier of the Canadian Army Overseas is charged with:

First Charge
Sec. 15-1 A.A.

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE
In that he
In the field at 0630 hrs 19 Jun 45 absented himself without leave until apprehended by Military Police at Amsterdam at 1900 hrs 9 Aug 45.
Total absence: 51 days, 12 hrs, 30 min.

Second Charge
Sec. 24-2 A.A.

WHEN ON ACTIVE SERVICE LOSING BY NEGLECT his clothing, equipment and regimental necessaries, in that he, in the field at 0630 hrs 19 Jun 45 was deficient equipment to the value of $ 8.25.

In the Field,
16 Aug 45.

(D.F.Forbes) Lt. Col.
Commanding,
3/Nth NS Highrs CAOF.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL:

(W J Megill) Brig
Comd
2/9 Cdn Inf Bde CAOF

GERMANY,
3 Sep 45.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(5).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F,60182	Pte		George Austin	HAYES	5/Nth NS Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 3 Sep 45 endorsed by me, (OR IN CHARGE SHEET ONLY FOR HE), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~Vide, appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
A/Maj	J Fawcett	5/HLI of C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A/Capt	A D Egan	5/SD&G Highrs
Lt	F L Archibald	5/HLI of C

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	J Y Woods	5/SD&G Highrs

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
--	--	--

On Active Service in the Fd

in GERMANY
(Country.)

(Signed personally. RP 105 fn 2.) (Rank.)

W. J Megill Brig

Dat 3 Sep 45

Commanding 2/3 Cdn Inf Bde CAOF

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

B/North Nova Scotia Highrs CAOF

5 Sep 45

This is to certify that F-60182 Pte Hayes, George Austin,
is in a fit state of health to undergo trial by
Field General Court Martial.

Iain M. Mackay (Capt)
No 5/Nth Ns Highrs CAOF

Statement by Capt. H. M. Cashaback 3/Mtl NS Highrs having been duly sworn states:

I am Capt. H. M. Cashaback 3/Mtl NS Highrs. On 19 June 45 the accused was reported as being AWL. On 11 July 45 the accused was SOS 3/Mtl NS Highrs, (CASOF), being absent without leave for a clear 21 days. A court of inquiry was convened to enquire into the illegal absence. I present a certified true copy of the declaration of the court. I also produce certificate of apprehension from #7 Edm Pro Coy.

Statement by A/Maj D. Wilkinson 3/N Shore R:

The defence would like to have the defending officer as character evidence, as defence is based on plea of mitigation only.

Character evidence by Maj. Wilkinson:

The accused was posted to my Coy, "D" Coy 6 Bde Bn at Farnhile Camp, Eng. together with a number of other men from the C.M.H. for leave, approx 14 days. These men including the accused were not given any leave in the U.K. but were sent to the 6 Bde Bn as rfts, as the unit was under strength and had to be composed of Maritime personnel or English speaking personnel from M.D. 4.

The matter of this personnel was taken up with higher authority with a view to their being SOS. However last minute reports received indicated they were to proceed. On the authority of the Bn C.O. they were given a 24 hr pass and all returned prior to the move.

The accused I regret to say took matters in his own hands and went absent prior to the passes being issued, and was disciplined, but returned prior to the date of move.

However, subsequently these personnel were given every administrative attention including the accused and until reposting were ideal soldiers.

Plea of Mitigation entered by Page 4 Maj Wilkinson

The defence fully appreciates its situation, - the record of the accused is self-explanatory and is not conducive ordinarily to a plea of mitigation.

In consequence the defence has only one plea for mitigation and that is it respectfully asks the Court to consider one factor and one factor alone.

What the accused has done is done, and he has paid the penalty for his misdemeanor, (all military), insofar as overall policy is concerned, insofar that personnel are now being released from detention to serve C.A.O.F., which is not applicable in this case.

May this infraction of Military Law be considered on the basis that Pte Hayes has appropriately 160 points, even taking into consideration his detention for detention.

He was returned to the U.K. for leave prior to the termination of hostilities. He did not receive that leave but was posted to a unit proceeding overseas. He went absent but returned prior to the move. His conduct was good after the situation had been explained and when he knew his case was being looked after.

However on posting from 6 Para Bn to 3/ Nd Highland (CAOF), he again took matters into his own hands thinking that he would be C.A.O.F. May it be released.

The defence regrets the Court considers his case solely on this case in particular. Pte Hayes was sent on leave, did not receive it, was sent to Belgium and Holland, and when expecting repatriation in view of his point score, was again posted to another C.O.F. unit. The defence feels that Pte Hayes' worst offence was that he took matters in his own hands without relying upon proper channels of communica

W.T. Archibald Lt.
Judge Advocate of Court
Junior Counsel for Prosecution

Page 6

Plea of Mitigation entered by A/Maj Wilkinson

The defence fully appreciates its situation, the record of the accused is self-explanatory and is not conducive ordinarily to a plea of mitigation.

In consequence the defence has only one plea for mitigation and that is it respectfully asks the Court to consider one factor and one factor alone.

What the accused has done is done, and he has paid the penalty for his misdemeanor, (all military), insofar as overall policy is concerned, insofar that personnel are now being released from detention to serve C.A.O.F. which is not applicable in this case.

May this expiration of Military Law be considered on the basis that Pte Hayes has approximately 160 points, even taking into consideration his detentions for detention.

He was returned to the U.K for leave prior to the termination of hostilities. He did not receive that leave but was posted to a unit proceeding overseas. He went absent but returned prior to the move.

His conduct was good after the situation had been explained and when he knew his case was being looked after.

However on posting from 6 Gen Bn to 3/ N.S. Highlrs (CAOF), he again took matters into his own hands thinking that he would be C.O.F. May it be noted, please, that the accused was not released on suspended sentence to serve C.A.O.F.

The defence requests the Court consider his case solely on this case in particular. Pte Hayes was sent on leave, did not receive it, was sent to Belgium and Holland, and when expecting repatriation in view of his point score, was again posted to another COF unit. The defence feels that Pte Hayes' worst offence was that he took matters in his own hands without relying upon proper channels of communication.

F.L. Archibald Lt.
Junior member of Court Martial
[illegible]
Wilkinson A.

Ex - C.

Summary of evidence in the case of F-60162 Pte. Hayes, George Austin, 3/Nth NS Highrs CAOF. Charged with absenting himself without leave.

The Commanding Officer directs that the evidence be taken on oath.

First Witness: Capt. H.M. CASHABACK, Adjutant, 3/Nth NS Highrs CAOF sworn, states:

I was on 19 Jun 45 and still am Adjutant of the 3/Nth NS Highrs CAOF. On that day the accused F-60162 Pte Hayes, George Austin was reported absent without leave.

On the 11 Jul 45 the accused Pte Hayes, George Austin was SOB 3/Nth NS Highrs CAOF having been absent 21 clear days. Court of Inquiry was convened and I hereby produce a Certified True Copy of Court of Inquiry Declaration. I also produce a Certificate of Apprehension from No. 7 Provost Coy.

The accused declines to cross examine this witness.

(H.M. CASHABACK) Capt & Adjt,
3/Nth NS Highrs CAOF.

The statements referred to in the evidence of the above witness are attached hereto:

(1) Certified True Copy of Court of Inquiry Declaration -- Exhibit "A".
(2) The original copy of the Certificate of Apprehension -- Exhibit "B".

Ernest M. Murray Capt.
(Signature of Offr Taking Summary)

THE ACCUSED WAS WARNED AS FOLLOWS:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence".

The accused: "I have nothing to say at this time".

G.A. Hayes
(Signature of Accused)

I certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence of the accused and that RP 4 (C),(D),(E),(F) and (G)(13) have been complied with.

In the Field.
16 Aug 45.

E. M. Murray Capt.
(E.M. MURRAY) Capt.,
3/Nth NS Highrs CAOF.

Exhibit "H"
R. M. Murray
Capt.

CERTIFIED TRUE COPY

RECORD of the Declaration of a Court of Inquiry assembled at VAREL, Germany on the 11th day of July 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. F60182 Pte Hayes, G. A. S/North Nova Scotia Highrs CAOF

DECLARATION.

The Court declare, that No F60182 Pte Hayes G. A. S/North Nova Scotia Highlanders COF illegally absented himself without leave from his quarters at Nunspeet, Holland, at 0630 hrs on the 19th day of June 1945. That he is still so absent and that on the 11 July 1945 he was deficient and that he is still deficient of the following articles:

1 Shirts Woollen	1.20	1 Straps Shoulder Left	.32
1 Overall Blouse Denim	2.64	1 " " Right	.32
1 " Trousers	2.81	1 Belts Waist	.34
1 Pr. Braces	.32	TOTAL	11.00
1 Brasses Cleaning	.04		
1 Brushes Button Brass	.26	75% of Total	8.25
1 Brush Clothes	.48		
1 Brush Hair	.34		
1 Cap Comforter (Cdn Patt	.34		
1 Razors Safety srn)	.06		
1 Ties Black w/Blade	.19		
6 Safety Razor Blades	.01		
1 Braces W.E.37 Pattern L	.30		
1 Braces W.E.37 " Right	.80		
1 Carriers W/B 37 "	.37		
1 Frogs Bayonet 37	.19		
1 H.S. Covers Camouflage	.07		

Names of President and Members.

Signed at Varel Germany
This 11th Day of July 1945

H.A. Staples Capt Pres
J.C.B. Wilson Lieut Member
J. W. Dunlop Lieut Member

Signature of Commanding Officer D. F. Forbes

(D.F.Forbes) Lt. COL.
Commanding,
S/Nth Nova Scotia Highrs
CCF

Certified True Copy

.....
(H.M. Cashaback) Capt.
Adjt.
S/Nth NS Highrs CAOF.

Exhibit "B"
E. M. Murray
Capt.

F-60182 Pte. HAYES G A

AMSTERDAM 1900

NORTH NOVA SCOTIA HIGHLANDERS
3rd. BTTN. 3 CDN DIV (CACF)
9 AUG 5
xxxxxxxxxxxxxx

Lieut.
(R F WIGHTMAN) A/CC.
No 7 Cdn Provost Company
C F N

Ex. D.

M.F.B. 355
30M—9-42 (5092)
H.Q. 1772-39-620
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F.60182	Pte.	HAYES, George Austin	3/Nth NS Highrs CAOF.

1. The following is a fair and true summary of the entries in the [redacted] MFM 6 sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act / Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	A.A. Sec. 15 (1) AWL - one times	A.A. Sec. 15 - twelve times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct Nil

[redacted]

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. [redacted]

Previous convictions of the accused by a court-martial [redacted] Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. [redacted]

or,

[redacted] The accused at the present time is under suspended sentence beginning wef 15 Apr 45.

4. The accused has been in confinement awaiting trial on the present charges, for 22 days in [redacted] military custody, making a total of 22 days in custody, of which 8 days were spent in hospital.

5. The present age of the accused according to his record of service is 21 years.

6. The date of his attestation specified in his record of service is 5 Jun 40

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to [redacted] military military [redacted] State any military decoration or reward. CVSM & Clasp.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of
Permanent Force
unit
.....dated....., and in his regiment (or corps), the rank of
.....dated..... N/A

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A Date of promotion.

In the rank of N/A years.

In the rank of N/A years.

In the rank of N/A years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force
Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number F60182 Rank Pte.
Unit
Name HAYES, George Austin of 3/Nth NS Highrs CAOF Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	In The Field 9 Jun 44	Sec.15(1) A.A.	2 years Imprisonment with H.L.	Sentence suspended wef 15 Apr 45

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 28th day of August, 1945.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

(H.W. CASHABACK) Capt.,
Adjutant,
3/North Nova Scotia Highrs CAOF
i/c Regimental Docs.

CERTIFIED TRUE COPY

No. F-60102 Name HAYES, G.A. Sqn., Battery, or Company HQ Corps P.E.I.H. Date of enlistment 5-6-40 G.C. Badges Tradesmen's Rates of Pay M.F.M. 6 (A.F.B.122) 7936—12-42 (7537) H.Q. 1772-39-1002

Date of last entry in Company Conduct Sheet) 5-11-40 No. and date of last drunk NIL Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character Fair

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 Oct 43	Pte		WOAS Absent without leave from 2130 hrs 1 Oct 43 to 1030 hrs 2 Oct 43 (Absent 13 hrs)	Lnt Christie	7 Days C.B.	4 Oct 43	Capt E. Smith	Forfeits 1 Day Pay
Field	23 May 44			Sec 15 (1) A.A. AWL from 0830 hrs 23 May 44 to 1030 hrs 25 May 44	Capt Ullock Capt Smith	2 yrs H.L. Imprisonment	9 Jun 44	D.C.C.M.	Fort 2 days Pay
Field	26 May 45	Pte		Sec 15(1)AA AWL from 0900 hrs 26 May 45 until apprehended at 2040 hrs 27 May 45(absent 1 day 11 hrs 40 mins)	P50301 Lnt. Mc ALOWEY C.T.	14 Days Summary NORP. Loss of Pay Cost of Escort 2s 11d	29 May 45	J.E. BUCHAN MAJOR	Forfeits 2 Days Pay AR 1 149(1)(a) Total FORF 16 Days pay

Certified true copy
(H.M. Cashback) Capt & Adjt
S/Nth N.S. Highrs

(P.T.O.)

CERTIFIED TRUE COPY

No. F60182 Name HAYES G.A. Sqn., Battery, or Company HQ Corps P.E.I.H. Date of enlistment 5-6-40 G.C. Badges Tradesmen's Rates of Pay [illegible] M.F.M. 6 (A.F.B.122) 7936—12-42 (7537) H.Q. 1772-39-1002

Date of last entry in Company Conduct Sheet) 5-11-40 No. and date of last drunk NIL Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. Character Fair

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Dartmouth	5-11-40	Pte		A.W.L. from 0815 hrs 5-11-40 till 2200 hrs 5-11-40 Sec. 15 A.A.	C.S.M. Ellis	Admonished	6-11-40	Major DesRoches	Forfeits 1 day pay P.R. & 1
Halifax	14-3-41	"		A.W.L. from 2200 hrs 14-4-41 till 2300 hrs 15-4-41	C.S.M Ellis Cpl. Camp	2 days C.B.	16-4-41	Major DesRoches	Forfeits 2 days pay P.R. & 1.
Valcartier	1-7-41	"		Absent without leave	Documentary No. 15 Pro.	2 days C.B.	2-7-41	Major DesRoches	Forfeits 1 day pay P.R. & 1
Botwood	4-8-41	"		A.W.L. from 0200 hrs 3-8-41 till 0600 hrs 4-8-41	Cpl. Pyfe	6 days pay & 6 days Lieu Datn.	4-8-41	Major MacDonald	Forfeits 2 days pay P.R. & 1
Botwood	5-11-41	"		A.W.L. from 0815 hrs 5-11-41 till 0200 hrs 7-11-41	Cpl. Shepherd	3 days CB	7-11-41	Lieut. MacKenzie	Forfeits 2 days pay P.R. & 1

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Botwood	27-11-41	Pte		A.W.L. from 2215 hrs 27 Nov 41 till 0130 hrs 28 Nov 41. Conduct to the prejudice, etc., i.e. improperly dressed	Sgt. Clow Cpl Shepherd	3 days C.B.	28-11-41	Major DesRoches	
Botwood.	29-12-41	"		A.W.L. from 0200 hrs 29 Dec 41 till 0159 hrs 8 Jan 42	Sgt MacKenzie	7 days C.B.	8-1-42	Major DesRoches	Forfeits 10 days Pay F.R. & L.
Botwood	3-2-42	"		A.W.L. from 2230 hrs 3 Feb 42 till 0200 hrs 4 Feb 42,	Cpl. Pyfe JM	3 days C.B.	4-2-42	Major DesRoches	
Botwood	25-2-42	"		A.W.L. from 2215 hrs 25 Feb 42 till 0600 hrs 28 Feb. 42	Cpl. Pyfe JM	7 days C.B.	28-2-42	Major DesRoches	Forfeits 3 days Pay F.R.&L.
Gander	17-6-42	"		Attempting to absent himself without leave.	RSM. Ellis Pte. Murphy	7 days C.B.	17-6-42	Lieut Sinclair	
Gander	19-6-42	"		Absent from Defaulters Call	Sgt Kenslow	7 days C.B.	20-6-42	Lieut Sinclair	

St. John NB 4-3-43 Insured Embarkation L. Warrant 205078 [illegible] Cancelled

St. John N.B. 5543 Certified no further entries to this date. D. Shidsturn.

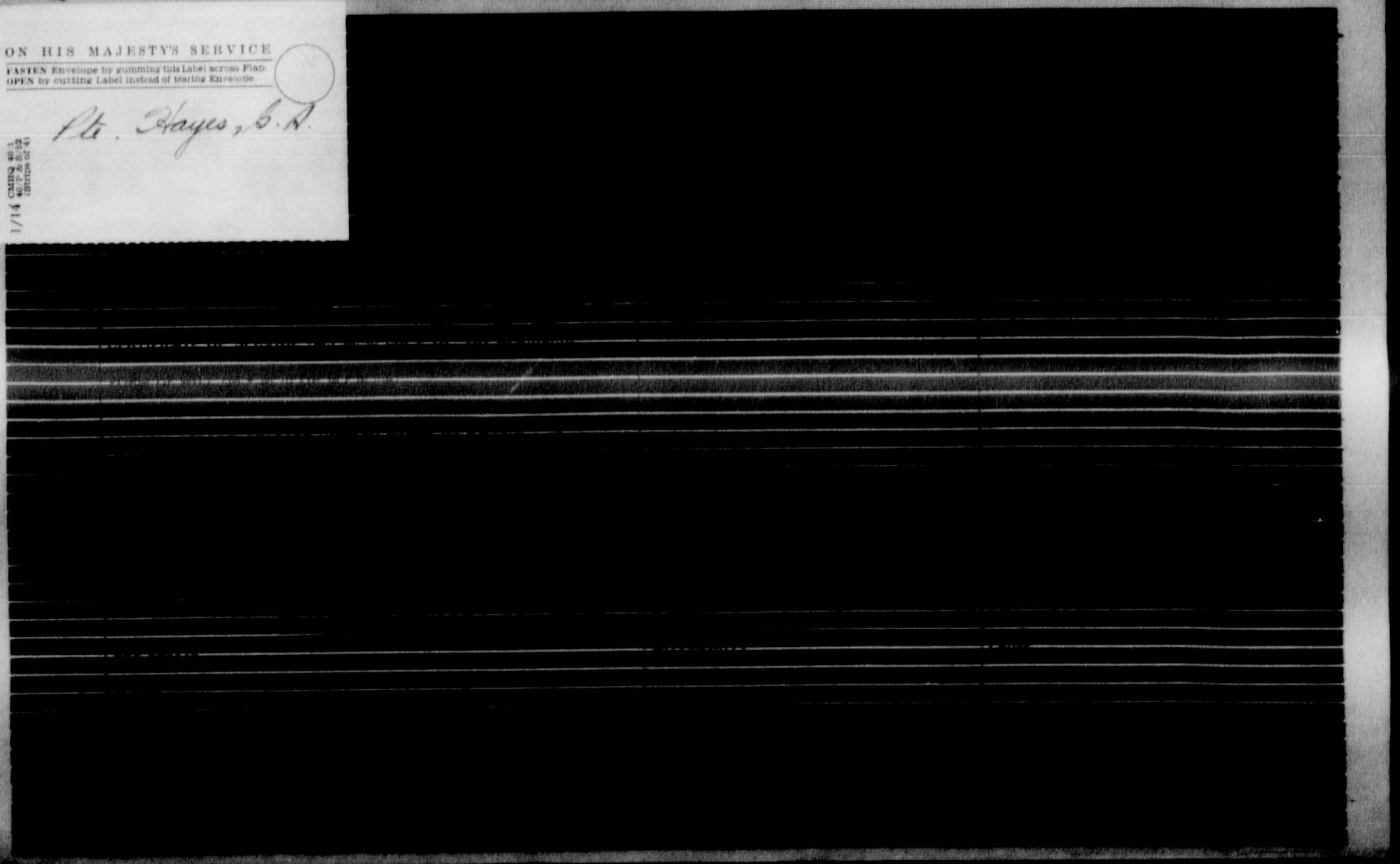
C. A. D. F. — 1 — 85

ON HIS MAJESTY'S SERVICE

FASTEN Envelope by gumming this Label across Flap.
OPEN by cutting Label instead of tearing Envelope.

Ft. Hayes, S. D.

1/14 CMBQ #9-1
40 (P & S) 52
(Strips of 4)



SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F 60182 Pte George Austin Hayes 3 H.L.I. (CAOF)

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15 (1)	Guilty	Guilty	
2nd	AA 15 (1)	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

As present under sentence for ..... beginning on (date) .....(1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B.355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To serve two hundred and seventy days.
(270) field punishment.

(Sgd) ..... 19 Dec 45 (Sgd) W.D. Ivory Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56. 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the findings and sentence set forth in Part I is :
I confirm the findings of the Court, but vary the sentence so that it shall read "To suffer Field Punishment for three (3) months." and I confirm the sentence as so varied.
I direct that the accused be not committed to prison or detention barracks until further orders.
~~I direct that the accused be not committed to prison or detention barracks until further orders~~ (Delete if not used)

Date 20 Dec 45 (Sgd) W.D. Ivory Major
Commanding 2/9 Inf Bde CAOF
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F60182 Pte Hayes G.A.	4 Jan 46.	J.R. Richardson Capt & Adjt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 1 JAN 1946 2 Cdn Inf Div

RECORD PRESENTED IN HQ IN AB 168 C AOF-1-85

FIELD GENERAL COURT-MARTIAL (CPA96 (In lieu of AF A4) 40.1 & B/1098 (5/44))

4/388

Convened by Order of Lt Col. H.E.P. Bennett Commd 2/8 Cdn Inf Bde dated 16 Dec 45.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmt, A/R or W/T	(b) Apptmt, A/R or W/T Apptmt.	Full Christian Names.	Surname.	Unit.
F-60182	Pte	Mbr of the Craft	George Austin	Hayes	3/HLI of Hyphes (CAOF)

Date 1 JAN 1946 2 Cdn Inf Div (CAOF)

R Lwr sworn 1st on the Capt

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Germany on (date(s)) 19th Dec 1945.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 69-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~, brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (2).~~ (1). Medical Certificate marked exhibit "A".
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to~~ W/A Mbr as interpreter ? Ans

~~The Interpreter is sworn.(1) Do you object to~~ W/A as shorthand writer ? Ans

~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	W.D. Ivory.	3/HLI of H (CAOF)
Member	Capt.	P de T Boudreau	3/HLI of H (CAOF)
Member	Capt.	H.D. Egan.	3/SDG of Hyphes (CAOF)
Judge-Advocate			
Prosecutor	Lieut	T.R.R. Butler.	3/HLI of H (CAOF)
Defending Offr	Lieut	C.C. Ellsworth	3/HLI of H (CAOF)

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused George Austin Hayes before arraignment make(s) (no) plea.
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below,

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 86, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. We don't (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his ~~(their)~~ plea(s) of Guilty to Not Guilty on ~~all~~ charge(s). The accused is (~~are~~) so informed, and ~~he (they)~~ ~~change(s)~~ his (their) plea(s) on ~~all~~ charge(s). ~~Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex B, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on ~~one~~ or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. RP 115. 2. RP 40(A), see 90(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No ~~not~~
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copy~~ (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "C" and Ex "D" respectively.(3)
(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes ~~not~~ (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 230, 563-566. Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 58(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The ACCUSED, F-60182 Pte George Austin Hayes, 3/Nth. N.S. Hgh'rs, CAOF. a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field in Germany, when in lawful custody, absented himself without leave from 1815 hours 31 Oct 45 until 2230 hours 15 Nov 45 (Absent 15 days, 4 hours, 15 minutes)

ADDED CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field in Germany, when in lawful custody, absented himself without leave from approximately 2130 hours, 26 Nov 45, until 1520 hours 27 Nov 45 (Absent 17 hours, 50 minutes)

In the Field
4 Dec. 45.

W. A. Milroy
(W. A. Milroy, Major)
Commanding,
3/Nth N.S. Hgh'rs. CAOF

To be tried by Field General Court Martial.

In the field
16 Dec 45

H E Y Doucet
(H.E.Y. Doucet)Lt-Col.,
A/Comd 2/9 Cdn Inf Bde CAOF

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apprnt, A/R or A/Apprnt	Full Christian Names.	Surname.	Unit.
F-89013	Pte		Ambrose Michael	MacNEIL	3/Nth NS Highrs CAOF
F-60182	Pte		George Austin	HAYES	3 Nth NS Highrs CAOF

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 16 Dec 45 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.) NEG
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint 5 of these offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto. NEG
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereof the Offr mentioned hereunder. NEG
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W.O. Avery	3/HLI of C CAOF

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by 3/HLI of C	
Capt	To be detailed by 3/SD&G Highrs	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	To be detailed by 3/HLI of C	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Germany (Country.)

W E Y Bond (Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

Date 16 Dec 45

A/Commanding 2/9 Cdn Inf Bde CAOF
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAMS (To item of AFAS 40 P & S/1697 (4601)

(See overleaf for oaths and notes for use on trial.)

Exhibit F1.

3/NORTH NOVA SCOTIA HIGHLANDERS CA OF

19 Dec 45

Officer Commanding
3/Nth NS Highrs CA OF

P60182 Pte. HAYES G.A.

1. This is to certify that I have to-day examined the m/n soldier and find him medically fit to undergo trial by Field General Court-Martial.

(Medical Officer) I/C

Exhibit "B"

Summary of evidence in the case of F60182 Pte George Austin Hayes, 3/Nth NS Highrs CAOF. Charged with absenting himself without leave while in lawful custody.

The Commanding Officer directs that the evidence be taken on oath.

First Witness: Capt. H.M. Cashaback, Adjutant, 3/Nth NS Highrs CAOF, being duly sworn states:

I am Capt. H.M. Cashaback, Adjutant of the 3/Nth NS Highrs, CAOF. On 31 Oct 45 at 1815 hrs the accused F60182 Pte Hayes, G.A., was reported absent without leave, having escaped from lawful custody. He was posted in Orders as AWL effective that time and date. I hereby produce a Certificate of Apprehension from No. 7 Cdn Provost Coy.

The accused declines to cross examine this witness.

H. Cashaback Capt
Adjt., 3/Nth NS Highrs

SECOND WITNESS: F50456 Pte Gallant, J.P., of the Regimental Police 3/Nth NS Highrs CAOF, having been duly sworn states:

I am F50456 Pte Gallant, J.P., of the Regimental Police 3/Nth NS Highrs CAOF. At approximately 1910 hrs, 31 Oct 45, while on duty I reported to L/Sgt Conrod at the Caledonia Barracks to take over five S.U.S. personnel for fatigue duties. He turned over to me five bodies of which one was F60182 Pte Hayes, George Austin. I escorted these men to the R.C.H. and marched them into the hallway. I halted them in front of the R.C.H. door and the five were present at that time. I spoke to the POW about the fatigues to be done and then sent into the fuse box at the end of the hall to get the hall lights on. This took about two minutes and on returning to the S.U.S. personnel I found that two had escaped. One of these was F60182, George Austin Hayes. The time was approx 1915 hrs. I searched the downstairs part of the building with no results. I notified L/Sgt Conrod at the guard room that two of the men had escaped. I told him to warn all the guards in the area but the escaped men could not be located.

The accused declines to cross examine this witness.

J.P. Gallant (J.P.)
F50456 Pte Gallant
3/Nth NS Highrs CAOF

THIRD WITNESS: F52783 L/Sgt Conrod, F.W. of "D" Coy, 3/Nth NS Highrs CAOF having been duly sworn states:

I am F52783 L/Sgt Conrod, F.W. of "D" Coy 3/Nth NS Highrs CAOF. I was guard commander at Caledonia Barracks on 31 Oct 45. At approx 1810 hrs, I turned over five S.U.S. to F50456 Pte Gallant, J.P. of the Regimental Police, 3/Nth NS Highrs, CAOF for fatigue duties. F60182 Pte Hayes, George Austin was one of these five S.U.S. At approx 1825 hrs Pte Gallant called me on the phone and said two of the men had escaped of which one was the above mentioned, Pte Hayes. I immediately warned the guard but the escaped S.U.S. could not be located.

The accused declines to cross examine this witness.

F.W. Conrod (F.W.)
F52783 L/Sgt Conrod
3/Nth NS Highrs CAOF

FOURTH WITNESS: F607648 A/Sgt McNeil, L. of "SP" Coy 3/Nth NS Highrs CAOF having been duly sworn states.

I am F607648 A/Sgt McNeil, L. of "SP" Coy 3/Nth NS Highrs CAOF. I was guard commander at Caledonia Barracks on 26 Nov 45 and when I checked the cells at 2130 hrs, F60182 Pte Hayes, G.A. was missing. I immediately sent out a patrol to search the camp area but the missing man could not be located.

The accused declines to cross examine this witness.

Mac Neil L.
(F607648 A/Sgt McNeil, L.)
3/Nth NS Highrs CAOF

FIFTH WITNESS: F36513 Pte Munroe, M.A. of the Regimental Police of the 3/Nth NS Highrs, CAOF having been duly sworn states:

I am F36513 Pte Munroe, M.A. of the Regimental Police of the 3/Nth NS Highrs CAOF. I was sent on duty patrol into Clidenburg and there apprehended Pte Hayes, G.A. at 1320 hrs, 27 Nov 45. I escorted him back to Caledonia Barracks and placed him in the guard room.

The accused declines to cross examine this witness.

M. Munroe M.P.
(F36513 Pte Munroe, M.A.)
3/Nth NS Highrs CAOF

THE ACCUSED WAS WARNED AS FOLLOWS:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence".

The accused: "I have nothing to say".

G.A. Hayes
(Signature of Accused)

I certify that the foregoing Summary of Evidence, consisting of three pages, was taken down by me in the presence of the accused and that RP 4 (C), (D), (E), (F) have been complied with.

In the Field
29 Nov 45

R. Bettley Lt.
(T.M.M. Bettley) Lieut.
3/Nth NS Highrs, CAOF.

LIST OF EXHIBITS

1. Original copy of "CERTIFICATE OF APPREHENSION".

SCHEDULE "F"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 APR 42

I CERTIFY that No. F-60182 Rank ... Pte ... Name ... JONES, G.A. ...

Unit ... N.N.S.H. 3 CDN DIVI CAGE arrested at Amsterdam

at ... 2230 ... (hour) on 14 Nov. 45 (date) and that at the time of his a

he was wearing (military uniform) ~~or civilian clothes~~

Signature of Provost Marshal, Assistant Provost Marshal or other officer or the Commanding Officer of the Portion of His Majesty's Forces or the Officer, Warrant Officer, or non-commissioned officer in charge of the detachment No 7 Coy Canadian Provost Corps, Canadian Army, into whose cust ody the above name d person was taken on arrest

D. Dwight Macritchie Capt

("D. D. Macritchie")

LIST OF WITNESSES

Prosecution:

Capt. H M Cashaback - 3/Nth NS Highrs, CAOF

F50456 Pte. GALLANT J P - 3/Nth NS Highrs CAOF

F607648 A/Sgt. MacNEIL L - 3/Nth NS Highrs CAOF

F36513 Pte. MUNROE M A - 3/Nth NS Highrs CAOF

F52783 L/Sgt. CONROD F W - 3/Nth NS Highrs CAOF

Defence:

NIL

P Bisby Lieut.
(Signature of Officer Taking Summary)

Exhibit "C" VOP

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
P60182	Pte.	HAYES, George Austin	3/Nth NS Highrs C.OF

NOTE.—The Field Conduct Sheet is to be produced in Court, with this statement but is not to be annexed to the proceedings. The numbers here stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for desertion or absence without leave, the entries for remands or absence, as the case may be, should be stated separately. Any recorded special acts of gallantry or distinguished conduct rendered on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 15(1) Fourteen times.

For A.A. Sec 40 Two times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 5 Nov 4 0

Date of last entry in Field Conduct Sheet 5 Sep 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for Six months detention beginning on the 5 th day of September 1945

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for ~~25~~ Nil days in military custody, *i.e.*, Nil days in open arrest, ~~25~~ Nil days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 22 years

6. The date of his attestation is 5 Jun 40

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of 1939-45 Star, Italy Star, CVSM & Clasp

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date—

		Date of Promotion.
In the substantive rank of	N/A	
In the war substantive rank of	N/A	
In the acting rank of	N/A	

*State the military decorations (if any) held by accused.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27933) Wt.24939/3604 24,000 7/44 A.& E.W.Ltd. Gp.498 Forms/S.296(War)3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
Field Gen Court Martial	In the Field 9 Jun 44	Sec 15(1) A A - A.W.L.	2 years Imprisonment with hard labour	Sentence suspended wef 13 Apr. 45
Field Gen Court Martial	In the Field 5 Sep 45	Sec 15(1) A.A. - A.W.L. Sec 24(2) A.A. - Loss by Neglect	Six months detention	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 30th day of November, 1945

(W.A. Cashaback) Capt.
Adjutant 3/Ntn NS Highrs CASF

No. P60182 Name HAYES, G. A. Sqn., Battery, or Company HQ Corps P.S.I.E. Date of enlistment 5-6-40 C.C. Badges Tradesmen's Rates of Pay

Exhibit D

No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. J.S. DesRoches Major, Chairheter Adjt

M.F.M. 6 (A.F.B. 122) 7801M—12-41 (7837) H.Q. 1779-39-1632

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Dartmouth	5-11-40	Pte.		A.W.L. from 0815 hrs 5-11-40 till 2200 hrs 5-11-40 Sec 15 A.A.	CSM Ellis	Admonished	6-11-40	Major DesRoches	Forfeits 1day pay P.R.& I
Halifax	14-3 41	Pte.		A.W.L. from 2200 hrs 14-4-41 till 2300 hrs 15-4-41	CSM Ellis Cpl. Camp	2 days C.B.	16-4-41	Major DesRoches	Forfeits 2 days pay P.R.& I.
Valcartier	1-7-41	Pte.		Absent without leave	Documentary No. 15 Provost	2 Day C.B.	2-7-41	Major DesRoches	Forfeits 1 day pay P.R.&I
Botwood	4-9 41	Pte.		A.W.L. from 0200 hrs 5-9-41 till 0600 hrs 4-9-41	Cpl. Pyfe	5 days pay in lieu Detn	4-9-41	Major MacDonald	Forfeits 2 day pay P.R.&I
Botwood	5-11-41	Pte.		A.W.L. from 2215 hrs 5-11-41 till 0300 hrs 7-11-41	Cpl. Shepherd	3 days C.B.	7-11-41	Lt. MacKenzie	Forfeits 2 day pay P.R.&I

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Botwood	27-11-41	Pte.		A.W.L. from 2215 hrs 27 Nov 41 till 0130 hrs 28 Nov 41. Conduct to the prejudice, etc., i.e. Improperly dressed.	Sgt. Clow Cpl. Shepherd	3 days C.B.	28-11-41	Major DesRoches	
Botwood	29-12-41	Pte.		A.W.L. from 0200 hrs 29 Dec 41 till 0100 hrs 6 Jan 42.	Sgt. MacKenzie	7 days C.B.	8-1-42	Major DesRoches	Forfeits 10 days Pay F.R.&I.
Botwood	3-2-42	Pte.		A.W.L. from 2230 hrs 3 Feb 42 till 0800 hrs 4 Feb 42.	Cpl. Fyfe, J.M.	3 Days C.B.	4-2-42	Major DesRoches	
Botwood	25-2-42	Pte.		A.W.L. from 2215 hrs 25 Feb 42 till 0600 hrs 26 Feb 42.	Cpl. Fyfe, J.M.	7 days C.B.	28-2-42	Major DesRoches	Forfeits 3 days Pay F.R.&I
Gander	17-6-42	Pte.		Attempting to absent himself without leave	RSM Ellis Pte. Murphy	7 days C.B.	17-6-42	Lieut. Sinclair	
Gander	18-6-42	Pte.		Absent from Defaulters Call	Sgt. Hanslow	7 days C.B.	20-6-42	Lt Sinclair	
St. John, N.B.	4-5-43			Issue Embarkation L. Warrant 400976 D. Hildebrun, Capt.					
St. John, N.B.	5-5-43			Certified no further entries this date. D. Hildebrun, Capt					

No. P60182 Name HAYES, G. A. Sqn., Battery, or Company HQ Corps F.E.Y.N. Date of enlistment 5-6-40 G.C. Badges Tradesmen's Rates of Pay

No. and date of last drunk NIL Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character Fair

M.F.M. 6 (A.F.B. 1220) 750M—12-42 (7537) H.Q. 1779-39-1652

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1-10-43	Pte.		WOAS Absent without leave from 2130 hrs 1 Oct 43 to 1030 hrs 2 Oct 43 (Absent 13 hrs)	Sgt. Christie	7 days C.B.	4 Oct 43	Capt. D.Smith	Forf 1 da pay
Field	23-5-44	Pte.		Sec 15(1)A.A. AWL from 0830 hrs 23 May 44 to 1030 hrs 25 May 44.	Sgt. Black Capt. Smith	2 yrs H.L. Imprisonment	9 Jun 44	F.G.C.M.	Forf 2 da Pay
Field	26-5-45	Pte.		Sec 15(1)A.A.AWL from 0900 hrs 26 May 45 until apprehended at 2040 hrs 27 May 45 (Absent 1 day 11 hrs 40 mins)	F50301 Sgt. MacAloney C.P.	14 days summary Forf of Pay Cost of Escort 2s:11d	29May45	J.K.Rhodes Major	Forf 2dy Pay F.R. & I 149(1)(a)Total
Field	19-6-45	Pte.		Sec 15(1)A.A. AWL from 0630 hrs 19 Jun 45 to 1900 hrs 9 Aug 45. (Absent 51 days 12 hrs 30 mins)	Capt. H.M. Cashaback Documentary	Dstn and stoppage of pay to the amount of £ s. d.	5 Sep 45	A.Connor F.G.C.M.	Forf 16dy Pay Total Forf 260 days pay
				Sec 24 (2) Loss by neglect £8.25		£8.25			

(F.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order disposing with trial	By whom awarded	Remarks

Certified True Copy 4 Dec 45

.....

(H.M. Cashaback) Capt & Adjt.
2/4th Bn Highrs CAOF.

PLEA IN MITIGATION OF PUNISHMENT

I am, F 60182 Pte. Hayes, George Austin, 3/North Nova Scotia Highlanders. I joined the Canadian Army in June 1940. At this time I was 16 years of age. I served in Canada and Newfoundland until June 1943. During this period I received only minor punishment. I proceeded overseas in June 1943 and went to Italy in September 1943. I was posted to the Carleton and York Regt and served with them until 23 May 44. During this period of eleven months overseas had only one minor crime. On 9 June 44 I was found guilty of being A.W.L. for two days and sentenced to two years imprisonment with hard labour. I served 311 days of the sentence during which time I earned 2480 marks or 100% of the possible for good behavior. My sentence was then suspended and I was sent to England. There I was posted to 6 Garrison Bn. At this time I received word from Canada that my father and mother were both ill and were entirely dependent upon me. Although I had over 120 points toward repatriation at this time I found I could not return to Canada as I was under suspended sentence. Instead I was sent to Germany with the Occupation Forces for an indefinite period. During June I heard that fellows with less points than myself were going to be sent home. If I had served my full sentence I would have been released and ready to go home about Oct or Nov instead of while I was in Germany for possibly a year or more due to the suspended sentence. After I realized this fact everything seemed to go wrong. I am sure it was the trouble at home and the suspended sentence which were the cause of me being in my present difficulties and beg the court to take this statement into consideration.

I am entitled to wear the 1939-45 Star, the Italy Star and the C.V.S.M. with Clasp.

G.A. Hayes

F 60182 Pte. Hayes G.A.

19 Dec 45.

VV-124
PTE HAYES J

"A" P.B. Kennedy Major.
VV-134
M.3

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this - second - day of - November -, 1943.

Whereas it appears to me, the undersigned, an officer in Command of Troops on Board H.M.S. Monterey -

, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * and that it is not practicable to delay the matter for reference to a superior qualified officer.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

* [illegible]

Proceedings Reviewed

[signature] Capt
JAG
Reviewing Officer (J.A.G.) C.M.H.Q.
7 Dec 43.

Rank.	Name.	Regiment.
Major	L.S. Eckhardt *President.*	592/1
Major	P.B. Kennedy	355/1
Members.		
Capt	M.E. Clarke	571/1
Capt	T.A. Weir	1103/1
Capt	W.S. Elder.	943/1

Waiting Member

* Must be signed personally by the Officer actually in command at the time, and all Alterations in the composition of the Court to be initialled by him

*Signed (J.B. Weir) Lt-Col.
Commanding Tps on Board H.M.S. Monterey.
Convening Officer.

SCHEDULE.

ELECTED TRIAL BY FIELD GENERAL COURT MARTIAL

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F-88414 Pte HAYES, James. "B" Coy Serial No. 357/1				
	FIRST CHARGE A.A. Sec. 40	not Guilty	Not Guilty	
	SECOND CHARGE A.A. Sec 40	not Guilty	Not Guilty	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) J.B. Weir (J.B. Weir) Lt-col. (Signed) P.B. Kennedy (P.B. Kennedy) Major.

Commanding Tps on Board SS Monterey. *Convening Officer* (c) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 4th day of November, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) — nil
*(4. The officers under instruction) and Court reporter

were duly sworn.

* Omit if not applicable.

Signed this 4th day of November 1943

P.B. Kennedy Major.
President of the Court Martial.
(P.B. Kennedy)

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 370 of 1918 have been complied with.

Signed this day of 19

Major.
President of the Court Martial.
(P.B. Kennedy)

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this day of 19

Lt-col.
(J.B. Weir) *Confirming Officer.*

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(12759) Wt. 40013—893 500 m 43/40 P. St. G. 640

JAG BRANCH - REVIEW RECORD

Accused

F 88414 Pte Hayes J

"B" Coy Serial 337/1 at sea

Remarks	Date
Trial in (Country) at Sea	4 Nov 43
Charges See 40 etc	
Sentence NOT GUILTY	4 Nov 43
Rec'd from CR at JAG Branch	6 Dec 43
To Lw 3 for (pre)(post) rev	6 Dec 43
Recommendations by Blkl.	
(1) Pass and record.	
(2) Up on irregularities.	
(3) Quash charge(s).	
(4)	
Ret'd to JAG Rev 1 by Col. III	7 Dec
Passed to	
Passed to	
To AG 5 for	
Ret'd from AG 5 to JAG Rev 1	
Instrs by JAG Rev 1 on disposal	
Record File Above	7 Dec 43
Instrs completed by	

"B" R.B. Somerville Major

ELECTED TRIAL BY FIELD GENERAL COURT MARTIAL
CHARGE SHEET

The accused, F88414 Private HAYES, JAMES, "B" Company, Serial357/1 a soldier of the Canadian Army Overseas, is charged with;

FIRST CHARGE
A.A.Sec 40

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

at sea, at approximately 1430 hrs, 26 Oct 43 did attempt to purchase from the Aft PX Canteen, well knowing that he was not entitled to do so.

SECOND CHARGE
A.A. Sec 40

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

at sea, at approximately 1430 hrs, 26 Oct 43 did state to Major H.H. Fullerton, Provost Marshal, "I am a member of the RCCS", or words to that effect, well knowing such statement to be false.

At Sea
1 Nov 43

R.B. Somerville
(R.B. Somerville) Major
a/Commanding Officer,
Serial 357/1

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

J.B. Weir
(J.B. Weir) Lt-Col.

On Board Ship.
2 Nov 43.

"D" [illegible] Major.

At Sea
4 Nov 43

This to certify that I have examined F88414 Pte Hayes J., and find him fit to undergo trial by Field General Court Martial

[illegible]

"C" [illegible]

THE PROSECUTION'S OPENING ADDRESS

Mr. President and members of the court: The accused is charged with two offences under Sec. 40 of the Army Act. The first, of attempting to purchase from the ships canteen when he knew he was not entitled to do so - and the second, making a statement well knowing such statement to be false.

The prosecution faces a rather difficult situation, namely, the court must either take the word of an officer, in this case, the Provost Marshal of the ship, or the word of the accused. This is the story:- Two people saw a man at the same place for the same length of time, later one picked out the man on an identification parade and could swear by his powers of recognition:- the other could not swear that it was the same man. To sum up, it is the word of one person against that of another.

Be for e the prosecution presents this case I refer the court to page 83 Para 45 of M.M.L. which states in part, "the law admits as sufficient the uncorroborated testimony of one credible witness". I leave it to the court to judge whether or not the officer is a credible witness.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL IN THE CASE OF REGIMENTAL NUMBER F-88414 Private HAYES, James of Serial 357/1.

COURT CONVENED AT 1125 hrs
AT SEA this 4 day of Nov 43

PROSECUTION OPENING ADDRESS - See APP "C"

FIRST WITNESS FOR THE PROSECUTION

Major Herbert R Fullerton, Serial 357/1, having been duly sworn, proceeds to to give evidence as follows:-

Q-1 What is your position on Board Ship?
A-1 Provost Marshal.

Q-2 What occurred on 26 Oct 43, at approximately 1430 hrs?
A-2 I was present at the aft PX in my capacity as Provost Marshal, checking on the canteen line-up that was formed. My attention was drawn to a discussion between one of my provost staff and a soldier in the line up, and who was not wearing his regimental cap. I heard the soldier say he was a signaller, and heard him give some excuse why he was not wearing his headdress. Looking over, I recognized the man as being a member of the C.B.H., in fact, a member of my own coy. I said "This man is a C.B.H.", and he looked me in the eye and said he was a signn. Thereupon, I asked him to come out on the open deck where we would check on this further. We started out, and he said to me " I am a member of the C.B.H. I then turned the matter over to Captain TYLER, A.P.M., and instructed him to charge the man.

Q-3 Why did you turn the case over to Capt TYLER?
A-3 For two reasons. Firstly, as I was Provost Marshal I did not wish to become involved personally into any individual case. Secondly, as the man was a member of my coy I preferred the charge, if possible, to be handled by somebody else.

Q-4 What happened after that?
A-4 The following day I received a call from Capt MACLACHLAN, Acting O.C. of "B" Coy, Serial 357/1, stating that the charge which he received bore the name of one Pte MACDONALD, but the individual that he had up on this charge stated that he was not the correct man. I thereupon went down and saw Pte MACDONALD, who was not the man, therefore, obvious that the soldier had committed an offence is giving an incorrect name and number.

CROSS EXAMINED BY THE DEFENCE

Q-5 What led you to believe that the accused was going to make a purchase?
A-5 He was in the PX.

Q-6 How far was he from the PX.
A-6 About four or five.

Q-7 Four or five what?
A-7 Four or five individuals.

Q-8 Did he have any money in his hand?
A-8 I didn't see it.

Q-9 Has the Sergeant-Major of "B" Coy identified the accused?
A-9 Not as far as I know.

Q-10 Was anyone absent from "B" Coy at about 1430 hrs, 26 Oct 43?
A-10 I have no idea.

Q-11 In order to identify the accused, was a muster parade held for all of Ser 357/1?
A-11 No, only "B" Coy.

QUESTIONED BY THE COURT

Q-12 The discussion you heard was between a soldier in the line and one of your staff?
A-12 That's right.

Q-13 Do you know the name of that member of your staff?
A-13 No sir, there were quite a number of Provost on duty. It may have been an APM, a Provost, a Provost Sergeant. There were a number of Provost staff there at the time due to the balls up there was at the PX the day before.

R.P. 83 (b) has been complied with.

SECOND WITNESS FOR THE PROSECUTION:

Captain J.E. TYLER, Serial 571/1, having been duly sworn proceeds to give evidence.

Q-1 What is your position on board ship?
A-1 Presently I am employed as Assistant Provost Marshal of the traffic control branch on board this ship.

Q-2 Would you tell the COURT where you were on 26 Oct at approximately 1430 hrs?
A-2 At 1430 hrs, 26 Oct 43, I was assisting, in the capacity of Assistant Provost Marshal at the art PX, to control traffic, while units authorized were making purchases.

Q-3 Will you tell the Court what happened then?
A-3 At about that time a soldier appeared, presumably to make a purchase, stating that his unit was RCCS, serial 573/1, and at that time that unit was authorized to make purchases. The man was wearing no headdress or badges distinguishing his unit, so I questioned him again on his unit, and he told me again that he was RCCS. About that time the Provost Marshall, Major FULLERTON, appeared on the scene. He had apparently heard my last question to this soldier, and he said, "That man is not a Signm, he is a C.B.Highr". The man still denied he was a C.B. Highr, stating again that he was a signaller. Major FULLERTON, the Provost Marshal, told the man to come outside where it was a little more light, which we did. Major FULLERTON again said "That man is a C.B.Highrs, he is in my own coy" and this time the man admitted that he was a C.B. Highr, and not a signaller. The Provost Marshal, Major FULLERTON, directed me to lay a charge against this man, which I proceeded to do. The man gave me his name as MACDONALD, and an "F" Regimental Number which I don't recall at the moment, and with this information I wrote out acharge against the man and handed it into the Ship's Orderly Room to be typed and handed to the Provost Marshal. I believe it was 2 days later, Major FULLERTON sent for me, and at the time he had the accused, Pte HAYES, in custody. Major FULLERTON showed me the man and asked me if this was the same man whom I laid the charge against on 26 Oct 43. I looked at the man, but could not state definitely that he was the same man. The following day I attended Orderly Room with the C.B. Highrs where the accused, Pte HAYES, was up on a charge. While giving my evidence I was again asked if Pte HAYES was the same man who had given me his name as MACDONALD. I again stated that I could not swear that he was the same man.

CROSS-EXAMINED BY THE DEFENCE

Q-4 Capt TYLER, were you the first one to interrogate the unknown man in the line-up?
A-4 I believe I was.

Q-5 How long were you with him at this time?
A-5 About three minutes.

Q-6 Was that longer than Major FULLERTON was with him, or not?
A-6 I believe it was.

Q-7 When you were called to "B" Coy to identify the accused, was the whole coy there or just the one man?
A-7 One man with his escort, apparently under close arrest.

Q-8 What number was in the men's Pay Book?
A-8 I didn't look at the Pay Book.

Q-9 Or the identity discs?
A-9 I didn't look on the identity discs.

Q-10 Do you have any reason to believe that this man was going to make a purchase at the canteen?
A-10 Well, he appeared at the canteen stating that he was a signm, and I presumed that he intended to make a purchase.

Q-11 How far away was he from where the goods were being dispensed at the counter?
A-11 I would say about six feet.

Q-12 Did you notice if he had any money in his hand?
A-12 Not that I noticed.

Q-13 Did the CSM or COS of "B" Coy identify this man?
A-13 Not to my knowledge.

Q-14 Was anybody absent from "B" Coy at 1430 hrs, 22 Oct 43?
A-14 I am in no position to know that.

NO RE-EXAMINATION BY THE PROSECUTION

EXAMINED BY THE COURT

Q-15 Do you now recognize the accused as the man whose name and number you took on the day in question?
A-15 I can't swear to it sir.

Q-16 Do you think he is the man?
A-16 I would not like to venture that statement, sir, it is pretty broad.

R.P. 83(b) has been complied with

PROSECUTION CLOSES

THE DEFENCE ADDRESSES THE COURT

I think that there is no Prima Facia case against the accused on both charges, here are the reasons:-

Take the First Charge, it reads "Did attempt to purchase from the aft PX Canteen. There has been no evidence whatsoever that shows that this man attempted to purchase from the canteen. The only evidence that was brought out was that he was in the line-up on men who were buying. To illustrate that a man may be in the PX line up without actually intending to make a purchase, I might state that if you go aft on "B" Deck of this ship there are latrines, and there you might be in a line up to go to the back of the ship, but still not want to go to the toilet. Further, with reference to the First Charge I quote "well knowing that he was not entitled to do so". There has been no evidence brught by the Prosecution to show that any orders whatsoever were given on this ship forbidding anyone to purchase at the canteen at any time, and since the Court tries the accused according to the evidence given before, I can't see any charge against the accused at all.

Now, with reference to the second charge, the Prosecution brought out in the opening address, that when two witnesses disagree on a point, precedence is given to the witness who should know what he is talking about. In the case, the Provost Marshal did not do the elementary things that a lance corporal would do to identify the accused, nor did his assistant. Capt Tyler, who was actually with the accused for a longer length of time that the Provost Marshal, cannot swear to the man's identity. Also very great discrimination was displayed in my opinion, when the Assistant Provost-Marshal was asked to identify the accused, not at a muster parade, but as an individual, and they cannot do it.

That is all sir.

THE PROSECUTION REPLIES TO THE DEFENCE

In answer to the first charge, to use the exact words of my learned friend, "might stand in a line up without wanting to go to the toilet" my learned friend should also have said "a man might stand in a line-up and want to go to the toilet". Now, when a man is about six feet from a purchase wicket and is standing in a line-up leading to that wicket, we can assume that the man was going up to the wicket to purchase goods. The majority have seen the location of the aft PX canteen will see that when a man is in a line up, six feet from the counter, he is in a position whereby there is no doubt that he was not going anywhere else.

As concerns the Second Charge. The Defence brought out that there is conflicting evidence as to the man's identity. The accused is charged under Sec 40 with making a false statement to Major FULLERTON, saying, "I am a member of the RCCS" He is not charged with making a statement to Capt TYLER, and I think that the prosecution brought out that it was in a difficult situation in that it did not have corroborated evidence to produce.

COURT IS CLOSED FOR CONSIDERATION OF APPEAL

COURT DOES NOT GRANT APPEAL FOR DISMISSAL OF CHARGES

FIRST WITNESS FOR THE DEFENCE

F-86414 Pte HAYES, James, Serial 357/1, having been duly sworn, is interrogated as follows:-

Q-1 On 26 Oct 43, at approximately 1430 hrs, will you tell the court in your own words, where you were, and what you were doing.
A-1 I was on boat drill, and I came off boat drill and I went back to my coy lines on 'B' Deck, and me and Pte FLYNN went back on 'B' Deck and were reading a book, and then we came in for supper at a quarter to five.

Q-2 Where there any coy parades that day?
A-2 Yes sir.

Q-3 After boat-drill?
A-3 No sir.

Q-4 There were no coy parades?
A-4 No sir.

Q-5 Your time was your own?
A-5 Yes sir.

CROSS EXAMINED BY PROSECUTION

Q-6 Pte HAYES, you say at 1430 yrs you finished boat drill, you went up on deck and read a book?
A-6 Yes sir, after I came from my coy lines.

Q-7 What were you wearing on your head?
A-7 I was wearing my Tam-O-Shanter.

Q-8 What deck of 'B' Deck was this?
A-8 On 'B' Deck Sir.

Q-9 Where about on 'B' Deck?
A-9 I can't recall.

Q-10 Are you quite sure it was 'B' Deck?
A-10 Yes sir.

Q-11 On the open end of 'B' Deck?
A-11 Yes sir.

Q-12 What was the name of the book.
A-12 It was a comic book.

Q-13 You said that you were on that deck all afternoon until supper time?
A-13 Yes sir.

Q-14 You stayed there until 1645 hrs, until supper time?
A-14 Yes sir.

Q-15 How long did it take you to read your book?
A-15 I didn't read all the time. I was talking and looking at ships.

Q-16 When you left your coy lines which way did you walk?
A-16 Right through the lavatory on to the open deck.

Q-17 Therefore, you were aft?
A-17 I don't know the deck sir.

Q-18 That's the back of the boat.
A-18 Yes sir.

Q-19 Where you where winchesare on 'B' Deck?
A-19 I can't recall, sir.

Q-20 You had someone with you all afternoon?
A-20 Yes sir, Pte FLYNN.

Q-21 Was he with you all afternoon?
A-21 Yes sir.

Q-22 How long have you known Pte FLYNN?
A-22 I have known him for one year.

Q-23 Casually, or as a good friend?
A-23 A good friend.

Q-24 Was he with you all afternoon?
A-24 Yes sir.

EXAMINED BY THE COURT

Q-25 Which part of "B" Deck were you on?
A-25 Right out on the open deck, where the lavatories are.

Q-26 Approximately what time did you return to your quarters from Boat Drill?
A-26 I can't answer that question sir.

Q-27 Was it one or two hours?
A-27 I can't answer that question sir.

Q-28 How long were you in your quarters beforeyou went on deck?
A-28 I can't recall sir.

Q-29 Now, I'll put it this way; was it an hour,or a few minutes?
A-29 I have no idea. Maybe the other witnesses have, but I haven't sir.

Q-30 Have you any idea how long you have been in here since the Court convened?
A-30 I would say about an hour sir.

Q-31 Have you any idea how long you were in your quarters?
A-31 I cannot answer that question sir.

SECOND WITNESS FOR DEFENCE

7-55659 Pte FLYNN, D. Serial 357/1, having been duly sworn proceeds to give evidence as follows:-

Q-1 Do you know the accused, and if so, who is he?
A-1 Yes sir, Pte Hayes (points to him)

Q-2 On 26 Oct 43 tell me precisely in your own words what you did after boat drill.
A-2 After boat drill we came in our quarters. We stayed about a half hour. From there we went out on the deck. We went out and I had a magazine, and I was reading it. Pte Hayes was sitting along side of me. He was talking to somebody who was sitting by him on the deck.

Q-3 Did you know the person to whom he was talking?
A-3 I don't know this person. I paid no attention to him.

Q-4 When did you leave the deck:
A-4 We came in about 20 minutes before we fell in for supper.

Q-5 What deck are you quartered on?
A-5 On "B" deck sir.

Q-6 What part of the deck did you go out on?
A-6 On the aft deck sir.

Q-7 Are there any winches there?
A-7 No answer.

Q-8 Do you know what a winch is?
A-8 No sir.

CROSS-EXAMINED BY THE PROSECUTION

Q-9 What head-gear did Hayes have on that day?
A-9 I am not sure, but I think it was his tam.

Q-10 What was Hayes doing the whole afternoon?
A-10 First, we were on boat drill. We came in from boat drill and went to our quarters

A-10 then we went on deck.

Q-11 What was Hayes doing when you were on the deck with him?
A-11 He was talking to somebody near him.

Q-12 What was the name ofthe magazine you were reading?
A-12 a Western Magazine sir.

Q-13 What was the name of the magazine that Hayes was reading?
A-13 He didn't have a magazine.

Q-14 When you took oath on the Bible, did you know what you were doing?
A-14 Yes sir.

Q-15 Did Hayes leave you for a minute at all?
A-15 No sir.

Q-16 Did you leave him?
A-16 No sir.

Q-17 And all Hayes did that afternoon was talk while you were reading a book?
A17 Yes sir.

Q-18 When you were on deckwas Hayes reading at anytime?
A-18 He could have been. He could have pulled out a book or something out of his pocket and read for a while.

THE DEFENCE ADDRESSES THE COURT

I don't want to reiterate what I did say when I asked the case be dismissed, pointing out that both charges were not prime facia, but I do want to point out that precisely what he was doing all afternoon cannot be said definitely. The same as I cannot tell now what this man has been doing all morning, in spite of the fact we have been in the room now over two hours and fifteen minutes. I have nothing further to say.

THE PROSECUTION ADDRESSES THE COURT

I haven't very much to say sir. Just this question of Capt TYLER and the Provost Marshal. Let me say in Capt TYLER's case that first sights are usually deceiving. We all know that when you met a person you may not recognize him again later on, but if you see him that person on various occasions you can safely say that you can pick out his face again. Now, I think that was the case with the Provost Marshal, that he being coy commander of theman knew him, and Captain TYLER, having not seen the man before was in doubt. It is admitted that the matter should have, and could have been handeled more efficiently, in that the man's pay book should have been checked at the time. The court can only decide who was right. In closing I am only to say that Major FULLERTON, being an officer of field rank, must be responsible for any statement which he may make.

END OF ADDRESS.

THE ~~A.D.C.~~ J.A. ADDRESSES THE COURT.

It is my duty at this time to sum up the case which is before the Court.

I wish to make it clear before starting my summing up, that in my capacity of Judge Advocate I advise and instruct the Court in matters of law only. The Court is a sole judge of the facts. Any opinion which I may express is my own, and is to be regarded as an opinion only. The Court must not be swayed or influenced by it.

The facts of this case are comparatively simple, but are in violent dispute although there are only four witnesses. According to the evidence adduced by the prosecution, it is alleged that the accused man presented himself in a Canteen parade, which parade was to consist only of R.C.C.S. personnel. According to the first witness for the Prosecution, Major Fullerton, the accused man presented himself in that parade, well knowing he was not to be there. Major Fullerton is quite definite about the identification of the accused inasmuch as he is a member of Major Fullerton's own coy. The other witness for the Prosecution, Capt TYLER, cannot say whether the accused man was in fact found in the line up. I think I may safely say, without prejudice to anyone, that the evidence of Capt TYLER, therefore must be disregarded. However, that is a matter, as I have stated before, for the Court to decide opinion.

Now we come to the evidence adduced by the Defence. The accused swears that he was not present at any time in the canteen parade, and he produces a witness FLYNN to corroborate the fact that he spent the pertinent times in his cabin or on "B" deck aft. Here again occurs what is known in law as a direct conflict of evidence. It becomes the duty of the court to decide which evidence is correct. If the witness for the accused is telling the truth it may be, in as much as Major Fullerton isconcerned, there was a case of mistaken identity. On the other hand, the accused and the witness Flynn may be lieing. That is also a matter for the Court to decide. The worst liar in the world may at times be telling the unadulterated truth.

Before closing, it is my duty to advise the Court that the accused must be given the benefit of any reasonable doubt. This has been the right of the accused person since time immemorial. This doubt, however, must be no fanciful or fleeting doubt, but must be truly reasonable. I therefore leave these matters in the hands of the Court for it to decide upon.

COURT IS CLOSED TO CONSIDER THE FINDING.

List of witnesses in the case of F88414 Pte Hayes,J.

For the defence:

NIL

For the Prosecution:

Major M.B.Fullerton	357/1
Capt J.B. Tyler	571/1

SHIPS PART I ORDERS

by

Lt-col J.B. Weir, E.D., Officer Commanding Troops on board S.S. Monterey

Last Part I Order No 10
dated 2 Nov 43

Order No 11
Wednesday 3 Nov 43

1. ROUTINE: As already detailed

2. DETAILS: As already detailed

3. MESS CERTIFICATE:

All offrs and WOs who have not already done so, will sign the Ship's Mess certificate in the Ship's Adjutant's Office, Room A.11, before 1200 hrs 4 Nov 43.

4. FIELD GENERAL COURT-MARTIAL:
F.88414 Pte ELLYARD J. Serial 357/1

The detail of officers as mentioned below will assemble at the Writing Room, A Deck Starboard side forward, at 1100 hrs 4th day of November, 1943, for the purpose of trying by Field General Court-Martial the accused person named in the margin, and such other persons as may be brought before them.

PRESIDENT

Major J.B. Kennedy 355/1

MEMBER

Capt M.S. Clarke 571/1

MEMBER

Capt T.A. Weir 1103/1

WAITING MEMBER

Capt W.B. Elder 943/1

PROSECUTING OFFICER

Capt C.F. Mulherson 357/1

DEFENDING OFFICER

Capt A.O. Gunn 357/1

JUDGE ADVOCATE

Major L.S. Eckhardt 592/1

Officer Commanding 357/1 will provide stationery, an escort for the accused person and a court orderly.

The accused will be warned and all witnesses duly required to attend.

The Proceedings, upon completion, will be forwarded to the Ship's Orderly Room.

(Over)

SHIPS PART I ORDERS

by

Lt-col J B Weir, ED, Officer Commanding Troops on Board SS Monterey

Last Order No 11 dated 3 Nov 43 — Order No 12 Thursday 4 Nov 43

1. ROUTINE: As already detailed

2. DETAILS: As already detailed

3. FIELD GENERAL COURT-MARTIAL:

Ships Part I Order No 11 dated 3 Nov 43 Para 4 is hereby amended to include:

OFFICERS UNDER INSTRUCTION

Lt W.F. Matheson	357/1
Lt D.C. Johnson	357/1
Lt F.G. Halliwell	355/1
Lt T.A. Allen	355/1

4. BLACKOUT:

Blue blackout bulbs are being interchanged with white bulbs. This is a serious offence which endangers the safety of the ship. Severe disciplinary action will be taken against offenders.

5. SLEEPING ON DECKS:

All men who sleep on the open decks must return to their quarters by 0630 hrs in order that the decks may be cleaned.

6. SHIP'S INSPECTION:

All unit offrs must remain with their units during Ship's Inspection until their particular area has been inspected.

7. RED CROSS:

The following sums of money, which were confiscated from gambling games on 2 Nov 43, have been handed over to the Chief Purser for delivery to the Red Cross in Great Britain:-

£ 11-11-0
3-6-0

The following sum has been donated by the crew for delivery to the Red Cross in Great Britain:-

£ 4-7-0

8. LIBRARY BOOKS:

The library will be open from 1000 hrs to 1200 hrs 4 Nov 43 for the return of books only. All ranks are requested to return books which have been read.

(Over)

SHIPS PART I ORDERS

by

Lt-col J.B. Weir, E.D., Officer Commanding Troops on board S.S. Monterey

Last Part I Order No 10
dated 2 Nov 43

Order No 11
Wednesday 3 Nov 43

1. ROUTINE: As already detailed

2. DETAILS: As already detailed

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4. FIELD GENERAL COURT-MARTIAL:
F.68414 Pte H.V.R. J. Serial 357/1

The detail of officers as mentioned below will assemble at the Writing Room, A Deck Starboard side forward, at 1100 hrs 4th day of November, 1943, for the purpose of trying by Field General Court-Martial the accused person named in the margin, and such other persons as may be brought before them.

PRESIDENT

Major I.B. Kennedy 355/1

MEMBER

Capt M.E. Clarke 571/1

MEMBER

Capt T.A. Weir 1103/1

WAITING MEMBER

Capt W.B. Elder 943/1

PROSECUTING OFFICER

Capt C.F. Mulherson 357/1

DEFENDING OFFICER

Capt A.C. Gunn 357/1

JUDGE ADVOCATE

Major L.S. Eckhardt 592/1

Officer Commanding 559/1 will provide stationary, an escort for the accused person and a court orderly.

The accused will be warned and all witnesses duly required to attend.

The Proceedings, upon completion, will be forwarded to the Ship's Orderly Room.

(Over)

5. FIELD GENERAL COURTS-MARTIAL

(a) F31143 Pte CAMES, L. was tried by Field General Court-Martial on 28 Oct 43 on board S.S. Monterey.
He was found guilty on three charges under AA Secs 10(4), 15(1) and 15(3) and was sentenced to undergo 120 days detention.
This sentence is to run concurrently from 28th October 1943 with a previous award of 28 days Field Punishment awarded on 18 Oct 43. The sentence was confirmed by Lt-col J.B. Weir, E.D., Officer Commanding Troops on board S.S. Monterey, on 1 Nov 43.

(b) G23769 Pte NAUSS. G L was tried by Field General Court-Martial on 28 Oct 43 on board S.S. Monterey.
He was found not guilty on one charge under AA Sec 15(3) and guilty on two charges under AA Secs 10(4) and 15(1) and was sentenced to undergo 120 days detention.
This sentence is to run concurrently from 28 Oct 43 with a previous award of 21 days Field Punishment awarded on 16 Oct 43. The sentence was confirmed by Lt-col J B Weir, E.D., Officer Commanding Troops on board S.S. Monterey, on 1 Nov 43.

(c) F65009 Pte RANKIN, J A was tried by Field General Court-Martial on 28 Oct 43 on board S.S. Monterey.
He was found not guilty on one charge under AA sec 40 and guilty on one charge under AA sec 10(3) and was sentenced to undergo 60 days detention.
This sentence is to run concurrently from 28 Oct 43 with a previous award of 28 days Field Punishment awarded on 18 Oct 43.
The sentence was confirmed by Lt-col J.B. Weir, E.D., Officer Commanding Troops on board S.S. Monterey, on 1 Nov 43.

G C A Macartney Capt

(G C A Macartney) Capt
Ships Adjutant

LOST

1. Waterbottle marked F.95702
2. Issue clasp knife with initials L.C. marked on handle

FOUND

1. Issue Clasp knife
2. Balaclava with RCOC badge
3. Waterbottle with damaged cork

AUXILIARY SERVICES NOTICES

1. There will be a boxing and wrestling exhibition at B deck aft at 1400 hrs 3 Nov 43.

2. MOVIES

1400 hrs Library A Deck	"Primrose Path"	Sp Coy 357/1
1400 hrs Writing Room A Deck	"Twin Beds"	C Coy 943/1
1830 hrs Library A Deck	"Flt Lt"	100 men 556/1
1830 hrs Writing Room A Deck	"Almost Married"	100 men 556/1
2030 hrs Library A Deck	"Flt Lt"	100 men 573/1
2030 hrs Writing Room A Deck	"Almost Married"	100 men 573/1

Senior WOs or NCOs will report 15 minutes ahead of showing. Men will be paraded up 10 minutes ahead and will not congregate independently in A Deck Foyer.

SHIPS PART I ORDERS

by

Lt-col J B Weir, ED, Officer Commanding Troops on Board SS Monterey

Last Order No 11
dated 3 Nov 43

Order No 12
Thursday 4 Nov 43

1. ROUTINE: As already detailed

2. DETAILS: As already detailed

3. FIELD GENERAL COURT-MARTIAL:

Ships Part I Order No 11 dated 3 Nov 43 Para 4 is hereby amended to include:

OFFICERS UNDER INSTRUCTION

Lt W.F. Matheson	357/1
Lt D.C. Johnson	357/1
Lt F.G. Halliwell	355/1
Lt T.A. Allen	355/1

4. BLACKOUT:

Blue blackout bulbs are being interchanged with white bulbs. This is a serious offence which endangers the safety of the ship. Severe disciplinary action will be taken against offenders.

5. SLEEPING ON DECKS:

All men who sleep on the open decks must return to their quarters by 0630 hrs in order that the decks may be cleaned.

6. SHIP'S INSPECTION:

All unit offrs must remain with their units during Ship's Inspection until their particular area has been inspected.

7. RED CROSS:

The following sums of money, which were confiscated from gambling games on 2 Nov 43, have been handed over to the Chief Purser for delivery to the Red Cross in Great Britain:-

£ 11-11-0
3-6-0

The following sum has been donated by the crew for delivery to the Red Cross in Great Britain:-

£ 4-7-0

8. LIBRARY BOOKS:

The library will be open from 1000 hrs to 1200 hrs 4 Nov 43 for the return of books only. All ranks are requested to return books which have been read.

(Over)

9. TRAFFIC CONTROL:

Attention of all ranks is drawn to the fact that traffic along passageways is clockwise. Traffic along Starboard (right) passageway will be used for walking aft (towards the stern of the vessel). Port side (left) passageways will be used for walking forward (towards the bow of the vessel).

(G C A Macartney) Capt
Ships Adjutant

LOST:

1. Field Service cap without badge. "ABC M55441" marked on inside.
2. Waterman's Skywriter fountain pen. Brown with red stripes.
3. Gas regulator from Bren Gun - "A" Coy 357/1
4. Balaclava, Service cap and badge, waterbottle.
5. Bulova waterproof watch, in bathroom "D" Deck, aft, 3 Nov 43.

FOUND:

1. Light coloured left handed woollen mitt.
2. Field Service cap without badge. No markings
3. Right handed leather gauntlet. Star and "Powell" on back.
4. Knife with key ring attached.

Pay books belonging to F.32682 Fraser D J and C.27701 Thompson R J H have still not been collected.

AUXILLARY SERVICES NOTICES

MOVIES

1400 hrs Library	B Coy 943/1	"Twin Beds"
1830 hrs Library	100 men 918/1	"Almost Married"
1830 hrs Writing Room	100 men 918/1	"Primrose Path"
2030 hrs Library	100 men 594/1	"Almost Married"
2030 hrs Writing Room	50 men 594/1 50 men J Tp 573/1	"Primrose Path"

SUMMARY OF EVIDENCE P.T. Kennedy Capt.

Summary Of Evidence in the case of F80414 Pte HAYES, James of "B" COY,357/1 a soldier of the Canadian Army Overseas, charged with two offences under Sec. 40 of the Army Act.

The Commanding Officer directs that the evidence be taken under oath.

FIRST WITNESS: Major H.R.Fullerton Serial 357/1 Provost Marshal on board ship, the S.S.Monterey, having been duly sworn states:

I am Major H.R.Fullerton 357/1. On the 26 Oct 43 at 1430 hrs I was and still am Provost Marshal on board ship. I was present at the PX Canteen in the aft part of the ship along with several of my Provost Staff during the time that purchase was being made. As specific times were being allotted to specific units,we wished to be quite certain that no men other than those authorized made purchases from the PX Canteen to the detriment of their fellow soldiers While watching the proceedings my attention was attracted by a discussion being carried on by a member of my Provost Staff and a soldier.I noticed that the soldier was not wearing the proper regt'l headdress as laid down for units authorized to purchase at the PX at that time.I heard my assistant ask this man to which unit he belonged and I heard the man reply that he was a signaller at the same time giving some sort of an excuse as to why he was not wearing his regt'l headdress. The man's face struck me as being familiar and I walked over and said,"That man is not a signaller, he is a C.B.H." Whereupon the man looked me in the eye and stated flatly, that he was signaller. At that point I said,"We will go out on the open deck" As we started to go out the man changed his story and said,"I am a C.B.H." I then turned to Capt Tyler and told him to charge the man.The following day Capt MacLachlan A/C.C."B"Coy,Serial 357/1 stated that the man had given his name as MacDonald along with a regt'l number and that the MacDonald that he had picked up on the charge denied that he was the man.I thereupon visited Pte MacDonald and he was not the man in question. I had Capt MacLachlan call a muster parade of "B" Coy,357/1 the following day and on that parade I checked over the entire Coy and identified the accused,Pte Hayes as being the man who had represented himself as being the signaller at the PX Canteen and who I turned over to Capt Tyler to be charged.Pte Hayes was fallen out of the Coy and as I did not wish to spend time personnaly on the case and as I was also the man's Coy Commander, I sent for Capt Tyler to complete the identification and to act a s witness in the case. Capt Tyler did not complete the identification therefore the charge entered with myself as witness.

Signed...H.R.Fullerton Major.....

The accused declines to cross examine the witness.

SECOND WITNESS:Capt J.E.Tyler 571/1 having been duly sworn states:

I am Capt J.E.Tyler of Serial 571/1 Assisting Provost Marshal on board S.S. Monterey.On the 26 Oct 43 at approximately 1430 hrs I was acting in the capacity of Assisting Provost Marshal,assisting in traffic control at the PX Canteen.At this time a soldier appeared presumably to make a purchase.He was not wearing any badges and I asked him for the name of his unit.He replied that he was of the R.C.C.S.,a unit which was at that time authorized to make purchases.While the discussion was going on the Provost Marshal appeared on the scene and apparently he heard my question to this man,because he said this man was a C.B.H. We moved outside to the open deck where Major Fullerton again said,"This man is definitely a C.B.H.,he is in my Coy",or words to that effect.At this time the man admitted he was a C.B.H.,and Major Fullerton instructed me to lay a charge against him.The man gave me his name as MacDonald and regt'l number and initials I do not remember now.I made out the charge and put it on the Provost Marshal's desk.Two days later I was sent for by the Provost Martial who had the accused Pte Hayes in custody.He (PM) asked me if this was the man for whom I had made out the charge on 26 Oct 43. Having only seen the manfor a very few minutes I could not swear that the accused was the same man.Later that day I attended Orderly Room at 357/1 and was still unable to identify Pte Haye s as the same man who had given me the name of MacDonald on 26 Oct 43

Questioned by the accused:

Q.1. Are you sure that you cannot identify the man that you saw at the PX Canteen that day.

A.1. Yes,I am sure that I cannot identify him now.

Signed...J.E.Tyler...Capt.....

The accused was warned as follows:

Do you wish to make any statement or give evidence under oath? You are not obliged to say anything or give evidence unless you wish to do so. But whatever you say or whatever evidence you give will be taken down in writing and may be given in evidence.

The accused: "I have nothing to say at this time"

Signed..H.O'Brien.....

I certify that RP 4 has been complied with.

Taken by me at Sea this 1st day of November 1943, in the presence and hearing of the accused.

.....(C.P.MacPherson)Capt.,
Officer Taking Summary.

3571-1

At Sea,
2 Nov 43

At my forthcoming trial by Field General Court Martial I request the services of, Capt A.C.Gunn if he is available.

Signed... Hayes D.

00-65

PTE HAYES J.D.

Correspondence to be PINNED here.

00-65

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 29th day of August, 1943

Whereas it appears to me, the undersigned, an officer in Command of Second Canadian Division, Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[redacted]

*(1) [redacted]

*(2) [redacted]

*(3) [redacted]

[redacted]

[redacted]

President.

Rank.	Name.	Regiment.
Major	A.H. Warr	2 Cdn A Tk Regt RCA

Members.

Rank.	Name.	Regiment.
Capt	J.M.A. Graham	RCASC
Lieut	A.G. Keith	RCE
Waiting Member: Capt	G. Donald	RCOC, HQ 2 Cdn Inf Div

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed E.L.M.Burns
(E.L.M.Burns)Major-General
Commanding 2 Cdn Div
Convening Officer

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B90757, Pte (L/Cpl) James Delmar HAYES, No.2 Coy, Cdn Provost Corps	Charge Sec 15(1) Army Act (See charge sheet attached)	Guilty	Guilty To be reduced to the rank of Pte & to undergo Field Punishment for a period of 14 days.	I vary the Sentence to read, "To undergo F.P. for 14 days and confirm the finding and Sentence as varied E.L.M. Burns Maj-Gen Comd 2 Cdn Div 1 SEP 1943

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— N/A

(Signed) E.L.M. Burns (E.L.M. Burns) Major-General
Commanding 2 Cdn Div
Convening Officer (*c*)

(Signed) Maj R.C.A.
President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 28th day of August 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. ~~The witnesses~~ N/A
*3. ~~The interpreter~~ N/A
*4. ~~The officers under instruction~~ N/A

* Omit if not applicable.

were duly sworn.

Signed this 30 day of Aug 19 43

Maj R.C.A.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 767 M.M.L. 1939.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison until further orders.~~

E.L.M.B.

Signed this 2nd day of Sept 1943

E.L.M. Burns
Confirming Officer.
Comd 2 Cdn Div

Promulgated and extracts taken in the case of B90757 Pte (A/L/Cpl) James Delmar Hayes 1943

(*a*) (Dated) 2/9/43 (Signed) Capt
OC 2 Pro Coy 2 Cdn Div

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible]

CHARGE SHEET:

82

Charge Against: B.90757 Pte. (A/L/Cpl) HAYES, James Delmar, No. 2 Provost Coy, 2 Cdn Div., a soldier of the Cdn Army Overseas.

FIRST CHARGE:
A.A. Sec 15(1) ABSENCE WITHOUT LEAVE

in that

He, When on Active Service, In the Field did absent himself without leave from 0800 hrs 19 Aug 43 until he surrendered himself to Lieut. J. Tweddle of 2 Provost Coy, 2 Cdn Div at Barns Green Tented Camp at approx 1310 hrs 23 Aug 43. Absent 4 days 5 hours 10 minutes.

WITNESSES: B.9048 Sgt. Williams, W.T. - 2 Provost Coy
Lieut. J. Tweddle - 2 Provost Coy

(J. J. PLATT) Capt.,
Commanding Officer
2 Provost Coy, 2 Cdn Div.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field
23 Aug 43

(E.L.M.Burns) Major-General
Comdg, 2 Cdn Div

Major R.C.A.
President

Ex 1

MEDICAL OFFICER'S CERTIFICATE.

I certify that B 30757 L/L/Cpl Hayes J. D.
of No. 2 Provost Coy, 2 Cdn. Div., is fit to undergo trial
by Court Martial.

Date 17 Aug. 43.
Time 1730 hrs.

Capt.
Medical Officer
2 Cdn. Div. H. Q.
R.C.A.

Witness Capt. R.C.A.
President

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at in the field

on the 30 day of Aug 19 43 by order of

Major General L. H. M. Burns

Commanding 2 Cdn Inf

dated the day of Aug 19 43

President.

Major A. R. Mann, R.C.A.

Members.

Capt. J. M. A. Graham, R.C.A.S.C.

Lieut. A. J. Roth, R.C.E.

~~Judge Advocate.~~

Trial of* B70757 Rfn (L/Cpl) James Delmar Hayes
No 2 Coy, Cdn Provost Corps

The order convening the Court, the charge-sheet and the summary ~~of evidence~~ are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available~~

~~owing to~~

~~a waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor.† Lieut. H. C. Forbes, Cdn Provost Corps.

~~Counsel~~, or defending officer† Lieut A. H. Mole R.C.O.C.

At 0910 o'clock the Trial commences.

The order convening the Court is read, and is marked X signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? Answer. No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

B

The President, members ~~and judge-advocate~~ are duly sworn

~~The following officers under instruction are duly sworn.~~ NIL

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the ~~first~~ charge against you which you have heard read ? *Question to the accused.*

Guilty *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read ?~~ *Question.*

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read ? *Question.* NIL

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read ? *Question.*

Answer.

The accused having pleaded Guilty to the charge, the provisions of Rule of Procedure 35 (B) are here complied with. NIL

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty" until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty.

* To be struck out in case the plea of "Not Guilty" has been proceeded with.

*[~~The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.~~]

The accused [illegible] is found guilty of

Absence without leave as charged.

*The summary (~~or abstract~~) of evidence is read, marked "G" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Yes sir

Answer. The accused in mitigation of punishment ~~says~~:—

~~[or~~ hands in a written statement, which is read, marked CC 1, signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No Sir

Answer.

Evidence as to character.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

~~Guilty~~

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

~~*The Court being re-opened, the accused is again brought before it, and~~ ~~is duly sworn.~~ ~~Guilty~~

~~Should not be crossed out below this line Wells~~

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E1, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. Yes ~~should not be crossed out above this line~~ Wells

~~Cross-examined by the accused.~~

Observation.—It is matter of the nature of the service of the accused as a disciplinary corps, or otherwise, the finding of the Court should not liable to any punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.* No Sir

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused to be reduced to the rank of Pte & to undergo Field Punishment for a period of 14 days.

Sentence.

AMb

AMb

SUMMARY OF EVIDENCE: In the Case of

B.90757 Pte. (A/L/Cpl) HAYES, James Delmar
No. 2 Provost Coy, 2 Cdn Div., a soldier of
the Cdn Army Overseas.

FIRST WITNESS: For the Prosecution

B.9048 Sgt. Williams, W.T.
2 Provost Coy, 2 Cdn Div, Not Sworn states:

In the course of my duties as Orderly Sergeant on 19 Aug 43 I checked the pass list at 0800 hrs. One pass was missing. It was an overnight pass that had been issued to L/Cpl. Hayes. I checked with the Section NCO who could give me no information as to the whereabouts of L/Cpl. Hayes. I then reported L/Cpl. Hayes absent to my Coy Orderly room. The next time I saw the accused was in this Coy Orderly room. Lieut. Embury turned him over to me at approx 1100 hrs 24 Aug 43 and informed me that the accused was under close arrest.

W T Williams

B.9048 Sgt. Williams, W.T.
2 Provost Coy, 2 Cdn Div.

THE ACCUSED declines to crossexamine the witness.

THE SECOND WITNESS: For the prosecution,

Lieut. J. Tweddle,
2 Provost Coy, 2 Cdn Div, due to the distance and time involved, and taking into consideration the exigencies of the service, being unable to attend a copy of a statement purporting to be signed by the witness Lieut. J. Tweddle is read to the accused and is attached hereto as Appendix "A".

THE ACCUSED waives the presence of the witness and declines to cross-examine.

THE ACCUSED having been informed of his rights in accordance with R.P. 4 (e) says:

"I have nothing to say."

S/Cpl Hayes J D

B.90757 Pte.(A/L/Cpl) Hayes, J.D.
2 Provost Coy, 2 Cdn Div.

The above Summary of Evidence taken by me, in the Field, this 24th day of August, 1943.

H C Forbes

(H. C. FORBES) Lieut.,
2 Provost Coy, 2 Cdn Div.
Officer Detailed to Take Summary of Evidence

"G"

A/Maj Major R.C.A.
President

Plea of mitigation of Sentence CC1

Witnesses Lt Embury
Lt Swedale
Sgt Mitchell

I joined the Can Army 16 of July 1941 with the 2nd Fld Ambulance which later became part of 1st Army Tank Brigade On 1st of April 1942 I was transferred to RCASC Att to 2nd Fld Ambulance employed as an ambulance driver. I had never requested a transfer from the unit but shortly before the unit proceeded overseas On 28th of April 1943 I was transferred to No 1 C.A.R.U. Adv Provost Corps where I was trained in Provost duties. I did not ask for a transfer there at the holding unit because I would of had a lot of kitchen duties & I thought if I went to the field I would be able to get back to driving a lorry. I was posted to No 2 Provost Coy. approximately the 20 of June & made an A/ T/Cpl on the 25 of June

my duties consisted partly of riding M/C. on road patrol. Prior to an accident I had on M/C on my first road patrol I was put on Swaddle to transfer me from a M/C to driving a lorry. Due to the accident I was off of the M/C for a week. After the accident I again requested to be taken off of the M/C. this request was made to Lieut Swaddle, Lieut Ebbeny & Sgt Mitchell. I was very nervous while riding a M/C. & was better suited to drive a lorry since I had been driving for over two years with my original unit. A few days later Lieut Ebbeny came to me when I was duty F.L. & told me I would be changed to a lorry however when a new man came to the unit he was given a lorry & I continued on a M/C. I drove a lorry on exercise Pick-Me but afterwards was put back on M/C. I received an overnight pass on 18 of August to go to Brighton & was told I would be on road patrol next day 19 of August. p.t.o.

missed my train from Brighton + went to report to the R.T.O. There was no one at the R.T.O. office so I left the station, I knew I would miss my road patrol duty which was what I wanted so that I would be taken off of road patrol entirely.

I remained away the extra three days to make sure I didn't get road patrol again. All I wanted was to get away from M/C + I could only think of this way to do it.

S/Cpl Hayes. J. F.
21st of Aug 1943.

CC1

Albert
Major R.C.A.
Provost C.

E1

Substitute for AFB 296 or MFB 355
(Authy: 2DC/5-4-1, d/10 Aug 41)

STATEMENT OF CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED

No. B.90757 Pte. (A/L/Cpl) HAYES, James Delmar. 2 Provost Coy, 2 Cdn Div.

Age: 25 Married No. of Dependents: One

Date of Attestation: 16 Jul 40

No. of Days Spent in Close Arrest (To date of Trial) 7

Civil: Nil Military: Two (2) Hospital: Nil TOTAL: Two (2) days

Dates of Promotions, Appointments, and Confirmation of Rank, If any:

Appointed A/L/Cpl, with pay of rank and appointment, w.e.f. 25 Jun 43.

A Certified True Copy of NF.M.6 Accompanies This Form:

H.C. Forbes

(H. C. FORBES) Lieut.,
Officer i/c Records,
2 Provost Coy, 2 Cdn Div.

Dated at: In the Field,

This 3rd day of Aug 1943

(To be dated and signed as of date of trial)

Adjt Maj for O.C.
President.

CERTIFIED TRUE COPY

No. B90757 Name HAYES, J.D. | Sqn., Battery, or Company | Corps Cdn Provost | Date of enlistment 16 Jul 40 | Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.R. 127) 40/P & S/136 (2637)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing with trial	By whom awarded	Remarks
Sheet destroyed 16 Jan 42. Last entry "N.A." Cases of Drunkenness: Nil.									
Field	16Apr 42	Pte.		AA 40. Conduct to the prejudice being Improperly dressed.	Lt.Col, K.A.Hunter Capt B.W. Vale	7 days C.B.	17Apr42	Lt-Col K.A.Hunter	
Field	7 Dec 42	Pte		AA 40. Conduct to prej etc.Found in bed at 0724 hrs - reveille being 0630 hrs.	RSM Smith Sgt Hamilton	3 days C.B.	7 Dec 42	R.A.MacLeod Major	
Field	18 Jul 43	A/ L/Cpl		AA 15(1). W.O.A.S. A.W.L. 7 hrs 56 minutes.	Cpl K.A. MacMillan	Admonished	19Jul43	Capt J.J. Platt, CO 1Hq(1)a Fmn(Overseas)	Forfeits 1 dys pay under ART 1Hq(1)a Fmn(Overseas)

CERTIFIED TRUE COPY OF ORIGINAL ON FILE

Offr i/c Records

Lieut., (P.T.O.)

HE 10.
Gibson. HAYES. J. H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C41296 Gnr James Francis Hayes 41 CAR.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 41	Not guilty	Not guilty	
2nd	AA 40	Not guilty	Guilty	
3rd	AA 19	Guilty	Guilty	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of acit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for 9 months -

(Sgd) Thos Lawson Capt — Judge-Advocate, if any. 18 Oct 44 — Date awarded. (Sgd) A Willson Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the findings and sentence of the Court but remit 120 days detention

I direct that the accused be not committed to prison or detention barracks until further order.(1) Ren
(1. AA 57A. Delete if not used.)

(Sgd) Rutherford
Commanding 11 Cdn Armd Bde
Confirming Officer.

Date 29 Oct 44

Date 30 Oct 44

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
C41296 Gnr HAYES, J.F.	31 Oct 1944	K.K. Mackenzie Majr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

If all entries or irregularities such as would warrant withholding confirmation.

Lt/Lawson Capt D.J.A. Q.4 Cdn Corps

RECORDED AT CMHQ IN AG 160 HE-10

RECEIVED 20 NOV 1944 JAG BRANCH

FIELD GENERAL COURT-MARTIAL

CPA386 (To issue of AFA2) 40-F-36 (E-1944) 40000 4/388

Convened by Order of Brig R.W. Mansel Comd 4 Can Armd Bde dated 17 Oct 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 77, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C41296	Gnr.	James Francis	Hayes	41 CAR

PROCEEDINGS REVIEWED 21 Nov 44

JSC

PROCEEDINGS REVIEWED BY D.J.A. Date 14 Nov 44 Cdn. Sec. G.H.Q. 21 Army Gp

PROCEEDINGS OF TRIAL.

Held at (place in country) Bilgrim on (date(s)) 18 Oct 44

REVIEWING OFFICER'S BRANCH C.M.H.Q.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2/103

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms RQs. For guidance as procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (not) amenable to military law, and each charge discloses an offence.(3) 1

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (not) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (not) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2) 11

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Mrs Olga Calmyn as interpreter? Ans No

The Interpreter is sworn.(1) ~~Do you object to ..... as shorthand writer?~~ Ans .....
The ~~shorthand writer is sworn.~~(1) 6

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	R.F. Willson	Lincs Regt
Member	Lt	R.W. McKeans	15 Can Fd Regt RCA
Member	Lt	A.H.L. Cairns	41 CAR
Judge-Advocate	Capt	Thos Lawson	H & W Cdn
Prosecutor	Capt	G. Jessup	41 CAR
Defending Offr	Lt	L Hornberg	41 CAR

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 31.)

A8. The accused ..... before arraignment make(s) (no) ..... plea. 11

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (not) arraigned (separately) on all charges in the charge sheet.(1) The accused does (not) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. 11

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form COR. C.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

... AFTER ARRAIGNMENT.

1. *The accused may ... Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdr... ...ative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy ... Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, ete, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of J A see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of J A or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement(s). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ... charge(s). The accused is (are) so informed, and he (they) charge(s) his (their) plea(s) on ... charge(s). Part 1 of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No.(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the first charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ... charge(s), and allowed on the first charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Intend giving as a witness. Do you intend to call witnesses on your behalf? Ans Yes - Character witnesses as to character only? Ans Yes.
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 44(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the second charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans Yes.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C, respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans No.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its purview, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas AO 309, 2123, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(D), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused : Do you wish to make a statement ? Ans No.[5]
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.[1]
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here: Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No.[1]
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (has) (no) opening address.[1]
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.[1]
(1. RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the first charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the first charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans I'm doing as a witness. Do you intend to call witnesses on your behalf ? Ans Yes - (Cpl Patel). Any witnesses as to character only ? Ans Yes.
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the second charge(s) being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(1. AA 54(7) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?[1] Ans Yes.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C, respectively.[3]
(1. MFB 355 or AFB 296. 2. MFM a. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?[1] Ans No.[2]
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences consigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assemble and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

R3h

CHARGE SHEET

The accused, C 41,296 Guardsman James Harold HAYES, 21 Cdn. Armd. Regt. (OGFG)(CA), a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE: SEC 41 ARMY ACT

When on Active Service committing a Civil Offence, that is to say, stealing

in that he

in the field, on 28 September, 1944 stole 1200 francs (Belgian), the property of Werner ROELS of Bruges, Belgium.

SECOND CHARGE: SEC 40 ARMY ACT

When on Active Service conduct to the prejudice of good order and military discipline

in that he

in the field, on 28 September, 1944 brandished a pistol and caused a disturbance in a public place.

THIRD CHARGE: SEC 19 ARMY ACT

When on Active Service, drunkenness

in that he

in the field, on 28 September, 1944 was drunk.

(B.M. Smith) Lt.-Col
Officer Commanding,
21 Cdn. Armd. Regt. (OGFG)(CA)

In the field
3 October, 1944

Appears for trial NR Can SVC

In 16 fmls
15 Oct 44.

Hist/arson exps
adjs N can arms Div

To be tried by Field General Court-Martial.

(R.W. MONCEL) Brig.
Comd 4 Cdn Armd Bde.

In the Field
17 Oct 44.

B.H.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3) 40/PAS/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 106. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-41296	Gdsm		James Harold	HAYES	21 Cdn Armd Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 Oct 44 was ordered by (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I also appoint (a) Alternate Offrs to form the Court, (b) a Fd Offr as President, for the reserve Judge-Advocate.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	R.F. WILLSON		Linc & Welld Regt

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Lieut	K.V. McKEARNS		15 Cdn Fd Regt RCA
Lieut	A.K.L. EAVES		25 Cdn Armd Regt

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt	G.B.W. BECKETT		4 Cdn Armd Div Sigs.

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	H.A. HANSON		HQ 4 Cdn Armd Div

On Active Service in the Fd

in Belgium (Country.)

(R.W. MOUNCEY) (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Date 17 Oct 44

Commanding 4 Cdn Armd Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

18 October, 1944

This is to certify that I have this date examined C 41,296 Gdsm. HAYES, J.H. and find him medically fit/~~unfit~~ to undergo trial by Field General Court Martial.

Medical Officer

Prunnetion.

IW Madame Lucas, 41 Rue de la Academie, Bruges. Swiss.

Dec 24 Sep 24 at Selection 6 - 6.30 hrs I saw soldiers entered my shop. They were drunk. The accused was one of them. They asked something in English which I did not understand. They asked for food. The accused had his elbows on the writing machine, broke the glass with his first, and then shook the hand machine. My husband came from behind the counter and told the accused not to do it. I went to the door and called for help. Another Czar soldier came in and then left. One of the 2 Czar soldiers and and the accused followed him. The accused fell between the counter and the door. He lifted himself up. and took all the paper money out of the till. I ran out and called for help. The accused put the money in his pocket.

Just before going out of the shop the accused took out his pistol.

He took about 1200 francs

more or less.

The money belonged to my husband and myself.

K Ekam.

The accused was in the shop 7-10 minutes. He fell down twice. Once when he entered and once when he lifted himself by the till. The accused broke the weighing machine and shook the fruit machine. The accused had a bottle. and was continuously present. The other soldier was not there all the time. He was not there when the accused left the shop.

The soldiers were too drunk to understand what my husband said. I saw it from the look in their eyes, the way they walked. He fell ~~and~~ because he was drunk. The accused put his hand on his pistol when I went to the door for help. My husband had run away by a private entrance followed by the other soldier.

The witness counts the date 1- was "21 Sep 14" on Thursday." I submit the matter that not day by the police

R P 93(8) complied with.

JN. Mr. Hermann Bonds of Rue de la Academie, Bruges -

Identifies the accused. On Thursday ~~that~~ ~~February~~ in Sept. the accused came in the shop, full, and the counter, put his elbows on mighty counter. He asked for some food in French. The other soldier must be the home country and I had to occupy myself with him. I came out by the private entrance. The other soldier followed me.

There was about 150 francs in the till and only small change was left when I returned.

L. Evans. The accused was very drunk. He only fell everywhere where he stood.

Person. I am a Bulletin Shop.

~~RP 83 (B) complied~~.

Counter

I attended the date was either the 20 or 21 Sept 44

RP 83 (B) complied with

Certain Dupont Adjoint Commissaire
Zw. Bruges Police sworn.

On 21 Sep 14. at 6 o'clock I saw the accused and another soldier in the public street. The accused had a pistol in his hand.

Madam Roels reports that she had had many stolen.

I followed the accused and the other soldier to the house of Mr. Hoste. I took their numbers from them and with 6 police took them to the Police office.

I am not sure that it was the 21 but it was on a Thursday.

The accused was brandishing a revolver and people ran away. It was not easy to take the accused's revolver but I tried to do it.

The accused knocked a window out of the fire station.

The house of Sawyer Hoste is about 150 or 200 the house of Madam Roels.

V. Cr. am. No force was necessary to take the revolver. He was too drunk.

Ink arrived & police st. about 6.00 p.m. He was carried there.

RP 53(B) complies.

Autopsy Report received by the Court.

There is incidents both place on 2 of Sp 44 and not 21 Sep. I have reported by writing by ex writing only report.

To Cr Adm I enclose the report regarding.

RP 53(B) complies.

Submission of no case.
on first charge.

Def Offr. The evidence shows
a theft on 21 Sep and not
on 28 Sep.

Pros Offr.
The civilian witnesses
are not definite as to
date. The date was fixed
by the Police Officer as
28 Sep 44.

Jc. Prima facie case explains.
A matter of fact for case
to judge.
Theft defined -

J.

Defence

C41 c 9d Edw VII Reg v of N. VI CAP. xxxvii.

My actual age is 24 yrs and not 23 as appears on my documents.
I had trouble with drink in London but stopped when I came to England.
On V & Sp I drank a lot of cognac about 1½ bottles. I remember leaving a cafe and going down the street. I don't remember anything after that.

K Evans.
Came off Oct 1942.

RDF 3(B) complied.

Prosecutrix summary.

The facts of the charge appear from the indictment.

Def. off. closing address.

The accused was almost helplessly drunk - and did not know the nature and consequences of his act and the difference between right & wrong.

fo. Defence of drunkenness explained as such & the burden of proving the charge. Burden of reasonable doubt.

Chaudet

Capt R. F Manns VI CER comm-
Honour served since March
1944. He is a first-class
soldier. He did his duty
in the field and did it
well. I would soon like him.

No 6 Exam.

RP 83 (B) complied with.

Lt. L. Hennessy VI CER comm
Honour served since Sep
43. He good soldier and
well behaved. His work is
field excellent — one of the
best men under my command.

No 6 Exam

RP 83 B) complied with.

Exhibit "A". R.3.

SUMMARY OF EVIDENCE

in the case of

C 41,296 Gdsm. James Harold HAYES, 21 Cdn.Armd.Regt.(90PO)(CA) charged with:

1. Committing a Civil Offence, that is to say, stealing. A.A. Sec. 41
2. Conduct to the prejudice of good order and military discipline.A.A. 40
3. Drunkenness. A.A. 19

By the direction of the Commanding Officer, 21 Cdn.Armd.Regt.(90PO)(CA) the evidence is taken on oath.

I am satisfied to have Mme. Olga Calmeyn, 1 Quai de la Porterie Bruges, Belgium act as interpreter at my Summary of Evidence.

J.H. Hayes
C 41,296 Gdsm. Hayes, J.H.
21 Cdn. Armd. Regt. (90PO)(CA)

The interpreter is then sworn.

FIRST WITNESS - Mme Werner ROELS, 21 Rue de la Academie, Bruges, sworn states:

"I am Mrs. Werner ROELS, 21 Rue de la Academie, Bruges. On 28 September, 1944 between 6 and 6.30 P.M. I was in my shop. Two Canadian soldiers came in and the accused fell on the ledge of the store window. The other one helped him up. The accused said "have you anything to eat?". He had his arm on the weighing machine and I said,"If you take your arm away from the weighing machine I will give you something to eat". The accused went from the counter to the ham machine and he put his hand in his pocket and took out a bottle of rum. During that time I went to the door and called for help. Then another Canadian came in the store and went to the accused and the bottle of rum fell on the floor. This third Canadian then left the shop and went away. After this, the accused ran after his comrade who had disappeared behind the counter into the house, running after my husband. While the accused was running he fell between the counter and the wall. He lifted himself and in so doing he took hold of the till and opened it. He took all the paper money that was in it. There was about 1200 frands more or less in the till and this was the property of my husband and myself. He put it in his pocket and while doing so I ran to the door and called for help. While I ran to the door I noticed the accused put his hand on his holster. He then left the shop and staggered down Spanish street. The accused was dead drunk. The weighing machine in the shop was damaged. I cannot say which of the two men damaged it."

Epse Werner Roels

Mme Werner ROELS
21 Rue de la Academie
Bruges

The accused declines to cross examine this witness.

SECOND WITNESS: Mon. Werner ROELS, 21 Rue de la Academie, Bruges, sworn states:

"I am Mr. Werner ROELS, 21 Rue de la Academie, Bruges. On 28 September, 1944 at about 6 or 6.30 P.M. two Canadian Soldiers entered my shop. They were drunk. The accused fell on the window ledge and the other stood in the middle of the shop. They both went to the counter putting their hands on the weighing machine. They spoke to me in English and I couldn't understand. I wanted the two men to take their elbows from the weighing machine. The accused did not take his elbows from the weighing machine. The accused was busy talking to my wife and I stood and waited. I then became

SECOND WITNESS (Cont'd...) engaged with the other Canadian and finally went into the residential part of my house with the other Canadian following me, and did not see the accused again. The weighing machine in my shop was damaged. One of the soldiers, I don't know which, broke the glass of the weighing machine. Before these soldiers entered my shop I had about 1200 francs more or less in the till and after they left, all the paper money was gone except the small change".

Werner Roels

Mon. Werner ROELS,
21 Rue de la Academie,
Bruges

The accused declines to cross examine this witness.

THIRD WITNESS: Octave DUPONT, Adjoint Commissaire, Bruges Police, sworn states:

"I am Octave Dupont, an Assistant Commissar of the Bruges Police. On 26 September, 1944 at about 6 O'clock I met two Canadian soldiers, drunk, in Academie St. They both had revolvers in their hands and were menacing people. The accused was one of these men. The accused knocked in one of the windows of the fire station. In Spanish Street they both went into the house of the lawyer Hoste. While they were in the corridor of the house I took the revolvers from them and took them to the police station. The accused was wounded in both hands. The accused was dead drunk".

Cross examined by the accused.

Q. "Did I cause you any trouble when you picked me up"?.
A. "No trouble".
Q. "Do you know who bandaged my hand"?.
A. "The house maid of the lawyer Hoste".

Dupont

Octave DUPONT
Bruges Police,
Bruges.

QUESTION TO THE ACCUSED: "Do you wish to make any statement or to give evidence on oath?. You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

A. I want to make a statement.
Q. On oath or not on oath?
A. On oath.

The accused, sworn states:
"I am C 41,296 Gdsm. Hayes, J.H., 21 Cdn.Armd.Regt. (GGFG)(CA). On 26 September, 1944 after drinking a bottle and a half of cognac in Bruges I left the cafe looking for something to eat. I had shoved the other half of the bottle of cognac in my tunic. After leaving the cafe my mind is a blank until the next morning when Sgt. Hudson told me why I was in jail".

J. H. Hayes

C 41,296 Gdsm. Hayes, J.H.
21 Cdn.Armd.Regt.(GGFG)(CA)

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence of the accused and that R.F. 4 (c) (d) (e) (f) and (g) have been complied with.

(A.R. Jessup) Capt
21 Cdn.Armd.Regt.(GSO) (CA)

In the field
2 October, 1944

Exhibit B

M.F.B. 355
5M 10-39 (2492)
H.Q. 1772-39-620

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C 41,296	Guardsman	James Harold HAYES	21 Cdn.Armd.Regt.(GGFG)(CA)

1. The following is a fair and true summary of the entries in the field Conduct sheet of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For A.W.L.	NIL times	eight times
For AA. 40	NIL times	six times

Number of instances of gallantry or distinguished conduct NIL

2. The accused has not been previously convicted

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for One days in civil custody, and fourteen days in military custody, making a total of fifteen days in custody, of which No days were spent in hospital.

5. The present age of the accused according to his attestation paper is 23 years

6. The date of his attestation specified in his attestation paper is 22 Oct,39

9. The accused is in possession of State any military decoration or reward. Canadian Volunteer Service Medal and clasp

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of
Permanent Force
unit
dated , and in his regiment (or corps), the rank of
dated.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank
Air Force

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this twelfth day of October, 1944 (H.V.Pritchard)Capt.
Adjutant
2] Cdn.Armd.Regt.(GGFG)(CA)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

No C41296 Name HAYES, J.H. | Sqn, Battery or Company | Corps C.A.C. | Date of enlistment 21 Oct. 39 | GC Badges | Service or Proficiency Pay N/A | MFM 6 (AFB 122) 40/P&S/136 (3438)

Company Conduct Sheet Date of last entry in N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc C.E.Slack,Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Ottawa	29Sep 40	Gdsm		(1)AA Sec.15(1) AWL 0200 hrs 29 Sep.40 till 1200 hrs 29 Sep.40. Time absent 10 hrs. (2)AA 40 Negligence to the prej etc	Sgt.Maley Cpl.Beckett	3 days C.B.	30Sep.40	Lt.-Col. Wurtele	Forfeits 1 days pay for absence.CES
Camp Borden	30Dec 40	"		AA 15(1) AWL 0600 hrs 30 Dec 40 till 0015 hrs 4 Jan.41	Cpl.Arnot " Adams	10 days C.B.	6 Jan.41	Maj.Brown	Forfeits 5 days pay for absence CES
Camp Sussex	22Aug 41	"		AA 15(1) AWL from 0630 hrs 22 Aug.41 till 1455 hrs 22 Aug.41. Time absent 8 hrs 15 min	L/Cpl.Andre Cpl.Sylvestre	10 days C.B.	23Aug.41	Maj.E.Lisle	Forf 1 days pay for absence.CES
Camp Sussex	16Sep 41			AA40.Neglect to the prej,etc. Failed to shave before coming on parade after being ordered to do so.	Lieut.Froats	7 days C.B.	17Sep.41	Capt.F.P. Andre	CES

(P10

Sheet 2.

No C 41296 Name HAYES, J.H. | Sqn, Battery or Company | Corps C.A.C. | Date of enlistment 21 Oct 39 | GC Badges | Service or Proficiency Pay N/A | MFM 6 (AFB 122) 40/P&S/136 (3438)

Company Conduct Sheet Date of last entry in N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 2. | Signature OC Company, etc C.E.Slack,Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	21Dec42	Gdsm.		A.A.15(1) A.W.L. from a place of parade.	Sgt. Headley	3 days C.B.	22Dec42	Capt.F.P. Andre	C.E.S.
Field	15Jan43	"		A.A.40.Conduct to the prej.etc. in that he was found inside NAAFI at Willems Barracks cont to insts given him by superior officer.	Lieut. MacPhail	7 days C.B.	16Jan43	Capt.F.P. Andre	C.E.S.
Field	21Feb43	"		A.A.40 Conduct to the prej. in that he failed to carry out his duties as Hut Orderly.	Lieut.Roy	7 days C.B.	22Feb43	Maj. F.P. Andre	C.E.S.

Certified True Copy

A/Pte Record Capt
Officer i/c Records
31 CASH

(P10

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Sussex	16Sep 41	Gdsm.		AA15(1) A.W.L. from Tattoo Roll Call 16 Sep 41.	L/Sgt. Tou-angeau	7 days C.B.	17Sep41	Capt. W.P. And-e	C.W.S.
Camp Sussex	1 Oct 41	"		AA15(1) A.W.L. 0720 hrs 1 Oct41 till 0630hrs 20Oct41	L/Cpl.Rogers	Forf 2 days pay	2 Oct41	Lt-Col. Wu-tele	Forf 1 day's pay for absence C.W.S.
Sussex	29Oct 41	"		(1)A.A.40 Conduct to the prej. Uttering a forged pass. (2)A.A.15(1) A.W.L. from 0630 hrs 17 Oct41 until apprehension 0100 hrs 29 Oct41. Time absent 11days 19½hrs.	L/Cpl. Andre Documentary	15 days detn. Cost of apprehension $36.69	4Nov41	Lt-Col. Wu-tele	Forf 12 days pay for absence. Forf 5 day's pay for period close arrest. Forf 15 days pay for period in detn. C.W.S.
Debert	4May42	"		A.A.40 Losing by neglect N.Registration Card.	Cpl. Rogers	4 Days C.B.	4May42	Capt. W.B. Bowker	
Debert	10Aug42	"		AA15(1) A.W.L. from 0600hrs 10Aug 42 to 1300hrs 22Aug42. Costs of apprehension & detn $53.00	Sgt. Pettigrew Documentary	27 days detn Stoppages of $53.00	29Aug42	Lt-Col. H.W.Rick	forf 13 days pay for absence C.W.S.

BB2·66
PTE HAYES J.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-85001 Pte. (A/Cpl) HAYES, John, Joseph - 85 Cdn Br Coy RCASC

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		Not Guilty	Not Guilty	Charge withdrawn by Prosecution
2nd		Guilty	Guilty	
3rd		Not Guilty	Not Guilty	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and re loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer Field Punishment for 60 days

(Sgd) ..... Judge-Advocate, if any. 27 Jan 44 Date awarded. (Sgd) C A Mair Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the findings and sentence of the court but remit 15 days field punishment.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) ~~AA 57A. Delete if not used.~~

(Sgd) ..... (R. T. LEND) Lieut Col

Date 28 Jan 44 Commanding Cond First Cdn Army Tpt Coln Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date	Signature of Offr.
B85001 Pte (A/Cpl) Hayes J.J.	29 Jan 44	R Stephens Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFA90 (In lieu of AFA3) 41/P & S/1608 (2964)

Convened by Order of Lt.-Col. R. T. Lend Comd 1C FIRST CDN ARMY TPT COLN dated 19 Jan 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-85001	Pte.	(A/CPL)	John Joseph	HAYES	85 Cdn Br Coy RCASC

PROCEEDINGS REVIEWED

J. Ruttigieklone Capt 1st Feb 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED

Date 8 Feb 44 D Lowing Lt-Col AJAG FIRST CDN ARMY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 27 Jan 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~AA, if any,~~ and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0945 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Sgt Terry J.E. as interpreter? Ans No Sir

The Interpreter is sworn.(1) ~~Do you object to ..... as shorthand writer? Ans .....~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	C A Mair	47 Cdn Gen Tpt Coy RCASC
Member	Capt	J.H. ELLIOTT	69 Cdn Gen Tpt Coy RCASC
Member	Capt	E A Rooke	66 Cdn Gen Tpt Coy RCASC
Judge-Advocate			
Prosecutor	Capt	D.S. Stephens	85 Cdn Br Coy RCASC
Defending Offr	Capt	R.G. Davidson	85 Cdn Br Coy RCASC

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ~~before arraignment makes(s) (no)~~ (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (ii); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your statement the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No Sir (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on Record charge(s). The accused is (are) so informed. ~~But neither~~ ~~Charge(s) him (their) plea(s) on ..... wiseguy(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if charged to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No Sir (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (not) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the third charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed (as to the charge(s)), and allowed on the third charge(s), and that, accordingly, ~~the trial will proceed on the former~~, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No Sir
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Services(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement and Conduct Sheet, and in mitigation of punishment ?(1) Ans. No Sir (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

85 CDN BRIDGE COY
R C A S C

B2

C H A R G E S H E E T

The accused B-85001 Pte. (A/Cpl) HAYES, John, Joseph, 85 Cdn Bridge Coy RCASC, a soldier of the Canadian Army Overseas is charged with, while on active service,

FIRST CHARGE
Sec. 15 (1) Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field did absent himself without leave from 2359 hrs 1 Jan 1944 until 2359 hrs 2 Jan 1944.

(total time absent 1 day)

SECOND CHARGE
Sec. 15 (1) Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, did absent himself at about 1245 hrs. 4 Jan 1944 until he surrendered himself to the Guard Commander at 1900 hrs on 12 Jan 1944.

(total time absent 8 days 6 hours and 15 minutes)

THIRD CHARGE
Sec. 9 (1) Army Act

DISOBEYING IN SUCH MANNER AS TO SHOW A WILFUL DEFIANCE OF AUTHORITY, A LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR OFFICER, IN THE EXECUTION OF HIS OFFICE,

in that he,

at about 1000 hrs, 14 Jan 44, while under close arrest, when personally ordered by D-106553 Sgt. White W.J., to exercise for a period of one hour, did refuse to obey the order in an insubordinate manner, saying ' he did not have to because he had not seen the M.O.'. The order was again repeated and again he refused.

Alex. Gagnon
(Alex. Gagnon) Major
Officer Commanding
85 Cdn Bridge Coy RCASC

Field
17 Jan 1944

To be tried by Field General Court Martial

19 Jan 44

R. T. [illegible] Lieut-Col
[illegible] First Can Army Tps Coln

FIELD GENERAL COURT-MARTIAL

CFAO5 (In lieu of AFA5)
40/PAM/1097 (2663)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 163, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-85001	Pte.	(A/Cpl)	John Joseph	HAYES	85 Cdn Sr Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 Jan 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [NOT THAT IT IS IMPRACTICABLE TO DELAY THE TRIAL BEFORE AN ORDINARY GENERAL COURT-MARTIAL.]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I nominate to appoint (a) three offrs to form the Court, (b) an Offr as President, for the reasons given attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate the Offr named hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	C. A. Mair	47 Cdn Gen Tpt Coy RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt.	J. R. Elliott	69 CdnGen Tpt Coy RCASC
Capt.	E. A. Rooke	66 Cdn Gen Tpt Coy RCASC

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt.	J. T. Robertson	86 Cdn Sr Coy RCASC

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England — (Country.)

(Signed personally. RP 105 fn 2.) — Lt.-Col. (Rank.)

(B. T. Hoey)

Date 19 Jan 44 — Commanding HQ FIRST CDN ARMY TPT COLB

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE
(K.R. (Can) para 557)

I certify that I have this morning examined B-85001 Pte. A/Cpl Hayes J.J., 85 Cdn Bridge Coy RCASC and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial

21 Field
.....1944

Beauchamp Capt.
.....
Medical Officer

I certify that I have this morning examined .B.85001...

A/Cpl..Hayes,.J.J.....of..85.Cdn.Bridge.Coy.R.C.A.S.C....and in my

opinion he is fit/~~unfit~~ to undergo trial by Field General Court Martial

(A.J. Beauchamp) Capt.
Medical Officer
85 Cdn Bridge Coy RCASC

Field
22 Jan 44

1st Witness for Prosecution (3rd Charge)

D 106552 Sgt. white H.J. having beensworn was questioned as follows:-

Do you recognize the accused?
"I do Sir"
What is his name?
A/Cpl Hayes J.J.
Can you remember 13 Jan 44 and accused at the time?
A//Cpl Hayes J.J. reported to Guard Room for period ofA.W.L.
Were you given any orders that day concerning A/Cpl Hayes J.J.?
About 1900hrs on 13 Jan 44 I was detailed by the Coy S.M to exercise A/Cpl Hayes J.J. for a period of 1 hour
When didyou commence to put that order into form.
At 0830 hrs 14 Jan 44
What order did you give at that time
I detailed Sgt Bolduc to proceed to Guard Room to get A/Cpl Hayes J.J. and to parade him in front ofM.O..~~xx~~ From the M.O. he was to go to unit parade square.
Was this order carried out.
Yes Sir.
When did you next see accused?
When Sgt Bolduc ~~in~~formed me that he had paraded the man to the M.O. and due to his absence Cpl Hayes was onthe parade sq.
Did you go to parade sq.
Yes Sir.
What did you see ~~their~~ there?
I found that accused had broken from his escort and was lounging around inan unsoldier manner
Can you give more detail?
The escort was standing fast the accused was wandering around with his hahds in his pockets.
Was the accused marching up and down?
~~xx~~ No "ir
Didyou give any order at that time.
I ordered him back under escort?
Did he go?
After I had repeated order 2 or 3 times
Did you issue any further order?
The accused demanded to know the reason why he had been brought to parade sq. I told him of my instuctions and he answered me ina very insobordinate manner.
How?
He saidhe would not take any exercise because he had not seen the M.O. then he demanded to know who inthe hell did I was and what bloody right had I to give him exercise, He then demanded that he be returned to Guard Room , that he was sick, and the weather was too cold.
Did you issue any more orders?
No Sir.
What did you do then?
I Left accused under escort between two soldiers and then I prodeeded to Orderly Room to get Sgt Knott, L.C. to witness the order I was about to give.Sgt Knott accompanied me back to parade square and again I found that accused had broken escort and was again wandering around on his own with his hands in his pockets.
What order did you then give?
I ordered him back under escort
Where was Sgt Knott then?
About 10 paces away.
What order was then given?
After the accused had been placed under escort again I ordered him that he would take 1 hrs exercise.
Can you remember exact words or as near as possible?
I have been detailed to give you 1 hrs exercise, you will do it now or words to that effect.
What did Cpl Hayes say?
He said, No, I will not do any exercise until I have seen the M.O.
What did you say?
I ~~ad~~ made no reply, I handed the escort and accused over to Sgt Bolduc.
Was there another prisoner under escort at that time?
Yes, A/Cpl Curphey
Were these two prisoners acting in concert with one another?
I do not know!
Who did the talking?
Cpl Hayes did most of it.

Cross Examined by Defence

Sgt White when you detailed Sgt Boldac to go to Guard Room and get Cpl Hayes did you give any instructions other than take him to M.O.?

Sgt Boldac was detailed to take the accused to M.O. and from there to parade square.
Therefore up to this time Cpl Hayes had no idea what he was on parade square for. Is that Correct?
I don't know whether Sgt. Boldac told him or not.
~~Is it true that Sgt. Boldac could not have informed him what he was there for when he had only been told to take him to the parade square?~~
What order did you actually give and to whom was it addressed?
The order was you have been detailed to take one hours exercise, You will do it now, and was given to Cpl. Hayes and Cpl. Curphey and the escort would have to accompany the accused.
The accused stated he was sick did he not?
Not on the issue of the second order.
On one of the refusals he did say he was sick.
Yes Sir.
If a man claims he is sick what is the practise?
Parade him to M.O.
Did you?
The M.O. was not available at that time.
But you still ordered in spite of accused saying he was sick and knowing he should see the M.O. that he do one hours exercise?
I was carrying out instructions issued to me.
Is it not true that you stated to accused that you told them you received particulars from the C.S.M. to give them one hours exercise?
It was Sir, and at the same time I gave the order.
Did this order include anybody else?
It included the other accused there at that time.
How long after you gave the second order was it before you gave orders to march back to guard room?
About five minutes Sir.
You march the guard back under whom?
It was taken from parade square to vicinity of Orderly Room by Sgt. Knott, L.C. and then handed over to Sgt. Boldac.
Did you not just say that they were taken back to the guard room by Sgt. Boldac?
Sgt. Boldac returned them to guard room.
What was weather like?
Bright, cold and wet underfoot.

Re examination by Prosecution.

Was it or was it not on a superior officers order that all orders were given by you?
Yes Sir.
Did you know he was sick?
No Sir Cpl. Hayes said he was sick but I did not know nature.
Do you know if there was any sickness prior to order given?
Non.
What was your purpose of repeating order in front of Sgt. Knott,?
Because the accused had refused the first order.

Questioned by the Court

Sgt. White you issued an order to a group of men saying they would do one hours exercise but did you give an order as to what type of exercise or what specific exercise?
I did not order any specific exercise.

Rules of procedure 83 (b) have been complied with.

The witness withdraws.

2nd Witness for Prosecution

D93669 Sgt. Knott, L.C. having been duly sworn was questioned as follows:-

Can you remember events of Jan 14 - 44?
Yes Sir.
Can you remember time of incident on parade square?
Yes Sir, around 1000 hrs.
What occurred at this time?
I met Sgt. White and he asked me to accompany him to the parade square.
What did you see on parade square?
I saw two Cpls under escort of four Ptes.
Were they standing at attention under escort or what was their manner?
They were under escort but not standing at attention.
What occurred next?
Sgt. White called them to attention under escort.
Did you hear any order given to take exercise ?
Sgt. White made some reference to previous order but I heard no order.
Did you hear Cpl. Hayes say anything?
Cpl. Hayes said something like the answer is the same as before, No.
You were in presence of accused when Summary of Evidence was given.
Yes Sir.
How is it that evidence given on Summary of Evidence is not the same as evidence given now?
The only reason I can give is that my statements were not taken ve verbatum with my statements?
Was it read over to you?
Yes.
When Cpl. Hayes said No, what did you think he was saying No to?
Sgt. White made a statement which might have been taken as an Order but might have been misconstrued.

Cross Examination by Defence

Is it not a fact that statement you made was changed around?
Not very much Sir.
You did hear Sgt. White give a specific order?
No, Sir.

Questioned by Court

Were any commands given by Sgt. White in your hearing that were not complied with by Cpl. Hayes?
No, Sir.

Rules of Procedure 83 (b) have been complied with.

The witness withdraws.

Court Closed.

I, B-85001 Pte. (A/Cpl.) Hayes, J.J., desire the assignment of an officer to defend me at my trial by F.G.C.M. Capt. K.J. Creber, 66 Cdn Gen Tpt Coy, RCASC, if available.

J.J. Hayes.

Field 17 Jan 44

B-85001 A/Cpl. Hayes, J.J.

LIST OF WITNESSES in the case of B-85001 A/Cpl HAYES J.J.

PROSECUTION --------FIRST CHARGE

FIRST Witness. K-45508 A/L/Cpl Nelson F.G., 85 Cdn Br Coy R C A S C

SECOND Witness. D-123419 Sgt. Knott R.C., 85 Cdn Br Coy RCASC

SECOND CHARGE

FIRST Witness. D-123517 A/L/Sgt Allardyce A.B., 85 Cdn Br Coy R C A S C

SECOND Witness D-72235 A/Cpl Rumsey F.T., 85 Cdn Br Coy RCASC

THIRD CHARGE

FIRST Witness. D-106552 Sgt. White W.J., 85 Cdn Br Coy RASC

SECOND WITNESS D-93669 Sgt. Knott L.C., 85 Cdn Br Coy RASC

DEFENCE

N I L

LIST OF EXHIBITS in the case of B-85001 Pte (A/Cpl) Hayes J.J.

Exhibit 'A' Tattoo report 1 Jan 1944

'F' PLATOON TATTOO REPORT 2359 hrs 1 Jan 44

All present and correct with the following exceptions

B-85001 A/Cpl Hayes J.J.

B-89470 A/Cpl Curphey G.E.

Sgd L/Cpl Nelson F.G.

certified true copy.....

(D.S. Stephens) Capt Officer detailed to take Sumary of evidence.

CHARGE SHEET

The accused B-83001 Rfn. (A/Cpl) MAYNE, John, Joseph, 85 Cdn Bridge Coy RCASC, a soldier of the Canadian Army Overseas is charged with, while on active service,

FIRST CHARGE
Sec. 24 (1)(a) AR Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field did absent himself without leave from 2359 hrs 1 Jan 1944 until 2359 hrs 2 Jan 1944.

(total time absent 1 day)

SECOND CHARGE
Sec. 24 (1)(a) AR Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, did absent himself at about 1345 hrs. 4 Jan 1944 until he surrendered himself to the Guard Commander at 1900 hrs on 13 Jan 1944.

(total time absent 8 days 6 hours and 15 minutes)

THIRD CHARGE
Sec. 9 (1)(a) AR Army Act

BEHAVING IN SUCH MANNER AS TO SHOW A WILFUL DEFIANCE OF AUTHORITY, A LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR OFFICER, IN THE EXECUTION OF HIS OFFICE,

in that he,

at about 1000 hrs, 14 Jan 44, while under close arrest, when personally ordered by D-106508 Sgt. White W.J., to exercise for a period of one hour, did refuse to obey the order in an insubordinate manner, saying ' he did not have to because he had not seen the M.O.'. The order was again repeated and again he refused.

(Alex. [illegible]) Major
Officer Commanding
85 Cdn Bridge Coy RCASC

Field
17 Jan 1944

To be tried by Field General Court Martial
19 Jan 44

SUMMARY OF EVIDENCE in the case of B-85001 Pte (A/Cpl) John Joseph HAYES, 85 Cdn Bridge Coy RCASC, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken under oath.

FIRST CHARGE
FIRST WITNESS

K-45508 A/L/Cpl Nelson F.C., 85 Cdn Bridge Coy RCASC, having been duly sworn states:

" I am K-45508 A/L/Cpl Nelson F.C., on the evening of January first 1944, I was duty NCO in 'F' platoon. It was my duty to call the roll at approx 2359 hrs. I called the roll at that time and B-85001 A/Cpl Hayes J.J. failed to answer his name. I immediately sent a report to the guardhouse. This report was my tattoo report, a copy of which I now produce and after being certified has been marked exhibit 'A' to this summary of evidence."

Sgd K-45508 A/L/C Nelson FC

The accused declined to cross examine this witness.

SECOND WITNESS

D-123419 Sgt Knott R.C., 85 Cdn Bridge Coy. RCASC, having been duly sworn states:

" I am D-123419 Sgt. Knott R.C. On Sunday 2nd January 1944 I learned from the tattoo report that A/Cpl Hayes had been absent since 2359 hrs 1 Jan 44. I was in charge of a detail and A/Cpl Hayes was supposed to accompany me on this detail I was on the detail until about 1530 hrs and during that timeA/Cpl Hayes was continuously absent. I was orderly Sgt that day and the tattoo report at 2359 hrs showed all persons in my platoon to be present. "

Sgd D-123419 Sgt. Knott R.C.

The accused declined to cross examine this witness.

SECOND CHARGE
FIRST WITNESS

D-123517 A/L/Sgt Allardyce A.B., 85 Cdn Bridge Coy RCASC having been duly sworn states:

" I am D-123517 A/L/Sgt Allardyce A.B. I received a chit from the orderly room of 'F' platoon on 4 Jan 1944 that A/Cpl Hayes and A/Cpl Carphey were to be ready for Orderly Room at 1500 hrs. That meant that they were to appear before the Officer Commanding 85 Cdn Bridge Coy RCASC when he sat before his Orderly Room. I went to warn them in the platoon area but could not find them. That was at about 1245 hrs. That night at 2245 hrs A/Cpl Hayes did not answer his name at tattoo roll call. I saw the tattoo report with this information on it that same night. I did not see him again before I left on scheme on Jan 11th and only saw him when I returned from the said scheme on Jan 15th. "

Sgd D-123517 A/L/Sgt Allardyce A B

The accused declined to cross examine this witness.

(cont'd page -2-)

SECOND CHARGE
SECOND WITNESS

D-72235 A/Cpl Rumsey F.T., 85 Cdn Bridge Coy RCASC, having been duly sworn states:

" I am D-72235 A/C pl Rumsey F.T. On the night of Jan 12th 1944 I was guard commander of the Company guard. At 1900 hrs on the said date A/Cpl Hayes reported to the guardroom. He stated that he was returning from being absent without leave. I sent a report to Coy HQ to the effect that he had returned."

Sgd D-72235 A/Cpl Rumsey F.T.

The accused declined to cross examine this witness.

THIRD CHARGE
FIRST WITNESS

D-106552 Sgt White W.J., 85 Cdn Bridge Coy RCASC, having been duly sworn states:

" I am D-106552 Sgt White W.J. At 1900 hrs on Jan 13th 1944 I was ordered by CSM Sweet to bring A/Cpl Hayes from the guardroom to the parade ground for the purpose of one hours exercise. At 0830 hrs 14 Jan 44 I detailed Sgt Bolduc to go to the guardroom to get A/Cpl Hayes and bring him under escort to the Unit RAP for a medical inspection. This order was carried out and Sgt. Bolduc informed me that A/Cpl Hayes had been paraded and due to the absence of the medical officer was on the pardde ground under escort. I then proceeded to the parade ground to carry out the instructions issued to me by CSM Sweet. Upon my arrival at the parade ground I found the accused had broken from the escort and was lounging around in a disorderly manner. I placed him back under escort and then he demanded to know the reason why he had been brought there. I informed him about the instructions I had received and he refused to obey the order, answering me in an insubordinate manner. I then returned to the Orderly Room and got Sgt. L.C. Knott to come with me and act as a witness. Upon returning to the parade ground. I found the accused had broken escort again, I placed him back under escort and repeated the order. His answer was a definite refusal to obey orders. I then ordered him to proceed back to the guardroom under an escort commanded by Sgt Bolduc."

Sgd. D-106552 Sgt. White W.J.

The accused declined to cross examine the witness.

SECOND WITNESS

D-93669 Sgt. Knott L.C., 85 Cdn Bridge Coy RCASC, having been duly sworn states:

" I am D-93669 Sgt. Knott L.C. On the 14th of Jan 1944, shortly after 0930 hrs. I met Sgt. W.J. White near HQ Orderly Room. He asked me to accompany him to the parade square. I did so and on arrival there Sgt. White asked me to be a witness. He then gave an order to undergo exercise to A/Cpl Hayes who was there under escort. A/Cpl Hayes refused to undergo such exercise. When requested to take such exercise He emphatically said 'No' "

Sgd D-93669 Sgt. Knott L.C.

The accused declined to cross examine this witness.

(cont'd page -3-)

QUESTION TO THE ACCUSED. Do you wish to make any statement or give evidence upon oath ? You are not obliged to say anything or give evidence unlessyou wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER BY THE ACCUSED: I do not wish to make any statement or give evidence at the present time.

Sgd. B-85001 A/Cpl Hayes J.J.

I certify that the foregoing summary of evidence was taken down by me inthe presence and hearing of the accused, jointly, and that rules of procedure 4 (c)(d)(e) and (f) have been complied with.

Signed by me in the Field this 15th day of January 1944

D.S.L. Stephens Capt

(D.S. Stephens) Capt
Officer detailed to take
this summary of evidence.

Summary of evidence in the case of B/85001 A/Cpl. John Joseph Hayes, R.C.A.S.C. Bridge Coy R.C.A.S.C. a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

The first witness H/85001 A/Cpl. John Joseph Hayes, R.C.A.S.C. being duly sworn states.

I am H/85001 A/Cpl. John Joseph Hayes. On the evening of January 19th 1944, I was duty N.C.O. in F. platoon. It was my duty to call the roll at [illegible] hours, I called the roll at that time, and B/85001 A/Pte/ Hayes failed to answer his name, I immediately sent a report to the guard room. The report was my latter report, a copy of which I now produce, and upon being identified, was marked exhibit A to this summary of evidence.

J. D. Nelson.

The accused declined to cross examine the witness.

60 mm.

Evidence

2nd witness D 123414 Sergt. R. G. Hewitt

I DS can Bridge Log R.C.H.C. being first duly sworn states.

I am D 123414 Sergt. R. G. Hewitt

On Sunday 2nd Jan 1944, I learnt that L/Cpl Hogg had been absent since 2359 hrs on 1st January 1944. I was in charge of detail, and L/Cpl Hogg was supposed to accompany me on the detail. I was on the detail till about 1930 hrs, and during that time L/Cpl Hogg was continuously absent. I am orderly sergeant today, and the latter part at 2359 hrs, ordered all persons in the platoon to be present."

R. G. Hewitt Sgt.

I/C declined to cross examine the witness.

3rd witness D 123517 A/Sgt Allardyce I DS can Bridge Log R.C.H.C. being first duly sworn states.

I am D 123517 A/Sgt Allardyce I attended a court in the orderly room 17 F. platoon on the 4 Jan 1944 when L/Cpl Hogg and L/Cpl Cursley

Cont.

were to be ready for
orderly room at 1500 hrs.
+ pte Grant was there to
appear before the O-pitch
commanding OS Coy Bridge Coy
RCASC, when he sat in
Orderly room.) went to
warn them in the platoon
area but could not find
them.) it was about 1245 hrs,
+ pte Grant right at 2245 hrs, A/Cpl
Murphy did not answer his
name at tattoo roll call.
) saw the latter report
with this information on it,
that same night.) did
not see them again before
) left on recess on June 11th
and only some then were)
returned from recess on
7th January 1944.

A Allardyce Lt/Col

+ the accused declined to cross
examine the witness

+ Cross witness (2nd charge) D 72235 A/Cpl Frederick + Grant Ramsay, OS Coy Bridge Coy RCASC, serving with duty cross stores.

) am D 72235 A/Cpl Ramsay
on the night of Jan 12th 1944
) was guard commander
of the company guard
at 1900 hrs. on Jan 12th 1944
A/Cpl) roger reported to the
guard room. He stated

he was returning from his
absent without leave.
I sent a report to Coy. H.Q.
to that effect, what they
had returned. (Plummer)
The above statement was taken in the presence of witness

Captain Watkins (Adjutant) D 106552, Sgt. Smith R.J. A Sqdn. Buckley Coy R.A.S.C. passing him slowly from States

I am D 106552 Sergt. Smith R.J. at 1900 hrs on the 13th January 1941, I was ordered by C.S.M. Smith to bring Pte Rogers from the guard room to the parade ground for the purpose of the P.T. exercise. At 0930 hrs on the 14 January 1941, I attended Sgt. Bridge to go to the guard room to get Pte Rogers and bring him under escort to the unit R.A.P. for a medical inspection. The roll was called out and Sgt. Bridge informed me that Pte Rogers had been paraded, and due to the absence of the medical officer was on the parade ground under escort. I then proceeded to the parade ground to take out the instructions issued to me by C.S.M. Smith upon my arrival

Cont.

at the parade ground, & was
told the accused soldier
from the ranks, and was
lounging around in a
disorderly manner, gave
him pass ~~pin told~~ under
arrest, and then he
demanded to know the
reason why he had
put prisoner there.
imposed fine of one
dollar) and refused
and he refused to obey
the order, answering in
an insolent manner
then returned to the orderly
room and got Sergt F. C.
Pratt to come with me
and act as a witness
upon returning to the
parade ground again,
found the accused and
private Grant
him pass under arrest
order. His answer was
a definite refusal to
obey order, then ordered
him to provided pass to
the guard room under an
arrest, commanded by
Sgt. Boldt.

cr Jewitt Sgt.

The accused declined to cross
examine the witness

Con.

witness
(Hand (Hoyt))

D 93669 Pvt. J. C. Hewett
of the 9th Ldn. Bridge
Head Forces but
duly sworn states.

I am D 93669 Pvt. J. C. Hewett.
On the 14th January 1944, at
after 0930 hrs, I met Pvt. Waite
near the H.Q. orderly room.
He ordered me to disengage
him to the parade ground
I did so, and we arrived
there Pvt. Waite ordered me
to be a witness. He then
gave an order to undergo
exercise to A(pe) Pte. Hoyt was
was then under arrest. The
Pte. Hoyt refused to undergo
such exercise. I was ordered
to make the exercise he said "no

J C Hewett

The accused declines to
cross examine the witness.

Question to the accused

Do you wish to make any
statement, or give evidence
upon oath? You are not
obliged to say anything
or to give evidence unless
you wish to do so, but
whether you say or do any
evidence you give will be
taken down in writing and
may be given in evidence.

Pte

drawn by the accused

) do not wish to make
any statement & give evidence
at the present time.

Cpl- J. J. Hayes.

) certify that the foregoing
summary of evidence was
taken down by me in the
presence of the accused
who after reading
it was
signed by me in my hand
this 15 day of January 1944

Pte Clayton could
appear sufficient
to raise the charge
of a witness.

M.F.M. 6
(A.F. B.122)
20/P & /5136 (2965)

B-85001 No. | HAYES J.J. Name | Sqn., Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 19/3/41 | G.C. Badges nil | Service or Proficiency Pay | 20

Date of last entry in Company Conduct Sheet: nil | No. and date of last drunk: n-a | Period not reckoning towards freedom from extra fine: n-a | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Original sheet destroyed on completion of six moths service O/S RO 319									
Field	27-6-42	Pte		Conduct to the prejudice of good order and military discipline	Sgt Terry	Forf of 7 days p a y	28-6-42	Major GA Greig	FR&I 149(2)
Field	6-8-42	Pte		1)A.A. Sec. 40 2)A.A. Sec. 8(2) Usinginsubordinate language to a superior offr. 3)A.A. Sec. 10(3) Resisting an escort whose duty it was to apprehend him. 4)A.A. Sec. 40 Required force to remove him to guard room	Sgt Terry Cpl Huard Lt. Webb Pte Breutsch.	14 days F.P.	8-8-42	Major G.A. Greig	Forf 14 days pay FR&I 149 (1)(b)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1-1-43	Pte		A.A. Sec 15 (1) AWL from 2359 hrs 1 Jan 43 until 1200 hrs 2 Jan 43 (absent 12 hrs 1 min)	Sgt Gauthier	14 days C.B. Forf of 5 days pay	4-1-43	Cap A.O. Allan A/O.C.	Forf 1 days pay FR&I 149(1)(a)

CERTIFIED TO BE A TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY

Field
17 Jan 1944

(J.S. Higgins) Lieut & Adjt
85 Can Bridge Coy R.C.A .S.C.

X

M.F.B. 355
5M-10-39 (2492)
H.Q. 1772-39-620

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-85001	Pte (A/Cpl)	HAYES J.J.	85 Cdn Bridge Coy RCASC

1. The following is a fair and true summary of the entries in the [illegible] Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act / Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	nil	times	A.A. Sec 40	3 times
For		times	A.A. Sec 8 (2)	1 times
For		times	A.A. Sec 10(3)	1 times
For		times	A.A. Sec 15(1)	1 times

[illegible]

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted [illegible]

3. The accused is not under sentence at the present time [illegible]

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and [illegible] days in military custody, making a total of [illegible] in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 33 years 7 months

6. The date of his [illegible] specified in his record of service is attestation 13 March 1941

7. [illegible]

8. [illegible]

9. [illegible]

10. [illegible]

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated ..., and in his regiment (or corps), the rank of ... dated ...

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

23 Jun 1943 Date of promotion.

xxxx

JB 30

Sgt Hayes JHT

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-36602 Sgt Joseph Henry Thomas HAYES X-4 List CAC, 9 CBR Bn.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A A Sec 6 (2)(f)	Not Guilty	Not Guilty	
2nd A A Sec 12	Not Guilty	Not Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 3 days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

(Sgd) ..... Judge-Advocate, if any. 28 Jan 45 Date awarded. (Sgd) R. E. Jones Foyer President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Findings noted

30 JAN 45

(G S N Gostling) Brig Comd 2 Cdn Base Rft Gp

I direct that the accused be not committed to prison or detention barracks until further order.(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 16 MAR 1945 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160A 5 3-5 4/38B

CFA96 (To Use of CMFA) 40/P & P (6144)

FIELD GENERAL COURT-MARTIAL

Convening Officer Brig G.S.N. Gostling, ED Comd 2 CBRG dated 20 Jan 45

ACCUSED.

(If two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank or (b) appointment, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Permt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-36602	Sgt	Joseph Henry Thomas	HAYES	X-4 List CAC, 9 CBR Bn

PROCEEDINGS REVIEWED 16 Mar 45

PROCEEDINGS OF TRIAL.

Held at REVIEWING OFFICER, JAG BRANCH C.M.H.Q. (place) ..... (country) ..... on (date(s)) 23, 25, 26 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 23/68

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns KCs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (of attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1350 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (2).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: Do you object to ..... as interpreter? Ans ..... RAS.

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No. Sir. (2)

(1. As to use ... 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. ...sident, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R.G. YOUNG	C i C	3 Cdn NETU
Member	Capt	G C WATT	C i C	11 CBR Bn
Member	Lieut	G G Moss	RCOC	9 CBR Bn
Judge-Advocate				
Prosecutor	Lieut	A. LAMARRE	I/C	1 Cdn Para Bn
Defending Offr	Lieut	A.F.M. INTOSH	CAC	9 Bn 2 CBRG

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused B-36602 Sgt Hayes, J.H.T. before arraignment make(s) (no) (a) plea (GA).

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RaF cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 2. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of wh...n in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 ... Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or B as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (no) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the (latter, and the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans.....Do you intend to call witnesses on your behalf ? Ans.....Are they witnesses as to character only ? Ans.....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E Below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans.....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(3)
(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans.....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, R-36602 Sgt Joseph Henry Thomas HAYES, Z-4 List CAC on strength 9 Canadian Base Reinforcement Battalion, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SEC 6 (2)
ARMY ACT

WHEN ON ACTIVE SERVICE, WITHOUT ORDERS FROM HIS SUPERIOR OFFICER LEAVING HIS GUARD.

in that he

in the Field, on 23 Dec 44, after being posted as Guard Commander at HQ, 9 C.B.R.Bn., Seminary, Chent, left his guard without being regularily relieved by superior officer.

SECOND CHARGE
SEC 19
ARMY ACT

WHEN ON ACTIVE SERVICE, WHEN ON DUTY, DRUNKENNESS.

in that he

in the Field, on 23 Dec 44, at 2255 hours, when Commander of the Guard was drunk.

(H.W.Rick),Lt.-Col.,
Commanding,
9 Bn, 2 C.B.R.Gp.

In the Field

29 Dec 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G S N Gostling) Brig
Comd
2 Cdn Base Rft Gp

In the Field
16 JAN 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-36602	Sgt		Joseph Henry Thomas	HAYES	X-4 List CAC, 9 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 16 JAN 45 endorsed by ~~me, (or by an offr of my staff (or unit), appointed C. (Unit) (1 by name),~~ "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto.
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

	R.G. YOUNG ~~G.E. LAFONDE~~		3 CDN. INF. BDE. ~~13 CBR Bn~~
Major (Rank.)	(Must be named. RP 106.)	CIC,	(Unit.)

MEMBERS.

Capt	to be detailed by OC 11 CBR Bn	11 CBR Bn
Lieut (Rank.)	to be detailed by OC ~~11~~ 9 CBR Bn (Named or detailed. RP 106.)	~~11~~ 9 CBR Bn (Unit.)

WAITING MEMBER.

Capt (Rank.)	to be detailed by OC 11 CBR Bn (Named or detailed, if any. RP 106.)	11 CBR Bn (Unit.)

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 20 JAN 45

(G S N Gostling)
Commanding 2 CDN BASE RFT GP
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA66 (In lieu of AFA3) 40/P & S/1697 (4931)

(See overleaf for oaths and notes for use on trial.)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-36602	Sgt		Joseph Henry Thomas	HAYES	X-4 List CAC, 9 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 16 JAN 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay this trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate the Offr Mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major *(Rank.)*	J E L CASTONGUAY *(Must be named. RP 106.)*	CIC,	11 CBR Bn *(Unit.)*

MEMBERS.

Captain	to be detailed by OC 11 CBR Bn	11 CBR Bn
Lieut *(Rank.)*	to be detailed by OC 10 CBR Bn *(Named or detailed. RP 106.)*	10 CBR Bn *(Unit.)*

WAITING MEMBER.

Captain *(Rank.)*	to be detailed by OC 11 CBR Bn *(Named or detailed, if any. RP 106.)*	11 CBR Bn *(Unit.)*

~~JUDGE ADVOCATE~~

(Rank.)	*(Must be named, if any. RP 106.)*	*(Unit.)*

On Active Service in the Fd

in BELGIUM *(Country.)*

(Signed personally. RP 105(2).)

Brigadier *(Rank.)*

(C S N Gostling)

Date 16 JAN 45

Commanding 2 CDN BASE RPT GP

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA66 (In lieu of AFA3) 40-7 M 8/1647 (4031)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

(KR(Can)Para 557)
CMHQ CL 173

I certify that I have this day examined B36602 (Number)

Sgt (Rank) HAYS (Name) J H I and in my opinion he is

~~unfit~~ fit to undergo trial by Court Martial

Station Feild. (Signed) J.H. Martin Capt RCAMC
Medical Officer

Date 22 JAN-45 (Unit) 1 Fd. 2 C.B.R.D.

MEDICAL OFFICER'S REPORT

I certify that No. B-36602 Sgt Hayes JH7
of 9 Bn 2 CBRG is in a good state of health,
and fit for to undergo Trial by Court martial.

J.B. Martin Capt RCAMC
Medical Officer

Station Field

Date 24 Jan 45

M. F. B. 246

MEDICAL OFFICER'S REPORT

I certify that No. B-36602 Sgt Hayes JHT
of 9Bn 2CBRG is in a good state of health,
and fit for to undergo Trial by Court martial.

J H Martin Capt
Medical Officer

Station Field

Date 25 Jan 45

M. F. B. 246

Notes on proceedings in the case of B-36602 Sgt: Joseph, Henry, Thomas, Hayes, X-4 Asst C.A.C. 9 C.B.R. Bn.

The prosecutor has no opening address.

First witness for prosecution

Lieut. C. H. Capstick, 61 Coy 9 C.B.R. Bn. sworn states:-

I was duty officer at 9 C.B.R. Bn. The accused in court is B-36602 Sgt. Joseph, Henry Thomas Hayes. At 1945 hrs. 23 Dec 44 I was ordered by Sup. H.Q. to supply two guards for a German P.O.W. I sent for the guard Sgt. and ordered him to provide two guards & have them ready in ten minutes at the front gate when they would be picked up & to report back to me when this had been done. He did not report. About 20 mins later I went out to the picquet room to find why he had not reported but he was not there. I sent one of the guards to find him. This guard reported back about ten minutes later and stated that he could not find the guard Sgt. I went to the Sgts mess and the Sgts quarters but he was not there. I called into the picquet room twice after that at about 2030 & 2100 hrs. but he was still absent. At 2130 hrs. I went to the Sgts' Company which was 57 Coy and told D-3207 Sgt. ~~Tu~~ Tupling H.E. that the guard Sgt was absent and that I could not find him. ~~Sgt Tupling visited the picquet room at 2200.~~ Objection - granted. Sgt Tupling searched for the Sgt of the guard & reported to me that he could not find him. I then ordered him to go to the

O.K.

room his whereabouts should have been known by the members of the progat.
Re-examined by none.
Exam by the Court.
Q. Are the responsibilities of the guard commander on hand in the guard room.
A. I don't know.
Q. Did you have the W.O. warn the accused.
A. No. The C.S.M. said he would go to see the accused & determine his condition or action to be taken.

Second witness for prosecution
D-26001 R.S.M. Percival W.O. 9 C.B.R. Bn.
sworn states:-
The accused in court is Sgt. Hayes.
I am R.S.M. of 9 CBR Bn, on the evening of the 23 Dec 44 at approx 2315 hrs. I was proceeding to my office as we were called to Action Stations. I was stopped in the Hall way by Lt. Lapstick and informed that he had placed the guard Sgt., Sgt Hayes, under close arrest as he had found him just to be absent from his guard room and secondly, drunk upon his return. He asked me if I would make the necessary arrangements for placing another guard commander in place of Sgt. Hayes. I contacted C.S.M. Travers of 54 Coy & instructed him to place another Sgt on the guard. I also informed him that Sgt Hayes was under close arrest & to send Sgt escort down to the detention room where the Sgt was being temporarily detained & to take him removed to his own quarters and kept under close arrest. I then proceeded to the detention room where I saw the accused sitting on the table with a provost escort next to him. Sgt Hayes' head was resting on his chest & his movements

orders that the Sgt of the guard cannot leave the guard room.

A. No sir, it is not laid down.

Third witness for Prosecution:

D 3207 Sgt. Tupling. F.L. 9 C.B.R. Bn. sworn states:-

The accused in court is Sgt. Hayes. I was acting in capacity as duty N.C.O. on the night of 23 Dec 44. The orderly office informed me that the guard commander was not in the guard room. He asked me to make a tour of the barracks. I visited the Sgts Mess, & quarters & Lounge. I found no trace of him there & then visited the guard room at approx 2200 hrs. I then reported back to the orderly office and stated that I could not find the guard commander. The duty Officer ordered me to visit the guard room at regular intervals. I visited the guard room at 2230 hrs and the guard commander was not there. At approx 23 mins later I learned that Sgt Hayes was in the guard room.

Cross by Prosecution

Q. What time was it when you visited the Sgts Mess, quarters & Lounge.

A. Between 2145 & 2200 hrs.

Q. Did you visit the detention.

A. No sir.

Cross-exam

Q. When you visited the guard room at 2200 hrs, did you question the guard-

A. As to Sgt Hayes whereabouts. Yes, the guard told me Sgt Hayes had not been absent very long.

Q. What kind of a night was it.

A. I think it was dark.

O.K.

Notes on proceedings in the case of B-36602 Sgt. Joseph, Henry, Thomas Hayes, 1-4 List C.A.C. 9 C.B.R Bn.

The prosecutor has no opening address.

First witness for prosecution

Lieut. C.H. Capstick, 61 Coy 9 C.B.R. Bn. sworn states:-

I was duty officer at 9 C.B.R Bn. The accused in court is B-36602 Sgt. Joseph, Henry Thomas Hayes. At 1945 hrs. 23 Dec 44 I was ordered by Gp. H.Q to supply two guards for a German P.O.W. I sent for the guard Sgt. and ordered him to provide two guards & have them ready in ten minutes at the front gate when they would be picked up & to report back to me when this had been done. He did not report. About 20 mins. later I went out to the picquet room to find why he had not reported but he was not there. I sent one of the guards to find him. This guard reported back about ten minutes later and stated that he could not find the guard Sgt. I went to the Sgts Mess and the Sgts quarters but he was not there. I called into the picquet room twice after that at about 2030 & 2100 hrs. but he was still absent. At 2130 hrs I went to the Sgts' Company which was 57 Coy and told D-3207 Sgt. ~~Tie~~ Tupling F.H.E. that the guard Sgt was absent and that I could not find him. ~~Sgt Tupling visited the picquet room at 2200.~~ Objection - granted. Sgt Tupling searched for the Sgt of the guard & reported to me that he could not find him. I then ordered him to go to the

O.C.

picquet room at frequent intervals to check on the personnel. At 2255 hrs I received a message from Cpl. H.G. that 'Action Stations' was on. I then went to the picquet room to double the guard and get them up. Sgt. Hayes had returned and appeared to be under the influence of alcohol. I went to the detention and told A-42212 L/Cpl. Radcliffe A. E. to place the Sgt. under close arrest. CAW. I went to the detention and told A-42212 L/Cpl. Carnegie E. M. to place the Sgt under close arrest.

Cross-exam by Prosecutor

Q. When you saw Sgt Hayes at 1945 hrs, how did he appear to you.

A. Normal.

Q. When you saw him at 2300 hrs was there any change.

A. Yes.

Cross-exam

Q. Were the two guards supplied.

A. Yes.

Q. On what do you base your statement that he appeared under the influence of liquor.

A. He was flushed in the face, unsteady on his feet and talked quite differently than he had at 1945 hrs.

Q. Could this have been caused by anything else.

A. I do not profess to be a Doctor.

Q. What constituted the guard commanders job that night?

A. He was in charge of the picquet personnel and his presence in the guard room was essential at all times. If for any reason he had to leave the picquet

room his whereabouts should have been known by the members of the progat.
No - sign - none
Exam by the Court
Q. Are the responsibilities of the guard commander on hand in the guard room.
A. I dont know.
Q Did you have the M.O exam the accused.
A. No. The R.S.M said he would go to see the accused & determine his condition or action to be taken.

Second witness for prosecution
D-26001 R.S.M. Percival W.O. 9 C.B.R. Bn.
sworn states:-
The accused in court is Sgt. Hayes.
I am R.S.M. of 9 CBR Bn, on the evening of the 23 Dec 44 at approx 2315 hrs. I was proceeding to my office as we were called to Action Stations. I was stopped in the Hall way by Lt Leapstick and informed that he had placed the guard Sgt, Sgt Hayes under close arrest as he had found him guilty of absent from his guard room and secondly, drunk upon his return. He asked me if I would make the necessary arrangements for placing another guard commander in place of Sgt. Hayes. I contacted C.S.M. Travers of 57 Coy & instructed him to place another Sgt on the guard. I also informed him that Sgt Hayes was under close arrest & to send a Sgt escort down to the detention room where the Sgt was being temporarily detained & to have him removed to his own quarters and kept under close arrest. I then proceeded to the detention room where I saw the accused sitting on the table with a provost escort next to him. Sgt Hayes' head was resting on his chest & his movements &c

while seated were unsteady. A few minutes later the 2nd escort arrived and I then left to take up my normal duties.

Cross exam

Q. What do you mean by saying that Sgts Hayes' movements while seated were unsteady.

A. He swayed from side to side.

Q. Do you attribute that to any thing in particular.

A. Yes sir. The accused from outward appearances could have been under the influence of liquor or he could have been ill, but, he was in no condition to carry on his duties as guard commander.

Re-exam

Q Have you laid down rules for the guard commander.

A. Yes sir.

Exam by the Court.

Q. You state that when you first saw the accused as to the accused condition whereas in your original testimony, you state that he was intoxicated, will you clarify that point.

A. On this statement given to me by Lieut Capstick that he had found the accused to be drunk & from his outward appearances I assumed at the time that the accused was in a state of intoxication. I was urgently required at my post for Action Stations & did not interview or question the accused. ~~(For the summary when I was cross exam by the witness he asked me if I thought that he was ill. I replied yes but there could have been that possibility although at the time it had never occured to me.~~

Q. It is laid down in the guard commanders

orders that the Sgt of the guard cannot leave the guard room.

A. No sir, it is not laid down.

Third witness for Prosecution:

D 3207 Sgt. Tingling. F.C. 9 C.B.R. Bn. sworn states:-

The accused in court is Sgt. Hayes. I was acting in capacity as duty N.C.O. on the night of 23 Dec 44. The orderly office informed me that the guard commander was not in the guard room. He asked me to make a tour of the barracks. I visited the Sgts Mess, quarters & lounge. I found no trace of him there & then visited the guard room at approx 2200 hrs. I then reported back to the orderly office and stated that I could not find the guard commander. The duty office ordered me to visit the guard room at regular intervals. I visited the guard room at 2230 hrs and the guard commander was not there. At approx 23 mins later I learned that Sgt Hayes was in the guard room.

Cross Question by Prosecution.

Q. What time was it when you visited the Sgts Mess, quarters & Lounge.

A. Between 2145 & 2200 hrs.

Q. Did you visit the detention.

A. No sir.

Cross-Exam

Q. When you visited the guard room at 2200 hrs, did you question the guard as to Sgt Hayes whereabouts.

A. Yes, the guard told me Sgt Hayes had not been absent very long.

Q. What kind of a night was it.

A. I think it was dark.

O.T.

Q. Were there any other areas besides the main guard room that were under the Sgts responsibilities.
A. I do not know.
Q. Did you look or call for the Sgt in the car park.
A. No sir.

Re-exam
Q. How far is the car park from the picquet room.
A. 150 - 175 yds.
Q. How long would the guard commander be away when inspecting centres in car park.
A. 10 - 15 mins.

Exam by Court.
Q. Did you see the accused at all during the night.
A. No sir.
Q. Were there any instances occurring the carb park upsetting that night.
A. No sir.

Fourth witness for Prosecution
A-42212 L/Cpl. Carnegie R. M. sworn states:-
The accused in court is Sgt. Hayes. At 1800 hrs 23 Dec 44 I was detailed for duty at the desk of 9 C.I.B. R. Bn guard room. At approx 2305 hrs Lieut Capstick who was the orderly officer came to me and informed me that the Sgt of the guard was in the guard room at the entrance of the serviceway and wanted him placed under close arrest. I went to the guard room where I found the Sgt

I told him I had to place him under close arrest. I asked him for his pistol which he gave to me willingly. I then escorted him to the desk of the guard room in the main building. I obtained the particulars which identified the Sgt as Sgt Hayes from his M.B.M. 1 pt I. I then arranged for a suitable guard to take charge of Sgt Hayes.

Cross by Prosecutor

Q. In your statement on the summary of evidence you say, quote "At the time of placing him under close arrest the Sgt's breath smelled of intoxicating beverages but he was capable of walking and talking". Is this true

A. Yes sir.

Q. Was the guard commander in the detention room during the evening prior to his arrest

A. No sir

Q. Did you see him during the evening prior to his arrest

A. Not that I recall.

Cross exam

Q. Were you under the impression that the accused was intoxicated

A. No sir.

Q. How did Sgt Hayes look at the time you saw him.

A. He looked tired & slightly pale.

Re exam

Q. How long since Sgt Hayes was placed under close arrest did you go to the guard room to get Sgt Hayes. W.S.

A. About 1½ minutes.

Exam by the Court.

Q. Can you identify the liquor by the smell of the Sgts breath.

A. No Sir.

Q. Can you identify the smell of the Sgts breath which you say was that of intoxicating beverages.

A. No. nor could I say for sure that he had been drinking intoxicating beverages.

Q. Did Sgt Hayes walk and talk normally

A Yes Sir.

Fifth witness for prosecution.

M-63723 Cpl. Radcliffe H. E. 9 C.B.R.B. sworn states:-

The accused in court is Sgt Hayes. On the 23 Dec 44 at approx 2255 hrs I was on duty at the guard room when the duty Office came to the guard room & asked me to go over to the main gate guard room & place the guard commander who was Sgt Hayes under close arrest. I went over to the main gate guard room accompanied by L/Cpl Carnegie & placed Sgt Hayes under close arrest and brought him to the main guard room.

Questions by Prosecutor

Q. When you brought Sgt Hayes back to the detention room how did he appear to you.

A. He walked & talked quite normally.

Q. Did you see Sgt Hayes at all during the evening prior to his arrest.
A. No sir.

Cross exam - none.

Re exam - none

Exam by Court

Q. Did you notice anything in particular wrong with Sgt Hayes.
A. No sir. nothing.
Q. How did he look.
A. When I saw him in the light of the guard room he looked quite alright.

Sixth witness for Prosecution.
H 26146 Sgt. Neve. R. H. 9 C.B.R. Bn.
sworn states

The accused in court is Sgt Hayes. I was Orderly Sgt for 31 Coy & between 2330 & 2400 hrs 23 Dec 44 was ordered by the C.S.M. to proceed to the detention room and act as escort to Sgt Hayes when I got down to the detention room Sgt Hayes was sitting on the table. I told him to come along with me & escorted him to his quarters. Then I reported to the C.S.M. that Sgt. Hayes was in his quarters. I was away from the quarters about 15 mins., when I returned to the quarters, Sgt Hayes was in bed. I stayed there about 10 mins and smoked a cigarette with Sgt Hayes. I then left Sgt Hayes and reported to the C.S.M. I was away about 10 mins, when I returned

Sgt Hayes was asleep. I was ordered to carry on with my duties.

By Prosecutor.

Q In your capacity as Orderly Sgt did you warn Sgt Hayes for duty as guard commander that night.

A. Yes sir.

Q. When you took Sgt Hayes to his quarters how did he look.

A. He looked pale.

Q. Did he look ill.

A. Yes sir.

Q. Did he ask to see the M.O.

A. No sir.

Cross exam

Q. When you warned the accused for duty did you inform him of the duties of Sgt of the guard.

A. No sir.

Re exam - none.

Exam by Court - none.

Seventh witness for Prosecution.

D-81467 Sgt. Riddoch J. M. 9 C.B.R. Bn sworn states:-

The accused in court is Sgt. Hayes. I was returning from town approx 2120 hrs 23 Dec 44 when I was challenged by our sentry at barracks & asked to produce my pay book. Sgt Hayes was standing beside the sentry and told the sentry to let me pass.

as he knew me.

Questions by Prosecutor.

Q Where was Sgt Hayes when you saw him.

A. Standing at the gate with the sentry.

Q How was he dressed.

A Fully dressed with head gear & pistol.

Q Did he look sober.

A. Yes sir.

Q. Did Sgt Hayes speak to you.

A. He did speak to me but I cant remember what he said.

Q. Was his voice normal.

A. Yes sir.

Cross exam

Q. Why are you certain about the time being about 2120 - 2130.

A. Because I was eating at a Cafe at and it was 2115 when we left the Cafe, it was about 10 mins walk from our barracks.

Q. As you approached the gate way did Sgt Hayes recognise you.

A. Yes sir.

Re-exam - none.

Exam by Court - none.

Eighth Witness for Prosecution.

D 76543 Sgt. J. Storey 9 C.B.R. Pln sworn states:

The accused in court is Sgt. Hayes. On 23 Dec 44 at approx 2130 hrs V.L.

Sgt Riddoch and myself were entering the barracks we were stopped by the sentry who asked us for our pay books but before we had them out Sgt. Hayes told the sentry to let us pass as he recognized us. On passing Sgt Hayes, Sgt Riddoch said something to Sgt Hayes to the effect of Reddening him for having to be on guard.

Question by Prosecutor

Q. What did Sgt Hayes reply to Sgt Riddoch.

A. I was not close enough to hear.

Q. How did Sgt Hayes sound to you.

A. Quite normal.

Q. How did Sgt Hayes look.

A. Normal.

Cross exam

Q. Are you quite certain you saw Sgt Hayes between 2120 & 2130 hrs.

A. Yes. sir.

Re exam. — none.

Exam by Court — none.

The prosecutor does not wish to give a closing address at this point.

First witness for Defence.

D-26001 F.S.M. Percival, N.O. 9 C.B.R.B. sworn states:

Question by Defence.

Q. Can you produce the standing orders for the guard commander in effect

at the Seminary on the 23 Dec 44.

H. I have a copy of Bn. standing orders for the gate guard that was in effect on the 23 Dec 44 and hereby submit it to the court as evidence.

The court accepts the document as submitted and marks it exhibit 'H'.

Cross exam

Q The document states that no 2 post is the vehicle lines. Does the guard commander have to visit the vehicle lines and confirm this.

A. Yes sir.

~~Q. How often & how long~~ CDW.

Cross exam continued on sheet No 13

~~End witness~~ CDW.

Statement by the accused.

B 36602 Sgt Hayes. J. H. T. 9 CBK Bn

sworn states

Sir, on the 19 Dec 44 I went to the M.O on sick parade with a head & chest cold I received some pills from the M.O. to be taken every four hours. I did not go on sick parade again as I was in charge of sick parades & could obtain the pills without going on sick parade. On the afternoon of the 23 Dec 44 I was given a pass till 1500 hrs & then relieved the guard Sgt in the guard room at 1600 hrs. The guard was not changed it had been on for 72 hrs. I went to supper & did not feel like eating I just had two cups of tea & took two pills I then went back to the guard room until the orderly officer Lieut Capstick C sent for me to go to the orderly room & he told me to supply two

HH.

guards for German P.O.W.'s to have them ready in 10 mins. I sent them away on a car then went back into the guard room I stayed in the guard room for awhile & not feeling too good walked up to visit the other guard in the car park. I walked around the car park for awhile & then returned to the main gate. I stayed there with the sentry while he checked all incoming personnel. At approx ~~2245~~ 2145 I again walked up to the car park & took two more pills. There was no water & the pills were broken so it was not hard to swallow them. About 10 mins later my head started to spin & I felt very ill so I walked around the car park & then went back to the guard room when the orderly officer Lt Capstick found me.

I didn't go on sick parade in the afternoon of the 23 Dec 44 because we had cut cards to see who the guard dog handler would be & so the ones that were not on guard could go out and make arrangements for Christmas, & I did not want to spoil their chances of having a good Christmas.

Question by defence.

Q Did you go on sick parade the following morning.

A. No but I sent down for the medical orderly.

Q. What caused the delay between 24th and 29th when you finally went to hospital.

A. I was under close arrest and did not get tried for three days. I then wanted to fill out the summary of evidence. The officer taking the summary

Lt. Anderson, bawled me out for not going on sick parade for I could not talk so he took me to the M.O. on the 28 Dec 44 & had me examined. The M.O. immediately sent me to hospital.

Q. How were you feeling during the first period in the school house, just after 2000 hrs.

A. I was not feeling very good.

Q. Did you have trouble with your head & chest.

A. Yes sir.

Cross exam.

Q. What time did you go on duty

A. I went on duty at 1600 hrs.

Q. When you saw Lt. Capstick at 1945 hrs did he tell you to report back to him after changing out the two guards.

A. I do not remember Lt Capstick saying to return as I tried to get my guard from going as a guard for the P.O.W. Lt Capstick said that they had to go & he would have them replaced.

Q How long were you in the car park the first time.

A. I was there about half an hour.

Q. At what time were you back at the gate with the sentry.

A. Approx 2110 hrs.

Q. Can you account for the time from 1945 to 2110 excluding the ½ hr spent in the car park.

A. The car for the POW was late in coming for the two guards, when they left I went back into the guard room for a period of time & then went to the car park.

Q. Did you have a junior N.C.O. on 2/c
the guard.

A. No sir. There was no other N.C.O on
the guard.

Q. Did you tell anyone that you were
going to the car park.

A. When I left I put a man whom
I thought was senior in charge of
the guard.

Q Did you tell that man you were
going to the car park.

A. No sir.

Q. Did you know it was your responsibility
to do so.

A It is the responsibility of the guard
Sgt to visit his posts hourly or when
ever he sees fit so when I left a man
in charge it was naturally presumed
that I was going to check the posts.

Q. While in the car park you felt sick.
Why did you not go to the M.O.

A. There is no M.O. stationed there.

Q. Is there an M.I.R.

A. Yes sir.

Q. Did you go to the M.I.R. to see if the
M.O. happened to be there.

A. No sir.

Q. When Sgt Rees escorted you to your
quarters, why did you not ask for
an M.O then.

A. I repeat, there is no M.O stationed
in the building, and also I thought
that a rest and the trouble would
disappear as it had before.

Q. Why did you not see the M.O the next
morning.

A. I sent for a medical orderly who came
up to see me. He said he would

return with medicine, but did not.

Q. Do you think the medical orderly was satisfied to diagnose your illness.

A. The medical orderly had no need to examine me as I had lost my voice & was coughing all the time.

Q. When you saw the M.O on the 19th did he tell you to report back.

A. No sir.

Q. Did he tell you how many pills to take and for how long.

A. He gave me so many pills and told me to take two every four hours.

Q. Approx how many pills did he give you.

A. About 8 or 10 and some brown pills to take for my throat, about 12 of the latter. The 8 or 10 pills being A.P.C & C.

Q. Where did you get the balance of the pills you were taking until the 23rd Dec.

A. From the M.S.R.

Q. Did the M.O give you permission to get extra pills.

A. No, but I was in charge of the sick parades and instead of going sick I got the pills from the orderlies.

Q. Why did you take two pills in the car park when there was no water.

A. Because I was feeling very ill.

Q. ~~If you~~ Row.

No cram - none.

Cram by Court.

Q Have did you attempt to inform your guards of the P.O.W. escort duty.

A. I didn't think it was my guards job and it would mean me two men

short. I told Lt. Capstick this.

Q. Did you have any harsh words with Lieut. Capstick.

A. No sir.

Q. Did anyone of the guard at any time inform you that someone had been looking for you.

A. The first time I returned no one mentioned it as I didn't go into the guard room. The second time when I went into the guard room the guard ? left in charge told me that the orderly officer had been looking for me, also a sgt. I had to finish making out the guard list to their time of posting ? when I was going to see the orderly officer.

Second witness for Defence.

Capt. O. N. Martin, R.C.A.M.C. of 109 C.B.L. Bn. sworn states:

Sgt Hayes was evacuated on the 29 Dec 44 with a diagnosis of a typical pneumonia

Q. ~~Could you describe the various stages~~

Q. Can you produce a document relating to Sgt Hayes visit to the M.O.

A. Yes I submit M.F.B. 292 dated 19 Dec 44, bearing the name of Sgt Hayes and diagnosed as acute coryza.

The court accepts the document as evidence and marks it exhibit 'D'.

Q. Can you discribe a hypothetical case of a man first diagnosed as acute coryza through the stages to a typical pneumonia case.

A. Acute coryza is a technical term discribing the common cold. As far

as is known it is a virus infection
of the upper respiratory tract producing
symptoms of general malaise, a watery
discharge from the nose.
Q. Could the symptoms of acute coryza
later develop into the lung, chest troubles
& loss of voice as suffered by the accused,
A. Yes sir. Also all symptoms of diphtheria.
Cross exam
Q. Could you give A.P.C & C pills for coryza
A. Yes
Q. Would too many of these make a person
sick.
A. Yes
Q. Would two pills every four hours make
him sick, these two pills per hour are for 4 days.
A. No, that is the normal dosage. How long should a man be taking
A.P.C. & C for acute coryza.
As long as the symptoms exist
Q. It is quite safe to take A.P.C & C. pills
Cross-none
by the Court.
these pills are prescribed is it
for a man to visit the M.I.R
replenish his supply from the
as long as no other specific
symptoms exist than the patient.
witness for Defense re-
C.S.M. Percival. W
sworn.
Q. How should

as is known it is a virus infection of the upper respiratory tract producing symptoms of general malaise, a watery discharge from the nose.

Q. Could the symptoms of acute coryza later develop into the head & chest troubles & loss of voice as suffered by the accused, also the dizziness.

A. Yes sir.

Cross exam

Q. Could you give A.P.C & C pills for coryza

A. Yes

Q. Would too many of these make a person sick.

A. Yes

Q. Would two pills every four hours make one sick, these two pills per four hrs for 4 days.

A. No, that is the normal dosage.

Q. How long should a man be taking A.P.C. + C for acute coryza.

A. As long as the symptoms exist it is quite safe to take A.P.C + C. pills

Re exam - none

Exam by the Court.

Q. Once these pills are prescribed is it normal for a man to visit the M.I.R and replenish his supply from the orderly.

A. Yes, as long as no other specific times for visits have been laid by patient.

First Accused witness for Defence recalled

D 26001 R.S.M. Percival. W.O

Cross exam.

Q. How often should guard commander

visit No 2 post and how long should it take

A. He should visit all posts at least twice in the evening and twice by day. The approx time ~~to visit~~ taken to visit the No 2 post would be no longer than approx 3 minutes, as the distance from the guard room to the no 2 post is approx 50 yds.

Q. Is it laid down that the guard commander is available to the duty officer for 24 hrs, which is the length of his tour of duty.

A. Guard commanders are always available to the duty officer during his tour of duty. If he finds it necessary for him to leave the guard room he should delegate his Cpl or senior private as acting guard commander during his absence and instruct said commander as to where he may be found if urgently required.

Re exam - none.

Exam by Court

Q. When were the changes in green ink (Item made, & who made them on Exhibit H. (Guard commanders orders).

A. The hand writing is mine and the changes were made by me. They came into effect about the 19th or 20th of Dec 44.

Q. How did it come about that there was no Cpl or N.C.O as 2/c guard on the night of the 23rd when orders (Exhibit A) state there will be.

A. companies supply personnel for and mount their own guards. I could not state whether or not there was a junior N.C.O. as 2/c that particular night. ~~or not.~~

Q. Is it ~~so~~ normal practice for a guard to remain on duty for 72 hours.

A. No, but under company arrangements and circumstances it is possible for such a thing to take place. Some companies asked to take the guard duties for long periods of time because the men knew their duties better and that they were agreeable to the system.

These notes consisting of eleven (11) sheets, in the case of B-36602 Sgt. Hayes J. H.T. were taken down by me to the best of my ability in the presence of the accused.

C. Watt - Capt.

C.W.

W.J.

Page 1

Summary of Defence.

(Note – all times given are aprox)

On the evidence of the accused backed by the sick report of 19 Dec 44 he had been suffering from a head and chest cold for some time, it gradually getting worse. On the 24 Dec 44 he claims he had practically lost his voice. On the 29 Dec 44 he was evacuated to hospital with Atypical Pneumonia. (Evidence Capt Martin MO)

On the day in question (23 Dec 44) he is warned for duty as guard commander and accepts same, (feeling – as he states – that otherwise he would be doing one of the other sergeants out of his evening off (this being two days before Christmas)) He was given the afternoon off up till 1500 hrs. He apparently takes over his duties at 1600 hrs (according to his own statement and there is no evidence to the contrary). At 1945 hrs he is sent for and instructed to detail two men to act as escorts for a German P.W. This he carries out. (Evidence of Lt Capstick) At 2015 however Lt Capstick finds him absent from the Guard Room (#1 Post according to standing orders for Guard commanders). At aprox 2120 hrs he is again found to be definitely at #1 Post by Sgts Riddock and Storey. At aprox 2200 hrs Sgt Tupling, carrying out a

general check of the serjeants mess lounge and quarters, and finally at #1 post finds that Sgt Hayes is not there. At aprox 2230 he checks again but the serjeant again is not there. Sgt Tupling however questioned the sentry at 2200 hrs and found that Sgt Hayes had been with him (the sentry) a few minutes previously. At 2255, Lt Capstick, going to check if the picket had been doubled at "Relief Stations", finds Sgt Hayes again at #1 post. This leaves two periods during the evening, each of aprox ½ hour & 1 hour duration unaccounted for. However on Sgt Hayes own evidence he claims he spent both these periods walking in the area of the vehicle lines (#2 Post in the Guard Orders). The ~~defence~~ prosecution has brought forward no evidence to throw doubt on these statements. Sgt Tupling, when questioned, definitely stated he did not look in this area, also that he did not call the accused's name. He also admit he thinks the night was dark. (In any case the area is fully enclosed by high buildings and would be quite dark) Lt Capstick only proves that he (the accused) was not in the mess or quarters. Lt Capsticks statement "The Guard commander is required near #1 Post at all times" does not conform to the

Standing Orders for Guard Commanders that state that he must visit these vehicle lines. In fact Mr Capstick did not seem to be aware there was a second guard post. Mr Percival stated that the time and number of these visits was at the discretion of the Guard commander. Mr Percival further stated that these visits would normally take the guard commander 8 minutes. Sgt Hays, however, has stated that he took two pills at 2200 hrs and felt slightly unwell and that at 2300 hrs he took two more pills around 2330 hrs and shortly afterwards had felt worse and quite dizzy, and so had kept walking around in the area of #2 post to try and overcome this feeling. In support of the statement that Sgt Hays was feeling more unwell is Lt Capstick (the only witness to see Sgt Hays both at 2000 hrs and 2235 hrs) statement that he, the accused, appeared unsteady at the latter time. Quite possibly the accused should have reported sick, on the otherhand it is quite understandable for a man to want to stay out of sick bay or hospital at christmas time.

In conclusion I maintain that the prosecution has not proven that the accused has contravened any of the orders contained in the Orders For the Guard Commander and consequently should be found Not Guilty.

PROSECUTOR CLOSING ADDRESS

CASE: B-36602 Sgt Hayes J.H.T.

To sum up the case on the charge of leaving his guard, the witnesses have shown that Sgt Hayes was NOT available between appx. 1945 hrs and 2250 hrs. Superior officers and N.C.O.s were looking for him, at different times during the evening of the 23 Dec 44, and he could not be found anywhere, until he himself reported back to the Guard Room. As a Guard Commander, he knew that his duty was to advise the 2 i/c of the guard exactly where he would be in the case of his being absent. That he did NOT do.

From his own saying, he spent appropriately one and a half hours in the car park and the balance of the time at the gate, where only two sergeants saw him, even though several times during the evening the Orderly Sgt. went to look for him, in the Guard Room. He complained of illness (but 6 pills and yet the M.O. states that the treatment Sgt Hayes was taking, would not ordinarily affect a person. The same night and for the six days following, he never asked to be seen by the M.O.

The evidence only shows that Sgt Hayes was definitely NOT available to his duty and superior officer.

[signature] Lt. R.C.A.

Prosecutor.

Remarks by the Court

The court find after due consideration of the evidence submitted against you ~~and the~~ that the charge of leaving your guard without authority has NOT been proven. Your own testimony given on Oath has explained to the satisfaction of the court - there having been no evidence submitted to contest or disprove your statements - your apparent absence from the Guard Room and the basis of the charge against you.

The court must point out to you however that your actions were most unsoldierlike and draws to your attention the importance of one or two matters.

(a) That it is your duty to ensure that your Command, whatever it may be known where to find you if you leave the place where one would normally expect to find you - in this case the guard room.

(b) When a soldier is sick it is his duty to take steps to make himself well by going through the normal channels - i.e. officially being paraded on Sick Report - in that way only can proper treatment and attention be given to any particular individual by those under whose command that soldier happens to be. If for instance you had paraded sick on the 25 Dec it is probable, judging from the evidence that this mother would not have reached the present stage.

A. Moore Major
President

25 Dec 45

2 A A.M.

ORDERS FOR THE N.C.O. IN CHARGE OF BN GUARD

1. The guard will consist of 1 Cpl & 3 Tprs. Their tour of dyty will be for 24 hrs. commencing at 1800 hrs until 1800 hrs the following day.

2. Posts will be operated as follows:-

   No.1 Post - Main gate entrance to B.H.Q.
   " 2 " - Vehicle Lines

3. No.1 Post will be a Guard Post.

4. N.C.O. i/c Guard will be responsible for sentries having a thorough knowledge of their duties and that they are properly instructed in the matter of PAYING PROPER COMPLIMENTS to all OFFICERS OF THE ALLIED FORCES and that they are alert at their posts in case of Fire, Enemy action or Gas alerts. He will a lso be responsible for the cleanliness and tidiness of the Guard Quarters and the outside area. His tour of duty will be for 24 hrs.

5. N.C.O. of the Guard will post and visit all sentries during their tour of duty.

6. All reliefs will be inspected by the N.C.O.i/c Guard who will ensure that each man is cleaned and properly dressed.

7. N.C.O. posting sentries will see that orders are properly handed over by the sentry being relieved, to the new sentry.

8. No personnel to leave the Guard room area without first obtaining permission from the N.C.O. to do so.

9. Ensure that the Guard turns out promptly in the event of an alarm.

10. Report to the duty Officer any occurances which require immediate action. Duty Officer may be found in the "Information Room" of B.H.Q. building fourth door on the left of Hall-way.

11. Instruct sentries that conversation with or loitering by civilians or troops will not be tolerated except in the line of duty.

12. Inspect the arms of each sentry before and after changing reliefs and the whole of the Guard when desmounting.

13. Sentries must be relieved every two hours. Tour of sentry duty - TWO HRS ON, FOUR HRS OFF.

14. After Military Curfew (2300 hrs) take the names and Numbers of ALL OTHER RANKS entering the Barracks and hand same to the R.S.M. the following morning.

ANY INFRACTIONS OF THESE ORDERS WILL RESULT IN DISCIPLINARY ACTION

W.O. Percival
A/R.S.M.
15th Nov 44.

Ex. B P.M.

57 Coy. | Squadron / Battery / Company / Detachment | 9 BN. R CHRG. | Unit or Battalion

MORNING SICK REPORT

19 DEC. 41 19

Regt'l No.	RANK AND NAMES (Christian Name in full)	Age	Religion	Whether for duty a prisoner or defaulter	Married or Single	DISEASE	Medical Officer's Remarks and Initial
D-3319	TPR. CRAYDUON. C.	24	R.C.		S	[illegible]	[illegible]
C-21703	TPR. CAWDERY. L.C.	20	R.C.		S.	[illegible]	[illegible]
H-102074	TPR. HAMER. C.	22	N.C.		M.	[illegible]	[illegible]
B-14887	TPR. THORNCYCROFT. E.B.	20	C.E.		S.	[illegible]	[illegible]
B-36602	SGT. HAYES. J.H.	29	Ang.		M.	[illegible]	[illegible]
P41287	TPR. DAVIES. AV	22	RC		S	[illegible]	[illegible]

Medical Officer

Orderly N.C.O.

3/60A N.F.S. 295 20/P & S/41

(OVER)

SUMMARY OF EVIDENCE

in the case of

B36602 Sgt Joseph Henry Thomas HAYES, X-4 List CAC on strength 9 Bn, 2 Canadian Base Reinforcement Group a soldier of the Canadian Army Overseas who is charged with:-

(1) WHEN ON ACTIVE SERVICE, LEAVING HIS GUARD WITHOUT ORDERS. A.A. Sec 6(2)(f)

(2) WHEN ON ACTIVE SERVICE, WHEN ON DUTY, DRUNKENNES. A.A. Sec 19.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS Lieutenant E.H. Capstick, X-4 List RCE on strength 9 Bn 2 C.B.R.Gp., having been duly sworn states:-

I am Lieut E.H. Capstick, R.C.E., I was duty officer 25 Dec 44 at 9 Bn H.Q. at 1945 hours I was ordered by Group H.Q. to supply two guards for a German P.O.W. I sent for the guard sergeant and told him to have two of his men ready to leave in 10 minutes and to report back to me as soon as they had gone, and I would find him replacements. He did not report. At 2015 hours and I went to the piquet room to find out why he had not reported, but he was not there. I sent one of the guards out to look for him. He reported back 10 minutes later and stated he could not find the guard sergeant. I visited the sergeant's mess and the sergeant's quarters looking for him, but could not find him. I called into the piquet room at about 2030 hours and 2100 hours, but he was still absent. At 2130 hours I went to 57 Coy Orderly Room and advised D-3207 Sgt Tupling, F.E. that the sergeant of the guard was absent. Sgt Tupling looked for him but could not find him. Sgt Tupling visited the guard room at 2200 hours and again at 2230 hours, but Sgt Hayes, the guard sergeant, was still absent. At 2255 hours, I visited the guard room to warn the guard of "Action Stations". I found Sgt Hayes had returned and was in my opinion definitely under the influence of alcohol. I went to the detention and told A-42212 L/Cpl Carnegie, E.M. to place the sergeant under close arrest. He was escorted to the detention by M-65723 L/Cpl Radcliffe, A.E., and A-42212 L/Cpl Carnegie, E.M., and placed in custody. Later I informed D-26001 RSM Percival, W.C., who later removed Sgt Hayes to his quarters under close arrest.

Witness cross-examined by the accused, as follows:-

Q.1. Sir, when you came into the guard room did I look sick or ill?
A.1. In my opinion you were merely intoxicated.

Q.2. Did you, Sir, ask me to do anything that would show I was intoxicated?
A.2. No.

The accused declines to cross-examine the witness further.

E.H.Capstick Lt

(E.H.Capstick)Lieut.

SECOND WITNESS D-3207 Cpl (A/Sgt) Tupling, F.E., PE 9 Bn, 2 C.B.R.Gp. having been duly sworn, states:-

"On the night of the 23 Dec 44 while acting in the capacity of duty N.C.O., the duty officer, Lieut. E.H. Capstick, informed me that B-36602 Sgt Hayes, J.H.T. the guard commander, was not in the guard room. He ordered me to make a tour of the barracks to see if I could find Sgt Hayes. I visited the Sgt's Mess, the Sgt's quarters, and the Sgt's reading room at approximately 2145 hours. I could find no trace of him in any of these places. I then visited the guard room as a last resort at approximately 2200 hours but foudn that he was not there either. After that I returned to the Orderly Room reporting to the Orderly Officer that I could not find him. He then told me to visit the guard room at regular intervals. At 2230 hours I returned to the guard room and found that Sgt Hayes was still absent. About 25 minutes later I heard that Sgt Hayes was back in the guard room. I do not know how long after 2230 hours it was before he returned"

The accused declines to cross-examine this witness.

F.E. Tupling

D-3207 Cpl (A/Sgt) Tupling, F.E.

THIRD WITNESS M66723 L/Cpl Radcliffe, H.E. Regimental Police, 9 Bn, 2 C.B.R.Gp. having been duly sworn states:-

"On the night of the 23 Dec 44 I was at the guard room at approximately 2250 hours when the duty officer came to the guard room and ordered me and A-42212 L/Cpl Carnegie to go over to the Bn guard room and place the guard commander, B-36602 Sgt Hayes, J.H.T. under close arrest. We immediately went over to the Bn guard room and escorted Sgt Hayes to the guard room and placed him under close arrest. I cannot say whether Sgt Hayes was under the influence of liquor or not.

Witness cross-examined by the accused, as follows:-

Q.3. Did I look ill in any way to you when you came to the guard room?
A.3. In my estimation you looked somewhat groggy, as if your might have been just awakened from sleep

The accused declines to cross-examine this witness further.

H.E. Radcliffe

M-66723 L/Cpl Radcliffe, H.E.

FOURTH WITNESS A-42212 L/Cpl Carnegie, E.M., Regimental Police, 9 Bn 2 C.B.R.Gp. having been duly sworn states:-

"At 1800 hours the 23 Dec 44 I was detailed for duty at the desk of H.Q. 9 Bn, 2 CBRG Guard Room. At approximately 2305 hours Lieut Capstick, the duty officer of 9 Bn, 2 CBRG., came to the desk informing me that the sergeant of the guard was in the guard room at the entrance to the Seminary and was in no condition to be in charge of the guard, and that he wanted him placed under close arrest. I then proceeded

FOURTH WITNESS (cont'd)

to the guard room accompanied by M-65723 L/Cpl Radcliffe, where the guard commander was found sitting on a chair. I placed him under close arrest, disarmed him, and then escorted him to the desk of the H.Q. guard room. I established his identity from MFM I pt 1 which he produced as B-36602 Sgt Hayes, J.H.T. He was detained at the desk until suitable arrangements could be made for an escort. He was then released under the instructions of D-26001 R.S.M. Percival, W.O., to Sgt Neve.

At the time of placing him under close arrest the sergeant's breath smelled of intoxicating beverages, but he was capable of walking and talking".

Witness cross-examined by accused, as follows:-

Q.4. Did I when you came into the guard room, look ill in anyway?
A.4. You looked pale and did not have a natural colour.

The accused declines to cross-examine this witness further.

A-42212 L/Cpl Carnegie, E.M.

FIFTH WITNESS D-26001 R.S.M. Percival, W.O., PE 9 Bn, 2 C.B.R.Gp. having been duly sworn states:-

"At approximately 2315 hours 23 Dec 44, "Action Stations" had been called. I was proceeding to my post when I was stopped by the Bn duty officer, Lieut Capstick, E.H., who informed me that he had placed the Bn guard sergeant under close arrest for being absent from his post and further upon his return he was drunk. I immediately informed C.S.M. Travers that he would have to post another sergeant as guard commander. I then visited the Bn detention room where I found the guard commander who I recognized as B-36602 L/Sgt Hayes, J.H.T. to be in no condition to carry on with his duties due to intoxication. Shortly afterwards, Sgt Neve reported to me that he had been sent as an escort for Sgt Hayes. I ordered him to take Sgt Hayes to his quarters and to remain with him during his time of close arrest. Immediately afterwards I reported to the Bn duty officer that I had appointed another guard commander."

Witness cross-examined by accused, as follows:-

Q.5. Sir, when I was sitting on the desk when you came down to the guard room, did I look ill or pale?
A.5. From where I stood I could not positively state whether you were ill or not as your head was bent forward on your chest.

The accused declines to cross-examine this witness further.

D-26001 R.S.M. Percival, W.O.

SEVENTH WITNESS (Recalled)

H26146 Sgt Neve, R.H., 57 Coy 9 Bn, 2 C.B.R.Gp. having been duly sworn, states,

"At about 1000 hrs 23 Dec 44 in my capacity of Coy Orderly Serjeant I was ordered by the C.S.M. to Warn Sjt Hayes to be Guard Commander and to mount the guard at 1545 hrs 23 Dec 44. This I did at approximately 1015 hrs 23 Dec 44."

The accused declines to cross-examine this witness.

R. H. Neve Sgt

H26146 Sjt Neve, R.H.

SIXTH WITNESS D-26032 Sgt Jarvis, C.H. PE 9 Bn, 2 C.B.R.Gp. having been duly sworn, states:-

"About 2300 hours 23 Dec 44 I was asked to report to the Provost to act as escort for a sergeant who was under close arrest. I did so until relieved by D-26001 R.S.M. Percival, W.O., about half an hour later. I was given Sgt Hayes's paybook and remained in the guard room with Sgt Hayes whom I recognize to be the accused. In my estimation Sgt Hayes looked ill, but I could not say he was drunk as he spoke to me in a normal manner.

The accused declines to cross-examine this witness.

D-26032 Sgt Jarvis, C.H.

SEVENTH WITNESS H26146 Sgt Neve, R.H. X-4 List CAC on strength 9 Bn 2 C.B.R.Gp., having been duly sworn, states:-

"On the night of 23 Dec 44 I was ordered to go down to the detention room to act as escort for B-36602 Sgt Hayes, J.H.T. I arrived at the detention room where I found Sgt Hayes sitting on the table. I informed the Provost that I had come as an escort, then escorted him to his quarters where he went to bed. We sat and talked awhile and he seemed to be quite alright. I left him then and reported to the C.S.M. as we were on "Action Stations". About fifteen minutes later I returned. Sgt Hayes was still in bed and awake. We sat and chatted and smoked a cigarette. During this time he was talking quite normally. I then left him again to report to the Orderly Room to see if there was any further orders. In about another ten or fifteen minutes I returned and found Sgt Hayes asleep.

Witness cross-examined by accused, as follows:-

Q.6 Did I not say to you when we were talking that I felt ill?
A.6 Yes, you looked ill and pale.

The accused declines to cross-examine this witness further.

H26146 Sgt Neve, R.H.

EIGHTH WITNESS D-81467 Sgt Riddoch, J.W., PE 9 Bn, 2 C.B.R.Gp. having been duly sworn, states:-

"I was returning from town at approximately 2120 hours 23 Dec 44 when I and another sergeant were challenged by the guard at the gate. Sgt Hayes who was standing there recognized me and said that it was O.K. for us to pass. I said a few words to him, the exact words I do not recall, but it was something in the line of kidding him for having to be on guard.

Witness cross-examined by accused, as follows:-

Q.7. When we were talking did it appear that I was under the influence of liquor?
A.7. When I was talking to you it did not appear to me that your had had anything to drink.

Q.8. Did I look sick or ill to you when we were talking?
A.8. The only thing I remember was that you looked tired.

EIGHTH WITNESS (cont'd)

The accused declines to cross-examine this witness further.

J W Riddoch Sgt.

D-81467 Sgt Riddoch, J.W.

NINTH WITNESS D-76542 Sgt Storey, J., X-4 List CAC on strength 9 Bn, 2 C.B.R.Gp. having been duly sworn, states:-

"On the night of 23 Dec 44 I was returning from town with Sgt Riddoch when the sentry stopped us at the gate and asked us for our pay books. Sgt Hayes told the sentry that it was O.K. that he recognized us. Sgt Riddoch kidded Sgt Hayes about having to be on guard.

Witness cross-examined by accused, as follows:-

Q.9. When we were talking did it look as if I was under the influence of liquor?
A.9. No, you looked quite normal to me.

Q.10. Did I look sick or ill?
A.10. As it was rather dark I could not be sure.

The accused declines to cross-examine this witness further.

J Storey Sgt

D-76542 Sgt Storey, J.

The accused was questioned as follows:-

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence on oath.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence, consisting of five pages, was taken down by me in the presence of the accused and that Rules of Procedure 4(c),(d),(e), and (f) have been complied with.

Hugh H Anderson Lt

(Hugh H Anderson) Lieutenant
Officer detailed to take the Summary of Evidence.

In the Field

28 Dec 44.

LIST OF WITNESSES
in the case of

B-36602 Sgt Joseph Henry Thomas HAYES, X-4 List CAC
on strength 9 Bn, 2 C.B.R.Gp.

FOR PROSECUTION

Lieut E.H. Capstick	X-4 List RCE, 9 CBR Bn
D-3207 Cpl (A/Sgt) Tupling, F.E.	PE, 9 CBR Bn
M-66723 L/Cpl Radcliffe, H.E.	Regt'l Police, 9 CBR Bn
A-42212 L/Cpl Carnegie, E.M.	Regt'l Police, 9 CBR Bn
D-26001 RSM Percival, W.C.	PE, 9 CBR Bn
D-26032 Sgt Jarvis, C.H.	PE, 9 CBR Bn
H-26146 Sgt Neve, R.E.	X-4 List CAC, 9 CBR Bn
D-21467 Sgt Riddoch, J.M.	PE, 9 CBR Bn
D-76542 Sgt Storey, J.	X-4 List, CAC, 9 CBR Bn

FOR DEFENCE

NIL

FLASH NUMBER TWO

FLASH NUMBER TWO

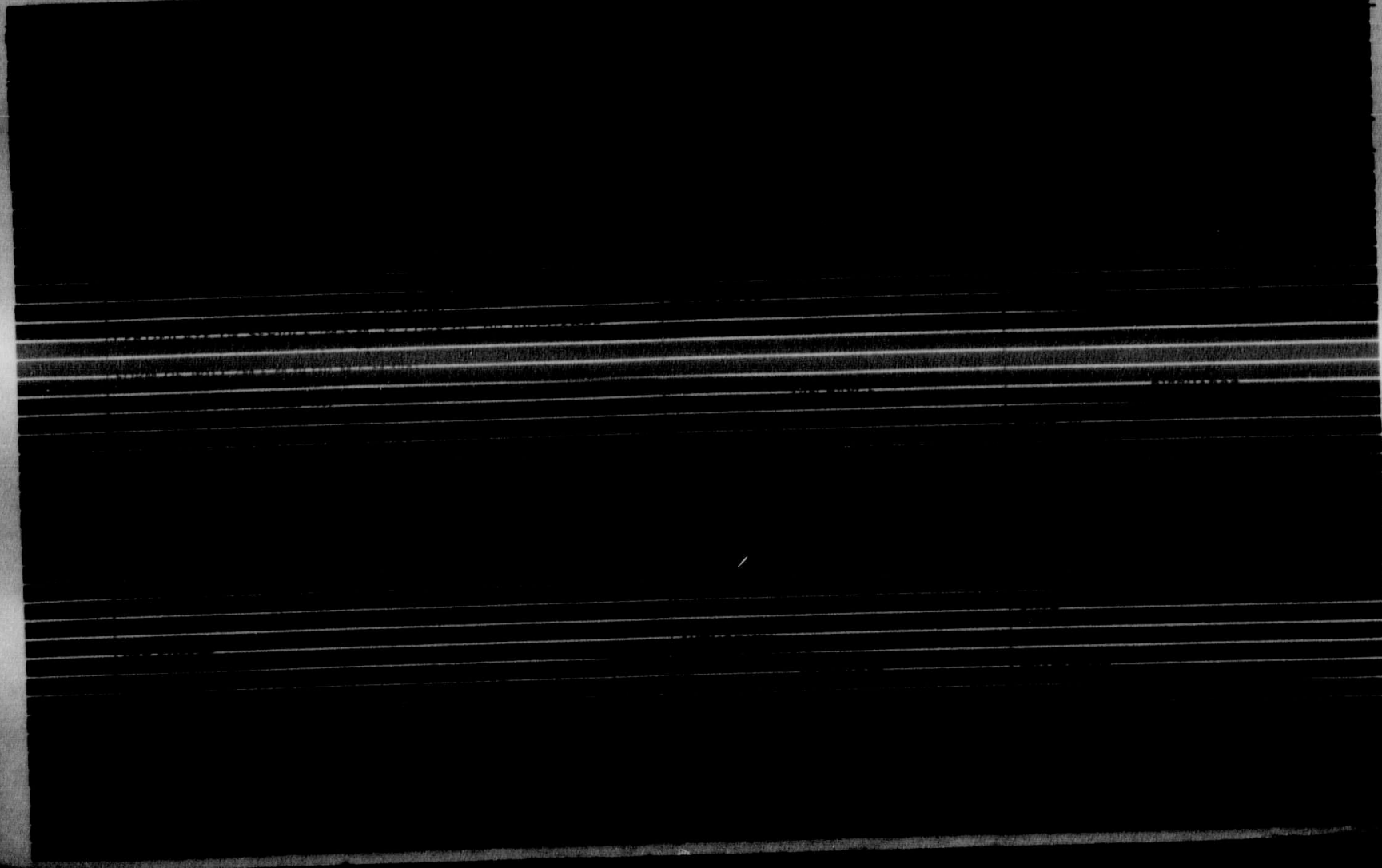
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FLASH NUMBER TWO

CA OF-1-100 Pte. Hayes S.A.



SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F-60182 Pte George Austin HAYES - 2/4th IG HQ Coy.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Sec 15(1) A.A.	Guilty	Guilty	
2nd Sec 40 b.A.	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At present under sentence for 3 Mos beginning on (date) 10 Dec 45 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 32 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be imprisoned without hard labour for one year and to be discharged with ignominy from His Majesty's Service.

(Sgd) ..... 16 Feb (Sgd) "P.R.C.Peterson" Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56. 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed.

I direct that the accused be not committed to prison or detention barracks until further orders. "DOC"

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) "DOC"

(1. AA 57A. Delete if not used.)

(Sgd) "D.C.Cameron" Lt-Col.

Date 17 Feb 46 A/Commanding 2/9 GIB.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F-60182 Pte Hayes, G.A.	18 Feb 46	"H.N.Cashabank" Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY. CAOF-1-100

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/P & S/1698 (E1144) 4/388

Convened by Order of Lt-Col. H.C.CAMERON A/Comd 2/9 Gds Inf Bde dated 13 Feb 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-60182		George Austin	HAYES	2/4th IG HQ Coy

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) GERMANY on (*date(s)*) 15 Feb 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout it on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereon. See back of Convening Order, CF A95, for oaths and instrs on how to record witnesses evidence, etc, which more are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1035 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused : Do you object to ..... as interpreter ? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, J.A. if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJOR	P.R.C.PETERSON	2/4th Hussars.
Member	CAPT	H.B.TOWNSEND	2/4th Hussars.
Member	CAPT	C.F.ROBSON	2/DLI (F.S.)
Judge-Advocate			
Prosecutor	LIEUT	J.I.MACLEAN	2/KOSB
Defending Offr	CAPT	R.W.LOCKWOOD	2/RSB

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 1 were not followed. See Diag p 3.)

A8. The accused F-60182 Pte George Austin Hayes before arraignment make(s) (no) (a) plea. (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

CAOF No. 1 F.100

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-86; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ——— charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ——— charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ——, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

File here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ———.(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ——— charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ——— charge(s), and allowed on the ——— charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ——— Do you intend to call witnesses on your behalf ? Ans ——— Are they witnesses as to character only ? Ans ———.
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ——— charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 56(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET.

The accused F 60182 Pte. George Austin Hayes, 3/N.N.S.H., CAOF, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE. Sec 15(1) Army Act.

When on Active Service, absented himself without leave

in that he

In the field in Germany, when in confinement absented himself without leave from approximately 2140 hrs 5 Jan 46, until 1400 hrs 15 Jan 46. (Absent 9 days 16 hrs 20 mins.)

SECOND CHARGE Sec 40 Army Act

When on Active Service, Conduct to the Prejudice of Good Order and Military Discipline,

in that he

In the field, in Germany, on 25 Jan 46, was wearing badges of rank of a Cpl and RCASC Shoulder Flashes to which he was not entitled.

In the Field,
4 Feb 46

"D.F.Forbes"
(D.F. Forbes) Lt Col
Commanding,
3/N.N.S.H.
C.A.O.F.

To be tried by Field General Court Martial.

"D.C.Cameron"
(D.C.CAMERON) Lt-Col
A/Cond, 2/5 Cdn Inf Bde CAOF

In the Field,
12 Feb 46

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 106. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F60182		Pte	George Austin	HAYES	3/4th HS Highrs.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 Feb 46 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	P.H.E.PATERSON	3/4th A & S Highrs.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	N.R.NICHOLSON	3/4th A & S Highrs.
Capt	C.F.BOULTON	3/HLI OF C.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	L.COX	3/HLI OF C.

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in	(Signed personally. RP 105 fn 2.)	(Rank.)
Germany (Country.)	"D.C.Cameron" (D.C.CAMERON)	Lt-Col

Date 12 Feb 46 A/Commanding 2/9 Cdn Inf Bde GAOF

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

3/North Nova Scotia Highrs CASF

15 Feb 46

N60182 Pte Hayes, G.A.

This is to certify that we have examined the a/m OR and have found him fit to stand Court Martial.

"J.C.Lewis" Capt.
(J.C.Lewis) Capt.
MO 3/Nth NS Highrs.
CASF.

President and Gentlemen of the Court:

Pte Hayes, G.A. enlisted in June 1940 when he was only 16 years of age, he came to England in June 1943 and then to Italy with the Carleton & York Regt, he came from Italy to N.W.E. and joined the 3/North Shore Regt.

He left the North Shore and joined the North Nova's in June 45. Since he enlisted voluntarily, and taking into consideration his age and length of service in the theatre of operations, the defence appeals to the court to be as lenient as possible in passing sentence.

EX "A"

Summary of Evidence in the case of F.60182 Pte George Austin HAYES, 3/RNSH., CAOF, charged with, when on active service, absenting himself without leave, in that he, in the Field in Germany, when in confinement, absenting himself without leave from approximately 2140 hrs, 5 Jan 46 until 1400 hrs 15 Jan 46.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS: F-57780 Cpl PELRINE, D.F. "B" Coy, 3/RNSH, having been duly sworn states:

At Caledonia Barracks on 5 Jan 46 I was Guard Commander of the Main Guard 3/RNSH. At approximately 2140 hrs I entered the guard room kitchen to have the night lunch. On leaving the kitchen I noticed Pte Hayes entering under escort. I returned to the Guard Commanders room. At approximately two minutes later, Pte Hayes escort F.52568 Pte Long, T.V. entered my room and informed me Pte Hayes had escaped. I immediately searched the lower floor of the building. On failing to locate the prisoner I notified the Canadian Provost Corps in Varel and the Bn Orderly Officer. I next searched the upstairs of the building and discovered a window slightly opened. There were footprints from the window along the drain of the roof, to a pole at one end of the building. Accompanied by F.52238 Pte Myers, R.A., of the Regt. Police I went outside of the building and found footprints leading away from the pole at the end of the building.

Q. Was the door leading to the upper floor locked.
A. No.

The accused declines to cross-examine this witness.

"D.F.Pelrine" Cpl.

SECOND WITNESS: B-159014 Pte Canning, G.E., "B" Coy, 3/RNSH, having been duly sworn states:

At Caledonia Barracks on 5 Jan 46 I was 2 i/c of the Main Guard, 3/RNSH. From 2100 hrs to 2300 hrs I was on duty in the hallway of the Guard Room. At approximately 2140 hrs I permitted Pte Hayes under escort to go to the kitchen for a drink of water. Immediately following this Pte Rogers and also a German National asked permission to go to the lavatory. While escorting the German prisoner to the lavatory I was approached by Pte Long, who asked me if I had seen Pte Hayes. I replied in the negative. I looked up the German civilian. I next checked on Pte Rogers and discovered he was also missing. I reported to the guard commander that both Pte Hayes and Pte Rogers were missing.

The accused declines to cross-examine this witness.

"G.E.Canning".

THIRD WITNESS: F-52568 Pte Long, T.V., "B" Coy., 3/RNSH., having been duly sworn states:

At Caledonia Barracks on 5 Jan 46 I was detailed as an escort for F.60182 Pte Hayes, G.A. I was on duty from 2100 hrs to 2300 hrs. At approximately 2140 hrs Pte Hayes asked to be taken to the kitchen for a drink of water. The 2 i/c of the guard opened the cell and I escorted the prisoner to the kitchen. While Pte Hayes was drinking I turned my back on him for a few seconds. On turning around again, he was no where to be seen. I went immediately to his cell but he was not there. I also looked in the lavatory to see if he was there. Then I asked the 2 i/c of the guard, who was in the hall, whether he had seen Pte Hayes. I then reported the absence of the prisoner to the Guard Commander, Cpl Pelrine.

The accused declines to cross-examine this witness.

"T.V.Long".

FOURTH WITNESS: F.57861 Pte Carty, M.R., Bn HQ., 3/RNSH, having been duly sworn states:

At Caledonia Barracks on 5 Jan 46 I was on duty as an RP at the Guard Room 3/RNSH from 1530 hrs to 2330 hrs. During our tour of duty we are in the front room of the building unless we leave it to check a vehicle. At approximately 2140 hrs Cpl Pelrine the Guard Commander notified me that Pte Hayes was missing.

Q. Did you assist the Guard Commander to search the building?
A. No Pte Myers, R.C. the other RP on duty assisted him.

Q. How many entrances are there to the front room from the outside of the building?
A. Only the one door.

Q. During the period from appox 2130 hrs to 2145 hrs did you observe Pte Hayes leaving the building by this door?
A. No.

The accused declines to cross-examine this witness.

"M.R.Carty".

FIFTH WITNESS: F.62239 Pte Myers, E.C., R.P.Coy, 3/RNSH, having been duly sworn, states:

At Caledonia Barracks on 5 Jan 46, I was on duty as an RP at the Guard Room 3/RNSH, from 1530 to 2330 hrs. At approx 2140 hrs Cpl Pelrine the guard commander entered the front room and told us Pte Hayes had escaped. I assisted the guard commander to search the building. We went outside and found tracks leading from a pole at the end of the Guard Room.

Q. What exits are there from the front room of the Guard House?
A. There is only one door.

Q. During the period from approx 2130 hrs to 2145 hrs did you observe Pte Hayes enter the front room of the Guard House or leave by the only door leading outside?
A. No.

The accused declines to cross-examine this witness.

"E.C.Myers".

SIXTH WITNESS: F.57861 Pte Carty, M.R.Bn HQ 3/RNSH, having been duly sworn states:

At approximately 1730 hrs on 25 Jan 46 I was detailed to be in charge of an escort to bring Pte Hayes from 3/4 Provost Coy in Oldenburgh to the Guard Room at Caledonia Barracks, Pte Williams, C.R. accompanied me. On returning from 3/4 Provost Coy with Pte Hayes we turned him over to the Guard Commander, Cpl Pelrine.

Q. Was Pte Hayes properly dressed?
A. No sir, he was wearing the rank of a Cpl and RNASC Flashes.

The accused declines to cross-examine this witness.

"M.R.Carty".

SEVENTH WITNESS: F.58458 Pte Williams, C.R., Bn HQ, 3/NNSR, having been duly sworn states:

At approximately 1730 hrs 25 Jan 46, I was detailed to accompany Pte Carty to 2/4 Provost Coy, Oldenburgh, to act as escort for Pte Hayes. When he was handed over to us he was improperly dressed, wearing the rank of a Cpl. We escorted him to the Guard Room at Caledonia Barracks. At approximately 1915 hrs we turned him over to the Guard Commander, Cpl Pelrine.

Q. Was Pte Hayes wearing RIASC flashes?
A. Yes.

The accused declines to cross-examine this witness.

"C.R.Williams".

The Certificate of Arraignment, produced as "documentary evidence", was handed to the Accused, marked Exhibit A, signed by the said Officer thereto.

"J.I.Maclean" Lt.

The accused was warned as follows:

Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused: I have nothing to say.

"G.A.Hayes".

I certify that R.P.4 has been complied with.
Taken by me in the field, in the presence and hearing of the accused, this 30th day of January, 1946.

"J.I.Maclean" Lt.

Feb 45.

O.C.,
2/Nth N.S.Highrs, C.A.O.F.

Sir:

I desire to have an officer with legal experience, preferably from Div HQ, to defend me at my forthcoming trial by Field General Court Martial.

"J.A.Hayes"
(Signature of Accused.)

Exhibit "A" "JLM"

CERTIFICATE UNDER ARMY ACT 163(1)(j)

Certified that No. F-60182 Rank L/Cpl Name HAYES
of the NWE Hdrs (CAOF) Bn., was apprehended by No. B-67849 Rank RSM
Name: Warren J of the 13 CDR Bn at Alverna, Holland at 1400 hrs on the
15 Jan 46, as an absentee without leave he was wearing military uniform at
the time of his arrest.

Place Field,
Date 1 Feb 46

"M.A.Frank"
(M.A.FRANK) Major
Officer Commanding
1 CDR Coy, 13 CDR Bn

3/NORTH NOVA SCOTIA HIGHLANDERS CAOF

Statement of Evidence in the case of V.60182 Pte. Hayes, G.A., 3/Nth NS Highrs, CAOF.

I am Capt H. W. Cashaback, Adjt 3/Nth NS Highrs CAOF. On the 25 Jan 46 P60182 Pte. Hayes, G.A. was on strength 3/Nth NS Highrs CAOF. He therefore was not entitled to wear ROASC shoulder flashes. He had not b een granted the rank of C/L by this unit.

In the Field,
11 Feb 46

"H.W.Cashaback" Capt & Adjt
3/Nth NS Highrs, CAOF.

LIST OF WITNESSES.

PROSECUTION:

F-57780	Cpl.	Pelrine	D.F.	3/Nth NS Highrs VARSL
B159014	Pte.	Canning	G.E.	" "
F-52568	Pte.	Long	T.V.	" "
F-57861	Pte.	Carty	M.R.	" "
F-58458	Pte.	Williams	C.R.	" "
F-82239	Pte.	Myers	E.C.	" "

DEFENCE:

NIL

"J.L.MacLean" Lt.
(J.L.MACLEAN) Lieut.
Officer taking Summary.

STATEMENT AS TO CHARACTER AND PREVIOUS CONVICTIONS OF OFFENDER

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or other unit as the case may be)
P60182	Pte.	HAYES George Austin	3/7thNZ Highrs CASF.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a Court Martial:

For A.A. Sec 15(1) ..... 17 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 5 May 44

Date of last entry in Field Conduct Sheet 22 Dec 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule below.

3. The accused at the present time is under sentence for 3 mos beginning on the 19th day of Dec 45
(Strike out if not applicable)

4. The accused has been awaiting trial on the present charges for .....N/A days in civil custody; and for ..... 34 ..... days in military custody, i.e., ... Nil ..... days in open arrest, ... 34 ..... days in close arrest; of which ..... Nil ..... days were spent in hospital.

5. The present age of the accused is ..... 22 yrs .....

6. The date of his attestation is ..... 5 Jun 40 .....

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of 39-40 Star, Italy Star, France-Germany Star, (State military decorations (if any)) CVSM & Clasp

9. (If the accused is a warrant officer or N.C.O.). The accused has served continuously, without reduction, to the present date— Date of promotion

In the substantive rank of .... N/A .....

In the acting rank of ..... N/A .....

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court	Date & Place of Trial	Charges	Sentence of the Court
FGCM	6 Jun 44 in the Field	A.A.Sec 15(1) AWL from 0530 hrs 23 May 44 to 1030 hrs 25 May 44	2 years Hard Labour Imprisonment
FGCM	5 Sep 45	First Charge. AA Sec 15(1) AWL from 0630 hrs, 19 Jun 45 to 1900 hrs 9 Aug 45 (Absent 51 days 12 hrs 30 mins) Second Charge. AA Sec 22(2) Loss by neglect $8.25	6 Months Detention and Stoppage of pay in amount of $8.25
FGCM	19 Dec 45	First Charge. AA Sec 15(1) AWL from 1615 hrs 31 Oct 45 until 2230 hrs 15 Nov 45 (Cont'd)overleaf.	

I HEREBY CERTIFY that the foregoing particulars which have been abstracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 4th day of Feb 46

"H.N.Cashmere"
(H.N.Cashmere) Capt & Adjt.
3/7th NZ Highrs CASF.

Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
19 Dec 45	First Charge. (Cont'd) (Absent 15 days, 4 hrs, 15 mins). Second Charge. AA Sec 15(1) AWL from 2130 hrs, 26 Nov 45 until 1520 hrs, 27 Nov 45 (Absent 17 hrs, 50 mins).	270 Detention.	Sentence varied to three months by Cond't 2/9 Cdn Inf Bde.

M.F.M. 6
(A.F. B.122)
40/F & S/136 (2965)

No. F60182 Name HAYES, G.A. Sqn., Battery, or Company HQ Corps P.E.I.R. Date of enlistment 5-6-40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk NIL. | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character Fair

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (Interim) with trial	By whom awarded	Remarks
Dartmouth	5-11-40	Pte		AWL from 0815 hrs 5-11-40 till 2200 hrs 5-11-40 Sec 15 A.A.	CSM Ellis	Admonished	6-11-40	Major DesRoches	Forfeits 1 day pay PM&I
Halifax	14-4-41	Pte		AWL from 2200 hrs 14-4-41 till 2300 hrs 15-4-41.	CSM Ellis Cpl Camp	2 days CB	16-4-41	Major DesRoches	Forfeits 2 days pay PM&I
Valcartier	1-7-41	Pte		Absent without leave.	Documentary No.15 Provost	2 days CB	2-7-41	Major DesRoches	Forfeits 1 day pay PM&I
Botwood	4-9-41	Pte		AWL from 0200 hrs 3-9-41 till 0600 hrs 4-9-41	Cpl Fyfe	6 days In lieu Detn	4-9-41	Major MacDonald	Forfeits 2 days pay PM&I
Botwood	6-11-41	Pte		AWL from 2215 hrs 6-11-41 till 0200 hrs 7-11-41	Cpl Shephard	3 days CB.	7-11-41	Lieut McKenzie	Forfeits 2 days pay PM&I

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Botwood	27-11-41	Pte		AWL from 2215 hrs 27 Nov 41 till 0130 hrs 28 Nov 41	Sgt Clow Cpl Shepherd	3 days CB	28-11-41	Major DesRoches	
				Conduct to the prejudice, etc., i.e. Improperly dressed					
Botwood	29-12-41	Pte		AWL from 0200 hrs 29 Dec 41 till 0159 hrs 8 Jan 42	Sgt MacKenzie	7 days CB	8-1-42	Major DesRoches	Forfeits 10 days pay FR&I
Botwood	3-2-42	Pte		AWL from 2230 hrs 3 Feb 42 till 0200 hrs 4 Feb 42	Cpl Fyfe JM	3 days CB	4-2-42	Major DesRoches	
Botwood	25-2-42	Pte		AWL from 2215 hrs 25 Feb 42 till 0600 hrs 28 Feb 42	Cpl Fyfe JM	7 days CB	28-2-42	Major DesRoches	Forfeits 3 days pay FR&I
Gander	17-6-42	Pte		Attempting to absent himself without leave	RSM Ellis Pte Murphy	7 days CB	17-6-42	Lieut Sinclair	
Gander	18-6-42	Pte		Absent from Defaulters Call	Sgt Kanslow				
St.John NB	4-5-43	Pte		Issued Embarkation L.Warrant 409978					
St.John NB.	Certified no further entries to this date. (Sgd) D.S.Lidstone, Capt.								

M.F.M. 6
(A.F. B.122)
40/P & /8136 (2965)

No. F60182 Name Hayes, G.A. | Sqn., Battery, or Company HQ | Corps P.E.I.H. | Date of enlistment 5-6-40 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk B11 | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character Fair

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 Oct 43	Pte		WOAS, Absent without leave from 2130 hrs 1 Oct 43 to 1030 hrs 2 Oct 43 (Absent 13 hrs)	Sgt Christie	7 days CB	4 Oct 43	Capt SW Small	Forfs 1 days pay
Field	23 May 44	Pte		Sec 15(1) AA AWL from 0900 hrs 23 May 44 to 1030 hrs 25 May 44	Sgt Ullack Capt Smith	2 yrs HL Imprisonment	9 Jun 44	FGCM	Forf 2 days pay
Field	26 May 45	Pte		Sec 15(1) AA AWL from 0900 hrs 26 May 45 till apprehended at 2040 hrs 27 May 45 (Absent 1 day 11 hrs 40 mins)	F50301 Sgt McAliney CF	14 days Summary Forf of Pay cost of Escort 2slld	29 May 45	JK Rhodes Major	Forf 2 days pay FR&I 149(1)(a) Total forf
Field	19-6-45	Pte		Sec 15(1) AA AWL from 0630 hrs 19 Jun 45 to 1900 hrs 9 Aug 45 (Absent 51 days 12 hrs 30 Mins) Sec 24(2) Loss by neglect $8.25	Capt HM Cashaback	Six Months Detention and Stoppage of pay in the amount of $8.25	5 Sep 45	FGCM	16 days pay Total forf 260 days pay

(P.T.O.)

M.F.M. 6
(A.F. B.122)
40/P & /8136 (2965)

No. F60182 Name HAYES, G.A. | Sqn., Battery, or Company | Corps CIC | Date of enlistment 5 Jun 40 | G.C. Badges | Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet | No. and date of last drunk NIL | Period not reckoning towards freedom from extra fine | Sheet No. #3 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				FIRST CHARGE.	Capt HM Cashaback				
Field	31 Oct 45	Pte		AA Sec 15(1) AWL from 1815 hrs, 31 Oct 45 until 2230 hrs 15 Nov 45. (Absent 15 days, 4 hrs, 15 mins)	F50456 Pte Gallant JP F607648 L/Sgt MacNeil L	3 mos Det	19 Dec 45	FGCM	17 days pay under FR&I 149 (1)(a) Forf 33 days pay under FR&I 149(1)(a)(ii)
Field	26 Nov 45	Pte		AA Sec 15(1) AWL from 2130 hrs, 26 Nov 45 until 1520 hrs 27 Nov 45 (Absent 17 hrs, 50 mins)	F36513 Pte Munroe, MA F52783 L/Sgt Conrod FW				Forf 90 days pay under FR&I 149(1)(b) Tot Forf 140 days pay.

Certified true copy "HM Cashaback"
31 Jan 46 (HM CASHABACK) Capt &
3/Nth NS Highrs CAOF
Offr in Custody of Regt Documents

(P.T.O.)

RR-129
CPL HAYES S.G.

RR-129

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 12th day of October, 19 43.

Whereas it appears to me, the undersigned, an officer in command of Canadian Military Headquarters, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~and that it is not practicable to delay the trial for~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~If any Officers named in the Schedule~~

*~~The Officer who is to be the President~~

~~Judge Advocate~~

Judge Advocate

Captain E.K. McDougall RCA, JAG Branch, CMHQ

President.

Rank.	Name.	Regiment.
Major	M.J. Griffin	Seaforths of C, CMHQ

Members.

Rank.	Name.	Regiment.
Captain	S. Fidler	Gen List, CMHQ
Captain	S.G. Simpson	RCAPC, CMHQ
Waiting Member Captain	J.A. Roncarelli	RCOC, C.M.H.Q.

*Signed (P.J. Montague) Major-General
Senior Officer
Commanding Canadian Military Headquarters
Convening Officer

12 OCT 1943

No illegalities or irregularities such as would warrant withholding confirmation.

(W.A.I. Anglin) Colonel
J.A.G., C.M.H.Q.

*Omit if not applicable.

Convening Officer is not Commanding Officer is of Field rank.

If the Court is composed entirely of Officers of the same unit, the Officers (and Waiting Member if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-73546 Cpl HAYES, Stanley George, No 6 Cdn (Area) Provost Coy, Cdn Pro Corps	First Charge Sec 18(4) Army Act (See charge sheet attached)	Guilty	Guilty	
	Second Charge Sec 25(2) Army Act (See charge sheet attached)	Guilty	Guilty To be reduced to the Ranks and to undergo Detention for 9 months 18 Oct 43 W.J. Griffin Maj Stenodette E.K. McDougall, Capt. Judge Advocate.	Finding and Sentence Confirmed P.J. Montague (P. J. Montague) Major-General Senior Officer Canadian Military Headquarters 20 OCT 1943

*Question to be asked of accused, if he pleads not guilty (R. of P. 39.(A)) :—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"

Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) P Montague (P.J. Montague) Major-General
Senior Officer
Commanding Canadian Military Headquarters
Confirming Officer (*e*)

(Signed) W.J. Griffin (M.J. Griffin) Major
Seaforths of C, CMHQ
President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Charge Sheet

The accused B/73546 Cpl. Stanley George Hayes of No.6 Cdn.(Area)Provost Company, Canadian Provost Corps, a soldier in the Canadian Army Overseas, whilst on active service is charged with:

First Charge

A.A.Sec.18(4)

STEALING MONEY, THE PROPERTY OF A PERSON SUBJECT TO MILITARY LAW,

in that he

in the field on the 21 Sept.43 when entrusted with the money and personal property of soldiers under arrest at the Detention Room of No.6 Cdn. (Area)Provost Company did steal the sum of £5.0.0 (five pound), the property of D-13660 Gnr Wells P.A., 5 Cdn Fd Regt, RCA, a person subject to military law.

Second Charge

A.A.Sec.25(2)

KNOWINGLY, AND WITH INTENT TO DEFRAUD ALTERING A DOCUMENT WHICH IT WAS HIS DUTY TO PRESERVE,

in that he

in the field on the 21 Sept.43, when he had charge of the personal property book of soldiers under arrest at the Detention Room of No.6 Cdn. (Area)Provost Company did alter same with intent to defraud.

Field
28 Sept.43.

Lieut.
~~(F.J. Smith)~~ Officer Commanding
6 Cdn.(Area)Provost Coy.
Canadian Provost Corps.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

In the Field
12 Oct 43

(P.J. Montague) Major-General
Senior Officer
Canadian Military Headquarters

A

Army Form A 9.

**Form of Proceedings for General and District Courts-Martial.

**N.B. Printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

Proceedings of a Field General Court-Martial held at London

on the 18th day of October 1943 by order of

Major General P.J. Montague, Senior Officer

Commanding Adv. Military Headquarters

dated the 12th day of October 1943

President.

Major M.T. Griffin, Seaforths of C., C.M.H.Q.

Members.

Capt. S. Fidler, Gen. List, CMHQ

Capt. J.G. Simpson, RCAPC, CMHQ

Capt. E.K. McDougall, RCA, JAG Branch, C.M.H.Q.

Judge Advocate.

Trial of* B-73546 Cpl. Stanley George Hooper, No 6 Cdn (Base) Provost Coy, Cdn Pro Corps

The order convening the Court, the charge-sheet and the summary ~~(abstract)~~ of evidence are laid before the Court.

~~The Court satisfy themselves that [illegible] is not entitled to vote.~~

~~[illegible] sitting member [illegible] place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor, Capt. D.J. Cuddy, Gen. List, CMHQ

~~Counsel~~ or defending officer ~~Capt. E.K. Howard, RCA, Canada~~ Capt. B.L. Dimon, 6 Cdn Pro Coy

At 3.45 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).

† Here state Rank and Name, and Regiment (if any).

‡ Qualification to be stated.

[illegible] Forms A 9/2.

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Lt. W.R. Burns, RCOC, CMHQ

Charge-Sheet.

Instruction.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

If the accused has elected to be tried under Army Act, sec. 35 (8) the last should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Question to the accused.

Guilty sir

Answer.

Are you guilty or not guilty of the second charge against you, which you have heard read?

Question.

Guilty sir

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~

Question.

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~

Question.

Answer.

The accused having pleaded Guilty to the charges, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Instruction.

CC

Proceedings on Plea of Guilty.

* To be struck out in case the plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused B 73546 Cpl. Stanley George Hagan, No 6 Cdo (Base) Prov Coy, Cdo Inf Bde is found guilty of The charges

†[The summary (or abstract) of evidence is read, marked G signed by the President, and attached to the proceedings.]

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:— No Sir

[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character? Yes sir.

Question to the accused.

Answer.

Evidence as to character

Lt. R. J. Stinson, 6 Cdn (Alem) Prov. Coy. Cdn. Prov Corps.

I am O.C. of the Accused. I have known Acc since 15 Apr 43. Since then he has been employed about centre walls on some duty, 2 i/c Distribution Room office where he has performed his duties in a very efficient manner. He has been found reliable & at no time has he given me reason to think that he might be an undesirable character. He handled small sums of money during that time.

RP 83(b) complied with

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

[Instruction.—If in course of the hearing of the charge the accused is convicted of a disciplinary offence, the finding of the Court should be held to any consequential punishment in addition to that to be awarded by the Court the prosecutor should call the attention of the Court to the fact, and the Court should inquire into the nature and amount of that additional punishment.]

Prosecutor produces MFB 355 & MFM 6

Question to the accused.

Do you wish to address the Court? *Answer* Yes sir, through my Def Off, Recorder marked)

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused *Sentence.*

See p 29 AFA 3

Page Four

duty as N.C.O. i/c Detention Office, Cpl Zenie drew my attention to a very large blot on a page in the property book.

On 23 Sept. 43 I was on duty at about 2220 hrs. in the Detention Office. Pte X. Y. Z was brought in drunk and incapable, searched and lodged in a cell. The large blot in the property book covered some of the property taken away from this X. Y. Z. On this X. Y. Z.'s person was found (in NO) one pound note, one (1) ten shilling note, six shillings sixpence silver and sixpence halfpenny bronze. This money was listed in the personal property book and both Cpl Zenie and I witnessed the same by signing it. The bank notes were placed in the X. Y. Z.'s wallet and put into Property Bag No. 32 along with the rest of his personal property. Cpl Zenie then made out a property slip which was attached to the rest of his documents. I later saw a Property Slip made out covering this X. Y. Z.'s property which was not the property slip made out when this prisoner was

Page Five G.

Signature by President

Summary of Evidence in the case of Reg No. B 78546, Cpl. Stanley George Hayes, of No 6 Can. (Area) Throat Coy, Canadian Throat Corps, a soldier of the Canadian Army Overseas.

By the direction of the Commanding Officer, this Summary of Evidence is taken on oath.

Witness No 1 for the Prosecution — C 3502, Cpl. Ian Wellington Clearwater, Special Investigation Section, Can. Throat Corps, C.M.P. Q.Z. a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

At approx. 1400 hrs. of 22 Sept. 43 I was instructed by A/Sgt. Durant I. I. I. C.M.P.Q. to investigate a complaint which had originated in the Detention office of No. 6 Can. (Area) Throat Coy. As a result of enquiries I requested Sgt. Tutter and Cpl. McConnell to submit written statements as to the condition of records and documents in the Detention Office during their tour of duty from 2359 hrs. 20 Sept. 43 to 2400 hrs. 21 Sept. 43 acting

on information contained in these statements I had Cpl. Hayes detained for interrogation. After a lengthy interview with Cpl Hayes I obtained information from him to the effect that he had participated in the theft of money from a soldiers underarrest. Cpl Hayes then produced the sum of $2.10.0 in two $1 notes and one 10/- note stating that this amount was his share of the stolen money.

Cpl Hayes next offered to give a voluntary statement. He was duly warned and cautioned and a signed statement obtained from him in the morning of 23 Sept 43. I would like this statement, Sir, to be admitted as an exhibit.

In view of the information contained in the statement of Cpl. Hayes I interviewed Sgt. Boyce on the morning of 24 Sept 43. I explained to Sgt. Boyce the allegations made against him by Cpl. Hayes

After being duly warned and cautioned Sgt. Boyce volunteered to make a signed statement. I would like this

statement, Sir, to be admitted as an exhibit.

As a result of my investigations it was considered expedient by me to take into my keeping a leaf from the Detention Room Property Book, which listed the property of the A.W.O.L. from whom the money was stolen and a property receipt for the same A.W.O.L. I would request, Sir, that these documents and the $2.10.0 received from Cpl. Hayes be used as exhibits.

A complete report covering my investigation was submitted by me to the Provost Sgt. on instructions of Capt. Young D.A.A.G. at 1130 hrs. 23 Sept 43. Hayes under close arrest at 1130 hrs. 23 Sept 43.

The accused declines to cross examine the witness.

Pte. Beauvais C.Pol.

Witness No. 2 for the prosecution. B73550 Sgt. John Miller Laird, R.C. Can. Provost Corps, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

On 21 Sept 43 at about 1545 hrs. when reporting for

as information contained in these statements I had Cpl. Hayes detained for interrogation. I then had a lengthy interview with Cpl. Hayes & obtained information from him to the effect that he had participated in the theft of money from a soldiers under arrest. Cpl. Hayes then produced the sum of £2.16.0 in two £1 notes and one 10/- note stating that this amount was his share of the stolen money.

Cpl. Hayes next offered to give a voluntary statement. He was duly warned and cautioned and a signed statement obtained from him in the morning of 23 Sept. 43. I would like this statement Exh, to be admitted as an exhibit.

In view of the information contained in the statement of Cpl. Hayes I interviewed Sgt. Boyce on the morning of 24 Sept. 43. I explained to Sgt. Boyce the allegations made against him by Cpl. Hayes

After then duly warned and cautioned Sgt. Boyce volunteered to make a signed statement. I would like this

statement Exh, to be admitted as an exhibit.

As a result of my investigations it was considered expedient by me to take into my keeping a leaf from the Detention Room Property Book, which listed the property of the V.D.G. from whom the money was stolen, and a property receipt for the same V.D.G. I would request Exh, that these documents and the £2.16.0 received from Cpl. Hayes be used as exhibits.

A complete report covering my investigation was submitted by me to the Provost Corps V.C. on instructions of Supt. from D.A.A.G. 4 plaint. Cpl. Hayes under close arrest at 1130 hrs. 23 Sept. 43. The accused declines to cross examine the witness.

Pte. Learwatt. Cpl.

Witness No. 2 for the prosecution. B73550, Sgt. John Miller Laird R.C.O.C. (Area) Provost Corp., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

On 21 Sept 43 at about 1545 hrs. when reporting for

Witness No 5 for the Prosecution

D/3552, L/Cpl John Edward Adams, No 6 Edn (Area) Provost Corps, a soldier of the Edn Army Overseas, having been duly sworn, states as follows:-

On 21 Sept 43 I was detailed to escort three soldiers and D/3660, Gnr. Wells, P. to Pulborough, Sussex. The following is the property which Gnr Wells signed for on leaving the Detention Office:-

W.D.S.M. - Parts I, II, III, wallet, letters, orders.
Five one pound notes, 1 ten shilling note, 6/6 silver, 6½d bronze.
Lanyard, whistle, photos, rabbit foot, 2 combs, 2 pencils, Field dressing, P. & cap and badge, arm, water proof respirator.

Upon returning to Henrietta St. at about 1750 hrs. 21 Sept. 43, Cpl Tennie inquired as to the property of Gnr Wells and the red blot on the property book. I handed Cpl Tennie the property slip and was informed by him that it was not the original one and that Gnr Wells had ten one pound notes as he had

booked in on my shift. I noticed that the amount listed thereon was five pounds and not ten pounds as was listed whilst I was in charge.

The accused declines to cross examine the witness.

John M. Baird Sgt.

Witness No 3 for the Prosecution

9/3797 Sgt Sidney Wade Fuller, No 6 Edn (Area) Provost Corps, a soldier of the Edn Army Overseas, having been duly sworn, states as follows:-

At about 2345 hrs. 20 Sept 43 I took over duty as N.C.O. i/c of Detention Office, during my tour of duty I have to check all documents, envelopes, body receipts and property receipts, and to see that all is in readiness for the day shift.

On checking the documents it was found that Sgt. Baird, whom I relieved had all documents made up.

At about 0745 hrs. 2 Sept 43 Sgt. Cooper took over from me. At

that time all was in good order. There was no ink blot in Gnr. Wells property list which was noted in the property book.

At no time during my tour of duty was I out of the office for more than a few minutes. In my absence Spr. McConnell was in charge.

The accused declines to cross-examine the witness.

A. G. Rutter, Sgt.

Witness No. 4 for the Prosecution. 2/16082 Gpl. Peter Jeanes No. 6 Can. (Area) Provost Coy., a soldier of the Can. Army Overseas, having been duly sworn, states as follows:

At about 1645 hrs. 21 Sept. 43 whilst on duty as Gaoler of the Detention Office I noticed a large blot of ink in the property book on the list of personal property belonging to D13660 Gnr. Wells P. 8 Can Fd Bty., R.C.A. This A.I.P. was booked in at about 2220 hrs. 20 Sept. 43 as drunk and incapable, his property being checked by Sgt. Laird and myself. While in his possession were ten (10) one pound notes, one (1) ten shilling note, six shillings sixpence silver and sixpence halfpenny bronze.

At about 1750 hrs. 21 Sept. 43 I contacted the escort of this A.I.P. (L/Cpl. Adams) and inquired if he could give me any information as to the ink blot on the property book. He handed me a property slip which I was unable to recognize as the original one which I had made out. Noticing that it was made out for five (5) one pound notes I told L/Cpl. Adams to submit a report concerning the escort of Gnr. Wells to his Unit paying particular attention to the personal property he (Wells) signed for.

At about 1850 hrs. 21 Sept. 43 I contacted W/Sgt. Durrant A.I.P.; and informed him of the circumstances and requested an investigation be made.

The accused declines to cross-examine the witness.

P. Canid Cpl

booked him in the property book. Cpl. Keene instructed me to submit a report re Gen. Wells property

I noticed the blot on the property book when I signed for Gen. Wells property but made no enquiry.

The accused declines to cross-examine the witness.

J.C. Adams. Lieut.

Witness No. 6 for the Prosecution

2/3505, Cpl. George McConnell, No. 6 Edm. (Area) Provost Coy., a soldier of the Can. Army Overseas, having been duly sworn, states as follows:—

At about 2345 hrs. 20 Sept. 43 in company with Sgt. Cattes I took over the midnight shift as I/C the Detention Office from Sgt. Baird and Cpl. Keene. Everything was in order and there were no ink stains on the books.

On handing over to Sgt. Boyce all documents were in order and there were no ink stains on the books.

Either Sgt. Cattes or myself were in the Detention Room at all times. Sgt. Boyce and Cpl. Hayes relieved Sgt. Cattes and

myself at approx. 0745 hrs.
21 Sept. 43.

The accused declines to cross-examine the witness.

Sgt McConnell RAF

Witness for the Prosecution. 4439 L/Cpl Leonard John William Wilson, No. 6 Can (Area) Provost Coy, a soldier of the Can. Army Overseas, having been duly sworn, states as follows:

On 20 Sept. 43 at about 2320 hrs. I was on duty as clerk in the Detention Room when D13600, Gnr. Wells, R., was booked in.

I then made out Gnr. Wells' documents. Cpl. Fennie made out his property slip. Cpl. Fennie gave me the property slip and I attached it to Gnr. Wells' envelope along with his body receipt. I noticed that the sum of ten pounds was listed on the property slip.

The accused declines to cross-examine the witness.

L Wilson.

The accused does not wish to make any statement but wishes the voluntary statement given to C31002, Cpl. Clearwater, R.H., R.A.F., after being duly cautioned, to be included in the Summary of Evidence.

Capt Hayes R.A.

I certify that the foregoing Summary of Evidence consisting of Eleven pages was taken down by me in the presence and hearing of the accused and that the Rules of Procedure 4 (c), (d), (e), (f), and (g) have been complied with.

Field
28 Sept. 43

F.J. Stinson, Lieut.
i/c No. 6 Can. (Area)
Provost Coy.

Prosecuting Officer
President

To: R-73546 Cpl Hayes, S.G.,
6 Cdn (Area) Provost Coy,
Cdn Provost Corps

Take notice that under the provisions of RP 76 a witness shall be called to testify at your trial by Field General Court-Martial whose evidence is not contained in the Summary of Evidence which was held on the 26th September 1943.

This witness shall be Gnr Wells, F.A., 5 Cdn Fd Regt, RCA. This witness will testify that on the 22nd September 1943 he was on privilege leave in London, that he got drunk and was picked up by Provost personnel who took him to Headquarters, Provost Office. He will swear that before being arrested he had ten one pound notes in one of his tunic pockets and a note and some change in one of his pants pockets. He will state that while in the Provost Office he remembers surrendering everything that he had in his possession. He will state that he was released the following day and that on his release he was given all his personal property which at that time consisted of five one pound notes, one ten shilling note and four or five shillings in change. He will testify that when given this money he considered that there was a lot missing as he did not remember touching any of the ten one pound notes that he had in his tunic pocket on the evening before. He will state that he told a Provost Sgt this who advised him that some person may have stolen the money from him while he was drunk the night before. Gnr Wells will swear that he still thinks he lost some five or six pounds but that he does not remember losing them or how they were lost. He will state that he was drunk but that he was not throwing his money around and that he was able to keep it in his pocket.

In the Field
15 Oct 43

(R.J. Stinson) Lieut
6 Cdn (Area) Provost Coy,
Cdn Provost Corps.

Quote No.....

CANADIAN PROVOST CORPS

LONDON AREA

CANADA

TELEPHONE: TEMPLE BAR 2618.

A. P. M.'s OFFICE,
30, HENRIETTA STREET,
COVENT GARDEN,
LONDON, W.C.2.

President

23 Sep 43.

I have been cautioned by Cpl. P.W. Clearwater, C C31002, of the Special Investigation Section, C. M. P. S. that I need not say anything unless I wish to and anything I do say may be taken down in writing and used as evidence. To show I understand this caution I sign my name here.

Cpl Hayes S.C.

I am B-73546 Cpl. S. C. HAYES of no 6 coy, 6 Edn Pro corps. at 0800 hrs of the 21st Sep 43, I was detailed for duty as 2 i/c Detention Room at 30 Henrietta Street London. M-17146, Sgt. W. T. Boyce was the N.C.O i/c. When first going on duty I checked the charge book and saw that there were forty prisoners in custody. I then put all property bags for men going back to the Holding Units on the window sill. I then checked the evidence Book and found all to be correct.

at about 1000 hrs Sgt. M-17146, Boyce, W.T. and I were looking through the property Book, and we saw the entry concerning the property of D-13660 Fus WELLS, P. W2, that is Sgt Boyce and I, saw that included in Fus WELLS' property were TEN one pound notes. The word TEN was not written very clear in the property Book. After discussing this point for a

Cpl Hayes S.C.

few minutes, Sgt BOYCE asked how the entry in the property Book in connection with Pte WELLS' money, could be changed to read FIVE instead of TEN. I then changed the word TEN to FIVE by putting a stroke in the centre of the letter "T" and dotted the "E" to make the word TEN into a FIVE. Sgt BOYCE said that this was not good enough and said that it would have to be blotted right out. He then took the Property Book over to the window and with his back to the door, blotted out the entry in the Property Book in respect to the property of Pte WELLS. During this time I was ~~watching~~ standing at the door with my back towards the elevator facing inside watching one prisoner cleaning up the Office. I think this prisoners name was PAUL, but I am quite sure he had no knowledge of what was taking place. I do not think that any other members of the Detn Room staff were present at this time. I do not know what method Sgt BOYCE used to blot out the entry in the Property Book of Pte WELLS as his back was towards me. A few minutes later when the Office was clear he drew it to my attention. No one handled the Property Book after Sgt BOYCE picked it up and took it over to the window and a few minutes later drew my attention to the large ink blot over the list of Pte WELLS' Property.

Capt Hughes D.J.

Quote No.....

CANADIAN PROVOST CORPS

LONDON AREA

CANADA

TELEPHONE: TEMPLE BAR 3615.

A. P. M.'s OFFICE,
30, HENRIETTA STREET,
COVENT GARDEN,
LONDON, W.C.2.

Sgt BOYCE then asked me if I thought it would be alright.

I then went over to where the property bags were, and picked up Bag #32, which contained the property of D-13660, WM. WELLS, brought it back to the table where Sgt BOYCE was standing and counted out TEN one pound NOTES. I took FIVE of these and I handed them to Sgt BOYCE and he put the FIVE one pound notes in his trousers pocket, but in a few minutes he handed the money back to me and said that I had better hold it for awhile, until all the men were booked out. After the alteration or Alot, was put in the property Book by Sgt BOYCE he told me that a new Property Slips would have to be made out, so I took the original property slips which had been made out by Cpl FREENIE and destroyed it and made out a new one which showed five one pound note instead of TEN. Sgt BOYCE was present when I done this.

After all the men were booked out including D-13660 WM WELLS, who, when we handed his property to him was quite satisfied that everything was in order and signed the Property Book, Sgt BOYCE

Cpl Pringle S.S.

and I went to the toilet on the same floor as the Detention Room and we split the Five one pound notes which we had taken from the property of Mrs WELLS. I gave him two one pound notes at this time and about ten or fifteen minutes later I went out to "FRED'S" Cafe on Bedford street and got the other pound note changed and gave him another ten shillings. We made it up between ourselves that we would not say anything under any circumstances, but after seeing his statement I decided to tell the truth. at approximately 2300 hrs of the 22 Sep 43, I handed over to S/Sgt DURRANT £2.10.0, which was my share of the money Sgt BOYCE and I had taken from Mrs WELLS property

I have never done anything like this before and have no idea what made me do it this time. I have only one charge of being A.W.L. for about 6 hrs since joining the Canadian Army in Nov 24. 1939. I have read over this statement and it is true.

Witness
C-31002. Cpl. Clearwater. P.W.
R.C.S.C. M.P.
1120 hrs 23 Sep 43.

23rd Regt RCA

List of personal property belonging to:-

Reg.No: D 13660 Rank GNR.

Name: WELLS, P.

Unit: 5 West Mounty Bty, RCA

MBM 1 Pts 1.2.3., wallet, letter, braces, five £ notes 10/- note, laynard, whistle, photoes, 6/6 silver, 6¢ bronze, rabbit foot, 2 combs, 2 pencils, laces, fld dressing, FS cap & badge, anklets, resp.

(32)

(Sgd) P. Wells

Exhibit "D"

(Sgd) M.J. Griffin
President

Certified true copy of original exhibit produced in the case of M-17146 Cpl (A/Sgt) Walter Thomas Boyce, No 6 Cdn (Area) Coy, Cdn Provost Corps.

(E.K. McDougall) Captain
Judge Advocate
JAG Branch, CMHQ

K42117 Pte Glavin, L.E. Irish Regt #4 CIRU	2310 hrs 20-9-43	wallet, 2s silver, 2½ bronze, safes, leave guide book, pencil, belt, comb, gum, 2 buts, file "H. Kibbie, L/Cpl"	"E. Glavin" "E. Glavin" "Cpl Hangle"
B74077 Pte Tweddle E.A #4 CIRU 48th Highrs	2315 hrs 20-9-43	MBM 1-2, 8/3 silver, 12 cigs, note book, Field D, Testment, braces, comb, correspondence, Balmoral & Badge, Gaitors, chain, respirator, tin hat, greatcoat. "John McBaird Sgt"	"E.A.Tweddle" "E.A.Tweddle" "Cpl Hangle"
M-60730 Pte Lester R.W. #23 Cdy CPC	2320 hrs 20-9-43	MBM 1-2-3, 4 batteries 6 keys, comb, tobbacco, pipe, cig lighter, pipe cleaners, braces, wallet, 14 £1 notes, 3/-silver, 4½ bronze, haversack, respirator, "John McBaird Sgt"	"Lester RW" "Lester RW"
B-68167 Pte Weathergill E.A. #1 CBO W/S RCOC	2330 hrs 20-9-43	MBM 1-2, 8/- silver, 1/4½ bronze, comb, braces, 12 cigs, beret & badge, respirator, kit bag, "John McBaird Sgt"	"E.Weathergill" "E.A.Weathergill" "Cpl Hangle"

Certified true copy of original exhibit produced in the case of M-17146 Cpl (A/Sgt) Walter Thomas Boyce, No 6 Cdn (Area) Coy, Cdn Provost Corps.

(E.K. McDougall) Captain
Judge Advocate,
JAG Branch, CMHQ

8418 Pte TH,F.B. L.I.	2045 hrs 20-9-43	MBM 2, correspondence, wallet, matches, A.T.S. badge, comb, fld dressing, F.S. cap, anklets, braces	"F.B. South" "F.B. South" "P. Miller" "F.A.B. Amer"
3005 Pte Well, G.L. C.R.U.	2200hrs 20-9-43	MBM 1-2-3/ 1-1 £ note, wallet, belt, braces, matches, 1 bronze, lanyard, 12 cigs, respirator, F.S. cap badge, safe F.A.B. Amer	"G. Sidwell" "G. Sidwell" "Cpl Hangle"
660 Gnr LLS P. est Mount Bty, RCA	2220hrs 20-9-43	MBM 1-3-2, wallet, correspondence, braces, five £ notes, 10/- note, lanyard, whistle, photos wife, 6/6 silver, 6½ bronze, rabbits foot, 2 combs, 2 pencils, laces, Fld dressing, F.S. cap & badge, 7 cigs, anklets & resp "Cpl Keenie"	Drunk "E.M.McLaird Sgt" "P. Wells" "W.E. Adams"

(Sgd) M.J. Griffin
President

Exh G - Bank of England £1 note
Serial No X 77 D 954430

Exh H - Bank of England £1 note
Serial No. X 66 D 011381

Exh I - Bank of England 10 shilling note
Serial No. S 44 D 148051

True description of Exh
G H & I at time of
Endorsement
Skillen Dorsett. Capt
I.A.

Statement in Mitigation

Strange that two men should be so sorely exercised twice. Family trouble in both cases caused mental anguish. Posters people prove to commit offences. Legal Aid Branch set up to do away with soldiers domestic worries + make him more efficient.

Has perfectly good record. Has handled money for long time. Efficient and reliable. Must off depend. Not a large amt. Explanation is the worries Hayes had. At enlistment was supporting mother + invalid brother. Believed he would get D.A. as a married man. 6 mos. before his mother got anything. She got 20/- a month + he arranged 30/- Kept trying longest more for her. That girl over here + wanted to marry her. Worried as he could not do this + part her mother had little to live on.

Didn't actually need the money. Just took it. Forgot. Not a time in his life he acted this way. Spirit perfect record. Not a criminal type at all. Crime has been done but Court should be lenient. Takes away stripes. That plus time in custody to date enough.

Summary of Evidence in the case of Reg.No. B/73546, Cpl. Stanley George Hayes, of No.6 Cdn.(Area)Provost Coy., Canadian Provost Corps, a soldier of the Canadian Army Overseas.

By the direction of the Commanding Officer, this Summary of Evidence is taken on oath.

Witness No.1 for the Prosecution.

C/31002, Cpl. Paul Wellington Clearwater, Special Investigation Section, Cdn.Provost Corps, C.M.H.Q., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

At approx. 1400 hrs of 22 Sept.43 I was instructed by S/Sgt Durrant, S.I.S., C.M.H.Q. to investigate a complaint which had originated in the Detention Office of No.6 Cdn.(Area) Provost Coy. As a result of enquiries I requested Sgt. Rutter and Cpl. McConnell to submit written statements as to the condition of records and documents in the Detention Office during their tour of duty from 2359 hrs 20 Sept.43 to 0800 hrs 21 Sept.43. Acting on information contained in these statements I had Cpl. Hayes detained for interrogation. After a lengthy interview with Cpl. Hayes I obtained information from him to the effect that he had participated in the theft of money from a soldier under arrest. Cpl. Hayes then produced the sum of £2.10.0 in two £1.0.0 notes and one 10/ note stating that this amount was his share of the stolen money.

Cpl. Hayes next offered to give a voluntary statement. He was duly warned and cautioned and a signed statement obtained from him on the morning of 23 Sept.43. I would like this statement, Sir, to be admitted as an exhibit.

In view of the information contained in the statement of Cpl. Hayes I interviewed Sgt. Boyce on the morning of 24 Sept.43. I explained to Sgt. Boyce the allegations made against him by Cpl. Hayes.

After being duly warned and cautioned Sgt. Boyce volunteered to make a signed statement. I would like this statement, Sir, to be admitted as an exhibit.

As a result of my investigations it was considered expedient by me to take into my keeping a leaf from the Detention Room Property Book, which listed the property of the S.U.A. from whom the money was stolen, and a property receipt for the same S.U.A. I would request, Sir, that these documents and the £2.10.0 received from Cpl. Hayes be used as exhibits.

A complete report covering my investigation was submitted by me to the Officer i/c S.I.S.. On instructions of Capt. Fern, D.A.P.M., I placed Cpl. Hayes under close arrest at 1130 hrs 23 Sept.43.

The accused declines to cross-examine the witness.

C/31002 .....Cpl (Clearwater, P.W.)

Witness No.2 for the Prosecution.

B/73556, Sgt. John Miller Baird, No.6 Cdn.(Area) Provost Coy., Canadian Provost Corps, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

On 21 Sept.43 at about 1545 hrs when reporting for duty as N.C.O. i/c Detention Office, Cpl. Keenie drew my attention to a very large blot on a page in the property book.

On 20 Sept.43 I was on duty at about 2220 hrs. in the Detention Office. An S.U.A. was brought in drunk and incapable, searched and lodged in a cell. The large blot in the Property book covered some of the property taken away from this S.U.A. On this S.U.A.s person was found ten (10) one pound notes, one (1) ten shilling note, six shillings sixpence silver and sixpence halfpenny bronze. This money was listed in the personal property book and both Cpl. Keenie and I witnessed the same by signing it. The bank notes were placed in the S.U.A.'s wallet and put into Property Bag No.32 along with the rest of his personal property. Cpl. Keenie then made out a property slip which was attached to the rest of his documents. I later saw a Property slip made out covering this S.U.A.'s property which was not the property slip made out when this prisoner was booked in on my shift. I noticed that the amount listed thereon was five pounds and not ten pounds as was listed whilst I was in charge.

The accused declines to cross-examine the witness.

.....Sgt
B/73556 (Baird, J.M.)

Witness No.3 for the Prosecution.

A/3797, Sgt. Sidney Garde Rutter, No.6 Cdn.(Area) Provost Coy., a soldier of the Cdn. Army Overseas, having been duly sworn, states as follows:-

At about 2345 hrs 20 Sept.43 I took over duty as N.C.O. i/c of Detention Office. During my tour of duty I have to check all documents, envelopes, body receipts and property receipts, and to see that all is in readiness for the day shift.

On checking the documents it was found that Sgt. Baird, whom I relieved had all documents made up.

At about 0745 hrs 21 Sept.43 Sgt. Boyce and Cpl. Hayes took over from me. At that time all was in good order. There was no ink blot on Gnr. Wells property list which was listed in the property book.

At no time during my tour of duty was I out of the office for more than a few minutes. In my absence Cpl. McConnell was in charge.

.....Sgt
A/3797 (Rutter, S.G.)

Witness No.4 for the Prosecution.

H/16082, Cpl. Peter Keenie, No.6 Cdn.(Area)Provost Coy., a soldier of the Cdn. Army Overseas, having been duly sworn, states as follows:-

At about 1640 hrs 21 Sept.43 whilst on duty as 2 i/c of the Detention Office I noticed a large blot of ink in the property book on the list of personal property belonging to D/13660 Gnr. Wells, P., 8th Field Bty. R.C.A. This S.U.A. was booked in at about 2220 hrs 20 Sept.43 as drunk and incapable, his property being checked by Sgt. Baird and myself.

In his possession were ten (10) one pound notes, one (1) ten shilling note, six shillings sixpence silver and sixpence halfpenny bronze.

At about 1750 hrs 21 Sept.43 I contacted the escort of this S.U.A. (L/Cpl Adams) and enquired if he could give me any information as to the ink blot on the property book. He handed me a property slip which I was unable to recognize as the original one which I had made out. Noticing that it was made out for five (5) one pound notes I told him to submit a report concerning the escort of Gnr. Wells to his Unit paying particular attention to the personal property he (Wells) signed for.

At about 1800 hrs 21 Sept.43 I contacted S/Sgt Durrant, S.I.S., and informed him of the circumstances and requested an investigation be made.

The accused declines to cross-examine the witness.

.....Cpl
H/16082 (Keenie, P.)

Witness No.5 for the Prosecution.

D/93552, L/Cpl John Edward Adams, No.6 Cdn.(Area) Provost Coy., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

On 21 Sept.43 I was detailed to escort three soldiers and D/13660, Gnr. Wells, P. to Pulborough, Sussex. The following is the property which Gnr. Wells signed for on leaving the Detention Office.

MBM Parts 1,2 & 3, wallet, letters, braces. Five one pound notes, 1 ten shilling note, , 6/6 silver, 6½d bronze.

Lanyard, whistle, photos, rabbit foot, 2 combs, 2 pencils, Fld. dressing, F.S. cap and badge, laces, gaiters, respirator.

Upon returning to Henrietta St. at about 1750 hrs 21 Sept.43 Cpl. Keenie enquired as to the ink blot on the property book. I handed Cpl. Keenie the property slip and was informed by him that it was not the original one, and that Gnr. Wells had ten one pound notes as he had booked him in the property book. Cpl. Keenie instructed me to submit a report on Gnr. Wells property.

I noticed the blot on the property book when I signed for Gnr. Wells' property but made no enquiry.

The accused declines to cross-examine the witness.

.....L/Cpl
D/93552 (Adams, J.E.)

Witness No.6 for the Prosecution.

H/3505, Cpl. George McConnell, No.6 Cdn.(Area) Provost Coy., a soldier of the Cdn. Army Overseas, having been duly sworn, states as follows:-

At about 2345 hrs 20 Sept.43 in company with Sgt. Rutter, I took over the midnight shift as 2 i/c the Detention Office, from Sgt. Baird and Cpl. Keenie. Everything was in order and there were no ink stains on the books.

On handing over to Sgt. Boyce all documents were in order and there were no ink stains on the books.

Either Sgt. Rutter or myself were in the Detention Room at all times. Sgt. Boyce and Cpl. Hayes relieved Sgt. Rutter and myself at approx. 0745 hrs 21 Sept.43.

The accused declines to cross-examine the witness.

.....Cpl
H/3505 (McConnell, G.)

Witness No.7 for the Prosecution.

L/139, L/Cpl Leonard John William Wilson, No.6 Cdn.(Area) Provost Coy., a soldier of the Cdn. Army Overseas, having been duly sworn, states as follows:-

On 20 Sept.43 at about 2020 hrs I was on duty as clerk in the Detention Room when D/13660, Gnr. Wells, P. was booked in.

I then made out Gnr. Wells' documents. Cpl. Keenie made out his property slip. Cpl. Keenie gave me the property slip and I attached it to Gnr. Wells' envelope along with his body receipt. I noticed that the sum of ten pounds was listed on the property slip.

The accused declines to cross-examine the witness.

.....L/Cpl
L/139 (Wilson, L.J.W.)

The accused does not wish to make any statement but wishes the voluntary statement given to C/31002, Cpl. Clearwater, W.W., S.I.S., after being duly cautioned, to be included in the Summary of Evidence.

I have been cautioned by Cpl. P.W. Clearwater, C/31002 of the Special Investigation Section, C.M.H.Q. that I need not say anything unless I wish to and anything I do say may be taken down in writing and used as evidence. To show I understand this caution I sign my name here.

.....Cpl
B/73546 (Hayes, S.G.)

1. I am B/73546 Cpl. S.G. Hayes of No.6 Coy., Cdn. Provost Corps. At 0800 hrs of 21 Sept.43 I was detailed for duty as 2 i/c Detention Room at 30 Henrietta St. London. M/17146, Sgt. Boyce, W.T. was the N.C.O. i/c. When first going on duty I checked the charge book and saw that there were forty prisoners in custody. I then put all property bags for men going back to the Holding Units on the window sill. I then checked the evidence book and found all to be correct.

2. At about 1000 hrs Sgt. M/17146, Boyce, W.T. and I were looking through the property book, and we saw the entry concerning the property of D/13660 Gnr. Wells, P. We, that is Sgt. Boyce and I, saw that included in Gnr. Wells' property were ten one pound notes. The word ten was not written very clear in the property book. After discussing this point for a few minutes, Sgt. Boyce asked how the entry in the property book in connection with Gnr. Wells' money, could be changed to read five instead of ten. I then changed the word ten to five by putting a stroke in the centre of the letter "T" and dotted the "g" to make the word ten into a five. Sgt. Boyce said that this was not good enough and said that it would have to be blotted right out. He then took the Property Book over to the window and with his back to the door, blotted out the entry in the Property Book. In respect to the property of Gnr. Wells. During this time I was standing at the door with my back towards the elevator facing inside watching one prisoner cleaning up the office. I think this prisoner's name was Paul, but I am quite sure he had no knowledge of what was taking place. I do not think that any other members of the Detention Room staff were present at this time. I do not know what method Sgt. Boyce used to blot out the entry in the Property Book of Gnr. Wells as his back was towards me. A few minutes later when the office was clear he drew it to my attention. No one handled the Property Book after Sgt. Boyce picked it up and took it over to the window and a few minutes later drew my attention to the large ink blot over the list of Gnr. Wells' property. Sgt. Boyce then asked me if I thought it would be alright.

3. I then went over to where the property bags were, and picked up Bag # 32, which contained the property of D/13660, Gnr. Wells, brought it back to the table where Sgt. Boyce was standing and counted out ten one pound notes. I took five of these and I handed them to Sgt. Boyce and he put the five one pound notes in his trousers pocket, but in a few minutes he handed the money back to me and said that I had better hold it for awhile, until all the men were booked out. After the alteration or blot, was put in the property book by Sgt. Boyce he told me that a new property slip would have to be made out, so I took the original property slip which had been made out by Cpl. Keenie and destroyed it and made out a new one which showed five one pound notes instead of ten. Sgt. Boyce was present when I done this.

4. After all the men were booked out including D/13660 Gnr. Wells, who, when we handed his property to him was quite satisfied that everything was in order and signed the property book, Sgt. Boyce and I went to the toilet on the same floor as the Detention Room and we split the five one pound notes which we had taken from the property of Gnr. Wells. I gave him two one pound notes at this time and about ten or fifteen minutes later I went out to "Freds" cafe on Bedford Street and got the other pound note changed and gave him another ten shillings. We made it up between ourselves that we would not say anything under any circumstances but after seeing his statement I decided to tell the truth.

At approximately 2300 hrs of the 22 Sept.43, I handed over to S/Sgt Durrant £2.10.0, which was my share of the money Sgt. Boyce and I had taken from Gnr. Wells' property.

5. I have never done anything like this before and have no idea what made me do it this time. I have only one charge of being A.W.L. for about 6 hours against me since joining the Canadian Army in Nov.24 1939. I have read over this statement and it is true.

Witness:
C/31002 Cpl. Clearwater, P.W.
S.I.S., C.M.H.Q.
1120 hrs 23 Sept.43.

.....Cpl
B/73546(Hayes, S.G.)

I certify that the foregoing Summary of Evidence consisting of Eleven pages was taken down by me in the presence and hearing of the accused and that the Rules of Procedure 4 (c), (d), (e), (f), and (g) have been complied with.

Field
26 Sept.43.

Lieut.
(R.J. Stinson)
6 Cdn.(Area)Provost Coy.
Canadian Provost Corps.

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-99-620
A.F.B. 206

Lgt Col Air Maj
President

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B/73546	Cpl	Stanley George Hayes.	No.6 Cdn.(Area)Provost Company.

1. The following is a fair and true summary of the entries in the F.L.C.O. Service ~~and General Regimental and Squadron, Battery~~ N/A Conduct sheets ~~or Company Conduct sheets~~ N/A of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ N/A of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	Nil times	Nil times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct N.A

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately. N.A.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act~~ A.F.A. 73 ~~Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time. N.A.

or,

~~The accused at the present time is under sentence for beginning on the day of~~ N.A

4. The accused has been in confinement awaiting trial on the present charges, for N/A days in civil custody, and ~~2 days 22 hrs + 30 Mins~~ N/A days in military custody, making a total of ~~2 days, 22 hrs + 30 Mins~~ N/A days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is ~~XXXXXXXXXXXX~~ 36 years, 8 months, 10 days.

6. The date of his ~~XXXXXXX~~ attestation specified in his record of service is ~~XXXXXXXXXXX~~ 24 November 1939.

7. ~~The service which the accused is allowed to reckon towards discharge is~~ N/A

8. ~~The accused is entitled to reckon~~ N/A ~~service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward. N.A.

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~ Air Force N.A

11. (In the case of an officer.) ~~The accused holds~~ in the ~~Royal Canadian Air Force~~ the rank of ~~Permanent Force~~ ~~unit~~ dated ....., and in ~~his regiment (or corps)~~, the rank of ~~dated~~ ..... N.A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

12 Dec. 41. Date of promotion.

In the rank of L/Cpl. — 1 year.

In the rank of Cpl — 10 mos ~~years~~

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Army~~ Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Unit ..... Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22 day of October 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

~~Lieut.-Col. Commanding.~~
a/ Officer Commanding
Officer i/c Records
6 Cdn. (Area) Provost Coy.

I certify that B 73546 Cpl Hayes S.G. is fit to undergo trial by Field General Court-Martial.

London 18 Oct 43

.....
Medical Officer

Capt

Pte Sillitoe
President

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 18th day of October 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~*(3. The Interpreter)~~
*(4. The officers under instruction)

*Omit if not applicable.

were duly sworn.

Signed this 18th day of October 1943

President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 732 M.M.L., 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this day of 19 ,

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this day of

Confirming Officer.

K. L. Montague Major-General
Senior Officer
Canadian Military Headquarters

Promulgated and extracts taken in the case of B73546, Cpl. Hayes, F.V.

(a) (Dated) 21 Oct 43 (Signed) [illegible] Lieut. a/S.C. No. 6 Edm. Fort. Coy.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23573) W1.46179/650 50,000 2/43 A.& E.W.Ltd. Gp.488
(24294) W1.11192/71 100,000 9/43 " "

5 T-81
Pte. Hayes, J. E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L28378 Pte Thomas Edward HAYES 4 CMP & DB

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	40 AA	Not Guilty	Not Guilty	
2nd	40 AA	Not Guilty	Guilty	
3rd	22AA	Not Guilty	Not Guilty	
4th	15(1) AA	Guilty	Guilty	
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for 1 year detention beginning on (date) 12 Feb 45 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of -- days, of which -- days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under L2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for six months.

(Sgd) "L J Brody" Capt — Judge-Advocate ~~at~~ LJB
24 Aug 45 — Date awarded.
(Sgd) "J E V Murrell" Lt Col — President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the whole of the proceedings from and including the~~ DCS
(1. AA 57A. Delete if not used.)

Date 31 Aug 45
(Sgd) "D C Spry"
(D C Spry) Maj Gen
Commanding Comd Cdn Rft Units.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
L28378 Pte Thomas Edward Hayes	5 Sep 45	"L S Grayson" Lt Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Received 26 Sep 1945 JAG Branch CMHQ.

Recorded at CMHQ in AB 160 5T-81

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA81) 40/P & B/1668 (H144) 4/38B

Convened by Order of Major Gen D C Spry DSO Comd Cdn Rft Units dated 15 Aug 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L28378	Pte	Thomas Edward	HAYES	4 CMP & DB

Proceedings Reviewed
26 Sep 45
"J M Robinson" Capt
Reviewing Officer,
JAG Branch, CMHQ.

Certified true copy of original proceedings herein.
[illegible]
"J M Robinson" Capt

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 24 Aug 45 LJB

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~[illegible]~~ assemble, and the Court is closed. LJB

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for seals and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 118, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet/~~X~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~XXX~~ amenable to military law, and each charge discloses an offence.(3) LJB

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~XX~~ brought before the Court. At 1000 hours trial commences. LJB

A4. The Prosecutor produces a Medical Certificate that accused is ~~XXX~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that notice of trial was served on accused at [illegible] on [illegible] by [illegible].~~ LJB
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~[illegible]~~ LJB

~~The Prosecutor informs~~ Do you object to U1681 S/Sgt Thomas ~~X~~ shorthand writer? Ans No
The shorthand writer is sworn.(1) HQ CHU
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~[illegible]~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc: LJB

President	Lt Col	J E V Murrell ED	11 Cdn Repat Depot
Member	Major	J R Dube	4 CITR
Member	Major	J M Benkhe	2 CGRU
Judge-Advocate	Capt	L J Brody (Barrister-at-Law)	HQ CHU
Prosecutor	Capt	S C Biggs	4 CITR
Defending Offr	Lieut	P D McGregor	2 CGRU

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 1 were not followed. See DI p 3.)

A8. The accused ~~[illegible]~~ before arraignment make(s) (no) (~~X~~) plea LJB
(2)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~XXX~~ arraigned (~~on the charge~~) on all charges in the charge sheet.(1) The accused does ~~not~~ LJB not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. ~~[illegible]~~ LJB
The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ~~ALL~~ CHARGES.

B1. The ~~President or~~ JA, ~~if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 25(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides~~ (not) to advise accused to change his ~~(their) plea(s) of Guilty to Not Guilty on~~ ..... charge(s). ~~The accused is (are) so informed, and he (they)~~ change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "9", initialled and read aloud by the ~~President~~.(1) THAT PART RELATING TO THE CHARGE
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY ~~are~~ 15 read to him ~~(them)~~ again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ~~ALL~~ CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO.(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~his~~) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the~~ ..... charge(s).(1) The Court ~~is closed, and considers the submission.~~(2) The Court is re-opened, and the President announces ~~that the submission~~ is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. DO NEITHER. Do you intend to call witnesses on your behalf? Ans. YES. Are they witnesses as to character only? Ans. NO.
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* AP5. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), ~~if any~~, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below. SUPRA.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(~~s~~)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 4 and Ex 5 respectively.(3)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. YES BY MY DEF OFFR.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if one, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*B*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"J E V Murrell" Lt Col
LJB

CHARGE SHEET

The accused, No L28378 Pte Thomas Edward HAYES, 4 Cdn Mil Prison & Detn Bks, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCTED TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Headley, England, on 8th May, 1945, while a soldier undergoing sentence in No 1 Cdn Detention Bks, was improperly concerned in a disturbance in said Detention Barracks.

SECOND CHARGE
SEC 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

At Headley, England, on 9th May, 1945, while a soldier undergoing sentence in No 1 Cdn Detention Bks was improperly concerned in a disturbance in said Detention Bks.

THIRD CHARGE
Sec 22
Army Act

WHEN ON ACTIVE SERVICE WHEN IN CONFINEMENT, ESCAPING,

in that he

At Headley, England, at approx 0900 hrs, 9th May, 1945, when in confinement in No 1 Cdn Detention Bks, escaped.

FOURTH CHARGE
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE,

in that he

At Headley, England, while a soldier undergoing sentence in No 1 Cdn Detention Bks, absented himself without leave from approx 0900 hrs 9th May, 1945, until approx 0200 hrs 10th May, 1945. (Total absence: 17 hrs)

"L S Grayson"
(L S Grayson) Lt-col
Officer Commanding
No 4 Cdn Mil Prison & Detn Bks

Reading, England,
14 Aug 45.

To be tried by Field General Court Martial.

"D C Spry"
(D C Spry) Maj Gen
Comd
Cdn Rft Units

In the Field,
15 Aug 45

"J E V Murrell" Lt Col
LJB

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L28378	Pte		Thomas Edward	HAYES	4 CMP & DB

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has [illegible] committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) this date endorsed by me, (I direct a Court to be assembled) " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; [illegible]
(Delete part in brackets when not required for compliance with RP 105(C).)

DCS

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt Col	J E V Murrell ED		11 Cdn Repat Depot

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Major	J R Dube		4 CITR
Major	J M Benkhe		2 CGRU

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Major	J E Titler		1 Cdn Repat Depot

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	L J Brody (Barrister-at-Law)		HQ CRU

On Active Service in the Fd

in England		"D C Spry"	Major General
(Country.)		(Signed personally. RP 105 fn 2.)	(Rank.)

Date 15 Aug 45 Commanding Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE
(K R (Can) 557)

LJB

I certify that I have this morning examined No L 28378
Rank Pte Name Hayes T E Unit 4 CMP & DB and in
my opinion he is fit to undergo trial by Court Martial.

Station: Field

Date: 24 Aug 45

"R W Hudson" Capt
(Medical Officer)
R W Hudson
No 4 Cdn Mil Prison & Det Bks
(Unit)

"J E V Murrell" Lt-Col

BY THE JA: The 3rd and 4th should be alternative charges. I advise the plea of guilty to the 4th charge should stand and that the 3rd charge be considered as alternative to the 4th and that a plea of NG be entered for the 3rd charge.
The Court will now proceed to try the accused on the 1st, 2nd and 3rd charges.

(Plan produced by the Prosecutor and with consent of Def Offr marked Ex 'H').

1st Witness Pros: D76446 SUS D'Aoust, H P, 4 CMP & DB, duly sworn, is examined by the Prosecutor:

(JA informs witness he may refuse to answer any incriminating question).

Q. On 8 May 45 you were a SUS at Headley Det Bks?
A. Yes.

Q. You had some duties in the kitchens?
A. Yes.

Q. Where did you live?
A. Living hut 1.

Q. Do you know the accused?
A. Yes.

Q. Did you see the accused on 8th May?
A. Yes.

Q. Whereabouts was he then?
A. In the living hut

Q. About what time?
A. Approx 7 o'clock - I couldn't say exactly.

Q. Morning or evening?
A. Evening.

Q. Where were you at that time?
A. I just came in from the kitchen.

Q. What was the accused doing when you saw him?
A. SUS Kelly was handcuffed and there were several SUS trying to get the handcuffs off him.

Q. How many?
A. It was never the same number.

Q. Did you recognize any of the SUS who were trying to take the handcuffs off Kelly?
A. Yes.

Q. Who were they?
A. One was the accused.

Q. Did you see how they were trying to do this?
A. I saw them using a shovel and poker.

Q. Who were they?
A. Hayes and SUS McKetterick.

Q. Do you remember any others?
A. No I remember these two in particular because he was working in the kitchen all day long.

Q. Had you known Hayes very long?
A. Since he was in the hut, just over a month.

CROSS EXAMINED BY THE DEF:

Q. You said you had been in the hut over a month?
A. Yes.

Q. You only knew two members of that hut?
A. Well as far as their names were concerned.

Q. You mean to say you were there and only knew two names?
A. No several.

Q. How many?
A. I couldn't say.

Q. How many in the hut did you know then?
A. 15.

Q. How many lived in the hut?
A. Approx 32.

Q. When you came into the hut Kelly had handcuffs on?
A. Yes

Q. With his hands in front or rear?
A. Rear.

Q. Are you sure of that?
A. Yes, the first time I saw him.

Q. What about the last?
A. He had them off.

Q. Did you see him handcuffed any other way?
A. Yes in front.

Q. How did that happen?
A. I couldn't say.

Q. When you saw accused with the group how was Kelly handcuffed?
A. I can't remember.

Q. How far were you from the accused?
A. He kept moving from one end of the hut to the other.

Q. Everybody was moving?
A. Yes.

Q. And the group was changing?
A. It was mostly all the same group that were around.

Q. How many in the group?
A. About 13 or 15.

Q. What were the rest of the boys doing?
A. Some were sitting on their bed and talking.

Q. Aren't there 2 doors?
A. There are two end doors but they are not used.

Q. What action did the staff take when SUS were yelling out of the windows?
A. Didn't do anything.

Q. Was anything attempted to prevent them yelling out of the windows?
A. Not that I remember.

Q. This happened quite a while ago didn't it?
A. Yes.

Q. Still you remember that the accused was yelling out of the window?
A. Yes.

Q. There was quite a bit of yelling then?
A. Yes.

Q. How do you remember the accused especially, what were the other 15 doing?
A. Mostly, like me, on the bed.

Q. Where were their beds located?
A. On the sides. The fellows mostly worked in the kitchen with me so I know them.

Q. Do you remember the names of anybody else looking out of the windows?
A. McKitterick.

Q. Anybody else?
A. No sir.

Q. How is you remember these two?
A. Well McKitterick for one I knew him from my own unit, and I used to speak to the accused.

Q. You have been questioned about this before have you not - whether you saw McKitterick or the accused yelling out of the windows?
A. No, only when the Summary was taken.

Q. Not before that?
A. By the SIS.

Q. When was the first time?
A. By the SIS a month or two after the trouble.

Q. Can you remember when you were questioned by the SIS?
A. Yes.

Q. Do you remember what happened?
A. Yes.

Q. Can you remember the questions asked?
A. No sir.

Q. Were you asked what happened in the hut?
A. Yes sir.

BY THE JA: The 3rd and 4th should be alternative charges. I advise the plea of guilty to the 4th charge should stand and that the 3rd charge be considered as alternative to the 4th and that a plea of NG be entered for the 3rd charge.

The Court will now proceed to try the accused on the 1st, 2nd and 3rd charges.

(Plan produced by the Prosecutor and with consent of Def Offr marked Ex 'H').

1st Witness Pros: D76446 SUS D'Aoust, H P, 4 CMP & DB, duly sworn, is examined by the Prosecutor:

(JA informs witness he may refuse to answer any incriminating question).

Q. On 8 May 45 you were a SUS at Headley Det Bks?
A. Yes.

Q. You had some duties in the kitchens?
A. Yes.

Q. Where did you live?
A. Living hut 1.

Q. Do you know the accused?
A. Yes.

Q. Did you see the accused on 8th May?
A. Yes.

Q. Whereabouts was he then?
A. In the living hut

Q. About what time?
A. Approx 7 o'clock - I couldn't say exactly.

Q. Morning or evening?
A. Evening.

Q. Where were you at that time?
A. I just came in from the kitchen.

Q. What was the accused doing when you saw him?
A. SUS Kelly was handcuffed and there were several SUS trying to get the handcuffs off him.

Q. How many?
A. It was never the same number.

Q. Did you recognize any of the SUS who were trying to take the handcuffs off Kelly?
A. Yes.

Q. Who were they?
A. One was the accused.

Q. Did you see how they were trying to do this?
A. I saw them using a shovel and poker.

Q. About how long did they take to take the handcuffs off?
A. At the time I was shaving and I have no idea. After I had finished I saw him with the handcuffs off. I was not there when they got them off. I saw them on and later on I saw him with them off.

Q. When you said you saw Hayes in the group how far were you from Hayes at that time?
A. Quite close to him.

Q. Did you see Hayes do anything towards taking the handcuffs off?
A. Well he was not the only one there, there were several around and one of them had a shovel and the other a poker.

Q. Did you see Hayes with the shovel at any time?
A. I couldn't say that.

Q. Did you see him with the poker?
A. No, sir.

Q. What were the staff doing at that time in the hut?
A. They weren't doing anything so far as I could see.

Q. Did you stay in living hut 1 during the rest of the evening?
A. Yes.

Q. Did anything unusual take place?
A. There was a lot of shouting going on through the windows: every time an offr went by there was shouting.

Q. Who was at the windows?
A. Several SUS.

Q. Did you see the accused at the windows at any time?
A. Yes.

Q. Did you hear him doing any shouting?
A. Yes.

Q. Can you recall any words he used?
A. I don't believe I can recall exact words.

Q. Can you recall the effect of any words he used?
A. It wasn't very nice language. He was just shouting every time an offr went by, he would say "Oh phooey".

Q. How often did an offr pass by?
A. Every 10 - 15 mins, every once in a while.

Q. Each time a bunch went to the window did you see the accused?
A. As far as I know each time I looked at a window I saw the accused there.

Q. Is it proper for the SUS in living huts to go to the windows?
A. It is against rules.

Q. Did you notice any other SUS inside the hut who were at the windows each time there was a move to the windows?
A. Yes. sir.

Q. Who were they?
A. Hayes and SUS McKetterick.

Q. Do you remember any others?
A. No I remember these two in particular because he was working in the kitchen all day long.

Q. Had you known Hayes very long?
A. Since he was in the hut, just over a month.

CROSS EXAMINED BY THE DEF:

Q. You said you had been in the hut over a month?
A. Yes.

Q. You only knew two members of that hut?
A. Well as far as their names were concerned.

Q. You mean to say you were there and only knew two names?
A. No several.

Q. How many?
A. I couldn't say.

Q. How many in the hut did you know then?
A. 15.

Q. How many lived in the hut?
A. Approx 32.

Q. When you came into the hut Kelly had handcuffs on?
A. Yes

Q. With his hands in front or rear?
A. Rear.

Q. Are you sure of that?
A. Yes, the first time I saw him.

Q. What about the last?
A. He had them off.

Q. Did you see him handcuffed any other way?
A. Yes in front.

Q. How did that happen?
A. I couldn't say.

Q. When you saw accused with the group how was Kelly handcuffed?
A. I can't remember.

Q. How far were you from the accused?
A. He kept moving from one end of the hut to the other.

Q. Everybody was moving?
A. Yes.

Q. And the group was changing?
A. It was mostly all the same group that were around.

Q. How many in the group?
A. About 13 or 15.

Q. What were the rest of the boys doing?
A. Some were sitting on their bed and talking.

LJB

Q. All this time Kelly and the accused paraded up and down as the group changed a bit?
A. They kept moving.

Q. Did the accused come into the washroom?
A. Yes.

Q. How far would he be from Kelly. Did you see him put a hand on Kelly?
A. No, sir.

Q. How close were you to Kelly?
A. I was shaving. I was very close.

Q. You would almost be in the group yourself?
A. I was one side of the washroom basin and he was the other.

Q. Everybody in the hut was in that group weren't they?
A. No.

Q. How large is the hut?
A. Bigger than this room.

Q. Were any staff around?
A. Yes, 2.

Q. What were they doing?
A. Standing at the door.

Q. Did they say anything to the group?
A. Not that I know of.

Q. You stated each time you looked at the windows the accused was there?
A. Yes, mostly.

Q. How many times did you look?
A. As I said before, I was shaving in the washroom for a while then I came back and went to bed.

Q. When did you finish shaving?
A. It took me 10 mins.

Q. When did you start?
A. Shortly after he came into the hut.

Q. Give us some idea of the time?
A. I didn't have a watch.

Q. How long from the time you finished shaving was it you went to bed?
A. 15 mins.

Q. What were you doing in the meantime?
A. Sitting on my bed.

Q. After you went to bed what did you do?
A. Stayed awake - there was too much shouting.

Q. Where is your bed?
A. In front of the door.

Q. Which door?
A. There is only one door to the hut.

Q. Aren't there 2 doors?
A. There are two end doors but they are not used.

Q. What action did the staff take when SUS were yelling out of the windows?
A. Didn't do anything.

Q. Was anything attempted to prevent them yelling out of the windows?
A. Not that I remember.

Q. This happened quite a while ago didn't it?
A. Yes.

Q. Still you remember that the accused was yelling out of the window?
A. Yes.

Q. There was quite a bit of yelling then?
A. Yes.

Q. How do you remember the accused especially, what were the other 15 doing?
A. Mostly, like me, on the bed.

Q. Where were their beds located?
A. On the sides. The fellows mostly worked in the kitchen with me so I know them.

Q. Do you remember the names of anybody else looking out of the windows?
A. McKitterick.

Q. Anybody else?
A. No sir.

Q. How is you remember these two?
A. Well McKitterick for one I knew him from my own unit, and I used to speak to the accused.

Q. You have been questioned about this before have you not - whether you saw McKitterick or the accused yelling out of the windows?
A. No, only when the Summary was taken.

Q. Not before that?
A. By the SIS.

Q. When was the first time?
A. By the SIS a month or two after the trouble.

Q. Can you remember when you were questioned by the SIS?
A. Yes.

Q. Do you remember what happened?
A. Yes.

Q. Can you remember the questions asked?
A. No sir.

Q. Were you asked what happened in the hut?
A. Yes sir.

LJB

Q. Were you asked if you saw the accused?
A. He just asked me who had been causing trouble in the hut. I didn't mention any names.

Q. You are sure of that?
A. Yes, he asked me if I knew any names and I told him "No".

Q. You can't remember what the accused was shouting?
A. No.

Q. Can you remember any of the staff who passed at that time?
A. No.

Q. How far away would they be from the hut?
A. From here to the table.

Q. You didn't recognize them?
A. Yes, but I don't know their names.

BY THE PRESIDENT:

Q. You state that Kelly was handcuffed behind his back, was in a group with 15 others, therefore there must have been some milling around him?
A. Yes.

Q. Now Hayes, did he have a shovel?
A. No sir.

Q. He didn't have a poker?
A. No sir.

Q. Therefore he might have been in that group seeing someone strike Kelly's handcuffs?
A. Quite possible.

Q. You didn't see him do anything to free or help Kelly?
A. No, sir.

Q. In connection with the shouting was there any rules and regulations broken taking into account VE Day had been announced?
A. I couldn't say.

Q. The men had been excited all day long?
A. Yes.

Q. And Hayes stood at the window and said "Phooey" to an offr?
A. Yes.

Q. Was he laughing when he said it?
A. I wouldn'tsay he was laughing.

Q. Was he joking?
A. He didn't seem to be.

Q. Did the other men take it as a joke?
A. I think so.

Q. They weren't saying curse or damn the offrs?
A. I think they were angry.

Q. Do you mean to tell me a soldier if he is angry is going to say "phooey" to an offr?
A. I don't imagine so sir.

(IN THE OPINION OF THE COURT AND THE JA IT IS NOT NECESSARY TO COMPLY WITH RP 83(B)).

2nd Witness Pros: A11807d SUS Guillotte HO, 4 CMP&DB, duly sworn is examined by the Prosecutor:

(JA informs witness he may refuse to answer any incriminating
LJB questions).

Q. You were in living hut 1 of A Compound of Headley Det Bks on 8 May 45?
A. Yes.

Q. Do you know the accused?
A. Yes.

Q. For about how long?
A. About 6 mos.

Q. Did anything unusual happen in living hut 5 on 8th May?
A. No sir.

Q. Towards the evening?
A. No sir, there was a little disturbance.

Q. Was the accused in living hut 5 at that time?
A. He went up to No 1 hut.

Q. Did you see him do anything inside the hut when this disturbance took place outside?
A. No sir.

Q. Did you see any damage done inside living hut 1 at any time on the 8th?
A. No sir.

Q. Was there no damage done inside the hut?
A. Not that I know of.

Q. Were you in the hut all day on the 8th?
A. Yes, sir.

Q. On the morning of the 9th did you see the accused?
A. I don't remember sir.

Q. Did you remain in the compound all morning?
A. On the 9th in the morning as soon as the guys paraded on the parade square I went out with them and walked on the square. They talked about going to C Compound. I followed them.

Q. Did you see the accused at this time?
A. Yes.

Q. Do you know what the word "accused" means?
A. I think it is Hayes.

Q. Do you recall the time they marched from A Compound Parade Square?
A. Yes.

Q. Did you go with them?
A. Yes.

Q. Did you go outside the E Gate with them?
A. Yes, sir.

Q. After you got outside the gate did you see the accused Hayes at any time?
A. No sir.

Q. do you remember seeing any vehs at any time?
A. Well I went out to walk with the rest of the bunch. I saw a 15 cwt coming along and he slowed down.

Q. Did you see who was driving this 15 cwt?
A. No, sir.

DEFENCE DECLINES TO CROSS EXAMINE

(IN THE OPINION OF THE COURT AND THE JA IT IS NOT NECESSARY TO COMPLY WITH RP 83(b))

4th Witness Pros: L27162 S/Sgt Thomas JR, 4 CMP&DB, duly sworn is examined by the Prosecutor:

Q. You have been on the staff at Headly Det Bks for some time?
A. Yes sir.

Q. Will you take a look at this plan (EX H), is that an accurate representation of A Compound?
A. Yes.

Q. And the E Gate is here?
A. Yes.

Q. That is the plan of the camp as at 8th May?
A. Yes.

Q. On the 9th May were you on duty in A Compound?
A. Yes.

Q. Do you know the accused?
A. Yes.

Q. Where had you seen him?
A. In Headley Det Bks.

Q. For how long prior to the 8th May?
A. A good time.

Q. Is it a matter of weeks or months?
A. I wouldn't like to say.

Q. Do you know if the accused was in Headley a month before the 8th May?
A. I would say he was.

Q. Did you see him on morning 9th May?
A. Yes.

Q. About what time did you first see him?
A. Some time after breakfast, between 8 and 9.

Q. Where were you at that time?
A. I went down to see the staff in cell block 7 after I came from breakfast. I saw (I wouldn't like to say how many) SUS on the square at that time and Hayes was one of them.

Q. Approx how many would be on the square at that time?
A. There would be under a 100.

Q. Would there be over 50?
A. Yes.

Q. Were they carrying anything?
A. Some of them.

Q. Approx what percentage?
A. I couldn't say, I didn't pay much attention.

Q. Did you see two bars or more than that?
A. Quite a lot of them had bars and iron and wood in their hands.

Q. Did you see if the accused was carrying anything?
A. I don't think he was but I wouldn't like to say.

Q. How far were you away from the accused when you saw him this time?
A. 15-20 yds.

Q. What did he do?
A. He was just in the bunch that were on the square as I walked to cell block 7 and I noticed he was one of those who were jumping up and down shouting and carrying on.

Q. Did you hear any of the words he used?
A. No sir.

Q. Did you see him again on that day after this time?
A. Yes sir when I left cell block 7 I went to hut B 2. (Witness indicates on plan the "T" shape hut marked "B" on plan).

Q. What did you see from there?
A. I saw about 60 or 100 of the SUS go out passed B2 huts to the E Gate. Hayes was one of them. That was the last time I saw him.

Q. What was his position in the group?
A. He was on the outside because I remember seeing him.

Q. Do you mean on a flank?
A. On a flank and in the front.

Q. On the flank nearest or away from you?
A. Nearest.

Q. About where was he so far as the front, middle and rear was concerned?
A. I would say in the first 15 to 20.

Q. Was he carrying anything at that time?
A. No sir I don't think he was.

CROSS EXAMINED BY THE DEF

Q. At the time the Summary was taken you didn't make any mention seeing the accused while you were at Hut B2?
A. When the Summary was taken I said I saw him go passed B2.

Q. Did you read it over before you signed it?
A. Yes.

Q. You said while you were at hut B2 you saw him go passed?
A. Well if I didn't say B2 I said he went passed where I was.

Q. You are sure you mentioned hut B2?
A. Yes.

LJB

Q. How many others did you recognize approx?
A. Well it is almost 4 mos ago, I don't remember.

Q. Could you make an approximation?
A. I wouldn't like to say.

Q. You said he was in the first 10 to 15, did that mean files?
A. No they were just in a mob.

Q. What frontage would that cover?
A. One or two stretched out in the front then perhaps six or them and so on.

Q. Was Hayes in the front?
A. Near the front.

Q. Was the frontage there wide or narrow?
A. Wide.

Q. You stated there were between 50 and 100 when you arrived on the square on the morning of the 9th and you did not pay much attention?
A. No sir.

Q. Was anybody paying any attention?
A. I don't know I was just walking along.

Q. You weren't excited by the presence of 50 men on the square?
A. No sir.

Q. You weren't frightened by 50 rioting men?
A. No sir.

Q. No fear of harm to yourself?
A. No, sir.

Q. You didn't notice if any of the staff were trying to lead them on the Square?
A. No sir.

BY THE COURT:

Q. Was there any distinguishing marks on the accused so that you could recognize him when they passed you. Was he dressed the same as the rest?
A. Yes but he had been there for two years and I knew him.

BY THE PRESIDENT:

Q. You states Hayes was on the square. On that day all the SUS came out and were on the square. It was against regs?
A. Yes.

Q. But on that day you apparently relaxed everything - you had no orders to keep them in the huts?
A. Yes sir.

Q. Hayes at that time had no bar or anything in his hands?
A. Not that I remember.

Q. What was he doing on the square?
A. He was talking loud and shouting.

Q. You said he was jumping up and down?
A. Yes.

Q. In what way was he jumping?
A. From exuberance or something I guess.

Q. Somebody trod on his toe?
A. I don't know.

Q. You state you saw Hayes marching out towards the E Gate?
A. Yes.

Q. The area he went through is out of bounds?
A. No sir it was still A Compound.

Q. Until he got down to where?
A. In front of the main buildings of A Compound when it finishes and C Compound starts.

Q. That procession was quite orderly?
A. It was just a mob.

Q. Did they do anything on the way?
A. Not when they passed B2.

Q. They moved quietly down the road?
A. They were all talking and shouting and hollering.

Q. Is it out of the ordinary to shout on VE Day?
A. Rules of the Det Bks say there should be silence.

Q. The Rules said they should be kept in the hut?
A. After all there are only 2 staff allotted to 50 men and 2 couldn't stop 50.

BY THE JA:

Q. Was any permission given by anyone for the SUS to assemble on the parade square on morning of 9th May?
A. No sir not that I know of.

Q. So this assembly of the mob as you call it was unauthorized?
A. Yes.

Q. Some had iron bars?
A. Yes.

Q. Some were carrying sticks?
A. Yes.

Q. Had they been issued with bars and sticks?
A. No sir.

Q. Were they quiet and orderly or were they noisy and turbulent?
A. Noisy.

Q. Why didn't you yourself make an effort to have them return to their huts or cell blocks?
A. I had no jurisdiction - there was a SM in charge of the compound.

Q. Did the SUS on the parade square appear to be out of control or still capable of being brought under control in your opinion by the available staff?
A. I think there would have been trouble.

Q. Did you think then that there would have been trouble?
A. Yes.

Q. Why?
A. From the way the men were acting themselves.

Q. In what way were they acting?
A. They were exuberant over VE Day and all going round hollering and yelling which was something they had never done before.

Q. This was on the morning of the 9th?
A. Yes.

(IN THE OPINION OF THE COURT AND THE JA IT IS NOT NECESSARY TO COMPLY WITH RP 83(B)).

CLOSE OF CASE FOR THE PROSECUTION

D E F E N C E

JA informs the Accused as to his rights etc. The accused does not wish to give evidence himself. He calls witnesses as to fact.

1st Witness Def: D106048 Pte Kelly D, 4 CIDepot Bn, duly sworn, is examined by the Def Offr:

(JA informs witness he may refuse to answer any incriminating questions).

Q. You were SUS at Headley Det Bks, on 8, 9, 10 May 45?
A. Yes.

Q. On evening of 8th May you were in hut 1?
A. Yes.

Q. Handcuffed?
A. Yes.

Q. You know the accused?
A. Yes.

Q. Did he give you any help or was he interested in removing your handcuffs?
A. No sir.

CROSS EXAMINED BY PROSECUTOR

Q. You were at the window some of the time in living hut 1 during evening of the 8th?
A. Yes.

Q. On the evening of the 8th there were about 5 of you who were moving around in the hut, McKitterick, Yourself and the accused and others?
A. I never saw Hayes moving around. I did quite a bit though.

Q. Was McKitterick with you?
A. No sir he was not moving around much.

Q. Do you remember seeing Hayes at the window once or twice?
A. Never noticed - he was laying on the bed when the men were trying to get my handcuffs off.

Q. Did the group who were trying to get your handcuffs off change from time to time?
A. No sir it was the same man all the time who took them off me - SUS Fortier.

Q. I understand they came off with a shovel and poker?
A. Yes,sir.

Q. Who used the shovel?
A. It was held by SUS Fortier.

Q. What did he do?
A. He broke the chain in between the handcuffs and then he put the poker in and bent the handcuffs.

Q. Whose idea was it?
A. It was his idea.

Q. Are you swearing before the court that you never saw the accused Hayes in that group?
A. Yes sir.

Q. Did you see him the hut at all that night?
A. Yes sir.

Q. Was there some damage done in that hut before the morning of the 9th May?
A. Yes sir.

Q. What sort of damage?
A. About 3 to 4 bars pulled out.

Q. Did you notice that there was a group of about 5 or more SUS doing the moving about in that hut?
A. No sir my handcuffs were behind my back and I had to lie down on my stomach. There was quite a bit of moving though.

Q. After the handcuffs were removed you could see them?
A. Yes.

Q. You weren't moving around alone were you?
A. No sir I was talking to others.

Q. I am suggesting that there were about 5 of you moving around and agitating?
A. I don't know about agitating.

Q. There were some others with you?
A. Yes.

Q. Hayes was with you?
A. No sir he was sitting on his bed.

Q. All night?
A. I don't know.

Q. These bars which you saw taken out on the 8th they were taken out by the group moving around?
A. I could not say. I pulled one of them and got out of the window.

Q. That took place on the 8th May?
A. Yes.

Q. Did someone else go out with you at the time?
A. Not that I know of.

Q. On the 9th how many were on the parade square?
A. I would say about 200.

Q. There were quite a few carrying bars?
A. Nobody was carrying bars on the square that morning of 9th.

LJB

Q. How about the groups of some sort?
A. No groups at all - not a man was carrying bars.

Q. Did you see Hayes out there in the mob?
A. I don't remember - there were so many.

Q. But Hayes was in your living hut?
A. Yes.

Q. You could recognize him quite easily if you saw him?
A. Yes.

Q. Do you now say he was not there?
A. I never seen him there.

Q. Do you remember if he went out of the E Gate with the mob?
A. Never noticed him.

Q. You went out of the E Gate?
A. Yes.

Q. Do you remember whether you ran across Hayes afterwards?
A. No sir.

Q. After you got outside didn't you contact him then?
A. I don't know whether he was in front or behind me sir.

Q. Hayes was one of the boys though?
A. Yes.

Q. You saw him shortly after you got out?
A. No sir. I kept running. He must have been in front of me.

Q. You kept running after you got outside the gate and it was some time after you saw him?
A. I saw him when he came back to Reading prison.

Q. I thought you mentioned just now you saw him just outside the prison gate?
A. No sir.

Q. You know he went out with the group at the same as you did?
A. Yes.

Q. You were in the middle of the mob?
A. Yes.

Q. After the mob left the parade square and came along towards the E Gate it kept moving did it?
A. Yes sir, we were all in a big bunch scattered all over the place.

Q. You thought Hayes was in front of you?
A. Yes sir.

Q. Did you notice him in front of you?
A. No sir.

Q. As the mob approached the E Gate there were some windows broken?
A. Yes sir.

Q. And damage done to that building on your left?
A. Yes sir to the kitchen - there were some windows broken.

Q. as a result of something the mob did as it went out?
A. Yes sir.

Q. Quite a few of them broken?
A. Yes sir.

REEXAMINED BY THE DEF

Q. Did you see Hayes in the mob?
A. I never recognized him.

(IN THE OPINION OF THE COURT AND THE JA IT IS NOT NECESSARY TO COMPLY WITH RP 83(B)).

CLOSE OF DEFENCE

CLOSING ADDRESS BY DEF OFFR

The accused faces 4 charges 2 of which he pleaded G to. I content the prosecution did not offer any evidence as to the 1st and 2nd charges. He was improperly concerned in a disturbance in the said Det Bks - 1st charge - on the evening 8th May. SUS D'Aoust gave evidence to the effect that Hayes was in hut 1 at the time. He also stated that was the hut in which Hayes was supposed to be. He stated further that there was a group around SUS Kelly who was handcuffed; but he did not see the accused do anything except be in that group. He then stated that each time he looked at the window Hayes was there yelling "phooey" at the offrs. His answer before that was that the group that were at the windows were yelling "phooey". He did not state in his examination in chief that Hayes had said anything. He also stated that the staff present in the hut were doing nothing to keep the yelling down or stop the interference with the handcuffs.

I would ask the court to consider the natural consequences of leaving an SUS handcuffed with a group of other SUS. It is my contention that the man who left him that way should have known better than to leave him unattended and handcuffed. As far as the yelling is concerned no attempt was made whatsoever to stop the noise. That is all I have to say about the first offence.

On the second offence evidence was given by S/Sjt Thomson that the accused was in a group of between 50 and 100 on the square. He then stated "I did not pay much attention". He also stated that nobody was making any attempt to stop the group. On questioning by the court he said he thought there would be trouble if anybody tried to stop them after already stating that he paid no attention. How he could be thinking and pay no attention at the same time is beyond me. They weren't interested in stopping these men.

He further states he saw the accused in front of Hut B 2 and that is the only evidence of the accused's activities on the morning of May 9th. He was with a group who were marching round the square under no guidance, no one trying to leave them, no one trying to stop the trouble. As the staff said, "I paid no attention".

I ask the court therefore to bear in mind when they consider the 1st and 2nd charges, the attitude that the staff had in this connection. I would refer to the Note under Sec 40 MML p 45b at the foot of the pay. (quotes "a charge ------ discipline"). The accused is being charged with being improperly concerned, no neglect or disorderly conduct is mentioned. Further, the last four lines of that Note("and the court ..... took place"). These events all took place on VE Day or the day following.

CLOSING ADDRESS BY DEF (CONTD)

Rules must have been relaxed because the staff weren't interested enough to pay any attention when the group paraded on the Square on May 9th, or tried to stop yelling and shouting in the hut on May 8th. There was no order in that hut. So I fail to see how the conduct of the accused has been to the prejudice of good order and mil discipline. There was no discipline - the lads were completely on their own - nobody tried to control them. They are not there because they are Sunday School pupils.

I ask the court to find the accused NG of the 1st and 2nd charges.

CLOSING ADDRESS BY PROS:

As to the 1st charge. The disturbance, which the court may consider on the evidence, is one which occurred inside living hut 1 and the evidence on that is simply boiled down to the fact you have a hut larger than this room and inside there was a small group always moving around and shouting. The accused was identified as being part of that group, and it is this group, including the accused, continually at the windows (where they should not have been) and who did a lot of shouting from them.

As to the other point that should be considered in connection with that disturbance is the un-handcuffing of Kelly and Hayes' part in that. It isn't necessary that Hayes be the person who held the poker or shovel. I ask the court to keep this picture in mind - that here is a hut of 50 SUS and only 2 members of the staff, and if the size of the group that surrounds Kelly with a common purpose of getting the handcuffs off is sufficient to prevent the staff from taking necessary action, then if Hayes is part of that group that is sufficient to make him improperly concerned. It is not necessary to fasten him with the actual act of un-handcuffing, but sufficient to make him improperly concerned in that part of the disturbance which took place in living hut 1.

On the 2nd charge the picture is not as the Def suggests that some specific act must be alleged; but I saw the Pros has shown that there was some disturbance and then the accused's identity in that disturbance; and if he is identified as being in that disturbance then we have sufficient basis for saying that he was improperly concerned in it - and that is what the charge is. The disturbance for which there is evidence on the 9th, is the milling mob on the parade square. Again I ask the court to keep in mind the relative proportions of staff to SUS there, and I also ask the court to accept the evidence that a number of those SUS on the parade square were carrying bars. This evidence of Kelly that nobody was carrying bars can be treated with the disrespect it deserves. The milling mob on the parade square there is evidence that Hayes was identified in it and that he drew attention to himself by jumping up and down and by shouting, so that is being a party to the mob whether their purpose at that particular moment was unlawful or not or had some specific object in mind - he was a part of it at that point. I ask the court to take the view of that mob that it was of such a number and so armed that it was not just a celebration group but it is a mob who felt its "oats", and they took over control. Feeling they were in a position to wilfully defy the prison authorities they continued to do so and marched out towards the E Gate. Evidence is that in his plea of Guilty to the 4th charge of being AWL from 0900 hrs that fixed the time on his own admission from which he left the gate. On top of that we have Kelly's evidence that he ran out and the accused also left at the same

time. Kelly says he was in the middle and from that position he saw damage done to the windows of the cook house on the way out of the E Gate. That is further evidence of a disturbance on the 9th what the court can take notice of as regards this 2nd charge.

I say that on the evidence it is a fair inference to say that the accused can be identified as being part of this mob when the disturbance took place. We have the evidence of S/Sgt Thomson saying that he saw him on the parade on the way up to the E Gate, and the time he left, and Kelly's evidence that he escaped at the same time.

SUMMING UP BY THE JA

Under our system of mil law the court are the judges both of the law and facts relating to this case. The court should follow my advice on all questions of law. The court however are the sole and absolute judges on all questions of fact. They should disregard any opinion given by me on a question of fact arising in this case. It is a fundamental principle of British Justice that the accused must be presumed to be innocent until proven guilty beyond a reasonable doubt. The accused does not have to prove he is innocent of the charges - on the contrary the onus is upon the prosecution of proving the guilt of the accused, beyond a reasonable doubt and that onus rests upon the prosecution throughout the trial. If, after careful consideration of the evidence before the court the court is either convinced of his innocence or left in reasonable doubt as to his guilt on any charge, it is the duty of the court to find the accused NG of that charge.

The 1st charge against the accused is a charge under Sec 40 AA of conduct to the prejudice etc. Before being justified in finding the accused guilty of that charge the court must be satisfied beyond a reasonable doubt that on 8 May 45 a disturbance took place in the Det Bks and that the accused was improperly concerned in it. Furthermore that under all the circumstances the conduct of the accused was such as to constitute conduct to the prejudice of both GO & MD.

The 2nd charge is likewise a charge under Sec 40 of conduct to the prejudice etc, and is the same in all respects as the 1st charge except that it relates to the 9th May and not 8th May 45. What I have said with respect to the 1st charge and the elements necessary to constitute the offence alleged in the 1st charge apply equally to the 2nd charge.

With respect to the 3rd charge, that is a charge under Sec 22 AA, when inconfinement escaping. The accused has pleaded G to the 4th charge, in the particulars whereof the accused is charged with having gone AWL while a SUS 1 Cdn Det Bks. In view of the allegation in the particulars of the 4th charge that the accused went absent while undergoing sentence, the 4th charge embraces actually the 3rd charge and the court considers it advisable to treat the case as though the prosecution has not offered any evidence on the 3rd charge. Consequently the court should bring in a finding of NG on the 3rd charge. In conclusion I wish to repeat that the court are the sole and absolute judges of the facts of the case and the accused must be given the benefit of any reasonable doubt.

Are there any further matters upon which the court, the Pros or Def Offr wish me to advise the Court?
Pres: No Pros: No. Def Offr: No.

COURT CLOSED TO CONSIDER ITS FINDINGS

COURT REOPENS

PRESIDENT: The court finds you NG on the 1st and 3rd charges. Findings of the court on the 2nd charge being subject to confirmation will be promulgated later.

JA: Do you wish to make any statement to the Court relating to the 4th charge?

Accused: No sir.

The JA: In that case the court records a finding of Guilty on the 4th charge. The next stage is reading of the Summ of Evidence.

(JA reads that part of the Summ of Evidence with relation to the 4th charge only - the accused's own admission).

MFM 6 and AFB 296 produced.

PLEA IN MITIGATION BY DEF OFFR

The accused has a medical category of M-3 and has not served on the continent because of his category he was unable to do so. He is 21 yrs of age. I am asking the court to consider his age and circumstances under which the accused was at the time of the disturbance at Headley. He went out of the gate with some larger group. This group had been parading on the square - no one paying any attention to them. He stayed AWL until 0200 hrs following day when he gave himself up at Borlon. There has been no evidence of any violence or bad temper on the part of the accused He was in a group that was celebrating without leadership. A young man of only 21 I would ask the court to be lenient in awarding its punishment.

COURT CLOSED TO CONSIDER SENTENCE

LJB

1003

SUMMARY OF EVIDENCE

in the case of

L 28348 SUS HAYES, T.E.

By order of the Commanding Officer,
all evidence is taken on Oath.

In the Field 24 July 45.

FIRST WITNESS:
L 27162 S/Sgt Thomson, J.R., having been duly sworn states:
On the morning of the 9th May 45 a lot of SUS were milling around on the Parade Square. I came on duty in "A" Compound after breakfast and saw SUS HAYES among the leading element of the rioting SUS. From the amount of yelling and shouting done by SUS HAYES I would say he was one of the ringleaders. I did not see SUS HAYES break anything.
Q.1. Did you see accused threaten anybody?
A.1. No.

The accused declines to cross-examine this witness.

S/Sgt.
(J.R. Thomson)

SECOND WITNESS:
D 76446 D'AOUST, H.P., having been duly sworn states:
On the evening of 8 May 45 about 1900 hrs I entered A.H. 1 and saw a number of SUS Trying to take the handcuffs off SUS KELLY. SUS HAYES was one of these SUS. I also saw SUS HAYES shouting through the window at the offrs and staff who were passing the hut.
Q.1. Do you remember what the accused was shouting?
A.1. No.

The accused declines to cross-examine this witness.

(H.P. D'AOUST)

THIRD WITNESS:
D 7966 BERNIER, G.P., having been duly sworn states:
On the morning of 9th May 45 there was a truck full of SUS going through the East gate and I jumped on board. I was captured at BRAMSHOT about three hours later.
Q.1. Did you see the accused before you boarded the truck?
A.1. No.
Q.2. Do you remember any of the SUS who were on the truck with you?
A.2. No - they were all English.

The accused declines to cross-examine the witness.

(J.P. Bernier)

FOURTH WITNESS:
A 118074 Pte GUILLOTTE, H.O., having been duly sworn states:
On the morning of the 9th May 45 I jumped on e truck which had four or five SUS on it. The truck was outside the camp at the time. When the truck stopped I went into the bush where I was caught.
Q.1. Did you see the accused in the truck?
A.1. No.
Q.2. Did you see him when the truck stopped?
A.2. No.

The accused declines to cross-examine the witness.

Pte.
(Guillotte, H.O.)

FIFTH WITNESS:

D 114944 deREPENTIGNY R., having been duly sworn states:
I was block orderly for AC 5 on the 8 May 45 when an SUS came along and asked for the keys. The keys could not be found but the SUS outside kept hollering for them. Somebody said that HAYES was one of the SUS who were hollering for the keys.

Q. 1. Was the accused in AC5 that day?
A. 1. No. He was outside.

Q. 2. Do you remember who said it was Hayes?
A. 2. No.

Q. 3. Did you know Hayes to see him?
A. 3. No. Somebody mentioned his name.

The accused declines to cross-examine this witness.

(R. deRepentigny)

SIXTH WITNESS:

SPECIAL INVESTIGATION SECTION

15th. JULY 45.

I, Reg. No. C.30629, S/Sgt. DENTON, L.A., certify that Reg. No. L 28378, SUS HAYES, T.E., having been duly cautioned, made the statement which is attached on 2nd JUNE 45.

S/Sgt.
Reg. No. C.30629, (L.A.DENTON)
Canadian Provost Corps - S.I.S.

I certify that this witness is not available owing to the exigencies of the service and that he is not required for the purpose of cross-examination R.P. 4(E).

Capt.
(W.E. Murray)

I certify that the statement referred to by this witness is marked Appendix "A" and attached hereto.

Capt.
(W. E. Murray)

The accused, having been cautioned according to R.P. 4(E), declines to make any statement or to give any evidence upon oath, and reserves his defence.

(T. E. Hayes)

I certify that this Summary of Evidence was taken down by me in the presence and hearing of the accused, and in accordance with R.P. 4(C),(D),(E),(F) and (G) this twenty-fourth day of July 1945.

Capt. RCA
(W. E. Murray)

Appendix "A"

A993

SPECIAL INVESTIGATION SECTION

CDN. PROVOST CORPS, CMHQ

STATEMENT OF: 2nd June 45

Regt. No. L 28348 Name HAYES T.E.

S.U.S. No. 1 Cdn. Det. Bks.

I have already been cautioned that I am not obliged to say anything unless I wish to do so, but whatever I do say will be taken down in writing and may be given in evidence.

At about 0900 hrs 9th May 45, I marched out to the East Gate with a large number of other rioting S.U.S. I was about half way back from the front of the crowd.

After passing through the East Gate of "C" Compound I hung on to the back of a truck, but I let go and ran into the bush.

I was finally apprehended at Bordon at 0200 hrs 10 May 45. I surrendered of my own free will and accord.

I did not take a truck when escaping from Headley Detention Barracks.

I have read over this statement and it is true.

(SGD) T. E. HAYES

(WITNESSED) L. A. DENTON

A388

LIST OF WITNESSES

WITNESSES FOR PROSECUTION

1. L.27162 S/Sgt THOMSON JR
2. D.76446 D'AOUST HP
3. D.57966 BERENER GP
4. A.1185074 Pte GUILLIOTTE RO
5. D.114944 DeREPENTIGNY R
6. C.30619 S/Sgt DENTON LA

WITNESSES FOR DEFENCE

Nil

In the Field
24 July 45

LIST OF EXHIBITS

1. Statement of Accused - Exhibit "A"

Exhibit "J" "J E V Murrell" LtCol

ARMY FORM B.296 (WAR.

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only). "J"

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L28738	Pte	HAYES Thomas Edward 4	CMP&DB

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 40 5 times.

For AA Sec 9(2) 3 times.

For AA Sec 15(1) 2 times.

For AA Sec 11 2 times.

Date of first entry in Field Conduct Sheet 25 Nov 42

Date of last entry in Field Conduct Sheet 12 Feb 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for 1 year Detn beginning on the 12 day of Jan 45

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for NIL days in military custody, *i.e.*, NIL days in open arrest, NIL days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 21 yrs, 281 days.

6. The date of his attestation is 30 Dec 41.

7. The service which the accused is allowed to reckon is 3 yrs, 226 dys.

8. The accused is in possession of† CVSM & Clasp

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of N/A	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

*Strike out if not applicable.

†State the military decorations (if any) held by accused.

(29584) Wt.42125-6299 42/707 11/44 A.& E.W.Ltd. Gp.698 Forms/B.2 6/Wt/44

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	4 Oct 43 AA Sec 9(2) Field		120 days detn. Forf 120 days pay.	38 dys.
FGCM	12 Feb 45 AA Sec 40 Field		One year Detn. Stoppage of pay £1-15-0	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 24th day of Aug 45

"K G W Doull" Capt & Adj

(K G W Doull)

CERTIFIED TRUE COPY

No L28378 Name Hayes T E | Sqn, Battery, or Company | Corps Can Infantry | Date of enlistment 30-12-41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&A/136 (3488)

Date of last entry in Company Conduct Sheet 19 Jun 42 | No and date of last drunk NIL | Period not reckoning towards freedom from extra fine N/A | Sheet No 3 | Signature OC Company, etc JW Jackson Lt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				officer - did not wear respirator facepiece when ordered to do so. (3) AA Sec 40 conduct to prejudice - gave false information to an NCO. (4) AA Sec 40 Conduct to the prejudice					
				neglected to wear identity discs.					
Field	18-7-44	Pte		AA Sec 40 Neglect to the prej etc neglected to shave before appearing on parade.	Lt T W Mackenzie	5 days pay FRAI 149(2)	19-7-44	Major A W Sanders	
Field	30-6-44	Pte		AA Sec 40 Improperly dressed Not wearing web belt	L7508 L/Cpl Taylor J B61972 L/Cpl Diebner C F	4 days pay FRAI 149(2)	9-7-44	Major R C Kelly	"W.S."

(PTO)

No L28378 Name Hayes T E | Sqn, Battery, or Company | Corps | Date of enlistment 30/12/41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&A/136 (3488)

Date of last entry in Company Conduct Sheet 19-6-42 | No and date of last drunk nil | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8/8/43	Pte		AA Sec 15(1) AWL from church parade at 0830 hrs 8 Aug 43.	S/Sgt C A Collins	3 days CB	10-8-43	Capt J A Quinn, o/c Burdon Hall Detachment.	"C.W.S."
Field	13-8-43	Pte		AA Sec 40 Conduct to the prejudice etc did absent himself from his post when posted as a sentry.	Capt McCreath Pte Fringle NL	7 days CB	14-8-43	Lt-Col P M Irwin	"C.W.S."
Field	29 Sep 43	Pte		AA Sec 9(2) Disobeying in such a manner as to show a wilful defiance of authority, a lawful command given by his superior officer when ordered to mount Guard, refused to do so.	RSM MacGowan Sgt Coulter A E L/Bdr Boeth AM Pte Gor-man G	To undergo Detention For 120 days pay Art 149(1)(6) A 15 days pay Art 149(1)(c) Total 135 days pay	4 Oct 43	F/CM	"C.C."

(PTO)

Exhibit "J"

No L28378 Name Hayes T E | Sqn, Battery, or Company | Corps CIC | Date of enlistment 30-12-41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&A/136 (3488)

Date of last entry in Company Conduct Sheet 19-6-42 | No and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Shilo Camp, Man	7-11-42	Pte		PREVIOUS SHEET DESTROYED 14-7-42. Sec 40 AA Conduct to the prejudice in that he remained in bed after Reveille.	No cases of Drunkenness. Sgt Meeling EH	5 days CB	25-11-42	Lt C N Shea	
Field	11-2-43	Rfn		AA Sec 40 (Rusty Rifle)	CSM Bellentine Cpl McLaughlin	3 days CB	11-2-43	Capt CSF Tubb	

CERTIFIED TRUE COPY.
??????????????Lt Col
OC Admin Wing
2 C I R U

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2-9-44	Pte		AA Sec 40 Improperly dressed. Not wearing head dress and tunic open.	127080 S/Sgt Hopkinson R	4 days pay FR&I 149(2)	5-9-44	Major RC Kelly	
Field	29-10-44	Pte	Nil	Sec 11 AA neglecting to obey Part I Orders #220 d/27 Oct 44 failed to report for duty.	Cpl Scott J	7 days CB	30/10/44	Major LW Burton	"WMS.
Field	16 Jan 44	Pte		Sec 40 AA (Conduct to the prejudice of Good Order -- improper use of Veh CM 195419 (public property) & incurring damages to said vehicle to the amount of £3-10-0. CERTIFIED TRUE COPY OF MFM 6 IN MY CUSTODY. "K G Doull" Capt & Adj 14 Aug 45 (K G Doull) 4 CMP&DB.	Capt WG Kyle Sgt Hammond HG L/Cpl Darby (CPC)	To undergo one year Detention & Stopp of pay £1-15-0 FR&I 158(2)	12 Feb 45	FGCM (Confirmed by Brig J E Sager	Forf 364 days Pay FR&I 149 (1)(b) Forf 25 dys pay FR&I 149(1)(c) Close Arrest

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				RELEASED from the DETENTION BARRACK Field on Dec 25 1945 SENTENCE HAVING EXPIRED. Remission earned under "Rules of Detention Barracks and Military Prisons 38 days. COMMANDANT'S Initials HMC					
Field	11.3.44	Rfn		AWL AA 15(1) 1 day 8 hrs 30 mins	Sgt Martyn	3 days FP & 28 days pay FR&I 149(2)	13.3.44	Maj W Kennedy	Auto Forf.
Field	22.3.44	Pte		(1) AA Sec 11 neglecting to obey Standing Orders-was not wearing respirator facepiece when required to do so. AA Sec 9(2) disobeying a lawful command given by his superior.	Cpl Monteith "		20-3-44	LtCol JH Wottersill	Forf 28 days pay FR&I 149(2)

	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29-4-43	Pte		Sec 9(2) AA WOAS disobeying in such manner as to show a wilful defiance of authority a lawful command given by his superior officer in the execution of his office, in that he at Peper Harow approx 1400 hrs 29 Apr 43, when personally ordered by Cpl Carter (I/C Guard) to bring in wood to the Guard Room, did not do so.	Cpl Carter	21 days Field punishment	30-4-43	"RC Kelly" RC Kelly Major Dep Asst Dir	Auto forf 21 days pay FR&I 149(1)(b)
Field	3-7-	Pte		AA9(2) Disobeying in such a manner as to show a defiance of authority a lawful command given by his superior officer, in that he when ordered to fall in with the guard did not do so.	Cpl Christianson. Sgt Drury.	28 days FP 28 days pay FR&I 149(1)(b)	5 July 1943	Lt-col PM Irwin	"PMI"

In the case of L28378 Pte Hayes T E 4 CMP&DB

Receipt for copy of Charge Sheet and Summary of Evidence

I have been given, free of charge, a copy of the Charge Sheet and Summary of Evidence in my case at 1330 hrs this 14 day of Aug 1945.

"T E Hayes"
Signature of Accused

Acknowledgement of notice under RP 89(b) and request for Defending Officer.

I have been warned at 1330 hrs this 14 day of August 1945, that the Prosecutor at my trial by Court Martial will be an officer having legal qualifications, and that I am entitled to 7 days notice of such fact, I expressly waive such notice.

I request that an officer having legal qualifications be appointed to represent me as my defending officer at my trial by Court Martial.

"T E Hayes"
(Signature of Accused)

4T-45-46

Pte. Hayes J. E.

Pte Poelzer RP J

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : L28378 Pte Hayes, T E - 4 VRD 1 CCOD
K1207 Pte Poelzer, R P J - Att 4 VRD, 1 CCOD

Charge. (Insert "alternative" where applicable.)	Plea. Each (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	Guilty	Guilty	
2nd			
3rd			
R 4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

R At present under sentence for ~~xxxx

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)*

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No S.R. (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character 1(1)
Ans No S.R.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 2. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment 1(1) Ans Sgt Ref Letter NOTE PAT (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A., if any~~.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused L28578 Pte Thomas Edward HAYES, on strength 4 V R D, 1 C C O D, and K1207 Pte Russell Patrick James POELIZER, attached 4 V R D, 1 CCOD, soldiers of the Canadian Army Overseas are charged with:

FIRST CHARGE
SEC 40
Army Act

When on Active Service Conduct to the Prejudice of Good Order and Military Discipline

in that they

In the Field, between 13 January 1945 and 18 January 1945 were improperly concerned in the use of Ford Sedan, C M 195419, public property, and thereby incurring damages to public property to the amount of £5-10-0.

"R C Kelly"
(R C Kelly) Lt-Colonel
OC Depot Battalion
Headquarters, 1 CCOD.

In the Field
9 Feb 1945

To be Tried by Field General Court Martial.

"J E Sager"
(J E Sager) Brigadier
Comd "F" Gp CMU.

DLM

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L26378	Pte		Thomas Edward	Hayes	A VRD, 1 CCOD
K 1207	Pte		Russell Patrick James	Joelzer	Att 4 VRD 1 CCOD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 10 Feb 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial". JES

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified comd) JES

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto. JES

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder. JES

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lieut Col	D L Redmon VD	Hq CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt	to be detailed by 1 CRU	
A Lieut	to be detailed by 1 CRU	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.) "J E Sezer" (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 10 Feb 45 Commanding "F" Gp CRU (J E Sezer) Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

DLM

Medical Officers Certificate
KR(Can) para 557

I certify that I have this morning examined No L28378

Rank Pte Name Hayes T E of 4 VRD 1 CCOD (Unit)

and in my opinion he is fit to undergo trial by Court Martial.

Station Bordon

Date 12 Feb 45
(of Court Martial)

"J P Mutmer" Capt (Rank)
Unit 4 VRD 1 CCOD
Medical Offr, RCAMC

DLM

Medical Officers' Certificate
KR(Can) para 557

I certify that I have this morning examined No K1207

Rank Pte Name Poelzer R P J of 4 VRD 1 CCOD (Att from 1 COM ERU

and in my opinion he is fit to undergo trial by Court Martial.

Station Bordon

Date 12 Feb 45
(of Court Martial)

"P Nutmer" Capt (Rank)
Unit 4 VRD, 1 CCOD
Medical Offr, RCAMC

DLR

CASES OF

L28378 Pte HAYES T E 4 VRD 1 CCOD

K1207 Pte POELZER RJP 4 VRD 1 CCOD

EVIDENCE TAKEN TO COVER DEFICIENCY IN SUMMARY (RP 37(B)).

FIRST WITNESS FOR PROSECUTION

A67730 Cpl PETTIGREW R M, 1 VRD having been duly sworn states:

Q. Did you examine vehicle CM 195419 on 23 Jan 45?
A. Yes sir.

Q. Did you estimate the damage?
A. Yes sir.

Q. What was the amount of damage?
A. £3.10.0d.

Q. Will you give a detail of the damage?
A. The material require: 1 grill guard £2.; 1 draft ventilator window 10/0d; 1 headlamp blackout shield 5/0d; 5 hours labour required 15/0d making a total of £3.10.0d.

Q. What is your job?
A. I am in charge of inspections carried out on all vehicles received from our park.

NO CROSS EXAMINATION.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

PLEA IN MITIGATION

I would like to point out to the Court the following points. First the evidence before the Court is purely circumstantial, it all hinges on two statements made voluntarily by the accused. We have two statement not taken under oath and it may well be that the accused have exaggerated in their second statements. Outside of their statements the evidence for the Prosecution is very weak and I would ask the Court for leniency for these two men on account of their youth.

DLR

SUMMARY OF EVIDENCE

Summary of Evidence in case of L28378 Pte Hayes T E on strength 4 V R D 1 C C O D, and K 1207 Pte Poelzer, R P J. attached 4 V R D, 1 C C O D, soldiers of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS for the Prosecution Capt W G Kyle on strength of 1 V R D, 1 C C O D, an officer of the Canadian Army Overseas, having been duly sworn states:

I am O i/c Storage & Maintenance Park, 1 V R D, 1 C C O D. On Sunday 14 Jan 45 acting on information received I ascertained that the wire fence on Peper Harow, East Park 1 V R D, had been cut and the wire pulled back allowing sufficient room for a vehicle to pass through. On further inquiry I found that Ford Sedan CM 195419 was missing. This vehicle was on charge to 1 V R D, and my records showed it to have been parked in the zone allotted to sedans and station wagons in Peper Harow East Park. This vehicle has since been returned to 1 V R D, 1 C C O D.

Both accused decline to cross examine this witness.

"W G Kyle" Capt
(W G Kyle) Capt

SECOND WITNESS for the Prosecution: C42004 Sgt Hammond H F on strength of SIS CMHQ, a soldier of the Canadian Army Overseas, having been duly sworn states as follows:

Pursuant to information received on 18 Jan 45 I proceeded to the R E Power Station, Bordon and found a Canadian Army Vehicle Ford Sedan C D No CM 195419 Parked behind the rear of the main power shed. On examinating this vehicle I found that the ignition lock was off and the ignition wires had been joined together. The right front door was locked and the left front door was locked from the inside. On releasing the hood cover I found the main lead to the battery disconnected and also the spark plug wires. I then arranged for the car to be under surveillance and set a trap for anyone about to use the vehicle. I left the car in the same condition that it had been left.

At 1800 hrs 18 Jan 45 I placed L/Cpl's Darby and McKenna of No. 9 Provost Coy behind a packing case approximately 10 feet from the car, and I placed L/Cpl McGladdery also of 9 Provost Coy behind a large cable spool 50 feet from the car where he could have a vision of the road leading to the entrance to the plant and vision of the vehicle. I kept watch at the power plant office.

At 1850 hrs 18 Jan 45 I saw two Canadian soldiers pass by when I was standing and go down the road turning the corner of the building in the direction of the place where the vehicle was. I proceeded very slowly to give ample time and when I reached the end of the building the arrest of K 1207 Pte Poelzer R P J of 1 C O M E R U, and L28378 Pte Hayes T E of 4 V R D 1 C C O D had been effected. I now recognize Ptes Poelzer and Hayes in this room.

I escorted Pte Hayes to 4 V R D Guard Room, and Pte Poelzer to 1 C O M E R U Guard Room pending further investigation.

On 19 Jan 45 I interviewed Pte Poelzer and cautioning him and having him sign the caution as having understood it, he made a voluntary statement. I introduce this statement of Pte Poelzer. (Exhibit 1).

On 20 Jan 45 I interviewed Pte Hayes T E, and after cautioning him which caution he signed, he gave a voluntary statement which I introduce as (Exhibit 2).

On 25 Jan 45 I again interviewed Pte Poelzer in regard to the discrepencies between his statement and Hayes' statement. Pte Poelzer then admitted his participation in the theft of Vehicle CM 195419. I then cautioned Pte Poelzer, which cuation he signed, and he made the following additional voluntary statement which I introduced as Exhibit 3.

On 25 Jan 45 I then interviewed Pte Hayes T E, who was implicated in the theft of vehicle CM 195419 according to statement of Pte Poelzer, and I read over Poelzer's last statement to Hayes, and he admitted that Poelzer's statement was true. and after being cautioned which caution he signed, he made an additional voluntary statement, which I introduce as (Exhibit 4).

On 20 Jan 45 in the presence of Pte Hayes I examined his small haversack. He did not have this haversack with him on the night of his arrest. He stated to me that it was his haversack. I found in the haversack one pair of wire cutters, and a key ring containing fifteen vehicle keys. I introduce wire cutters as (Exhibit 5) and the key ring andkeys as (Exhibit 6).

"H F Hammond"
(H F Hammond) Sgt

Both accused decline to cross examine this witness.

THIRD WITNESS for the Prosecution: B116507 L/Cpl Darby D H on strength No 9 Provost Coy, attached HQ CMP a soldier of the Canadian Army Overseas having been duly sworn states as follows:

On Thursday 18 Jan 45 at approximately 1800 hrs I was detailed by Sgt Hammond to remain covered behind an upturned platform approximately 10 ft to the right of vehicle CM 195419 located at the rear of the R E Sub-Station, Bordon. With me at that point was L/Cpl McKenna of No 9 Provost Coy.

At approximately 1850 hrs I saw a soldier whom I now recognize as Pte Hayes, coming around the rear part of this vehicle to the right front door which he opened. He reached in and leaned across the front seat and knocked down the door catch on the left front door. He turned back out of the car and went to go around the open front right door and as he did so the beam of his flashlight fell on my riding coat and he stood still with the beam of light on me. I close in on him and grabbed him by the arms and asked him who he was. His reply was "Just a guy". I then arrested him.

Both accused decline to cross examine this witness.

"D H Darby"
(D H Darby) L/Cpl

FOURTH WITNESS FOR THE PROSECUTION: M5477 L/Cpl McKenna H, on strength of No 9 Provost Coy, a soldier of the Canadian Army Overseas, having been duly sworn states as follows:

On 18 Jan 45 at approximately 1815 hrs I was stationed by Sgt Hammond at a point about 10 ft away from vehicle CM 195419 Ford Sedan which was parked behind Bordon R E Substation.

About 1850 hrs, 18 Jan 45 I noticed two soldiers whom I now recognize as Pte Poelzer, and Pte Hayes coming around the corner of building and stop about 11 paces behind this vehicle. Then Pte Hayes went to the right of the vehicle and Pte Poelzer went to the left of the vehicle. Pte Hayes opened the door of the vehicle and reached across the front seat. I couldn't see what he was doing. Pte Hayes then came out of the vehicle and his flashlight shone toward L/Cpl Darby. L/Cpl Darby stepped out from behind the packing case and arrested Pte Hayes. I came out from the other end of the packing case and arrested Pte Poelzer.

Both accused decline to cross examine this witness.

"H McKenna"
(H McKenna) L/Cpl

FIFTH WITNESS FOR THE PROSECUTION: M102391 L/Cpl McGladdery G, on strength No 9 Provost Coy, attached Headley Detention Barracks, a soldier of the Canadian Army Overseas, having been duly sworn states:

On 18 Jan 45 at approximately 1800 hrs I was posted by Sgt Hammond about 51 feet from Ford Sedan CM 195419 which was parked behind the R E Sub Station, Bordon.

About 1850 hrs, 18 Jan 45, I saw two soldiers whom I now recognize as Pte Hayes and Pte Poelzer walking up the road leading to the RE Sub Station which is "Out of Bounds" to all troops. There is a large sign at the entrance saying "Out of Bounds".

They came up the road within 51 feet of the car; then they stepped in the shadow of the building; they paused momentarily and then proceeded on within 21 feet of the car and paused momentarily again. As they paused on both occasions, they talked to each other. The second time they paused they were in the shadow of the trees and I couldn't see them very well. I then stepped out from where I was, and by that time they had been arrested by the car. From where I was standing originally I couldn't see this vehicle at 1850 hrs.

Both accused decline to cross examine this witness.

"G McGladdery"
(G McGladdery) L/Cpl.

The accused were cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

Both accused decline to make a statement and reserve their defence.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

Signature "F Gibson"
Officer taking Summary (Capt.

Bordon, Hants.
29 Jan 45.

Ex A DLR

EXHIBIT 1

19 Jan 45
1 C O M E R U

STATEMENT OF K1207 PTE POELZER R P J

I have been cautioned by Sgt H F Hammond of the Special Investigation Section, CMHQ, that I need not say anything unless I wished to do so but anything I do say will be taken down in writing and may be used as evidence. I clearly understand this caution and wish to make a statement. To show I understand this caution I sign my name here.

(Sgd) "R Poelzer Pte K 1207"

On the 14 Jan45, I was on strength of No 4 V R D. I left camp with Pte Hayes T of 4 V R D at 1800 hrs 14 Jan 45 and we proceeded to Bordon Railway Station. We purchased railway tickets from Bordon to Guildford. We left on the 1830 hrs train from Bordon to Bentley, changed trains to Aldershot and again changing trains from Aldershot to Guildford. Arriving at Guildford at 2030 hrs. we went to the Guildford Y M C A to get something to eat and went out and caught the bus to Woking. We stayed in the Y M C A a few minutes to see if we could pick up some gash. We saw we couldn't and went outside and took a bus. When we left the Y M C A we turned right from the door, walked straight up the hill to the Bus Stop near the Rly Station. It is just a common Bus Stop. We got on the bus and went to Woking. The fare, single, cost me 9d, Hayes and I paid our own fares.

When we arrived at Woking at about 2125 hrs and went to the Red House Hotel and drank beer, about 5 or 6 pints to closing time at 2200 hrs. We both bought beers. After closing time we walked to the Rly Station, purchased a ticket from Woking to Bentley for 2/6 single, we caught the 2228 train from Woking and arrived at Bentley at 2330 hrs. When we got off the Alton train at Bentley, the ticket puncher told us that there was no more trains to Bordon and we had to walk. We were bust. We walked down the tracks about ½ mile and then turned left on a road, we then got to the New Inn on the Bordon - Farnham Road, and then turned right to Bordon. It took us from 2330 hrs to 0600 hrs to walk from Bentley to Bordon. We stopped twice about 5 or 10 minutes. When we arrived back at 4 V R D there being no Roll Call we were not posted AWL. I washed up and had breakfast. I was on fatigues on 15 Jan 45 shovelling coal. I was paid that day and drew £1.0.0.

On Monday 15th Jan 45 I went to the Palace and saw Bing Crosby, I went to the show alone. After the show got out at 2130 hrs I went to the Cdn Y M C A for coffee and there until 2200 hrs. the YMCA closed and I went back to my billets and went to bed.

On Tuesday 16 Jan 45 I slept in until 0900 hrs. The Q/M Stores Officer came to my bunk and woke me up and I was taken to the Guard Room and locked up, stayed until 1630 hrs and a Cpl from the Orderly Room told me I was released. He told me the Sgt Major wanted to see me, I saw the Sgt Major and he told me I was on draft to 1 C O M E R U. the next day at 1530 hrs. He told me to get my equipment together. I went back and had my supper, put my equipment together after supper and I went to the NAAFI at 1900 hrs and wrote letters. I left the NAAFI at 2200 hrs and went to my billets and went to bed. I was alone at the NAAFI.

On Wed 17 Jan 45 I went to the MO, also dentist for inspection, to PO and QM Stores. I drew gaiters, drawers, shorts, 2 pair of stockings, gas cape, mess tins and helmet net and a pair of braces. I have no Greatcoat, I lost in the Greyhound Pub at Mansfield, Nottingham on 10 Dec 44. I have not had a greatcoat since. They did not query my kit shortage at the QM Store at 4 V R D as I did not have my Part 111. I was transferred to 1 C O M E R U at 1330 hrs 17 Jan 45 and have not had a kit inspection. At 1800 hrs 17 Jan 45 I went alone by bus from Bordon to a dance in a hall off the main street on the side, coming from the traffic lights towards Bordon, this is at Farnham. DLR

I stayed at the dance to 2330 hrs. I did not know anyone there, I had a few dances, I left the dance alone and went back to the street lights and hitch-hiked a ride to Borden. Arriving back to my billets at midnight. I was checked by the Guard at L O M E R U, I showed my paybook, I did not have a pass and was let go. I was up on orders on Thursday and received one days' stoppage of pay.

At 1715 hrs 18 Jan 45 I left L O M E R U and went down to see Pte Hayes, I waited for him in his billet to 1800 hrs and we were going to go to a show. We walked through the bush and saw a car, we walked over to see it and what it was doing there and were arrested. I don't know the place we walked through, it is across the road from 4 V R D,. I have seen the place in daylight but don't know what it is. I heard this was a short cut to the show (Palace) and I walked through there once before. There is one building to the right up further down the road there is one more building on the left, the car was parked behind this building on the left.

I have not had this car out, I do not know nothing about it.

When we approached the car I went to the rear side and Hayes went to the offside, I was not inside the car. I told Hayes to release the door catch on the rear door for me as I could get in. He released the catch from the inside of the car and I was just getting in when I was arrested.

I have read over this statement and been given the opportunity to add to or delete any part of it and it is the truth.

(Sgd) R Poelzer Pte M 1207

Witnessed by: H G Hammond, Sgt.

DLR.

EXHIBIT 2

20 Jan 45.
4 V R D, Bordon, Hants.

STATEMENT OF L28378 Pte Hayes T E of 4 V R D

I have been cautioned by Sgt H F Hammond of the Special Investigation Section, C M HQ, that I need not say anything unless I wish to do so, but anything I do say will be taken down in writing and may be used as evidence. I clearly understand this caution and wish to make a statement. To show I understand this caution, I sign my name here.

(Sgd) T E Hayes Pte L28378

I am on strength of 4 V R D as a hut orderly, my category is U-3, I have been at 4 V R D for two or three months, I have never been stationed at 1 C C M E R U.

On Sunday 14 Jan 45, I borrowed 5/ from Pte Carter of "E" Block, I had owed him 15/, this made a £1.0.0. I was with Pte Poelzer, then of this unit. We had supper at 1630 hrs, Poelzer and I caught a bus at Bordon Cross Roads, and went to Aldershot, this cost us 1/2, we each paid our own fare. We changed buses at Aldershot and caught a bus to Woking. I don't remember what the fare to Woking was, but we each paid our own fare, arriving at Woking about 1900-1930 hrs. We had 1/2 pint of beer each, I paid for the beer. Poelzer did not buy any beer. We were both short of money. We had the 1/2 pint of beer at the Red House. We then left went to a dance at the Hall near the Six Cross Roads, it is some kind of a church affair. We left the dance with the idea of catching a train which left at somewhere around 2330 hrs. When we got to Woking Rly Station one of the train officials told us that the last train had gone. Poelzer and I then walked up the road, caught a ride in a Can Truck from Woking to Guildford By Pass. We got off at the By Pass and waited for another hitch-hike. We waited and got a ride from Guildford By Pass over the Hogs Back to Bordon. This was a Can Army Truck. We arrived at Bordon, this would be around four o'clock on Monday morning. We got off the truck by the Fire Hall, the truck continued straight up the road, we turned right and went to our unit cook house. The cooks were preparing to get breakfast. We had a piece of bread and butter and we went over to the hut. I left Poelzer by his hut. I laid down on the top of the bed for awhile.

On Monday 15 Jan 45, we were paid in the afternoon, I drew £3.0.0, I paid Carter the £1. I owed him. Poelzer came over to my hut, we were sitting talking for a while and Poelzer and I went by bus to Aldershot. We went to a show (picture) and then to the Palais Dance Hall, we returned to Bordon on the 2228 train from Aldershot to Bordon. We got off the bus at the Police Station at Aldershot and went to the first picture show from the Police Station. I don't remember what was on at the show. When we got off the train at Bordon, Poelzer and I walked back to our unit and went to bed about 2330 hrs.

On Tuesday 16 Jan 45, Poelzer and I went to Aldershot at about 1715 hrs, we went by bus. We just mucked about the town, had a few drinks, walked around Aldershot and we both came back to Bordon on the 2228 hrs train and walked back to our unit and went to bed.

On Wednesday 17 Jan 45, Poelzer and I went again to Aldershot leaving at 1730 hrs. We again mucked about all evening we were not drinking that night. We went inside of the Palais Dance Hall, talked to the doormen. We did not dance, I don't know if Poelzer did or not. We again caught the 2228 train from Aldershot to Bordon and went to bed.

"D.L.R."

Poelzer had been transferred to 1 C O M E R U on 17 Jan 45. I wish to add on the night of the 17 Jan 45 Poelzer left me at my billet and went on to 1 C O M E RU his new unit.

On the night of 18 Jan 45 Poelzer came from 1 C O M E R U to my billet and as we had no place in particular to go, we left our camp area at 1830 hrs to go to the Methodist Home. When we left our unit lines we crossed the Street and went through the R E Yard going towards the Methodist Home. I don't know why we went this way, I have never been through this way before. We passed some buildings of the R E and following the road and Russ Poelzer saw a car standing beside a big building. We stopped and then went to have a look at it. I went to the right hand side of the car, Poelzer went to the left hand side of the car. The car was a Ford Staff Car. The door was closed on my side but not locked. I opened the front door on the right side and looked into it. Russ Poelzer said his door was locked and I released the catch on inside of Poelzer door. I then turned around, I had a flashlight on and swinging around I noticed by my light a Provost standing near the car. He came up and grabbed me. He said what have I got there, I said a flashlight. He said OK boys, others came from the bush and then he called Hammy and Poelzer and I were taken into custody.

I have been given the opportunity to add to or delete any part of this statement and it is the truth as far as I can recollect.

(Sgd) T E Hayes, Pte 128378

Witnessed by: H F Hammond, Sgt.

DLR

EXHIBIT 3

1 C O M E R U
25 Jan 45.

STATEMENT OF K1207 Pte Poelzer R P J

I have been cautioned by Sgt H F Hammond of the Special Investigation Section, CMHQ, that I need not say anything unless I wish to do so, but anything I do say will be taken down in writing and may be used as evidence. I clearly understand this caution and wish to make a statement. To show I understand this caution I sign my name here.

(Sgd) K 1207 Pte Poelzer R P J

I now wish to make a further statement giving the true facts of the stolen vehicle, and that my statement to Sgt. Hammond on the 19 Jan 45 was untrue.

I was in Pte Hayes billet on Saturday at 1400 hrs, 13 Jan 45, and we decided to go out and as we did not have any money, we didn't have money to get transportation. Hayes and I talked the transportation angle over and we decided to get a car from 1 C C O D at Peper Harow. We had supper at our unit and then we hitch-hiked to 1 C C O D. We got to 1 C C O D after dark. Hayes had a pair of wire cutters with him. We went up the hill towards 1 V R D and cut through a pasture to 1 V R D Park. When we reached the wire fence, I took the wire clippers from Hayes and cut the wire fence. This was a middle fence in the pasture, we then went up to the Park fence and there was a gate, we swung the gate open and there was a protection roll of wire at thi's gate and I cut through this roll and then we were inside of 1 V R D Park. Hayes and I walked down towards the staff car park. Hayes had been with the Convoy Section and knew the parking places. We got up to the staff cars. We got to a Ford Staff car, the one we were arrested at. I opened the front door on the left hand side and released the front hood catch, we looked in to see if there was a battery in it, there was no battery. There was no ignition lock but the wire were connected up to start. Hayes looked at one of the other staff cars and got a battery from a car and installed it in the one we had. Hayes at first said "We'll take another one". I said "No", there's a good light on this one". After we got the battery in, Hayes started the motor. I got in with him and drove up to some fire pails in the park and filled the radiator with water. Hayes drove out the way I had cut the fence and through the pasture and out to the highway. We then drove to Staines. The petrol tank was full. We stole the car at 1830-1900 hrs. 13 Jan 45. We picked up a couple of broads at Staines and went for a little ride, with the two girls. We parked for a while and took them to near their home, about 2230 hrs. Hayes and I then drove back to Bordon about 2400 hrs. We wanted to use the car on Tuesday night, so we thought about the Power Station and drove the car in and parked it against the door of a big shed at the rear. It looked to be out of sight. I gave Hayes back his wire clippers and we went to bed.

On Sunday 14 Jan 45 at 1830 hrs Hayes and I went to the place where we parked the car, it was still there. We had disconnected the main battery cable and the spark plug wire on Sat. night. Hayes connected the battery and I the spark plug wires. Hayes started the car and drove to 4 V R D by "B" Kit trucks, we had a piece of rubber hose and siphoned petrol from one of the trucks, filling our car's tank. The oil seemed to be alright.

We found a 4 gal petrol can, filled it also and placed it in the back compartment. We then got another 4 gal petrol can and filled this. We then had about 18 gals of petrol. We got the gas from a Diamond T truck.

After getting the petrol we went to Aldershot, Hayes driving and arrived there at 1930 hrs. We went out on the Hogs DLR

Back to the Doone Cafe and picked up Haye's girl friend "Titche" and took her home. She lives above a pub near the Purple Heart at Tongham. I went in the pub and Hayes stayed in the car talking to the girl. At 2015 hrs Tich went inside and Hayes and I drove to Woking. We had one or two beers in the Red House. We went out and sat in the car for three quarters of an hour, wondering what we should do. A soldier came along and said he was broke and asked us if we would take him home to Horsham. He was a Cdn and stationed at Horsham. We drove him to Horsham, got there very late as we got lost going there. We got to Horsham about 0400 hrs 15 Jan 45. After we got rid of this soldier we returned to Bordon and put the car the same place, after disconnecting the wires.

On Monday, Tuesday and Wednesday we took the car out and went to Aldershot, Sunningdale and Farnham and each night we parked the car at the same place.

On Thursday 18 Jan 45, Hayes and I went to get the car again at 1850 hrs and I went to the left side. Hayes released my door that was locked, from his side of the car. I opened the door and pulled out the lever that releases the radiator top bonnet. We were both then arrested for being in possession of the car. We did not use a flashlight to going to the car.

This is the only car we have stolen. We have not been at 1 V R D together. This was my first trip.

I have read over this statement and have been given the opportunity to add to or delete any part of it. It is the truth and given of my own free will, voluntarily.

(Sgd) Pte Poolzer R F J

Witnessed by: H F Hammond, Sgt
SIS CMHQ

DLR

Exhibit 4

4 V R D
25 Jan 45.

STATEMENT OF L 28378 Pte Hayes T E

I have been cautioned by Sgt H F Hammond of the Special Investigation Section, CMP, that I need not say anything unless I wish to do so, but anything I do say will be taken down in writing and may be used as evidence. I clearly understand this caution and wish to make a statement. To show I understand this caution I sign my name here.

(Sgd) T E Hayes Pte L28378

I have had the statement of Pte Poelzer R P J read over to me and I also know his signature, and the statement he gave on 25 Jan 45 is the truth. I now wish to give a voluntary statement of the truth of the stolen vehicle.

On Sat 13 Jan 45, Pte Poelzer came to my billet, we had no money and wanted to go out and as we did not have any transportation we decided to go to H Q 1 C C O D at Leper Harrow and steal a staff car from the Storage Vehicle Park. When I was with H Q 1 C C O D in 1943, I had been on Guard Duty at this park and knew the area. I had a pair of wire clippers that I got when I was with 2 C I R U at the unit salvage dump and I had them in my kit bag. I got the clippers from my kit bag and Poelzer and I proceeded to H Q 1 C C O D. We got a bus to Hindhead and hitch-hiked from Hindhead to Milford Cross Roads. We arrived there at about 1830 hrs. We walked down the Guildford By Pass and came to a gate of a farmers fence and cut across his pasture to another fence. I gave Pte Poelzer the wire cutters and he cut the pasture fence. We then went up to the Vehicle Park to the gate and opened the gate and Poelzer cut the wire and we pulled the wire back to make passage for a car.

We went up to the staff cars, we looked at one that there was no battery in it. I looked inside of another one there and there was a battery inside of it. I took this battery and put it in the car we were stealing. Started the car up, we got some water out of some fire buckets and put it in the rad. We then drove out of the park, closing the gate behind us and pulling the wire back in position. We drove through the pasture through the gate to the Guildford By Pass. I was driving the stolen vehicle.

We then proceeded to Staines, we picked up two girls and went for a little drive, then took them home and returned to Bordon during the night. We had decided on leaving the car so that we could find it in the morning. We had no money or transportation so we thought we would keep the car. We then hid it in behind the R E Power Plant near 4 V R D and went to bed.

On Sunday 15 Jan 45, Poelzer and I had supper at the unit and went over to where the car was at 1800 hrs. We connected the battery up and I drove the car to the 4 V R D Car Park Square, and we proceeded to siphon some gas out of a Diamond T Truck. We filled the car tank also a 4 gal and a 2 gal petrol tins and put them in the back compartment. We then drove to Aldershot, then to the Doone Cafe, Hogs Back to meet my girl, Marie Tuck, and drove her to the Anchor Pub in Tongham, where she lives. After I took her home we went to Woking, drove around Woking for a while and then met a Cdn who was broke and he wanted to go to Horsham. We told him we would take him to Horsham and in going there we got lost and we arrived at his camp at 0400 hrs. This soldier was a French Canadian. We then returned to Bordon placing the car at the R E Power House as we did the previous night. This was about 0600 hrs.

On Monday, Tuesday and Wednesday we took the stolen car

DLR

to Aldershot, Sunningdale and Aldershot. It was Wed we made out last trip to Aldershot 17 Jan 45. I got out of the car at Aldershot and Poelzer took the car back to Farnham to a dance. He picked me up at 2145 hrs. I had picked up my girl friend intending to go to a show at Aldershot, but there was to big a queue, so we had fish and chips and walked around. When Poelzer picked us up, I drove the girl back home and we returned to Bordon and parked the car at the same place.

On Thursday 18 Jan 45, Poelser and I went down to the Power Plant at 1845 hrs to get the car again. We were at the car. We did not use a flashlight going to the car, but I turned it on in the car, released the door for Poelzer to release the hood catch on his side. I turned around with the flashlight and saw a Provost standing quite close. I and Poelzer were then arrested for being in possession of a stolen vehicle.

I never been around 1 C O M E R U and did not go there Sunday night.

The car that we were found in possession of is the car we stole from 1 V R D Park.

I have read over this statement and have been given the opportunity to add to or delete any part of it and it is the whole truth.

I wish to add that this is the first and only car I have stolen.

(Sgd) T E Hayes Pte L28378

Witnessed by: H F Hammond,
SIS CMHQ.

DLR

NOTICE PURSUANT TO RULE OF PROCEDURE 16.

IN THE MATTER OF a trial by Court Martial wherein it is proposed to try together L-86378, Pte.Hayes, T.E. and K-1307, Pte.Poelzer, R.P.J., charged jointly with an offence contrary to A.A. Sec. 40.

TAKE NOTICE THAT pursuant to Rule of Procedure 16 it is intended to try you together with Pte. Hayes at a Field General Court Martial.

AND FURTHER TAKE NOTICE that if you give evidence and in doing so incriminate Pte. Hayes, jointly charged with you, you are liable to be cross-examined as to the character (R.P. 80 (D)(iii)).

Dated in the Field this 1 day of February 1945.

(R.G. Kelly) Lt.Col.
O.C. Depot Bn.
Headquarters, 1 Cdn. C.O.D.

TO:

Pte. Poelzer, R.P.J.

Comd. "F" Group, C.R.U.

NOTICE PURSUANT TO RULE OF PROCEDURE 16.

IN THE MATTER OF a trial by Court Martial wherein it is proposed to try together L-28378, Pte. Hayes, T.E. and K-1207, Pte. Poelzer, R.P.J., charged jointly with an offence contrary to A.A. Sec. 40.

TAKE NOTICE THAT pursuant to Rule of Procedure 16 it is intended to try you together with Pte. Poelzer at a Field General Court Martial.

AND FURTHER TAKE NOTICE that if you give evidence and in doing so incriminate Pte. Poelzer, jointly charged with you, you are liable to be cross-examined as to the character (R.P. 80 (D)(iii)).

Dated in the Field this 1st. day of February 1945.

(R.C. Kelly) Lt.Col.
C.C. Depot Bn.
Headquarters, 1 Cdn. C.O.D.

TO:

Pte. Hayes, T.E.

Comd. "F" Group, C.R.U.

ARMY FORM B.296 (WAR)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K 1207	Pte	Poelzer R F J	Attached 4 V R D, 1 C C O D

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	AA Sec 8(2)	1 times.
For	AA Sec 15(1)	6 times.
For	AA Sec 40	1 times.
For		times.

Date of first entry in Field Conduct Sheet 23rd June 1944.

Date of last entry in Field Conduct Sheet 12th December 1944

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is undergoing detention

beginning on the x day of x

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 24 days in military custody, *i.e.*, nil days in open arrest, 24 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 19 years.

6. The date of his attestation is 29th Nov 1943.

7. The accused's conduct in the present x

8. The accused is in possession of

Please cite military decorations (if any) held by accused.

9. If the accused's service during the present x The accused has served continuously with the colours

Date of Promotion.

being a x

being a x

being a x

Ex B DLR

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(50000) W1-42128-4/45 42,000 11/44 A.& E. W. Ltd. Gp.498 Forms/B.296/War/1

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
Mansfield Borough Petty Sessions	20 Dec 44 Mansfield Notts.	Robbery with violence, reduced to larceny from the person (Civilian charge)	Fined £2.0.0	Nil

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 14th day of February 1945 "H F Gibson" Capt

ARMY FORM B.296 (WAR)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L28378	Pte	Hayes T E	4 V R D 1 C C O D

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sect 9(2) 3 times.

For AA Sec 11 2 times.

For AA Sec 15(1) 2 times.

For AA Sec 40 8 times.

Date of first entry in Field Conduct Sheet 7 Nov 1942

Date of last entry in Field Conduct Sheet 29 Oct 1944.

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused was present at [illegible]

beginning on the [illegible]

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 24 days in military custody, *i.e.*, nil days in open arrest, 24 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 21 years

6. The date of his attestation is 30th Dec 1941

7. [illegible]

*Strike out if not applicable.

8. The accused is in possession of: CVSM & C (2 CLSPS) 40 #14, 6/ 18/1/44.

(Here the military decorations (if any) held by accused.)

9. If the accused was [illegible] with reference to the particulars

Date of Promotion.

In the substantive rank of

In the war substantive rank of

In the acting rank of

Ex B

DLR

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(86699) Wt.42129/4399 42,000 11/44 A.& E.W.Ltd. Gp.698 Forms/F.B.6/War)/4

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	4 Oct 43	AA Sect 9(2)	120 days detention	30 days remission earned under "Rules of Detention Barracks and Military Prisons".

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 12th HFG day of February 1945 "H F Gibson" Capt

No L28378 Name Hayes T E | Sqn, Battery, or Company | Corps | Date of enlistment 30/12/41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/100 (3428)

Date of last entry in Company Conduct Sheet 19-6-42 | No and date of last drunk nil | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8/8/43	Pte		AA Sec 15(1) AWL from church parade at 0830 hrs 8 Aug 43.	S/Sgt C A Collins	3 days SB	10-8-43	Capt J A Quinn, o1/c Burdon Hall Detachment.	
Field	13-8-43	Pte		AA Sec 40 Conduct to the prejudice etc did absent himself from his post when posted as a sentry.	Capt McCreath Pte Pringle NL	7 days CB	14-8-43	LtCol P M Irwin	
Field	19 Sep 43	Pte		AA Sec 9(2) Disobeying in such a manner as to show a wilful defiance of authority, a lawful command given by his superior officer when ordered to mount Guard, refused to do so.	BSM MacGowan Sgt Coulter A R L/Bdr Boetz AM Pte Gorman G	To undergo 120 days detention Forf 120 days pay & 15 days pay Total 135 days pay	4 Oct 43 Art 149(1)(b) Art 149(1)(c)	FGCM	

(PTO)

No L28378 Name Hayes T E | Sqn, Battery, or Company | Corps CIC | Date of enlistment 30-12-41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/100 (3428)

Date of last entry in Company Conduct Sheet 19-6-42 | No and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Shilo Camp, Man	7-11-42	Pte		PREVIOUS SHEET DESTROYED 14-7-42. Sec 40 AA Conduct to the prejudice in that he remained in bed after Reveille.	No cases of Drunkenness. Sgt Mealing EH	5 days CB	25-11-42	Lt C N Shea	
Field	11-2-43	Rfn		AA Sec 40 (Rusty Rifle)	CSM Ballentine Cpl McLaughlin	3 days CB	11-2-43	Capt CST Tubb	

CERTIFIED TRUE COPY.
??????????????Lt Col
OC Admin Wing
2 C I R U

E/C
DLF

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if order dispensing with trial	By whom awarded	Remarks
				RELEASED from the DETENTION BARRACK Field on Dec 23 1943 SENTENCE HAVING EXPIRED. Remission earned under "Rules of Detention Barracks and Military Prisons 38 days. COMMANDANT'S Initials HWC					
Field 11.3.44	Rfn			AWL AA 15(1) 1 day 8 hrs 30 mins	Sgt Martyn WK	3 days FP & 28 days pay FR&I 149(2)	13.3144	Maj W Kennedy	Auto Forf.
Field 22.3.44	Pte			(1) AA Sec 11 neglecting to obey Standing Orders-was not wearing respirator facepiece when required to do so. AA Sec 9(2) disobeying a lawful command given by his superior.	Cpl Monteith WL		28-3-44	LtCol JH Mothersill	Forf 28 days pay FR&I 149(2)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if order dispensing with trial	By whom awarded	Remarks
Field	29-4-43	Pte		Sec 9(2) AA WOAS disobeying in such manner as to show a wilful defiance of authority a lawful command given by his superior officer in the execution of his office, in that he at Peper Harow ~~about~~ 1400 hrs 29 Apr 43, when personally ordered by Cpl Carter (I/C Guard) to bring in wood to the Guard Room, did not do so.	Cpl Carter	21 days Field	30-4-43		Auto forf 21 days pay FR&I 149(1)(b)
In the Field	3-7-	Pte		AA9(2) Disobeying in such a manner as to show a defiance of authority a lawful command given by his superior officer, in that he when ordered to fall in with the guard did not do so.	Cpl Christianson. Sgt Drury.	28 days FP 5 28 days pay FR&I 149(1)(b)	July 1943	Lt-col PM Irwin	

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MFM 6 (AFB 122) 40/PA8/136 (3438)

No L28378 Name Hayes T E | Sqn, Battery, or Company | Corps Can Infantry | Date of enlistment 30-12-41 | GC Badges | Service or Proficiency Pay | Signature OC Company, etc JW Jackson Lt | Character

Date of last entry in Company Conduct Sheet 19 Jun 42 | No and date of last drunk NIL | Period not reckoning towards freedom from extra fine N/A | Sheet No 3

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				officer - did not wear respirator facepiece when ordered to do so. (3) AA Sec 40 conduct to prejudice - gave false information to an NCO. (4) AA Sec 40 Conduct to the prejudice					
Field	18-7-44	Pte		neglected to wear identity discs. AA Sec 40 Neglect to the prej etc neglected to shave before appearing on parade.	Lt T W Mackenzie	5 days pay FRAI 149(2)	19-7-44	Major A W Sanders	
Field	30-8-44	Pte		AA Sec 40 Improperly dressed Not wearing web belt	L7508 L/Cpl Taylor J B61972 L/Cpl Giebner G F	4 days pay FRAI 149(2)	9-9-44	Major R C Kelly	

(FTO)

CERTIFIED TRUE COPY

No K1207 Name Poelzer RPJ | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | Signature OC Company, etc | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Supplementary					
Field	15-8-44	Pte		WOAS Sec 40 Failing to appear on parade.	CSM Speirs A	14 days CB	14-8-44	Major BM McLean	
Field	18-8-44	Pte		WOAS (1) AWL 2230 hrs 18 Aug to 1050 hrs 19 Aug 44. Sec 15(1) AA 12 hrs. (2) Sec 8(2) Failing to comply with an order. (3) AWL from 1100 hrs 19 Aug to 0900 hrs 21 Aug 44. Sec 15(1) 1 day 23 hrs.	Sgt Longstaff	21 days det	21-8-44	Major BM McLean	
Field	10-10-44	Pte		Sec 15(1) AA AWL from 2300 hrs 10 Oct 44 to 0610 hrs 15 Oct 44 Absent 4 days 8 hrs & 10 min)	L/C Bertone Bloss JM	Forf 10 days pay FRAI 149(2)	20-10-44	Major Kelly	Forf 5 days pay FRAI 149 (2)(b) Stoppage of $1.12/4 Cost of apprehension.

(FTO)

No K1207 Name Poelzer RPJ | Sqn, Battery, or Company | Corps Can Inf Corps | Date of enlistment 29-11-43 | GC Badges | Service or Proficiency Pay | Signature OC Company, etc | Character

MFM 6 (AFB 122) 40/PA8/136 (3438)

Date of last entry in Company Conduct Sheet 16-2-44 | No and date of last drunk Nil | Period not reckoning towards freedom from extra fine N/A | Sheet No 1

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed 29 May 44 on completion of six months service.					
Field	23-6-44	Pte		Sec 15(1) AA AWL 1545 hrs 23 Jun 44 - 1330 hrs Jun 44. 21 hrs.	Sgt McGeachie	10 days FP 10 days loss of pay	26-6-44	Lt Col GH	A for 1 day pay
				CERTIFIED TRUE COPY				Ex C OIR	

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2-9-44	Pte		AA Sec 40 Improperly dressed. Not wearing head dress and tunic open.	L27080 SQMS Hopkinson R	4 days pay FR&I 149(2)	5-9-44	Major RC Kelly	
Field	29-10-44	Pte	Nil	Sec 11 AA neglecting to obey Part I Orders #220 d/27 Oct 44 failed to report for duty.	Cpl Scott J	7 days CB	30/10/44	Major LW Burton	

CERTIFIED TRUE COPY
Date Feb 1945
Officer having custody of Original

"T M Taylor" Lt & Adjt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18-11-44	Pte	NIL	Sec 15(1) AA AWL from 1700 hrs 12 Nov 44 to 0700 hrs 13 Nov 44. (Absent 14 hrs)	Pte Rankin R	7 days fp forf 15/11/44 7 days pay FR&I 149(b)		Lt Col F Steele	Forf 1 days pay FR&I 149(1)(a)
UK	2-12-44	Pte		AA Sec 15(1) AWL from 2200 hrs 2 Dec 44 till 0100 hrs 14 Dec 44 Absent 11 days & 3 hrs.	L/Cpl Salter	28 days pay 149(2) FR&I	28/12/44	Lt Col RC Kelly	Forf 12 days pay FR&I 149(1)(a)
Mansfield Notts.	12-12-44	Pte		WOAS Robbery with violence reduced to larceny from the person (Civilian Charge).	Mr. Thompson (Civil court)	Fined £2-0-0	20-12-44	Mansfield Borough Petty Sessions	

Certified True Copy
Date Feb 1945
Officer having custody of Original.

"T M Taylor" Lt & Adjt

WNN: 130

PTE HAYES TE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L 28378 Pte HAYES T.E., HQ CCOD

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AB 126(1)			Finding on plea in Bar - FOUND PROVEN
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

27 May 1944

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under 62.)

Sentence Awarded by the Court: ja

(Sgd) ..... (Sgd) .....
Judge-Advocate, if any. Date awarded. President. (RP 45, 50)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

ja

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 54-56, 125, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

The finding of the Court that the plea in bar of trial is proved is confirmed

I direct that the accused be not committed to penal or detention barracks under further orders.(1)
(1. AA 57A. Delete if not used.)

Date 31 May 44 (Sgd) J.E. Sager
(J. E. SAGER) Brig.
Commanding Confirming Offr. Comd "P" Group

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
L 28378 Pte Hayes T E H/LCCOD Promulgated	2 June 44	J. McLeod Lt. a/a No. 1 CCO.D.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 14 JUN 1944 JAG BRANCH

RECORDED AT CMHQ IN AB 160 ... NNN 138

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier J.E. Sager Comd "P" Gp, CRU dated 26 May 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-28378	Pte	Thomas Edward	Hayes	HQ CCOD

PROCEEDINGS REVIEWED 14 June 44
H.C. Duckett Lieut
REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

R Held in the Fd in (country) ENGLAND on (date(s)) 27 MAY 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

R A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Caution: do NOT include all relevant fms RAs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order; CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 22, RP 36, 63-70, 72, 74, 94, 103, 119, 132.)

R A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

R A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1320 hours trial commences.

R A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~As President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.(1)~~ Do you object to P G T SHALLET as shorthand writer? Ans N O SIR
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans N O SIR (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

R A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT COL	D.L. REDMAN VD	H.Q. CRU
Member	CAPT	T.J. KEARNS	1 CAMC
Member	LT	S.A. SINGER	1 CAMC
~~Judge-Advocate~~			
Prosecutor	CAPT	H.R. MacCHARLES	1 CCOD
Defending Offr	LT	J. DUKE	1 CCOD

Questions by President: Is the Prosecutor a lawyer? Ans N U Is the Defending Offr a lawyer? Ans N O (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D/ p 33.)

R A8. The accused ..... before arraignment make(s) ~~no~~ plea(s) (1)
under R P 36 NOTE ATT. COURT ADJOURNED at 1730 hrs
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the witnesses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

R A9. The accused is (~~are~~) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. ... eedings are continued on Record Form .....

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTER...

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Letter Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....Do you intend to call witnesses on your behalf? Ans..... Are they witnesses as to character only? Ans.....
(*1. RP* [redacted] *115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans.....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP* [redacted] *(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

THE ACCUSED ELECTS TO BE TRIED BY F.G.C.M.

CHARGE SHEET

The accused, L-28378, Pte. Thomas Edward HAYES, of Headquarters No. 1 Cdn. C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
Army Act
Sec. 15 (1)

While on Active Service

ABSENTING HIMSELF WITHOUT LEAVE

in that he

at Peper Harow, M.R.S124-374635, absented himself without leave from Tattoo roll at approximately 2240 hours on 14 May 44 till 0800 hours on 15 May 44. Total time absent 9 hours 20 minutes.

R. Kelly

(R.C. Kelly) Major,
O.C., Depot Battalion,
Headquarters, 1 Cdn COD.

Peper Harow

24 May 44.

To be Tried by Field General Court Martial.

J. E. Sager

(J. E. SAGER) Brigadier
Comd "F" Gp, CNU

Bordon, Hants.
26 May 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to sepdrate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
28378	Pte		Thomas Edward	Hayes	HQ 1 CCOD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 May 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge Advocate the person the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt.-Col.	D. L. Redman, E.D.	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A	Captain from	1 CARU
A	Lieutenant from	1 CARU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally, RP 105 fn 2) (Rank.)

(J. E. SACER) Brigadier

Date 26 May 44

Commanding "F" Gp, CRU

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (For Use of AFAS) (See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
KR(Can) para 557

I certify that I have this morning examined No. [illegible]....

Rank Pte.....Name Hayes T.E.....of H/1 CCOD....(Unit)

and in my opinion he is ~~unfit~~ fit* to undergo trial by Court Martial.

[signature] Capt
.....(Rank)
Unit
Medical Offr, RCAMC

Station Field.....
Date. 27 May 44.....
(of Court Martial)

x Cross out one N/A and initial.

F.G.C.M. IN THE CASE OF

L 2837[illegible] Pte HAYES, T.E., HQ CCOD

27 MAY 1944

DEFENDING OFFICER STATES

Sir,

I wish to offer a plea in bar under RP 36(A)(1), that he has been previously dealt with summarily by his Commanding Officer for this offence under AA 46.

The Defending Officer read foot note to AA 46 as follows:

"15. Where a case of absence without leave is dealt with summarily by the company, etc, commander acting as commanding officer, he must, of course, comply with the provisions of this sub-section, and should in every case, before awarding any punishment, inform the soldier of the number of days pay he forfeits under the P.W. in respect of his absence, and ask him whether he wishes to be tried by district court-martial.

16. A C.C. must never omit to ask the question prescribed by this sub-section, otherwise he acts without jurisdiction and any award of punishment could be invalid."

The Defending Officer stated that he proposed to call evidence to prove these facts under RP 36 (B).

1st WITNESS FOR THE DEFENCE on the plea in bar

A 55082 C.S.M. McADAM, S., on strength 1 CCOD, having been duly sworn states:

Q 1 On the 15 May 44 did you attend orderly room at 1 CCOD?
A 1 Yes Sir.

Q 2 Do you recall Pte Hayes on my left?
A 2 Yes Sir.

Q 3 Was he up on orders at the orderly room that day?
A 3 Yes Sir.

Q 4 During that orderly room is it true that the accused, Pte Hayes, was awarded 28 days detention without being asked whether he would accept the CO's punishment or elect to be tried by FGCM?
A 4 Yes Sir.

Q 5 Would you tell the Court just what took place at that time?
A 5 There was four men for orders as I recall it, four men in this whole parade, three were given five days and their pay, Pte Hayes was given 28 days detention.

Q 6 What were they charged with?
A 6 AWL in each case.

Q 7 Do you remember how long the absence was in the case of the accused?
A 7 It started from Tattoo on the 14 May until they reported on parade the next morning, I would say they were charged with being AWL for a little over six hours, but I would hesitate to swear the exact length of their charged absence on oath.

Q 8 It was the same charge that the accused is being tried for today as far as you know?
A 8 Yes Sir, if he is being tried for being AWL from Tattoo on the 14th until the next morning, it is the same charge.

Q 9 Are you certain that he was not asked whether he wished to be tried by FGCM.
A 9 I am absolutely certain, in fact I called the Adjutant's attention to it afterwards.

Q 10 Where is the charge sheet?
A 10 I do not know Sir.

Q 11 Was there a charge sheet?
A 11 Yes Sir.

Q 12 What happened when you drew the attention of the Adjutant to this?
A 12 He called it to the attention of Major Kelly.

Q 13 What was done then?
A 13 I do not know but I was warned to have Pte Hayes paraded again next day.

Q 14 What happened next day?
A 14 Major Kelly admitted that he had forgotten to ask if he, Pte Hayes, would be tried by him, Pte Hayes said "no sir, he would be tried by FGCM.

Q 15 Was that the same day?
A 15 No Sir, that was the next day, the 16 May.

Q 16 Was any Part II Order issued?
A 16 I am not sure Sir.

Q 17 Had the accused been marched out before you mentioned this omission to the Adjutant?
A 17 Yes Sir.

Q 18 Was he marched in again that day?
A 18 No Sir.

Q 19 When was he marched in again?
A 19 The next day Sir.

Q 20 What was the accused given 28 days detention for?
A 20 That, Sir, I can't say.

Q 21 Where did this take place?
A 21 HQ 1 CCOD, Pepper Harrow, at the orderly room, at about 0900 hrs Sir.

PROSECUTOR DECLINES TO CROSS-EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(B)

2nd WITNESS FOR THE DEFENCE

The Accused (L 28378 Pte Hayes, T.E.) on strength 1 CCOD, having been duly sworn states:

Q 22 Pte Hayes will you tell the Court, in your own words, just what happened in the orderly room on the 15 May 44, on Monday?
A 22 Sir, I was warned for orders at 1400 hrs on 14 May, I went up and was paraded in with two other chaps, Ptes Gower and McKnight, were all on the same charge, being AWL nine hours and 20 minutes, I was paraded on the same charge that is before you now. Major Kelly took my crime sheet and looked it over and said "You know what I told you", I said "Yes Sir". He gave me 28 days detention, but he did not ask me if I would be dealt with summarily or whether I wished to be tried by court martial.

Q 23 Did he say anything about that at all?
A 23 No Sir.

Q 24 What happened after that, after he awarded you 28 days detention?

A 24 We were marched out as I started to say that I should be given an opportunity to ask for court martial, we turned left as ordered and marched out, and when the parade was outside in the hall-way I asked the sgt major if the O.C. ought to ask if we would accept his punishment. He said "Yes he would have to ask that", I asked to be paraded back in and see Major Kelly but the CSM told me he would take it up for me and we were marched away to the guard room.

Q 25 When were you next paraded in?

A 25 The next day Sir, it was in the morning.

Q 26 What did Major Kelly say this time?

A 26 He told me that he had made an error by not asking me whether I wanted to take his punishment or not and then asked me if I wanted to take his punishment. I said "No Sir, I would take a court martial" and I was remanded for a summary of evidence.

Q 27 Why did you elect trial by court martial?

A 27 I wished to plead not guilty as I felt that I was not guilty I was in camp, I was not at the hut at the exact time the tattoo roll was called, I had gone to the bath room and then to the mess and was there when the roll was called. I had no warning that a Tattoo report would be taken, it had never been called before since I was there, and nothing was said about one being called this night. I came back between 2245 and 2250 hours that night, soon after the completion of the roll call and went to bed, I remained there AT ~~until~~ reveille which was at 0630 hours. There was no roll call then, the first roll call was at the parade at 0800 hours and I was there to answer my name when called.

THE PROSECUTOR DECLINES TO CROSS EXAMINE THIS WITNESS
In the opinion of the Court it is unnecessary to comply with RP 83(8)

THE DEFENDING OFFICER - stated that he had this morning phoned to the Adjutant HQ 1 CCOD and had told him of the nature of the plea in bar which he intended to make and had asked the Adjutant to send over CSM McAdam to give evidence which the Adjutant had done.

THE PROSECUTOR AND DEFENDING OFFICERS each stated that they had received no instructions from any officer at HQ 1 CCOD to produce to the Court any evidence against the evidence which has been given by the accused and CSM McAdam.

THE DEFENDING OFFICER said that was his plea in bar and his evidence in support thereof.

THE PROSECUTOR said - I do not think there is any thing for me to say respecting the plea in bar.

COURT IS ADJOURNED FOR ~~THE CONFIRMING OFFICER~~ My Report to THE CONFIRMING OFFICER

MY

Summary of Evidence in the case of L.28378 Private Hayes, T. E. on the strength of Headquarters, 1 Cdn. C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

FIRST WITNESS For the Prosecution

R.52930 Sgt. Cathers, W.S. on strength of H.Q. 1 Cdn. C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, having been duly sworn states as follows:-

"I am Transport Sgt. at H.Q. 1 Cdn.C.O.D. On the night of Sunday 14 May 44 I took the Tattoo Roll call in the huts and rooms occupied by Transport personnel between 2230 and 2240 hrs. It was approximately 2240 hrs when I took the roll call in the hut in which Pte. Hayes sleeps. I checked each bed in the hut and found Pte. Hayes missing. He was not in any of the other huts or rooms occupied by Transport personnel. He did not report during the night and I did not see him until parade at 0800 hrs 15 May 44 when he was present on the Transport Sections morning parade."

W. Cathers Sgt

The accused declines to cross examine this witness.

SECOND WITNESS For the Prosecution

R.53375 L/Cpl. DeVore, R.J. on strength of H.Q. 1 Cdn. C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-
"I was duty N.C.O. for the Transport Section, H.Q. 1 Cdn.C.O.D., for the week-end 13-15 May 44. On Sunday night 14 May 44 I accompanied Sgt. Cathers when taking the Tattoo Roll call when we checked all the huts and rooms occupied by Transport Section personnel. We checked all the beds in the hut in which Pte. Hayes sleeps, at approximately 2240 hrs, and did not find him and further did not find him in any of the buildings occupied by Transport personnel. I did not see Pte. Hayes until the next morning on the Transport Section parade at 0800 hrs 15 May 44."

R J DeVore

The accused declines to cross examine the witness.

The accused was cautioned as follows:-
"Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

The accused elects to give evidence on oath.

The accused L.28378 Pte. Hayes, T.E. on the strength of H.Q. 1 Cdn.C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-
"On the evening of 14 May 44 I was in my hut, talking to Pte. Proudlove until about 2220 or 2225 hrs. I then went down to the bath room and was there for about 5 or 10 minutes. I then went down to the kitchen where I saw Pte Gower, Pte. McKnight came in shortly after and we had a cup of tea. At approximately 2245 hours we left to go to our quarters. Pte Hogan came in just as we were leaving. We then went up to our huts, the others went into their hut and I went into my hut and went to bed. Everyone in the hut was asleep and as my bed was made down I crawled into bed without waking anyone and went to sleep. I did not realize thatthe Tattoo report had been taken or I would have gone to the Transport office and reported where I had been."

T E Hayes

FIRST WITNESS
For the Defence

A.38365 Pte Gower, G.I. on strength of Headquarters, 1 Cdn.C.C.B., R.C.O.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-
"I am employed as a driver in the Transport Section, H.Q. 1 Cdn.C.C.B. I was on duty during the week end 13 to 15 May 44. On the night of 14 May 44 I was in the kitchen in the basement of Peper Harow mansion for lunch between 2230 and 2240 hrs. Pte. Hayes was also there, also Pte Hogan and another driver. I had the only cup so we used it alternately to have our tea. After having our tea Pte Hayes and I went up to our huts at approximately 2245 hrs. He went into the first hut where he sleeps and I went on to the second hut, where I sleep."

W Gower

The accused declines to cross examine this witness.

SECOND WITNESS
For the Defence

B.81231 Pte. Proudlove, A.W. on the strength of H.Q., 1 Cdn.C.C.B., R.C.O.C., a soldier of the Canadian Army Overseas having been duly sworn states as follows:-
"I live in the next hut to Pte Hayes. On the evening of Sunday 14 May shortly after 2200 hrs Pte Hayes came in to my hut and sat down. We talked for ten or fifteen minutes when Pte Hayes left saying that we was going to the toilet and then down to the kitchen. It would be approximately 2225 hrs when Pte Hayes left. I then went to bed and did not see him again that night."

A.W. Proudlove

The accused declines to cross examine this witness.

THIRD WITNESS
For the Defence

B.48775 Pte Hogan, J. on the strength of H.Q. 1 Cdn. C.C.B., R.C.O.C., a soldier of the Canadian Army Overseas having been duly sworn states as follows:-
"I am a driver in the Transport Section, H.Q. 1 Cdn.C.C.B. On Sunday 14 May 44 I was a duty driver and came in off a trip shortly after 2200 hrs. I stayed around the Transport Office until some where between 2230 and 2250 hrs. There being no trips booked I then went down to the kitchen to have my lunch. When I got to the kitchen I saw Ptes Hayes, Gower and McKnight who are also drivers. They had apparently finished their lunch and left shortly after I arrived. I did not see any of them afterwards that night."

J Hogan

The accused declines to cross examine this witness.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c)(d)(e),(f) and (g) have been complied with.

H.K. McCharles

(H.K. McCharles) Capt,
Officer detailed to take
Summary of Evidence.

Peper Harow

17th May 44

Additional Summary of Evidence in the case of L28378 Pte. Hayes T.B. on the strength of H.Q. No. 1 Cdn. C.O.D. R.C.O.C., a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1ST WITNESS

for the prosecution
RECALLED

K52930 Sgt. Cathers W.S. on the strength of H.Q. No. 1 Cdn. C.O.D. R.C.O.C., a soldier of the Cdn. Army Overseas, having been duly sworn, states:-

I am Transport Sgt. at H.Q. No. 1 Cdn. C.O.D. and Pte. Hayes, whom I now recognize, is a driver on strength of the Transport Section, H.Q. No. 1 Cdn. C.O.D.

On the night of 14 May 1944, Pte. Hayes did not have a pass permitting him to be away from his quarters at Tattoo Roll Call, nor was he on any duty which would keep him from being present at Tattoo Roll Call.

The accused declines to cross examine the witness.

W.S. Cathers Sgt
K52930.

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

After the above caution, the accused declines to make an additional statement.

I certify that the foregoing Additional Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

H.K. McCharles - Capt.
Officer detailed to take Summary of Evidence.

Peper Harow
23 May 1944.

LIST OF WITNESSES FOR PROSECUTION

K.52930	Sgt. Cathers W.S.	Headquarters, 1 Cdn.C.O.D., R.C.O.C.
K.53375	L/Cpl.DeVore, R.J.	Headquarters, 1 Cdn.C.O.D., R.C.O.C.

LIST OF WITNESSES FOR DEFENCE

A.38365	Pte. Gower, G.E.	Headquarters, 1 Cdn.C.O.D., R.C.O.C.
B.81231	Pte. Proudlove A.W.	Headquarters, 1 Cdn.C.O.D., R.C.O.C.
E.48775	Pte. Hogan, J.	Headquarters, 1 Cdn.C.O.D., R.C.O.C.

LIST OF EXHIBITS

NIL

I, L.28376 Pte. Hayes, T.E. of Headquarters, 1 CCOD, RCOC, wish to have Major E.M.Miller of No. 1 CCHU represent me at my trial.

T.E. Hayes
L.28376 Pte. Hayes, T. E.

Certified I have received the following documents:-

Summary of Evidence
Copy of Charge Sheet
List of Witnesses for Defence and Prosecution.

T.E. Hayes
L.28376 Pte. Hayes, T. E.

Summary of Evidence in the case of L.28378 Private Hayes, T. E. on the strength of Headquarters, 1 Cdn. C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

FIRST WITNESS for the Prosecution

K.52930 Sgt. Cathers, W.S. on strength of H.Q. 1 Cdn. C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, having been duly sworn states as follows:-

"I am Transport Sgt. at H.Q. 1 Cdn.C.O.D. On the night of Sunday 14 May 44 I took the Tattoo Roll call in the huts and rooms occupied by Transport personnel between 2230 and 2240 hrs. It was approximately 2240 hrs when I took the roll call in the hut in which Pte. Hayes sleeps. I checked each bed in the hut and found Pte. Hayes missing. He was not in any of the other huts or rooms occupied by Transport personnel. He did not report during the night and I did not see him until parade at 0800 hrs 15 May 44 when he was present on the Transport Sections morning parade."

W.S. Cathers Sgt

The accused declines to cross examine this witness.

SECOND WITNESS for the Prosecution

K.53375 L/Cpl. DeVore, R.J. on strength of H.Q. 1 Cdn. C.C.D., R.C.O.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-
"I was duty N.C.O. for the Transport Section, H.Q. 1 Cdn.C.O.D., for the week-end 13-15 May 44. On Sunday night 14 May 44 I accompanied Sgt. Cathers when taking the Tattoo Roll call when we checked all the huts and rooms occupied by Transport Section personnel. We checked all the beds in the hut in which Pte. Hayes sleeps, at approximately 2240 hrs, and did not find him and further did not find him in any of the buildings occupied by Transport personnel. I did not see Pte. Hayes until the next morning on the Transport Section parade at 0800 hrs 15 May 44."

R J DeVore

The accused declines to cross examine the witness.

The accused was cautioned as follows:-
"Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

The accused elects to give evidence on oath.

The accused L.28378 Pte. Hayes, T.E. on the strength of H.Q. 1 Cdn.C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-
"On the evening of 14 May 44 I was in my hut, talking to Pte. Proudlove until about 2220 or 2225 hrs. I then went down to the bath room and was there for about 5 or 10 minutes. I then went down to the kitchen where I saw Pte Gower, Pte. McKnight came in shortly after and we had a cup of tea. At approximately 2245 hours we left to go to our quarters. Pte Hogan came in just as we were leaving. We then went up to our huts, the others went into their hut and I went into my hut and went to bed. Everyone in the hut was asleep and as my bed was made down I crawled into bed without waking anyone and went to sleep. I did not realize thatthe Tattoo report had been taken or I would have gone to the Transport office and reported where I had been."

T. E. Hayes

FIRST WITNESS
For the Defence

A.38365 Pte Gower, G.E. on strength of Headquarters, 1 Cdn.C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-
"I am employed as a driver in the Transport Section, H.Q. 1 Cdn.C.O.D. I was on duty during the week end 13 to 15 May 44. On the night of 14 May 44 I was in the kitchen in the basement of Peper Harow mansion for lunch between 2230 and 2240 hrs. Pte. Hayes was also there, also Pte Hogan and another driver. I had the only cup so we used it alternately to have our tea. After having our tea Pte Hayes and I went up to our huts at approximately 2245 hrs. He went into the first hut where he sleeps and I went on to the second hut, where I sleep."

G.E. Gower

The accused declines to cross examine this witness.

SECOND WITNESS
For the Defence

B.81231 Pte. Proudlove, A.W. on the strength of H.Q., 1 Cdn.C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas having been duly sworn states as follows:-
"I live in the next hut to Pte Hayes. On the evening of Sunday 14 May shortly after 2200 hrs Pte Hayes came in to my hut and sat down. We talked for ten or fifteen minutes when Pte Hayes left saying that we was going to the toilet and then down to the kitchen. It would be approximately 2225 hrs when Pte Hayes left. I then went to bed and did not see him again that night."

A.W. Proudlove.

The accused declines to cross examine this witness.

THIRD WITNESS
For the Defence

B.48775 Pte Hogan, J. on the strength of H.Q. 1 Cdn. C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas having been duly sworn states as follows:-
"I am a driver in the Transport Section, H.Q. 1 Cdn.C.O.D. On Sunday 14 May 44 I was a duty driver and came in off a trip shortly after 2200 hrs. I stayed around the Transport Office until some where between 2230 and 2250 hrs. There being no trips booked I then went down to the kitchen to have my lunch. When I got to the kitchen I saw Ptes Hayes, Gower and McKnight who are also drivers. They had apparently finished their lunch and left shortly after I arrived. I did not see any of them afterwards that night."

J. Hogan

The accused declines to cross examine this witness.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c)(d)(e),(f) and (g) have been complied with.

H.K. McCharles Capt

(H.K. McCharles) Capt,
Officer detailed to take
Summary of Evidence.

Peper Harow

17 May 44

LIST OF WITNESSES FOR PROSECUTION

K.52930 Sgt. Cathers W.S. Headquarters, 1 Cdn.C.O.D., R.C.O.C.
K.53375 L/Cpl.DeVore, R.J. Headquarters, 1 Cdn.C.O.D., R.C.O.C.

LIST OF WITNESSES FOR DEFENCE

A.38365 Pte. Gower, G.F. Headquarters, 1 Cdn.C.O.D., R.C.O.C.
B.81231 Pte. Proudlove A.W. Headquarters, 1 Cdn.C.O.D., R.C.O.C.
E.48775 Pte. Hogan, J. Headquarters, 1 Cdn.C.O.D., R.C.O.C.

LIST OF EXHIBITS

NIL

I, L.28378 Pte. Hayes, T.E. of Headquarters, 1 CCOD, RCOC, wish to have Major E.M.Miller of No. 1 CORU represent me at my trial.

T.E. Hayes
L.28378 Pte. Hayes, T. E.

Certified I have received the following documents:-

Summary of Evidence
Copy of Charge Sheet
List of Witnesses for Defence and Prosecution.

T.E. Hayes
L.28378 Pte. Hayes, T. E.

Additional Summary of Evidence in the case of L26378 Pte. Hayes T.E. on the strength of H.Q. No. 1 Cdn. C.O.D. R.C.O.C., a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1ST WITNESS

for the prosecution
RECALLED

K52930 Sgt. Cathers W.B. on the strength of H.Q. No. 1 Cdn. C.O.D. R.C.O.C., a soldier of the Cdn. Army Overseas, having been duly sworn, states:-

I am Transport Sgt. at H.Q. No. 1 Cdn. C.O.D. and Pte. Hayes, whom I now recognize, is a driver on strength of the Transport Section, H.Q. No. 1 Cdn. C.O.D.

On the night of 14 May 1944, Pte. Hayes did not have a pass permitting him to be away from his quarters at Tattoo Roll Call, nor was he on any duty which would keep him from being present at Tattoo Roll Call.

The accused declines to cross examine the witness.

W B Cathers Sgt
K 52930

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

After the above caution, the accused declines to make an additional statement.

I certify that the foregoing Additional Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

H.K. McCharles - Capt.
Officer detailed to take Summary of Evidence.

Peper Harow
23 May 1944.

F Gp

FORM OF APPLICATION FOR A COURT-MARTIAL

H.Q., 1 CCOD, RCOC. Regiment

Station Field Date 19 May 19 44

Application for a Field General Court-Martial

Sir,

I have the honour to submit One charge against

No. L.26378 Pte. Hayes, T.E. H.Q., 1 C.C.O.D., R.C.O.C.

of the Unit under my command, and request you will obtain the sanction of Comd "F" Gp, CMU that a Field General Court-Martial may be assembled for his trial at Feper Harow

The case was investigated by (a) Capt. H. E. McCharles
Headquarters, 1 Cdn.C.O.D., R.C.O.C.

A Court of Inquiry was held on (b) (date)

at (Station).

President } Ranks, names and corps.
Members }

The accused is now at Jasper Camp His general character is (c) Good.

I enclose the following documents (d):—

1. One Charge Sheet (in duplicate) (e).
2. Summary of Evidence, original (f) and One ~~copy~~ R&K
3. ~~Original Exhibits (g)~~. R&K
4. List of witnesses for the prosecution and defence (with their present stations or addresses) (g).
5. ~~List of Exhibits (h)~~. R&K
6. ~~Correspondence (g)~~. R&K
7. Statement as to character (M.F.B. 355) and regimental and company, etc., conduct sheets (or Field Conduct sheets) of accused (g).
8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (R.P. 14 (B)) (h).

Your obedient servant,

Signature of Commanding Officer

(R. C. Kelly) Major.
O. C., Depot Battalion,
Headquarters, 1 Cdn COD.

To: Comd
"F" Gp,
C.M.U.

MEDICAL OFFICER'S CERTIFICATE

I certify that No. L.26378 Pte. Hayes, T.E. H.Q. 1 C.C.O.D., RCOC Regiment, is fit to undergo trial by Court-Martial.

Signature of the Medical Officer.

*Insert "fit" or "unfit."

(a) Here insert name of:—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence (R.P. 19 (B) (iii)).
(b) To be filled in if there has been a Court of Enquiry respecting any matters connected with the charges; otherwise to be struck out (R.P. 19 (B) (iii)).
(c) To be filled in by the Commanding Officer.
(d) Any items not applicable to be struck out.
(e) One copy to be sent to the President; one copy to be filed with the application for trial.
(f) Original summary of evidence to be sent to the President.
(g) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.
(h) 3 and 8 to be sent to the President.
(If the accused has elected to be tried under A.A. 46 (8), the fact should be recorded at the top of this form.)

M.F.B. 321
40-P & S-650

YY-11

PTE HAYES J.L.

104

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G.48055 Pte Joseph Lawrence Hayes, No 15 Coy C.F.C.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15(1)	Guilty	Guilty	
2nd	AA 71	Not Guilty	Not Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn b.)

~~At present under sentence of~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 85 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To suffer field punishment for fourteen days and to forfeit all ordinary pay for a period of fourteen days

(Sgd) W. H. Waugh Capt. — Judge-Advocate, if any.

P Dec 43 — Date awarded.

(Sgd) [illegible] — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) C. E. H. Jones Colonel

Date 27 Dec 43

Commanding Canadian Forestry Corps

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G.48055. Pte. Joseph Lawrence Hayes.	27th Dec. 43.	C L Allen Lieut & Adjt No. 15 Coy C.F.C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

CPA86 (1) [Item of AFA3] 40-P.G.S. 11658 (2664)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Colonel C.E.H. Jones Comd C.F.C. dated 26 Nov 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-48055	Pte	Joseph Lawrence	Hayes	No 15 Coy C.F.C.

Proceedings Reviewed

Chas Allen

3 Jan 44

Reviewing Officer (J.A.G.) C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Scotland on (date(s)) 6 and 7 Dec 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fore RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet, if attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3) No transcript

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 10.30 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to an interpreter?~~ Ans ~~No~~ ~~The Interpreter is sworn.~~) Do you object to G-45166 Lt/Sgt Kennedy, R.C. as shorthand writer? Ans No

The shorthand writer is sworn.(1) No witnesses

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2) No transcript

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 181, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	J. B. Dunlop	O/C Mil Tng HQ. C.F.C.	
Member	Major	O. J. Hamel-Roy	H.Q.	No 9 Coy C.F.C.
Member	Capt	D. B. Baxter		No 24 Coy C.F.C.
Judge-Advocate	Capt	W. H. Waugh	Gen List	C.M.H.Q.
Prosecutor	Major	J. T. Shallington		H.Q. C.F.C.
~~Supplg Comd Rep~~ Defending Offr	Capt	Thomas Stephen Burns, Solicitor & Barrister Kingswell		15 Coy C.F.C.

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Confirming Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See QR p 32.)

A8. The accused before arraignment make(s) (no) plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~were~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. Not Guilty

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternatives, see RP 37(*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83–85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No Sir.(5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s).~~ But see Transcript. Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex D, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

With But see Transcript

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No Sir.(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) ~~final~~ opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. ~~Final~~ evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the second charge(s).(2) The Court is re-opened, and the President announces that the submission is disallowed on the ~~charge(s), and~~ allowed on the second charge(s), and that, accordingly, the trial will proceed ~~on the former~~, but the accused is (are) found Not Guilty on the latter charge(s).(3) But see Transcript

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans. .....

Do you intend to call witnesses on your behalf?

Ans. ..... Are they witnesses as to character only? Ans. .....

(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form D or E.*)

~~For provisions after charge of plea of Guilty is not finally accepted, see Transcript.~~ As to the finding charge

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character.1(1)

Ans. Yes I should like witnesses.

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E and Ex F respectively.(3)

(*1. MFR 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment 1(1) Ans. I will say something in mitigation (in transcript)(2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to answer any questions, given or permissibly sought which would affect the amount of punishment. RP 37(F) fn 1.*)

Court to record Evidence given in Court about character of accused

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) PD

(*1. When several accused tried separately see RP 76(B). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 208, 330, 563-566, Overseas RO 3099, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"B"

CHARGE SHEET

The accused, No.G-48055 Private Joseph Lawrence [illegible], No 15 Company, Canadian Forestry Corps, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

at Kiltarlity, Inverness-shire, Scotland on 14 September 1943 absented himself without leave from 1530 hours to 1730 hours on the said date (time absent 4 hours).

Second Charge
Sec 4(1)
Army Act

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE that is to say assaulting, intent to impair the efficiency of machinery used in the performance of essential services, contrary to Defence (Gen) Regulations, 1939, Regulation 58(1)

In that he

on Tuesday, 14th day of September 1943 between 1800 hours and 1930 hours at the Canadian Forestry Corps Sawmill, Allarburn, Parish of Kiltarlity, Inverness-shire, Scotland did unlawfully cut several balata transmission belts and damage three power plants in the said sawmill with intent as aforesaid.

Remanded to O.C. No.5 District, C.F.C.

In the Field
11 Nov. 1943

D.A. Mitchell
(D.A. Mitchell) Major
O.C. No.15 Coy. C.F.C.

Remanded for Field General Court Martial

In the Field
11th Nov 1943

N.C. Ferguson
(N.C. Ferguson) Lt.-Col.
O.C. No.5 District C.F.C.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

In the Field
26 Nov. 1943

C.C.F. Jones
(C.C.F. Jones) Colonel
Commander,
Canadian Forestry Corps.

"A"

Proceedings of a FIELD GENERAL COURT MARTIAL held at H.Q., No. 15 Coy Canadian Forestry Corps, in the Field in Scotland, on Monday, the 6th day of December, 1943, in the case of No. G-48055 Pte. Joseph Lawrence HAYES, No. 15 Coy C.F.C.

President:- Lt.-Col. J.H. Dunlop,
O. i/c Mil.Trg. H.Q., C.F.C.

Member:- Major O.V. Maude-Roxby, M.C.,
No. 19 Coy C.F.C.

Member:- Capt. G.D. Baxter,
No. 28 Coy C.F.C.

Judge-Advocate:- Capt. W.H. Waugh, General List.

Waiting Member:- Major K.W. Carlisle,
No. 10 Coy C.F.C.

Prosecuting Officer:- Major J.T. Shillington,
H.Q., C.F.C.

Defending Officer:- Capt. F.S. Perry,
No. 18 Coy C.F.C.

Defending Counsel Mr Gilmour Hepburn Burness Solicitor and Law Agent Dingwall Scotland

Officers under instruction:-

Major K.W. Carlisle, No. 10 Coy C.F.C.
Capt. R.K. Adamson, No. 15 Coy C.F.C.
Lieut. R. Crabtree, No. 10 Coy C.F.C.
Lieut. J.C.L. Akin, No. 15 Coy C.F.C.
Lieut. D. Gray, No. 27 Coy C.F.C.
Lieut. G.H. Rennie, No. 18 Coy C.F.C.
Lieut. R.M. Calder, 5 Dist H.Q., C.F.C.

Court Stenographer:- G-45160 Sgt. Henneberry, H.J.,
J.A.G. Branch, C.M.H.Q.

The order convening the Court, the Charge Sheet and the Summary of Evidence are laid before the Court.

The Court satisfy themselves as provided by R.P.22 & 23.

The accused is brought before the Court.

At 10.30 o'clock the trial commences.

J.A. I must make an explanation to both of you accused at the present moment. We are at the moment going to read the ~~Confirming~~ orders to both of you and ask you whether you object to any members of the Court or the shorthand writer. Do you object to G-45160 Sgt. Henneberry, H.J. of C.M.H.Q. as shorthand writer on your trial?

Both accused answer "No, Sir."

Shorthand writer duly sworn.

The order convening the Court, (marked "A") in the case of G-48037 Pte. Ernest Patrick Owens, No. 15 Coy C.F.C., is read by the President. The names of the President and members and Judge-Advocate are read over in the hearing of the accused, and they severally answer their names.

Pres. Pte. Owens, do you object to me or any of the officers whose names have been read over to you as members of the Court?

Ans. No, Sir.

The order convening the Court, (Marked "A") in the case of G-48055 Pte. Joseph Lawrence Hayes, No. 15 Coy C.P.C., is read by the President. The names of the President and members and Judge-Advocate are read over in the hearing of the accused, and they severally answer their names.

Pres. Pte. Hayes, do you object to me or any of the officers mentioned in this list?

Ans. No, Sir.

President, members and Judge-Advocate are duly sworn.
Officers under instruction are duly sworn.
Prosecutor produces Medical Certificate that accused is fit to undergo trial by court-martial.
EXHIBIT "C"

J.A. With which accused will we proceed first?

Pros. I suggest, Mr. President, we proceed with the accused Owens.

J.A. Any objection by the Defanding Officer.

Def. No objection.

At this point in the proceedings the trial of G-48055 Pte. Joseph Lawrence Hayes, No. 15 Coy C.P.C. is adjourned until 10.15 o'clock on the 8th day of December, 1943.

On the 8th day of December, 1943, at 10.15 o'clock, the Court re-assembled pursuant to adjournment, present the same members as when adjourned.
Prosecutor produces Medical Certificates that accused is fit to undergo trial by court-martial.
EXHIBIT"C1"
EXHIBIT"C2"

The Charge Sheet is signed by the President, marked "B" and annexed to the proceedings.
EXHIBIT "B"

The accused is arraigned upon each charge in the above mentioned charge sheet.

Q.1. Are you guilty or not guilty of the first charge against you, which you have heard read?

A.1. Guilty, Sir.

Q.2. Are you guilty or not guilty of the second charge against you, which you have heard read?

A.2. Not Guilty, Sir.

J.A. Private Hayes, you have pleaded Guilty to the first charge and Not Guilty to the second. The first charge is Absent Without Leave for a period of four hours.

Q.3. Do you understand the nature of that particular charge?

A.3. Yes, Sir.

J.A. And owing to the fact that you have pleaded Guilty to the first charge, the procedure to be followed is that the charge on which you have pleaded Not Guilty will be tried ahead of that particular charge. There will not be a regular trial in respect to the charge to which you have pleaded Guilty but merely a consideration of sentence to be awarded, after you have been given an opportunity to make a statement in reference to the charge, call wit

as to character and make an address in mitigation of punishment.
We will now proceed on the other charge.

Pres. Q.4. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence?

A.4. No, Sir.

J.A. Do you wish to make an opening address on the second charge?(to the Prosecutor).

Pros. Mr. President, Gentlemen of the Court, I have been so authorized by the Convening officer and I do not intend to produce any evidence in this case.

Def. Mr. President, in view of the Prosecutor's submission, I move, therefore, that the second charge be dismissed.

The Court is closed to consider the motion.
The Court allow the motion.
The Court is re-opened, the accused again brought before it, and their decision announced.

Pres. The Court has allowed the motion as proposed by the Defending Officer, and therefore, Private Hayes, you are found Not Guilty on the second charge.

J.A. You will now take your seat and we will proceed with the trial on the charge to which you have pleaded Guilty. Private Hayes, the Court will now receive any statement you desire to make in reference to the charge. If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty, or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined, we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.

Q.5. Do you wish to make a statement?
A.5. No, Sir.

J.A. I will now read the Summary of Evidence as it affects this charge - Sergeant Parker's evidence and Lieut. Murphy's. (Reads same).

Summary of Evidence - EXHIBIT "D"

Q.6. Do you wish to give evidence yourself or to call any witnesses as to your character?
A.6. Yes, Sir, a character witness.

1st Witness Defence — Lieut. G.C. Murphy, Officer i/c Kiltarlity Mill, No. 15 Coy Canadian Forestry Corps, being duly sworn, is examined by the Defending Officer:

Q.7. Will you give your name, rank, and unit?
A.7. Gerald Cecil Murphy, Lieutenant, No. 15 Coy Canadian Forestry Corps.

Q.8. And you are the Officer in charge of Kiltarlity Mill, are you?
A.8. Yes.

Q.9. Do you recognize the accused?
A.9. Yes, Sir.

Q.10. And who is he?
A.10. Private Hayes.

Q.11. Can you tell the Court how long Hayes worked for you?
A.11. Sir, I was - as I said - officer in charge of Kiltarlity Mill for six months and I have known Private Hayes during that time.

Q.12. How have you found him; tell the Court something of his character.
A.12. Private Hayes always worked in the yard, Sir, and carried out whatever duties he was assigned to, and I - at no time did I ever see Hayes doing anything wrong, particularly around the yard, and I always found him carrying out his duties as he should do. He always seemed to me to be a very cheerful soldier.

The Prosecutor declines to cross-examine this witness.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

Def. The Defence has no more witnesses.

The Prosecutor produces Statement as to Character and Particulars of Service, and certified true copy of Conduct Sheet, purporting to refer to the accused, which he submits to the Defending Counsel for examination, and then to the Court for admission in evidence.

Statement as to Character and Particulars of Service of Accused. EXHIBIT "E"

Certified copy of Conduct Sheet EXHIBIT "F"

J.A. Do you wish to address the Court on the Statement and Conduct Sheet, and in mitigation of punishment?

Def. I do want to say something in mitigation, briefly. I would ask the Court to deal leniently with the accused on this offence, because it appears from the reading of the Summary that in a sense the offence was condoned, inasmuch as he was allowed to stay absent even after being found there. It also appears from the reading of the Summary that the mill had been closed down partially throughout that day and there was apparently no urgent need for this man's services; it was in effect something bridging on a holiday for the yard crew of which the man was a part. I would ask the Court to consider that, and also the time that he has already spent under arrest, and his character and conduct as described by Mr. Murphy.

J.A. At this moment I feel it is my duty as Judge-Advocate to advise the Court as follows. In viewing the ~~statement~~ plea in mitigation of the Defending Officer he has brought up that in the case of Absent Without Leave there may be the question of condonation somewhat, and that the men were permitted to have a holiday.

That discloses to me, as Judge-Advocate, that the accused has a defence to this charge of Absent Without Leave, and I therefore recommend to the Court that they change the plea of the accused from Guilty to the charge of Absent Without Leave to Not Guilty, and proceed with the trial on the first charge accordingly, and that the Court be now closed to consider what I have just recommended.

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The Court is closed to consider the statement.
The Court decides to advise accused to change his plea of Guilty to Not Guilty on the first charge.
The Court is re-opened and the accused again brought before it, and their decision announced.

Pres. The plea of Guilty on the first charge has been changed to a plea of Not Guilty by the Court. The trial will proceed.

Def. Sir, may I ask the Judge-Advocate, would it be possible to have my remarks in regard to condonation struck from the record?

J.A. That would be impossible at this stage; you have already made them and the Court have already made a decision

1st Witness Prosecution — Lieut. G.C. Murphy, Officer i/c Kiltarlity Mill, No. 15 Coy Canadian Forestry Corps, is examined by the Prosecutor on his former oath:

Q.13. Mr. Murphy, you have already been sworn in this case. What is your full name, rank, and unit?
A.13. Gerald Cecil Murphy, Lieutenant, No. 15 Coy Canadian Forestry Corps.

Q.14. I believe you told my learned friend before that your duty in No. 15 Coy was officer in charge Kiltarlity Mill?
A.14. Yes, Sir.

Q.15. Do you recall on the afternoon of 14th September a closing down of the Kiltarlity Mill?
A.15. Yes, Sir.

Q.16. Do you know the accused?
A.16. Yes, Sir.

Q.17. Where did the accused work?
A.17. The accused worked, Sir, in the yard.

Q.18. Where?
A.18. Sometimes, Sir, he would pile lumber, other times stripping gangs, you know.

Q.19. Where?
A.19. All I can say to that, Sir, is in the yard.

Q.20. In the yard of what?
A.20. The millyard, Sir.

Q.21. Was he working there on the 14th September?
A.21. Yes, Sir.

Q.22. Did he work there all day?
A.22. No, Sir, he, due to a misfortune to the mill where we had to close down the mill for repairs, all hands were ordered to carry out other duties other than their own, and in the - what shall I say - excitement some men weren't able - we were not able to give supervision to all men, therefore Private Hayes with several other men went Absent Without Leave.

Q.23. You were the officer in charge of that party at the mill?
A.23. Of the whole party.

Q.24. Did you give authority to Hayes or any other soldier to leave the millyard?
A.24. No, Sir.

Q.25. Did you say Private Hayes did leave the millyard?
A.25. Yes, Sir.

JMP

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Q.26. Did you at any subsequent time during the afternoon give authority to Private Hayes to remain away from the millyard?
A.26. No, Sir.

Q.27. Did you during the afternoon know where he was?
A.27. Yes, Sir.

Q.28. What steps if any did you take to have him brought back?
A.28. At three o'clock, Sir, when I was told of his absence I gave orders to one of the several mill sergeants to order him back, along with his companions, to the mill. On being told that this order.

J.A. Don't say what you were told; say as a result of what was reported to you.

A.28. As a result of the failure of Hayes and his companions cont'd. to return, I, on my own authority, decided that at that late time they would be of no use to me at the mill and would be a hindrance to the remainder of the men with whom they were working.

Q.29. Why would they be a hindrance?
A.29. Because a man who has been drinking as long as they were drinking naturally would be of no use on a job.

Q.30. Yes; was it, do you know, or can you tell the Court whether or not it was your intention at that time to permit them to carry on there, by way of condoning their absence.
A.30. No, Sir, I did not condone their absence, but as I say I decided in my own mind that that was the only course I could adopt then, and I decided to report their absence to Officer Commanding, 15 Coy at the close of the day - which I did.

Q.31. And what action was taken as a result?
A.31. The O.C. gave the necessary orders for their apprehension.

Witness cross-examined by Defending Officer.

Q.32. You discovered, Mr. Murphy, that Hayes had gone at three o'clock?
A.32. Yes, Sir.

Q.33. And it was at what time that you sent the sergeant out to pick him up?
A.33. At three o'clock, Sir.

Q.34. And when did he come back?
A.34. The sergeant you mean?

Q.35. Did Hayes come back?
A.35. No, Sir.

Q.36. Do you know why he didn't come back?
A.36. I only know what I assumed to be the reason, Sir.

Q.37. But you decided that he was of no use to you that afternoon?
A.37. I decided, Sir, in my own opinion, that these men would be of no use to me.

Q.38. Were any other men away from your crew?
A.38. Three others.

Q.39. Were they charged as well?
A.39. Yes, Sir.

Q.40. All charged?
A.40. Yes, Sir.

The Prosecutor declines to re-examine this witness.

J.A.M.

Witness questioned by Judge-Advocate.

Q.41. Did Private Hayes return to work during the course of that afternoon?
A.41. No, Sir.

Q.42. What time did the mill close down that day?
A.42. 5:30.

Q.43. 1730 hours?
A.43. Right, Sir.

Q.44. Did you see Private Hayes subsequently that day?
A.44. I saw Private Hayes at 7:15, which would be 1915 hours; I saw him again within the next quarter of an hour.

Q.45. At these times when you saw him, was he at work?
A.45. No, Sir.

Q.46. Where was he?
A.46. Well, I saw him on one occasion in the millyard; within the next fifteen minutes I spoke to him at the telephone kiosk.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(8).

The witness withdraws.

2nd witness Prosecution — G-48173 Sergeant R.A. Parker, Mill Sergeant, No. 15 Coy Canadian Forestry Corps, being duly sworn, is examined by the Prosecutor.

Q.47. What is your regimental number, rank, name and unit?
A.47. G-48173 Sergeant Parker, R.A., 15 Coy Canadian Forestry Corps.

Q.48. What are your duties with No. 15 Coy?
A.48. Mill sergeant.

Q.49. Do you recall the afternoon of 14th September, 1943?
A.49. I do.

Q.50. Do you know the accused Private Hayes?
A.50. Yes, Sir.

Q.51. What do you recall about the afternoon of the 14th September?
A.51. That the mill broke down around one o'clock, started again about two.

Q.52. Was Private Hayes employed at the mill on that day?
A.52. I think, Sir, they brought him in the yard to work that afternoon.

Q.53. But was he employed at the mill that day?
A.53. Yes, Sir.

Q.54. At the millyard?
A.54. Yes, Sir.

Q.55. Do you know whether he worked there on that day?
A.55. He worked during the morning, but in the afternoon he was away.

Q.56. In the afternoon he was away; where was he in the afternoon?
A.56. As far as I know at MacKenzies Pub.

Q.57. And where is MacKenzies Pub in relation to the millyard?
A.57. About two hundred yards from the mill. on the mill site

Q.58. On the mill site?
A.58. No, it is not on the mill site.

Q.59. Did you give authority to Private Hayes to leave the mill site?
A.59. No, Sir.

Q.60. You, I believe, said that you saw Private Hayes at MacKenzies Pub?
A.60. Yes, Sir.

Q.61. How did it happen that you saw him there?
A.61. I was sent over.

Q.62. With what instructions?
A.62. Find out why they weren't coming back to the mill.

Q.63. Who sent you over?
A.63. As far as I know, Sir, Lieut. Murphy.

Q.64. And what did you do when you went over?
A.64. I asked the boys why they weren't coming back to work. They said they were when they drank their beer.

Q.65. Did you say that they could stay while they drank their beer?
A.65. No, Sir.

Q.66. What did you do?
A.66. Went back to the mill.

Q.67. Did you see Private Hayes again that day?
A.67. Yes, Sir.

Q.68. On what occasion?
A.68. Went over shortly before five o'clock; told the boys to catch the mill truck at half-past five.

Q.69. Told them to catch the mill truck at half-past five; who was there?
A.69. Private Owens, Hayes, Miles and Cripps.

Q.70. Did you order them to catch the mill truck?
A.70. Yes, Sir, I think I did.

Q.71. Did you give them authority this time to stay at MacKenzies Pub?
A.71. No, Sir.

Q.72. Do you know whether they caught the mill truck?
A.72. They didn't.

Q.73. Did you see Private Hayes again that day?
A.73. Seen him that night, Sir.

Q.74. Under what circumstances?
A.74. I was under orders to pick him up and arrest him.

Q.75. Who gave you those orders?
A.75. The Sergeant-Major.

Q.76. What time did you get those orders?
A.76. Between seven and eight - shortly after seven I should say.

Q.77. After you received those orders, what did you do?
A.77. I picked up two men and went to a truck and went to the Kiltarlity Mill.

Q.78. Did you find Private Hayes?
A.78. Not at the mill, later on I went to Beauly and picked him up at his home.

Q.79. What time was that?
A.79. After nine o'clock; possibly around half-past.

JHH

Q.80. Did you ask him to show you a pass?
A.80. No, Sir.

Q.81. Do you know whether he had a pass?
A.81. I know he didn't have one.

Q.82. And you actually picked him up in the town of Beauly?
A.82. Yes, Sir.

Q.83. How far is Beauly from No. 15?
A.83. They tell me it's around eight miles.

Witness cross-examined by Defending Officer.

Q.84. You first saw Hayes at three o'clock, Sergeant?
A.84. Yes, Sir.

Q.85. And you saw him again at what time?
A.85. Around five to five.

Q.86. It was not 5:30?
A.86. No, it was not 5:30.

Q.87. You say your instructions were to find out why they were not coming back?
A.87. If I remember --

Q.88. In other words, you were not ordered to bring Hayes back at that time?
A.88. As far as I can remember, they're the instructions.

Q.89. You knew they were there from 3:30 to 5:00, and you knew therefore he was Absent Without Leave; you considered that, and you allowed him to stay there; is that a fact, you allowed him to stay there?
A.89. Yes.

Q.90. Did you give any order directly to Hayes at all, or did you merely make some suggestions to him?
A.90. I think I would call it more a suggestion.

Q.91. You made a suggestion that it would be a good thing if they came back?
A.91. At five to five I didn't, or when I went back at five to five.

Q.92. At three o'clock?
A.92. Yes, Sir.

Q.93. In other words you allowed him to stay there?
A.93. Yes, Sir.

Q.94. Why was that, Sergeant, because you didn't consider it necessary for him to come back?
A.94. As all four boys were pretty well under the influence of liquor they didn't come back to the mill.

Q.95. You didn't put them under arrest for drinking, or anything like that?
A.95. Not then, no.

Prosecutor declines to re-examine this witness.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with Rule of Procedure 83(B).

The witness withdraws.

The Prosecution is closed.

J.A. As that concludes the case for the Prosecution, I will now address a few remarks to the accused. You will now proceed with your defence. You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination. You may,however, make a statement without being sworn, and you will not be subject to cross-examination. But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony. You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

Q.96. Do you wish to give evidence yourself as a witness?
A.96. No, Sir.

Q.97. Do you wish to make a statement?
A.97. No, Sir.

Q.98. Do you wish to say nothing?
A.98. Yes, Sir.

Q.99. Do you mean to call any witnesses on your behalf?
A.99. No, Sir.

Q.100. Are you going to call any other witnesses as to character?
A.100. No, Sir.

J.A. In view of the accused not making a statement, the Prosecuting Officer makes his closing address first and the Defending Officer follows.

Closing address by the Prosecutor.

Mr. President, with regard to this charge, it has been conclusively shown in the evidence both of Mr. Murphy and Sergeant Parker that on the 14th day of September, 1943, when the mill was temporarily broken down - at Kiltarlity - the accused along with other soldiers left the mill site without permission. As Mr. Murphy says, they assigned jobs of work to the men whose work was being held up because of temporary failure of the mill; but owing to the amount of work that was required of the officers and N.C.O's in order to get the mill in running order again, individual supervision of each man could not possibly be made.

As a result the accused together with two or three other men took advantage of that lack of supervision and went off through the woods to the MacKenzies Pub, which is off the mill site and a few hundred yards away from the mill. They left their jobs without permission. They went absent from the job without leave.

Mr. Murphy, in his evidence, says that some two hours later having missed these men when the mill resumed operation, he sent Sergeant Parker over to order them back to work. Sergeant Parker, who is a technical Sergeant, possibly misinterpreted the instructions he received and went over to the pub and suggested that the men come back, went back to Mr. Murphy and reported that the men had been over there drinking. Mr. Murphy realized that a mill or a millyard is no place to have men who are under the influence of liquor and consequently made a mental note of the fact that they had gone A.W.L., had been drinking, that he preferred that they weren't on the mill site for the remainder of the afternoon, and he was to take the matter up with the C.O. that night; certainly no condonation of the Absence Without Leave.

They left the premises without permission, were absent without permission. The fact that they remained absent from three o'clock on, that they remained absent even

though Sergeant Parker had gone over and spoken to them, still does not amount to condonation of the offence of Absent Without Leave. They went absent without any authority whatsoever at 1:30 when they did. The subsequent actions of Mr. Murphy and the subsequent instructions of the C.O. No. 15 Coy definitely establish that there was no intention on the part of the officer in charge of the operation or the Officer Commanding the Company to condone the Absence Without Leave.

I submit on the evidence as presented that a conviction must be registered.

Closing address by the Defending Officer.

I agree, Sir, that there is no question that the accused was certainly absent at the time, but I still maintain that he was allowed to be absent. There seems to be some doubt about the type of orders given, both by Mr. Murphy and Sergeant Parker. It seemed very clear that in fact there were no orders given at all, but merely suggestions.

I don't think we need to concern ourselves very much with Mr. Murphy because the only superior officer who had contacted Private Hayes throughout this time was Sergeant Parker, and Sergeant Parker gave no direct orders whatever to the accused. He said flatly in fact that he allowed them to stay there. I submit that the word "allowed" means pretty much the same as the word "condoned", and he can't be considered to be Absent Without Leave during that time when the Sergeant took no steps whatever to bring him back or to point out what his responsibility was in that particular regard.

I therefore submit that the offence was condoned, and that he is Not Guilty.

J.A. Does the Court consider a closing address by me necessary.

In the opinion of the Court and the Judge-Advocate a summing up by the Judge-Advocate is considered unnecessary.

The Court is closed for consideration of the finding. The Court find the accused Guilty of the first charge. The Court is re-opened and the accused is again brought before it.

J.A. Major Shillington, as Prosecuting Officer, you have previously produced as Exhibits "E" and "F", Statement as to Character and Particulars of Service of Accused, and certified copy of Conduct Sheet. I presume there is no change and that you wish them to remain as Exhibits "E" and "F".

Pros. Exactly.

J.A. Q.101. (To accused) Do you wish to address the Court on the Statement and Conduct Sheet, and in mitigation of punishment?

A.101. No, Sir.

Pres. The Court is closed to consider sentence. The finding and sentence being subject to confirmation will not be announced now but will be promulgated later. The proceedings in open Court are accordingly terminated.

W.W. Haught Capt
Judge Advocate

"A"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V pards 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G.46055	Private		Joseph Lawrence	HAYES	No.15 Coy., C.F.C.

CONVENTING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Nov. 43 endorsed by me, (he) (they) ~~(is) (are)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is desirable in the public interest that a Field General Court-Martial should be convened for the trial thereof~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I approve (as appears in the Order for the Road, Rank, Unit, or Particulars, for the convening thereof).~~

(AA 49, RP 106(E), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt.Col.	J.H. Dunlop	C.I/c Mil.Trg.,H.Q.,C.F.C.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	O.V. Maude-Roxby,M.C.	No.19 Coy.C.F.C.
Capt.	G.D. Baxter	No.28 Coy.C.F.C.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Major	K.W. Carlisle	No.10 Coy.C.F.C.
Lieut.	G. Johnson	No.18 Coy.C.F.C.

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt.	W.H. Waugh	Gen.List

On Active Service in the Fd

in Scotland (Country.)

C.E.F. Jones (Signed personally. RP 105 for A) (C.E.F.Jones) Colonel (Rank.)

Date 26 Nov. 1943. Commanding Canadian Forestry Corps Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

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This is to certify that I have this day examined:

G.48055 Pte. Hayes, J.L.

of No. 15 Company, Canadian Forestry Corps, and find him medically fit to appear before a Field General Court Martial.

(W.G. West) Capt., RCAMC,
M.O. i/c No. 5 District,
Canadian Forestry Corps

6 Dec 43
SBO/

"C"
Lotts.
Pte

NO. 15 COMPANY,
CANADIAN FORESTRY CORPS

This is to certify that

I have this date examined:

G.48055 Pte. Hayes, J.L.

and find him medically fit/~~unfit~~

to undergo trial by Field

General Court Martial.

(W.G. West) Capt., RCAMC,
M.O. i/c No. 5 District,
Canadian Forestry Corps

7 Dec 43
SRO/

"C"

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M.O. i/c No. 5 District,
Canadian Forestry Corps

8 Dec 43

SEO/

"C"

"D"

SUMMARY OF EVIDENCE

IN THE CASE OF

C.48055 PRIVATE HAINES, J.L. (27), No. 15 Coy Canadian Forestry Corps, Kiltarlity, Parish of Kiltarlity, Inverness-shire.

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-- SUMMARY OF EVIDENCE IN THE CASE OF --

G.48055 Pte. HAYES, J.L.
NO. 15 COY C.F.C.

By direction of the Officer Commanding, No. 5 District, C.F.C., all evidence is to be taken under oath.

1st WITNESS

Lieut. C.C. Murphy, Officer i/c Kiltarlity Mill, No. 15 Coy C.F.C., having been duly sworn, states:-

I am the Officer in charge of Kiltarlity Mill, Can. Forestry Corps. When we went to start back at work on Tuesday 14th of Sept. at 1 o'clock we had a breakdown which necessitated closing the mill for upp. two hours, during that time all the men were put to work at various jobs to keep them busy. When we were ready to resume operations, I was told by the Mill Sergeant that several of the men were absent. I asked him to round them up, which he did with the exception of four particular men, Privates. Cripps, Miles, Owens and Hayes. With the numerous duties that had to be carried out, I paid no more attention to the absence of these men except to instruct the Sergeant, Sgt. Parker to do his best to get them back. When I found that they had not come back I instructed Sgt. Parker to lay a charge of Absent without Leave, which he did so. Shortly before closing time, we had a slight accident which made it imperative for me to go back to the mill after tea. When we had finished repairing the trouble I went down to have a look at the engines which had given us trouble previously, and noticed Owens and Hayes making a rather hurried trip through the mill yard. I thought no more about it except to make up my mind to ring the Sgt. Major at 15 Coy and ask him to have these two men picked up. That was the only thought that went through my mind.

I then proceeded through the engine room and noticed as I was passing through that a number of belts had been cut, my only thought then was to ring up 15 Coy and report the damage with the intention of ringing up Major Kennedy with the same idea in view. I then proceeded to carry out measures to remedy the situation. I have no idea who caused the damage.

On my way to the telephone kiosk, I noticed Hayes coming out of the road from McKenzie's store. I also noticed Owens crossing the field towards the same road. When I arrived at the telephone, I had to wait a few minutes while Hayes carried on a private telephone conversation. When he came out I suggested to him, rather firmly, that he go back to camp. I asked him, "Have you been in the mill yard tonight", he told me he had not. I then got through to 15 Coy and went back to the mill.

Q. When you asked Hayes if he had been in the mill, this was after you said you saw Hayes and Owens going hurriedly through the mill yard?

A. Yes, sir. By this time the mill office was open. I telephoned Major Kennedy, explained to him the extent of the damage and asked for his assistance. Shortly, I was shown considerably more damage to other parts of the mill, namely three motors. I telephoned Major Kennedy again and he sent the necessary mechanics and the District Transport Officer to repair the motors and I proceeded to repair the belts.

Q. You mentioned McKenzies Store, is that also a pub?
A. Yes, sir.

Q. The damage done to the belts, could that have been accidental?
A. No, sir.

Q. What instrument or instruments were used to damage the belts, would you say?
A. All the damage was done b a very sharp knife, there were signs of an attempt being made to damage one belt with a handsaw, but it was a very futile attempt and all the damage was done by a sharp knife.

Q. The damage to the engines, could it have been accidental in your opinion?
A. No, sir.

Q. Who was with you when you were working in th mill previous to discovering the damage?
A. Sgt. Blissard of No. 5 Dist. and Pte. Walsh of No. 15 Coy.

Q. And were they with you when you discovered the damage or did you call them?
A. I called them sir, they were not with me.

Q. Did you hear any noise that evening when you arrived to do your repair work?
A. Yes sir, but I knew that the district mechanics should be there repairing or examining the motors, so I attributed any noise to their presence.

Q. Did you see the district mechanics there that evening?
A. Not to name any of them, sir.

Q. Did you see their vehicle with their tools and equipment there that evening?
A. I saw the vehicle that they usually use leaving the mill.

Q. Was that before or after you discovered the damage?
A. Before, sir.

Q. How much before?
A. I would say half an hour.

Q. You stated you saw Hayes and Owens walking quickly through the mill yard towards the scotch mill?
A. I saw them walking from the log pool to the scotch mill.

Q. In your opinion did they see you?
A. No, sir.

Q. Did you see anyone else there, the night watchman?
A. No sir, I sent Pte. Walsh to find the night watchman and he found him at his duties at the steam boiler.

Q. You stated a saw was used, did you identify this saw as part of the mill equipment?
A. Yes, sir.

Q. When you instructed Sgt. Parker to get these men back, back to where?
A. Back from McKenzie's pub, sir.

Q. What did Sgt. Parker report to you on his return?
A. He reported that they promised him to get back as soon as possible, but he also reported that they had considerable beer which they intended to drink, so I decided it was no use bringing them back because I didn't see that they would be in a fit shape to work for the rest of the afternoon.

Q. Did Sgt. Parker at any time suggest or report to you that these men had suggested to him that they were not getting a square deal at the mill?
A. I wouldn't interpret Sgt. Parker's remarks that way sir, he did say that they wished to have a tlak with me about working conditions, and my reply was that he should know and they should know that they could talk to me at any time, either on duty or off.

Q. Had these men ever complained to you that they had a grievance of any kind?
A. No, sir.

Q. Did you hand over to the civil police any articles which were considered might be evidence in this matter?
A. Yes sir, several pieces of belt which had been cut and the handsawx in question.

Q. Lieut Murphy, Do you recognize these articles here?
A. Yes, sir. They are the slashed belts, etc., given to Det. Sgt. Urquhart for his investigations and are listed as follows:-

One piece 6" balatta belting.
One piece 4" balatta belting.
Two pieces 12" balatta belting.
Number of pieces pigskin leather lacing.
Hand saw.
Three pieces copper piping.
One 12" Corner drive balatta belt apprex.45' long.

The Accused declines to examine the witness?

.....
(G.C. Murphy) Lieut.

2nd WITNESS

G.48173 Sgt. PARKER, R., Mill Sergeant, No. 15 Coy C.F.C., having been duly sworn, states:-

About 3.30 p.m. I was told to go to McKenzies's pub to see if any of the boys were over there still, and if they were, ask them if they were coming back.

Q. Did you go into the pub?
A. Yes, sir.

Q. And what soldiers from Kiltarlity Mill were in the pub when you arrived?
A. When I arrived, outside were Owens, Hayes, Cripps and Miles.

Q. Did you order these four men back to work?
A. No, sir.

Q. Why not?
A. My instructions were to go and find out why they weren't coming back.

Q. And what did you find out?
A. They said they were coming back as soon as they had finished their beer.

Q. Had they much beer with them outside the pub?
A. Yes, sir.

Q. How many bottles?
A. I couldn't say sir, --4 or 5 glasses.

Q. Did they appear to be under the influence of liquor?
A. Yes, sir. to a fair amount.

Q. Did they appear to be congenial, happy, or were they in a stubborn mood and antagonistic?
A. Well when I was there they were quite happy, singing and had a scotch tinker dancing for them.

Q. And when you asked about coming back, did they resent you being there?
A. No, sir.

Q. In other words they were having a party and just didn't feel like going back to work that day?
A. Yes, sir.

Q. What did you report back to Lieut. Murphy regarding these men?
A. I think I told him they would be over after they had drunk their beer.

Q. Did you have occasion later in the day to see Ptes. Owens or Hayes?
A. I went over again around 5 o'clock, I didn't want them in the mill under the influence of drink, but they said there was only 5 more minutes before the pub was opened.

Q. Is that the last time you saw them that day?
A. Until I had instructions to pick them up.

Q. Who instructed you?
A. The Sergeant Major.

Q. And what were his instructions,
A. To pick up Owens and Hayes.

Q. Where?
A. He didn't say, - around the mill.

Q. Tell us what you did?
A. I left the camp and proceeded to the mill and met Lt. Murphy, who told me that Owens was at the Nurses. I went over and picked him up, the Nurse said he needed medical attention, so I took Owens to the M.R.D. at 18 Coy, got the Orderly Sergeant there and gave him instructions that Owens was under arrest.

Q. And did you tell Owens that he was under arrest at the time?
A. I can't remember if I did or not.

Q. Was Owens behaving himself when you saw him?
A. Yes, sir.

Q. Was he in complete control of himself, not creating a disturbance?
A. Quite normal, sir.

Q. Did he show that he was under the influence of liquor whilst he was at the nurses home?
A. He showed slight signs of it sir.

Q. What did you do then, after you left the M.R.D. at 18 Coy?
A. I went looking for Pte. Hayes, returned to the mill, saw Capt. Curry to get a work ticket to go to Beauly. Went to Hayes home and picked him up.

Q. Who was with you?
A. Ptes. Hewitson and Scott.

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Q. Did you go into the house of Hayes?
A. Yes, sir.

Q. Who went in the house with you?
A. The truck driver.

Q. What was his name?
A. Oh, I can't remember it.

Q. Where was Hayes in the house and who was with him?
A. He was sleeping in front of the fire place and his wife was with him. I woke him up and got him dressed, had a cup of tea and came back to camp.

Q. Did you bring Hayes bicycle back with you?
A. No, sir.

Q. Was Pte. Hayes, in your opinion, under the influence of liquor when you woke him up?
A. Yes, sir.

Q. You state you picked up Owens at theNurses?
A. Yes, sir.

Q. Why was he at the Nurses ?.
A. He had a cut on his thigh.

Q. Did you enquire as to how he cut himself?
A. Yes, sir.

Q. And what was his reply?
A. He said he fell in a ditch.

Q. When you picked up Owens at the Nurses Home, did his clothes bear any evidence of dirt, or leaves, such as would be there from a fall
K. into a ditch hard enough to have cut himself?
A. I couldn't say, sir.

Q. On your way back from Beauly with Hayes, did he appear to be quite normal, or so much under the influence that he was unable to understand you?
A. No, sir. He could understand me.

Q. He appeared quite normal?
A. Yes, sir. perfectly normal.

Q. Did Hayes or Owens at any time complain to you that they were not getting fair treatment at Kiltarlity Mill?
A. Well, in a way sir. They tried to explain to me that they needed a Sergeant from 15 in the yard. They said if they had a Sergeant from 15 in the yard they wouldn't get so many dirty jobs.

Q. This conversation took place at the pub?
A. Yes, sir.

Q. Did they express that as one of the reasons for not coming to work?
A. No sir, as far as I can remember.

Q. There was no question at the pub when you were there that afternoon that Hayes or Owens said they would not be allowed to work together?
A. Yes, sir. I think there was.

The accused declines to cross-examine the witness.

R.A. Parker
(G.48173 Sgt. Parker, R.)

3rd WITNESS

G.489248 Pte. MYLES, W.H., No. 15 Coy., C.F.C., having been duly sworn, states:-

Q. Who was with you?
A. Pte. Cripps, sir.

Q. And who was in the pub when you arrived there?
A. Owens and Hayes.

Q. Were you asked that afternoon to go back to work?
A. Yes, sir, after the mill started.

Q. Who asked you to go back to work?
A. Well, Sgt. Jewel came over first.

Q. And who came after?
A. Sgt. Parker.

Q. Did you and Cripps go back to work?
A. No, sir. We didn't.

Q. Did Owens and Hayes go back to work?
A. No, sir.

Q. What did you tell Sgt. Parker about not going back?
A. I said I would be right over.

Q. Hayes and Owens, what did they say?
A. I don't just remember what they said.

Q. What happened after that, did you stop or go away?
A. No, sir. we stayed there, we had a few more drinks of beer.

Q. How long did you stay there?
A. We stayed until the pub opened and then we went into the pub, we stayed until about 6.30, I think.

Q. Where were Owens and Hayes?
A. I don't know, they went out.

Q. Who came down and took you back?
A. Sgt. Doak and Harry Gill.

Q. Was there any question or did any question arise that Owens and Hayes in your presence told Sgt. Parker that they were not getting a fair deal in the yard?
A. Yes, sir. They said that.

Q. Did they during the afternoon give any impression that they were disgruntled and not at all pleased with the way -
A. No, sir. that every word I ever heard them say.

The accused declines to cross-examine the witness.

.....
(G.489248 Pte. MYLES, W.H.)

Lieut. Murphy having been recalled, was questioned as follows:-

Q. In the evening of 14th September, did you tell Sgt. Parker when he came down with an escort, that Owens was in the Nurses Home?
A. I told him to look in there first, because it had been reported to me that he was there looking for medical attention.

Q. Can you recall who told you?
A. Yes, sir. Pte. Neale of 15 Coy. He came to me and asked me for assistance to get Owens either to the M.R.D., or to hospital, to have his cut attended to.

Q. Was Neale sober?
A. Yes, sir.

Q. How was he dressed, working clothes, or walking out clothes?
A. I think he was walking out.

Q. You yourself did not go to the Nurses' Home?
A. No, sir.

Q. Did he tell you how he knew Owens was cut?
A. No, sir. He merely reported that he was badly cut and in his opinion he should have medical assistance.

The accused declines to cross-examine the witness.

G.C. Murphy
.....
(G.C. Murphy) Lieut.

4th WITNESS

C.48122 Pte. Arseneault, C., No. 15 Coy C.F.C., having been duly sworn, states:-

Q. On the evening of 14th September, did you see Owens and Hayes?
A. I did.

Q. Will you state what you do in this Company?
A. Motor Mechanic, sir.

Q. Will you tell us what you did about 7.30 on that evening?
A. I was going out to do a job and on my way down I met Hayes, down near the telephone booth in the village of Kiltarlity. He asked me to take a fellow to the doctor. I said "Yes". We went on a little further, to where Owens was standing.

Q. Where was he standing?
A. In front of McKenzie's gate. -Then Hayes wanted me to go to Beauly and I wouldn't go.

Q. Why did he want you to go to Beauly, to take Owens there?
A. He wanted me to go to the doctor.

Q. Did you take Owens to the doctor in Beauly?
A. No.

Q. And what happened then?
A. I just left the two of them there and went on to my work.

Q. Did they appear to be quite sober?
A. I never noticed they were drunk or anything.

Q. When Hayes stopped you, did he tell you he wanted you to take Owens who was hurt, to Beauly?
A. He told me there was a fellow hurt.

Q. What time would you say it was that you saw Owens and Hayes in Kiltarlity, approximately?
A. It was somewhere around 7.30.

The accused declines to cross-examine the witness.

.....
(C.48122 Pte. Arseneault, G.)

5th WITNESS

C.48106 Pte. Stewart, M., No. 15 Coy C.F.C., having been duly sworn, states:-

Q. You are a driver in No. 15 Coy?
A. Yes, sir.

Q. Did you accompany Pte. Arseneault on Tuesday 14th September on the way to Drumnadrochit to carry out some repair work?
A. Yes, sir.

Q. And at what time did you leave to carry out this work?
A. I couldn't say for sure, around 7 o'clock.

Q. On your way did you go through the village of Kiltarlity on the road that leads to Kiltarlity Mill?
A. Yes, sir.

Q. Did you see Hayes that evening on your way down?
A. Yes, sir.

Q. Where abouts?
A. Along by the Post Office.

Q. Is the telephone near the Post Office?
A. Yes, very close.

Q. Did you stop and speak to Hayes?
A. Yes sir, we stopped.

Q. And did you hear Hayes ask Arseneault to take anyone to any place?
A. I heard them talking about something but I couldn't hear what it was.

Q. Did you at any time see Owens?
A. Yes.

Q. Where was he when you saw him?
A. He was standing against the fence just along from the Post Office.

Q. Was that near to the entrance of the pub?
A. Yes, sir.

Q. Did you hear Arseneault say that he would not be able to take Owens in the truck?
A. Yes, sir.

Q. Did you notice whether Owens was hurt or not?
A. No, sir.

Q. Did both Hayes and Owens appear to be sober?
A. No, sir. I don't think they were.

Q. Did you notice anything unusual about them?
A. No, sir.

Q. Have you been questioned by the civil police in this matter?
A. Yes, sir.

Q. Were you quite close to both Hayes and Owens?
A. No, sir. I didn't get out of the truck at all.

Q. Could you tell whether they were sober or not?
A. Well, I couldn't swear to it sir.

The Accused declines to cross-examine the witness.

M P A Stewart
.....
(G.48106 Pte. Stewart, M.)

6th WITNESS

G5095 Pte. BARRETT, J., No. 15 Coy C.E.C., having been duly sworn, states:-

Q. You are the nightwatchman at Kiltarlity Mill?
A. Yes, sir.

Q. And were you on duty from 5.30 on the 14th September until 7.30 on the 15th of September?
A. I was.

Q. Did you at any time in the evening have occasion to see Owens and Hayes, who are now seated before you?
A. I did.

Q. Will you please tell us where and when?
A. I saw them on the west side of the boiler room of the scotch mill, I can't be sure of the time,--between 6 and 7 o'clock.

Q. What were they doing?
A. They were standing there talking.

Q. Near the boiler room?
A. Yes, sir.

Q. Did you speak to them?
A. I just spoke to them, yes.

Q. And who answered you?
A. Owens.

Q. How did they appear, did they appear to be quite normal?
A. Well, I would say they were.

Q. Were they showing any signs that they had been drinking?
A. I wouldn't say they had been drinking.

Q. Did you not think it unusual to see them at the mill at that time?
A. I did at that time in the evening.

Q. And how were they dressed?
A. In their working clothes.

Q. Did they appear to be excited or anything at all when you saw them?
A. Well I would say that they did.

Q. Did you have occasion to go to McKenzie's pub that evening?
A. No.

Q. Were you asked by anyone to call a truck or escort to McKenzies pub that evening?
A. I was.

Q. By whom?
A. Miss McKenzie.

Q. In what manner did you receive that message?
A. She came over and asked me if I would call 15 Coy and ask for someone to call for some of the boys.

Q. Did she mention who was there?
A. She did, Owens, Hayes and some of the other boys, she didn't know their names.

Q. Did you take any action in this matter?
A. I did.

Q. What did you do?
A. I called the Sergeant Major of 15 Coy.

Q. Did you have occasion that evening to be called into the main mill by anyone?
A. I did.

Q. Who called you?
A. Pte. Walsh.

Q. And what did you do when he called you?
A. I went over to the office as he said that Lieut. Murphy wanted me, I went over and Mr. Murphy wasn't there. He had gone to telephone as the door was locked. He told me the belts in the mill was all cut, so I went over and had a look.

Q. Could you tell in what manner they were cut.
A. They were cut with something sharp.

Q. Did you notice the damage to the engines?
A. Not at that time.

Q. Did you look?
A. I did.

Q. There are three engines in the mill are there not, did you notice damage on how many engines?
A. Two engines.

Q. How long have you worked in mills?
A. About 18 months.

Q. Previous to joining the army did you ever work around a mill?
A. I did for one week.

Q. Did the damage in the mill look like an accident or deliberate?
A. It looked deliberate.

Q. You said Owens spoke to you, did Hayes speak to you?
A. No.

Q. You said they appeared to be excited, in what manner did they appear to be excited?
A. Well, they just seemed as if they were going somewhere in a hurry.

Q. Was it right after you say them that Walsh called you, or how long after did Walsh call you?
A. Very shortly after, I don't just know how long.

Q. What were you doing at the time you were called?
A. I was working cleaning the boiler.

Q. That is part of your usual duties every evening?
A. Yes, sir.

The accused declines to cross-examine the witness.

.....
(G.5095 Pte. Barrett, J.)

7th WITNESS

G5267 Pte. CRIPPS, J., No. 15 Coy C.E.C., having been duly sworn, states:-

Q. Were you over in McKenzie's bar on the afternoon of Tuesday 14th September?
A. Yes, sir.
Q.
Q. Were Owens and Hayes present?
A. Yes, sir.

Q. Did they ever mention in your presence, on being asked to return to work, that they were not getting a square deal at the mill?
A. Sgt. Jewel came and ordered us to work and we told him we were coming back. Then Sgt. Parker came over and we were talking to him, they were telling him about not getting a square deal, they didn't mention not going back.

Q. Did you hear at any time either of them say that if there was a dirty job, they had to do it?
A. Yes, sir.

Q. Did you hear Owens or Hayes make any threat to do damage to the mill?
A. No, sir.

Q. You were drinking at the same?
A. Yes, sir.

Q. Are you prepared to say that they were sober at this time?
A. Yes, as far as I knew, they were not drunk.

Q. Were you drunk that afternoon?
A. No, sir.

Q. Are you the Pte. Cripps who was picked up by the truck about 5 or 6?
A. Yes, sir.

Q. Were you drunk then?
A. I had had a few.

The accused declines to cross-examine the witness.

.....
(G5267 Pte. CRIPPS, J.)

8th WITNESS

K72778 Pte. BROWN, S.T., No. 18 Coy C.F.C., having been duly sworn, states:-

Q. You are the diesel engine operator at Kiltarlity Mill?
A. Yes, sir.

Q. On Tuesday 14th September did you perform your normal duties as engineer?
A. Yes, sir.

Q. When you returned to work that day did you find anything wrong with your No. 2 engine, at 1 o'clock?
A. Yes sir, there was ak bit of trouble starting it.

Q. And as a result the mill was idle until about 3.15?
A. In some ways.

Q. When you left the mill that afternoon, did you leave the Ruston Hornsby engine running to provide lighting for two mechanics who were coming to do minor adjustments to No. 2 Engine?
A. Yes, sir.

Q. And had they arrived before you left?
A. Yes, sir.

Q. And had they carried out the adjustments by the time you left to go to tea?
A. No sir. I left them there.

Q. Were you recalled to the mill that same day?
A. Yes, sir.

Q. About what time?
A. Somewhere around 8 or shortly after.

Q. What did you notice that was unusual to the normal running conditions of the mill?
A. The engines had been damaged.

Q. In what manner?
A. Such as fuel lines broken and oil lines and a few other things broken on No. 3 Engine.

Q. Was this damage done in your opinion accidently or was it done deliberately?
A. I would say it had been done deliberately.

Q. Were any of your tools, or anything else, missing when you returned that evening?
A. There was one wrench missing and a knife.

Q. Were both of these there when you left to go for tea?
A. I couldn't say about the wrench, but the knife I know was in its usual place.

Q. What was its usual place?
A. I kept it in the drawer.

Q. Was this knife an unusually sharp one?
A. Yes, I always kept it very sharp.

Q. Have you seen this knife since the damage was done to the mill?
A. Yes I have seen the knife, but I couldn't really swear to it.

Q. Where did you see it?
A. I saw it in the mill office, the police officer was showing it to me. I did identify it, I had put a mark on the blade with a file and marked the dagger part on the back, but I have sharpened it several times since and it may have worn off by now.

Q. Had it been sharpened in the manner in which you usually sharpen yours?
A. Yes, sir.

Q. Was this an Army Issue Jack Knife?
A. Not a Canadian Issue, an English Issue.

Q. As this knife was marked in the dagger part, you felt reasonably sure that it was your knife?
A. Yes, sir.

Q. Did most of the men know that you had the knife there?
A. Yes, quite a few, I can't say all.

Q. You know Owens and Hayes who are here, did they ever work with you in the Mill or assist you around the Mill?
A. No, not that I remember.

Q. Did you have occasion to go with Major McPhail to where the knife was found?
A. Yes, sir.

Q. Will you tell us just about where the knife was found?
A. I would say it was about 200 yds from the mill.

Q. In which direction?
A. Down towards the old mill, in the brush.

Q. Would that be in the direction of the Kiltarlity pub, or McKenzie's?
A. No, not exactly, not the way we go to the pub anyway.

Q. The damage done to the belts, could this damage have been done with your knife?
A. It could have been done.

Q. As an operating engineer in a saw mill such a knife is generally used for the cutting or squaring the belt previous to lacing, is that correct?
A. Yes, sir.

The accused declines to cross-examine the witness.

.....
(K72778 Pte. Brown, E.T.)

9th WITNESS

Major McPhail, No. 15 Coy C.F.C., having been duly sworn, states:-

Q. On the afternoon of Tuesday September 14th you were the Officer Commanding this Unit at that time?
A. Yes, sir.

Q. Ptes. Owens and Hayes, who you now see, are under your command?
A. Yes, sir.

Q. You were a member of the Court Of Enquiry concerning the damage at Kiltarlity Mill on the next day, Wednesday 16th?
A. Yes, sir.

Q. During that Court of Enquiry you made certain investigations in Kiltarlity Mill?
A. Yes, sir.

Q. Did you see the damage done in the mill?
A. Yes, sir.

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Q. Could you now give us an idea of what that damage was, approximately?
A. I know that there were several belts cut, but I can't say definitely how many, and I know that there was a certain amount of damage done to the engines, I can't say exactly what parts were damaged and what parts weren't.

Q. Did you notice how the cuts had been made?
A. Yes, I noticed that the belts had been cut with a sharp knife, because most of the cuts were very clean.

Q. You did not see either Hayes or Owens on the evening of Tuesday 14th?
A. No, sir.

Q. Did you, in the course of your investigation, find a knife?
A. Yes, sir.

Q. Where did you find it?
A. I found the knife alongside a path which runs through the woods from the back of Kiltarlity Mill to McKenzie's pub.

Q. And did you have this knife identified?
A. Yes, sir. I had heard that Brown, the Engineer at the mill, had lost a knife that he keeps in his drawer and I had him call and he identified the knife as the one which he had lost the previous afternoon.

Q. Was Hayes charged by the civil police in your presence?
A. He was, sir.

Q. Was Owens charged in your presence?
A. He was.

Q. And they were both warned in your presence that anything they might say might be taken by the police and used in evidence?
A. Yes, sir. After the charge was read.

Q. Do you recall what the charge was, generally speaking?
A. Generally it was that jointly they did do wilful damage to Kiltarlity Mill by cutting a certain number of balatta belts and doing damage to the power engines.

Q. Major McPhail, I have here M.P.R. 264 concerning Ptes. Hayes and Owens, on which is mentioned --'Remanded for Dist. Commander' 'Remanded for Summary of Evidence' - Please listen carefully to this, is this the Charge you heard Dect. Sgt. Urquhart read to the accused.
(The charge is read--attached)
A. Yes, that is the charge I heard read.

Q. Were Owens and Hayes being transferred to units in the South?
A. Yes, they were.

Q. Had they been notified previous to Tuesday 14th Sept. that they were going South?
A. Not so far as I know, their transfers were approved and came in the morning mail, and they would have been warned that evening.

The accused declines to cross-examine the witness.

.....
(D.A. McPhail) Major.

10th WITNESS

Elizabeth White,(Now. Mrs. McGregor) District Nurse, Kiltarlity having been duly sworn, states:-

Q. You are the district Nurse at Kiltarlity?
A. Yes, sir.

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Q. I would like you to go back to the evening of Tuesday 14th September, You see before you two soldiers of the Canadian Forestry Corps, have you ever seen them before?
A. Yes, sir.

Q. Did you see them on Tuesday 14th Sept. between 7.30 and 8, or about that time?
A. Yes, sir.

Q. Could you tell me under what circumstances you saw them and where?
A. They came to my door wanting assistance, as one of them had a cut on his leg which was needing dressing and asked if I would do it. I asked them in and carried out the dressing.

Q. Was the cut clean or a jagged one?
A. A clean cut.

Q. And the trousers were cut?
A. Yes.

Q. Where was the wound?
A. High up on the right thigh.

Q. In your opinion were Hayes and Owens sober?
A. They had been drinking.

Q. Were they quite coherent in their speech and sensible in their actions?
A. Yes, sir. Quite.

Q. Did they ask you to obtain a doctor for them?
A. Yes, sir.

Q. And what doctor did they ask for?
A. Dr. Leitch.

Q. Is Dr. Leitch an Army doctor?
A. Well, he does visit convalescent camps.

Q. He is not a member of the R.A.M.C. in uniform as far as you know?
A. I couldn't say about that.

Q. What did you say when they asked for Dr. Leitch?
A. Well, I didn't think it was the correct procedure. I didn't think that Dr. Leitch would handle it.

Q. How long have you been a nurse?
A. I started my training about 10 years ago.

Q. Have you had much experience in surgical work?
A. Not outside hospital.

Q. Were you ever employed as a surgical nurse in a hospital?
A. That is part of our training.

Q. As a nurse, in your normal course of training, you have seen many cuts and wounds?
A. Yes.

Q. Would you say that the cut of Owens was a cut by glass or a very sharp instrument?
A. Well, it is possible that it could have been done by glass, if it was smooth enough, but it is more likely a sharp instrument.

Q. The manner of both Owens and Hayes at the time they were at your house was quite in good order?
A. Yes, sir.

Q. They didn't give the impression that they were drunk or disorderly at all?
A. No.

The accused declines to cross-examine the witness.

E. McGregor
(E. McGregor)

11th WITNESS

Miss Christina MacKenzie, Housekeeper, The shop, Allarburn, Kiltarlity, having been duly sworn, states:-

Q. You live at the shop Allarburn, Kiltarlity, with your Father Donald McKenzie, General Merchant at the same address and you conduct a general store and public house?
A. That's right.

Q. On the afternoon of Tuesday 14th Sept. did you see these two men, Hayes and Owens?
A. In the afternoon yes, they came into the bar about 2.15.

Q. Did anyone else come in?
A. Well, I served them and went out back. My father had been at a funeral and came in between 2 and 3 and of course I didn't know who was in.

Q. Did you see Ptes. Miles and Cripps in the afternoon?
A. I knew there were four there, but I didn't see Miles and Cripps until after 5 o'clock.

Q. Did you see Owens and Hayes after 5?
A. Yes.

Q. Did you have any occasion to tell them that they should go home?
A. I thought they were a wee bit noisy and I thought they would be better in camp.

Q. And did you have occasion to get in touch with Military authorities so they would move?
A. I went along to ask for a truck to take them home about 6.10, I thought they would be safer home.

Q. Who did you find at the mill when you went over there?
A. Jack Barrett.

Q. Did you ask him to telephone?
A. I asked him to telephone, yes.

Q. Did you go with him?
A. I went with him, yes.

Q. When you left him, where did you leave him?
A. I walked back to where he was working at the Scotch Mill and came back through the path.

Q. Which Path?
A. The short cut through the wood.

Q. Were Hayes and Owens at your place when you arrived back?
A. No.

Q. Did you speak to your father about Owens and Hayes or anyone else there?
A. Yes, he said they had disappeared.

Q. Did he say in which direction they had left?
A. I can't remember.

Q. Your father didn't express any surprise that you hadn't seen Owens and Hayes?
A. I can't think what he said.

Q. Were Miles and Cripps still in the bar?
A. Yes.

Q. Were you there when the car arrived to take them back?
A. Yes, I was there.

Q. Did anyone else from the mill have occasion to go over and ask any questions about any members of the C.F.C. at your place that evening?
A. No.

Q. No-one asked where Barratt was?
A. Oh yes, Bill Goodrow.

Q. And did he tell you any reason why he wanted to see him?
A. He told me there was damage done at the mill.

Q. After Goodrow was there, did you see Owens and Hayes again?
A. Yes, I was speaking to Owens at the top of the road.

Q. In what direction was he going?
A. He was walking towards the main road.

Q. He was quite normal.
A. Well, hex appeared to be.

Q. Did you see Hayes about that time?
A. No I didn't see him.

Q. Did you speak to Owens at that time?
A. Yes.

Q. Did you say very much to him?
A. No, I just asked him why he had run away, I suppose I was a wee bit annoyed with him.

Q. Did he appear to be limping when you saw him?
A. No, he didn't appear to be limping.

Q. You didn't notice whether his clothes were cut?
A. As a matter of fact, no.

Q. When you saw Owens last time, he was walking across the field?
A. Yes.

Q. I will show you a map, this plan marked "A", this is a blue print will you take a look at it please. I will mark this "1" at the point where you saw Owens making for?
A. I was well up the road in front of the shop, marked "2". The point "3" is where I spoke to Owens.

Q. And he was going to the telephone kiosk marked on the map? Did you see Hayes when you were there?
A. No, I didn't see him.

Q. You didn't take the path which runs at the back of the Estate Carpenters shop, that is well known?
A. That's so.

Q. This plan marked "A.I", to the best of your belief and knowledge, is a copy of the blue print "A"?
A. Yes.

The Accused declines to cross-examine the witness.

A. MacKenzie
(Christina MacKenzie)

12th WITNESS

Donald MacKenzie, General Merchant, The Shop, Allarburn, Kiltarlity, having been duly sworn, states:-

Q. You are a general merchant and proprietor of the shop "Allarburn"?
A. Yes, sir.

Q. On Tuesday 14th Sept. at about 3 o'clock you returned from a funeral?
A. Yes, sir. That's true.

Q. Will you tell me what you did from that time on concerning Hayes and Owens who you see before you, and before you proceed, do you recognize them?
A. Yes, Sir.

Q. And were they in your pub on Tuesday 14th Sept.?
A. Yes, sir. When I cam home it was about ten minutes to 3, and they were all there, I gave them drinks until 3, then they went out and I locked up the place.

Q. At what time did you open the bar again?
A. Just after 5.

Q. Did you see Owens and Hayes again?
A. Yes, they all came to the door again at 5 o'clock when I opened?

Q. Who was with them, do you remember ?
A. Bill Miles and another chap, I can't remember his name.

Q. Did you have any trouble with any of the four men?
A. They were just a wee bit rowdy.

Q. Did you instruct your daughter to notify the authorities to come?
A. Yes, sir. The place is not to substantial and I didn't want the place damaged.

Q. The men were boisterous?
A. Only just among themselves, they were doing no harm, only rough among themselves.

Q. Sort of wrestling?
A. Yes.

Q. Did you see Owens and Hayes outside after you told your daughter to go?
A. Yes.

Q. Where did you see them?
A. They were out about 20 yds from the door.

Q. And what were they doing?
A. They were walking along the footpath out of my sight towards the mill.

Q. Then your daughter came back, had Owens and Hayes gone?
A. Yes.

Q. They went in the same direction as she left?
A. Yes, but of course I know nothing of what happened.

Q. Did you mention to your daughter that she might have seen them on her way back from telephoning.?
A. I can't say.

Q. Did you express surprise that she did not see them on her return from the mill?
A. No.

Q. Were you present when the truck called and collected Cripps and Miles?
A. Yes.

Q. And did you see either Owens or Hayes later on in the evening?
A. Yes.

Q. Where did you see them?
A. I was out at the gate leading to the field opposite the door, and I saw Hayes pass along the path from the direction of the mill.

Q. Did you see Owens?
A. Yes, sir.

Q. Where was Owens?
A. Going through the field.

Q. In what direction?
A. Making for the main road.

Q. And was he limping?
A. He was a little lame.

Q. Did you notice any tear in his clothes or blood?
A. No.

Q. I will show you a plan, now please show me where you were standing?
A. I was standing at "4". Hayes was walking in the direction of the crooked line, and the arrowed line is the approx. course Owens took ending at "1".

Q. When you saw Owens going towards the road, he was a little lame?
A. Yes, he was a little lame.

Q. Both Hayes and Owens were proceeding by different routes and were coming from the direction of the mill?
A. They entered from the footpath.

Q. Could you give any idea of the time?
A. I never looked at the time, I would say about 7.30.

Q. Would you say that any time during the day Owens and Hayes were drunk?
A. No.

Q. You have been a public house keeper for a good number of years?
A. 6 Years.

Q. If a man were drunk, with your experience you would be able to tell?
A. Yes.

Q. In your opinion these men were not drunk?
A. No, no.

The Accused declines to cross-examine the witness.

D. MacKenzie.
(Donald MacKenzie)

13th WITNESS

G.48164 Pte. Neil, A.W., No. 15 Coy C.E.C., having been duly sworn, states:-

Q. Do you recognise these two men, seated here?
A. Yes, sir.

Q. Could you give their names?
A. Ernie Owens and Joe Hayes.

Q. On the afternoon of Tuesday 14th Sept. were you at the home of the District Nurse, Mrs. McGregor?
A. I couldn't say as to the date.

Q. I will put it another way, were you at the District Nurses Home on the evening when Owens and Hayes arrived and Owens needed Medical attention?
A. Yes, sir.

Q. About what time was it that they were there?
A. About 7, or half past, I couldn't say exactly.

Q. To the best of your knowledge, what condition was Owens in, was he drunk or sober?
A. I couldn't say sir.

Q. Could you smell liquor on him?
A. I never noticed it at the time.

Q. Were you in the same room with him?
A. Yes, sir.

Q. You didn't smell liquor on either Owens or Hayes?
A. I never noticed it.

Q. Were you present at the occasion when the Nurse attended Owens?
A. Yes, sir.

Q. And did you ask Owens how he was hurt?
A. No, sir.

Q. Did you have any conversation with Owens at all?
A. I can't remember.

Q. Did you have any conversation with Hayes?
A. No, sir.

Q. Did you go to Lt. Murphy and tell him that Owens was badly cut and needed medical attention?
A. Yes, sir.

Q. Were you present when Owens or Hayes asked for the assistance of Dr. Leitch of Beauly?
A. No, sir.

Q. Is there anything further you can tell us concerning what took place that evening at the District Nurse's Home?
A. No, sir.

Q. Did you hear the District Nurse say that she did not think that Dr. Leitch should handle the case and they should get an Army Doctor?
A. No, sir.

The accused declines to cross-examine the witness.

A.W. Neil
(G.48164 Pte. Neill, A.W.)

14th WITNESS

C.48181 Pte. Walsh, J., No. 15 Coy C.F.C., having been duly sworn, states:-

Q. On Tuesday 14th Sept. did you accompany Lt. Murphy back to Kiltarlity Mill to do some work with Sgt. Blissard on the resaw?
A. Yes, sir.

Q. On your arrival did you go directly upstairs to th top of the mill?
A. I went straight up.

Q. In the course of repairing the saw, did you make a lot of noise?
A. We were making a good bit.

Q. Did you hear any suspicious noise from the bottom floor?
A. No, sir.

Q. Did you see the belts which were damaged?
A. Yes, sir.

Q. Will you tell us in what manner you think these were damaged?
A. I couldn't say, sir. They looked as if they were cut.

Q. Were they cut at the lacings, or others, or both?
A. They were cut in the middle, not at the lacings.

Q. Were they clean cuts?
A. I couldn't say, sir. I didn't examine them.

Q. How long did you work in sawmills before joining the army?
A. About 15 Years.

Q. In your experience of 15 years in sawmills would you say these were cut with a very sharp instrument?
A. They seemed to be cut cleanly.

Q. Did you see the damage done to the mill engines that same afternoon?
A. Yes, sir.

Q. In your opinion was the damage to the mill engines and the belting accidental or deliberate?
A. It looked as if it was deliberate.

Q. Did you see Owens and Hayes that evening?
A. No, sir.

Q. Did you see the mechanics who were supposed to be repairing the mill engines from the afternoon?
A. No, sir. I didn't.

Q. Did you see the vehicle of the General Workshops at the mill that evening?
A. After the damage was done I saw it.

Q. Is that when S/Sgt. Savoie and the other mechanics came down to repair the damage?
A. Yes, sir.

The accused declines to cross-examine the witness.

J. Walsh
.....
(C.48181 Pte. Walsh, J.)

15th WITNESS

C.48187 S/Sgt. Savoie, W.H., General Workshops, C.F.C., having been duly sworn, states:-

Q. You are the S/Sgt. in charge of the mechanics at No. 5 District Workshops?
A. Yes, sir.

Q. On the evening of Tuesday 14th Sept. were you ordered by Mr. Peake to take mechanics and proceed to Kiltarlity?
A. Yes, sir.

Q. On your arrival, what damage did you find to the mill engines, can you just give roughly the number of engines?
A. 3 engines were out of commission.

Q. Would you say the damage had been accidental or deliberate?
A. Deliberate.

Q. Would an instrument such as a heavy wrench have had to be used?
A. On some parts of one engine a bar would have had to be used.

Q. What time did you start to repair these engines, approximately?
A. At about 8.45.

Q. What time did you xxxxx finish with your mechanics, completely?
A. Approximately 11.30

Q. How many mechanics did you have with you?
A. Six including myself.

Q. How long would it have taken two men to do the damage to these engines?
A. If it was done hurredly it could have been done in as little time as three or four minutes, four minutes I should say.

Q. Were all the damaged parts lying around or were they taken outside?
A. Some were outside, found later, others never found to date.

Q. Earlier in the afternoon had you occasion to send any of your men to Kiltarlity mill on work?
A. Between 5.30 until 7 o'clock, I had two men.

Q. Who were these two?
A. Cpl. Bowker and Pte. Jones.

Q. Did you see them later on that evening?
A. I didn't see Cpl. Bowker, I saw Jones.

Q. Was Jones one of the mechanics who went to the mill to do the repair work?
A. No, sir. Not one of the 5.

Q. Where did you see Jones later that evening?
A. At the workshop at a welding class.

Q. When he finished his repair work, he went back to carry on a class at 18?
A. Yes, sir.

Q. He had mentioned that the repair work was completed satisfactorily?
A. The repair work they went to do was not finished, it was to be finished the following morning, before the mill began.

Q. What was the repair job?
A. Repairing the change over valve from petrol to oil fuel, it was temperarily in running condition.

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Q. Did you see Cpl. Bowker that night at all?
A. No, sir.

Q. Did you see him next morning?
A. Yes, sir.

Q. Did he inform you that everything was running satisfactorily when he left?
A. He informed me through Jones. He didn't re-appear that particular night but the next morning he informed me that the engines were running then, although temporarily.

Q. The lights were running from what engine?
A. The Ruston Hornsby.

Q. This engine was found to be damaged when you arrived?
A. Yes, sir.

Q. And was not in running condition, or could it be started when you arrived?
A. It took about half an hour to start it.

The accused declines to cross-examine the witness.

S/Sgt. W H Savoie
(C.4187 S/Sgt. Savoie, W.H.)

16th WITNESS

K98516 Cpl. Bowker, J.V., General Workshops, C.F.C., having been duly sworn, states:-

Q. Did you, accompanied by Pte. Jones, go to Kiltarlity Mill on the evening of Tuesday 14th Sept. for the purpose of repairing engines?
A. Yes, I went down, but I can't swear as to the date.

Q. Do you know the engineer at Kiltarlity mill by the name of Brown?
A. Yes, sir.

Q. Was Brown running the lights at the time when you arrived?
A. Yes, sir.

Q. And the engine running the lights was the Ruston Hornsby?
A. Yes, sir.

Q. He left it running in order to provide lights for you when you took over?
A. Yes, sir.

Q. Did you notice the other two engines when you were there?
A. Yes, sir.

Q. Was one of these known as the U.D. 18, on which you were to do some minor adjustments?
A. Yes, sir.

Q. Was that engine when you left the mill in running repair?
A. Yes, sir.

Q. And was the other U.D., in running repair?
A. Yes, sir.

Q. When you completed your work, about what time would it be?
A. 6.15 or 6.20

Q. Did you shut the Ruston Hornsby engine off?
A. Yes, sir.

Q. By doing so, did you cut off the lights?
A. Yes, sir.

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Q. Did you meet Miss McKenzie of the beer shop that evening at or around the mill?
A. I don't know if that's her name, but we met the girl from the pub; she was walking through the mill.

Q. Do you recognise these two men?
A. The one this side.

Q. Pte. Hayes, You know him by sight?
A. Sometimes I ride alongside him into Beauly.

Q. You did not see Hayes or the other soldier sitting with him that evening at Kiltarlity Mill?
A. No, sir.

Q. It is therefore an established fact that when you left the mill, the engines were in running repair?
A. Yes, sir.

The accused declines to cross-examine the witness.

W. J. Bowker
(K96516 Cpl. Bowker, J.V.)

17th WITNESS

K72694 Pte. Jones, J.A., General Workshops, C.F.C., having been duly sworn, states:-

Q. Did you accompany Cpl. Bowker on the afternoon of Tuesday 14th September to Kiltarlity mill for the purpose of repairing a U.D. 18?
A. I did, sir.

Q. Did you see Brown, the mill engineer, when you arrived?
A. Yes, sir.

Q. And did he had over the engine running for the purpose of keeping on the lights so that you could work?
A. That's right, sir.

Q. On completion of your repair work did you shut off the engine that was running the lights?
A. Yes, sir.

Q. That engine was in good running repair when you left it?
A. Yes, sir. When we shut if off it was.

Q. Did you see the other two engines before you left the mill?
A. We were working on one.

Q. The one you left was it ready to run in the morning?
A. Yes, in normal running condition.

Q. Did you see either of these two men here that evening?
A. No, sir.

Q. Do you know them?
A. No, sir. I don't know their names.

Q. Did you see Miss McKenzie from the beer shop that evening at the mill?
A. I saw her going by the mill.

Q. Did you speak to her?
A. I said hello.

Q. You knew her as the girl at the pub?
A. Yes.

Q. Do you know what she was doing?
A. No, she was just walking by.

Q. Did you see Miss McKenzie on your way out of the mill on completion of your work?
A. Yes, when we were leaving.

Q. Approximately what time was that?
A. About 6.30.

Q. Did you notice any belts cut or broken in the mill?
A. No, nothing at all.

The accused declines to cross-examine the witness.

.....
(K72694 Pte. Jones, J.A.)

18th WITNESS

Katie Ann Bain, Nurse, Raigmore Hospital, Inverness, having been duly sworn, states:-

Q. Were you on duty on Tuesday 14th September at about 10.15 p.m. in Ward 4 when Owens was admitted?
A. Yes, sir.

Q. Could you identify ~~him~~ him?
A. The first one.

Q. Owens was suffering from a cut in his right side when admitted?
A. Yes, sir.

Q. Did you ask him how he came by that wound?
A. Yes.

Q. And what was his reply?
A. He thought he cut it with glass.

Q. He was in your opinion sober?
A. Yes.

Q. I will show you a pair of trousers. Are these the trousers you took from Owens and placed in the locker?
A. I didn't take much notice, a pair like that.

Q. Do you remember handing them over to D.S. Urquhart of the Inverness Police?
A. Yes.

Q. Are these the trousers and the seal that was on them?
A. That's the kind of seal that was used anyway.

Q. You signed a sealed label attached to the article?
A. Yes, sir.

Q. Is that your signature?
A. Yes, that's my signature.

The accused declines to cross-examine the witness.

.....K.A. Bain.....
(Katie Ann Bain)

19th WITNESS

Dr. Gray, Sarah Kirkpatrick Ruth, Raigmore Hospital, Inverness, having been duly sworn, states:-

Q. Were you on duty in Ward 4 at approximately 10 p.m. on Tuesday 14th September?
A. Yes.

Q. Could you identify Pte. Owens in this room?
A. Yes, the first man.

Q. Will you tell us the nature of his wound?
A. He was suffering from an incised wound of the right thigh 2½" long, and the muscle was involved at a lower level than the skin, a fairly deep wound, but I can't identify the exact muscles now.

Q. Did he appear to be sober?
A. Yes.

Q. Did you ask him how he came by the wound?
A. Yes.

Q. What was his reply?
A. He said he thought he had fallen and cut it.

Q. Did he seem willing to give this information or was he reticent about it?
A. He was rather reticent.

Q. Would you say this wound was caused by some sharp instrument?
A. I should say a sharp instrument.

Q. Could it have been cut by a broken bottle or piece of glass?
A. It could have been.

Q. In your experience, had the wound been of glass would it not have been more jagged?
A. That would depend on the piece of glass, and how he came by it.

Q. You didn't see the clothes of the patient?
A. No, I don't remember seeing them.

Q. Is there anything further you could add, Doctor?
A. No, I don't think so.

The Accused declines to cross-examine the witness.

Sarah K.R. Gray
.....
(Sarah Kirkpatrick Ruth GRAY)

20th WITNESS

Detective Sergeant Urquhart, Gregor Calder, Inverness-shire, Constabulary, having been duly sworn, states:-

Q. You are a Detective Sergeant in the Inverness-shire Constabulary?
A. Yes, sir.

Q. You were called to investigate an accident which occurred at Kiltarlity Mill in the Canadian Forestry Corps at Kiltarlity, Inverness-shire on the 14th of September?
A. I was, sir.

Q. Were you called by Lt. Col. N.C. Ferguson, O.C., No. 5 Dist. C.F.C.?
A. Yes.

Q. Were you accompanied by any person during your investigations?
A. By Constable McLean of Kirkhill.

Q. This is rather a long proceeding we have here, and I will ask you to tell in your own words what you did and the result of your investigations in this matter at Kiltarlity Mill?
A. I called on Lt. Col. N.C. Ferguson and he handed me a knife, which I now produce sealed and signed by Lt. Col. Ferguson, Major McPhail and Pte. Brown. We proceeded to the mill where we saw Lt. Murphy, the mill officer, and he handed over to us some further productions in the case, these are pieces of belting, 1 piece of 6", piece of 4", 2 pieces of 12", and a number of pigskin leather lacings, all now produced, we marked all these articles and got Lt. Murphy and Sgt. Jewell to sign them. At the same time Mr. Peake handed to me two pieces of pipe line from No. 2 Engine, and the feed pipe line of No. 1 Engine, he signed the labels which I attached. I myself found three ignition leads lying around in the engine room, now produced and identified by Lt. Peake as three of the ignition leads which were cut. We interviewed a number of witnesses and took statements from them, Pte. Brown, Miss. C. Mckenzie, Elizabeth White (Mrs. McGregor), Miss K.A. Bain, that was at Raigmore, that was all I took that particular day. I saw Hayes the accused and charged him with the offence.

Q. You stated on the 18th you saw the accused Hayes and charged him with the offence in the presence of his C.O., and Constable McLean, was that charge the result of your investigation?
A. Yes, sir.

Q. And did you feel reasonably sure that the result of your investigations compelled you in your duty as an Officer of the Crown to lay these charges?
A. Yes, I certainly did.

Q. How long have you been a Police Constable?
A. 20 Years.

Q. And you have been in charge of investigations in the Inverness-shire Constabulary for some time?
A. I have been a Detective Sergeant for the past two years and I have investigated all cases which occurred in my own beat since I joined the Police.

Q. In the exhibits which you have produced here, we note that the belting is very cleanly cut. Would you say that this knife was sharp enough to have cut the clean cuts in that belting?
A. Yes, sir.

Q. This knife has been identified?
A. Yes, sir.

Q. By Whom?
A. By Pte. Brown.

Q. And that is his signature as having identified the knife?
A. Yes, sir.

Q. This saw, did you see any evidence of any belting that was cut by a saw?
A. Yes, sir. I saw a belt in the mill which showed signs of attempts being made to cut it with a saw.

Q. Is that belt here?
A. No, its in use in the mill, and I understand the saw was found almost immediately beneath the particular belt.

Q. This wiring that you have produced is identified by Mr. Peake as wiring from one of the engines in the mill?
A. Yes.

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Q. And it shows evidence of having been pulled roughly out of the engine?
A. Probably cut with a knife.

Q. Now please go on again?
A. Hayes was duly warned, cautioned and charged with the offence and he replied 'I have nothing to say' Sergeant. Before then of course I had duly cautioned him that he was not obliged to say anything in answer to my question and I told him that whatever he might say, might be used in evidence. I then asked him if he had anything further to add to his statement which he had already made at the Court Of Enquiry, and he informed me that he had nothing to add to that statement. I asked him if he could tell us where Owens met with his injury and he maintained that it was in the woods behind the beer shop. I asked him if he could point out the place to us, but he maintained that he was so much under the influence of drink that he could not remember the exact spot. He was quite definite about Owens coming by his injury in the woods behind the beershop.

Q. Did Hayes tell you what caused the wound?
A. He couldn't say definitely, he thought it was glass, but couldn't say what glass, whether a bottle or any other broken glass. He was asked if he could describe the glass, but he led me to understand he didn't see the glass himself.

Q. Was Hayes manner frank and above board in giving you this information or was he concealing anything in your opinion?
A. I should say that he was concealing something.

Q. Please go on again?
A. On Monday the 20th I continued my enquiries at Kiltarlity Mill and took statements from Pte. Stuart Brown and got him to identify the knife and he sealed the label which is attached to it. I also took statements from Charles Lawrence Reggin, Sgt. Raymond Arnold Parker, Major Kennedy and a further statement from Lt. Murphy. I also took statements from Major Robertson, Cpl. Bowker and Pte. Jones, I think that was all. Oh, then I took a statement from Dr. Gray at Raigmore.

Q. I will show you a sketch signed by yourself.
A. That is a rough sketch by me.

Q. I will show you a brown print sketch, which are true copies of the sketch.
A. They certainly appear very much similar, yes.

Q. Now go on again please.
A. On the 30th September I saw the accused Owens at Raigmore Hospital when he was being discharged from there and in the presence of his C.O. I warned, cautioned and charged him with the offence. He replied, "I never had nothing to do with wrecking that mill", I might say here that I asked him if he could explain how he came by his injury and he told us that he fell on the road in front of the beer shop, he was quite definite about that. When asked what caused the cut he was unable to say.

Q. You state that Owens told you he fell on the road in front of the pub?
A. Yes, sir.

Q. And you state that Hayes told you he fell in the woods at the rear of the pub?
A. Yes, sir.

Q. You state that Hayes said he was unable to say what cut Owens and Owens according to evidence taken today, said he was cut by glass and now you state he told you he was unable to say what was responsible for the cut on his leg?
A. That is so.

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Q. In other words the two statements are conflicting?
A. Absolutely.

Q. Did you have this knife examined for fingerprints?
A. Yes, sir.

Q. And were there none on it?
A. There were no fingerprints on it.

Q. The belting we have in court here before us, roll of belting, there is a slit shown on the belting, showing evidence that the ~~kix~~ knife slipped, is it possible in your opinion that this was the cause of the wound to Owens' thigh?
A. Yes, sir. It is quite possible.

Q. Did you obtain the clothing of Owens from Raigmore Hospital?
A. I did, sir.

Q. I will show you a pair of trousers with a cut in them, are these the trousers?
A. They are the trousers which were handed over to me by Nurse Bain.

Q. And in your years as a Detective Sergeant would you say that they were cut by a sharp knife?
A. Yes, I would.

Q. From the position of the cut, would you say it was possible for the knife to have slipped and torn into the thigh of the wearer of these trousers?
A. Yes, sir.

Q. Have you any other information which would enlighten or assist us in any manner in arriving at a reasonable conclusion as to the cause of this wilful damage done at Kiltarlity Mill on Tuesday September 14th. We defer to you with your many years of experience and ask if you could assist us in arriving at some conclusive result?
A. Yes, sir. I do feel reasonably sure on the strength of the evidence obtained by me.

Q. And on the strength of this evidence you so charged them?
A. Yes, sir. I did.

Q. If the civil authorities wished they could proceed with this charge under the Defence of the Realm Act?
A. Yes, sir.

The Accused declines to cross-examine the witness.

Gaugxhart A/S

.....
(G.G. Urguhart) Det. Sgt.

The two accused having been questioned stated that they wished to call no witenesses.

Rule of Procedure No. 4 Para. C.D.E. & F have been complied with.

By order of the Officer Commanding No. 5 District, Canadian Forestry Corps, all witnesses and the stenographer were sworn before giving evidence.

Taken down before me in presemne and hearing of the accused at No. 15 Coy Can. Forestry Corps, Kiltarlity, Inverness-shire, this 6th day of October, 1943.

C.L. Kennedy

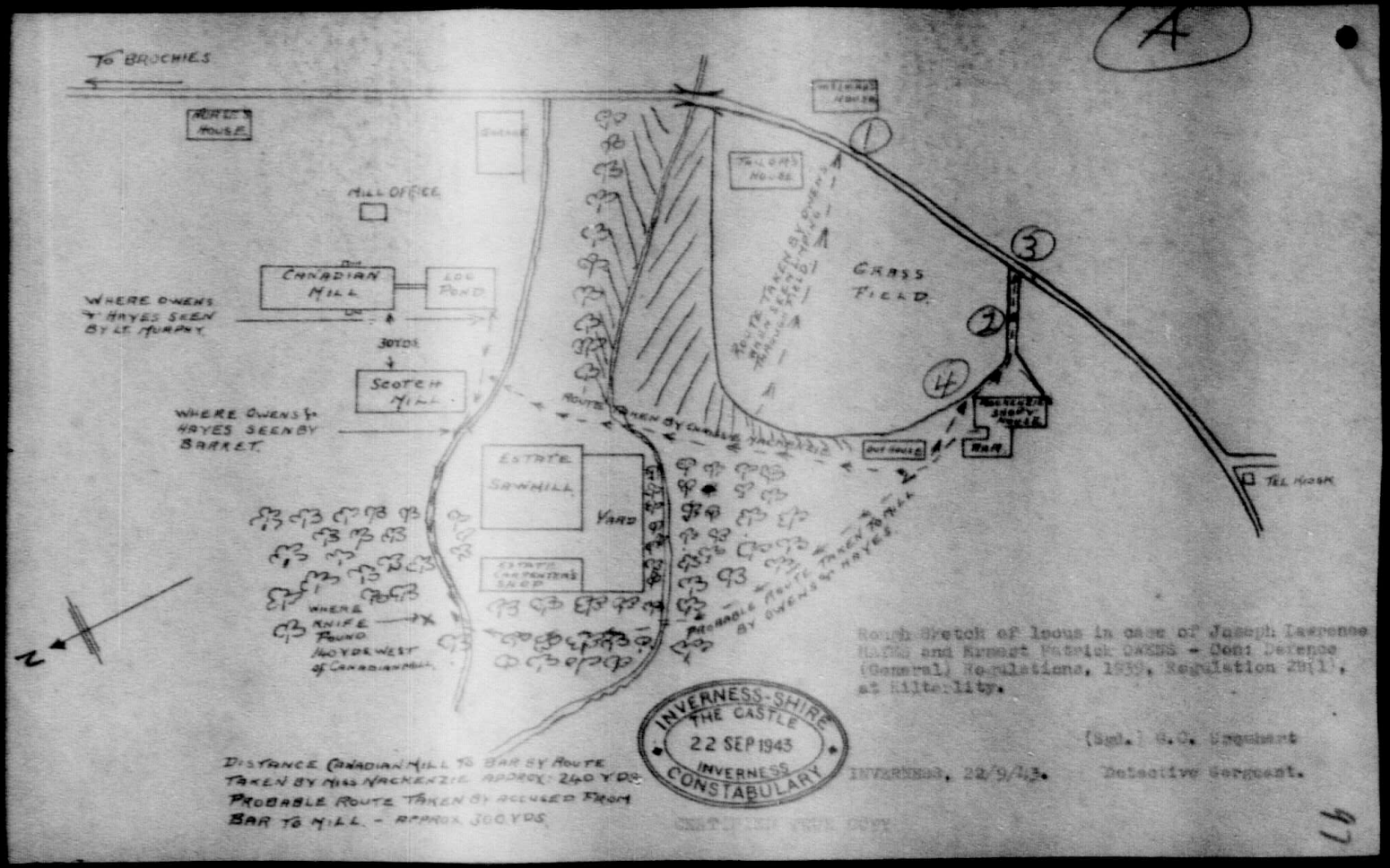
(C.L. Kennedy) Major.

LIST OF EXHIBITS.

One Clasp Knife
One Piece 6" balatta belting
One Piece 4" balatta belting
Two pieces 12" balatta belting.
Number of pieces pigskin leather lacing
Hand saw
Three pieces copper piping
One 12" Corner drive balatta belt approx. 45' long.
One khaki battledress blouse.
One pair khaki trousers.
One Khaki shirt
One woollen semmit.
One pair leather gloves
Plan of Kiltarlity Mill area.
Finger Print Form in respect of Pte. Joseph Lawrence HAYES
Finger Print Form in respect of Pte. Ernest Patrick OWENS.

--LIST OF WITNESSES FOR THE PROSECUTION--

LIEUT. G.C. MURPHY	NO. 15 COMPANY C.F.C.
G48173 SGT. PARKER, R.	NO. 15 COMPANY C.F.C.
G49248 PTE. MILES, W.H.	NO. 15 COMPANY C.F.C.
G48122 PTE. ARSENAULT, G.	NO. 15 COMPANY C.F.C.
G48106 PTE. STEWART, M.P.	NO. 15 COMPANY C.F.C.
G 5095 PTE. BARRETT, J.	NO. 15 COMPANY C.F.C.
G 5267 PTE. CRIPPS, J.	NO. 15 COMPANY C.F.C.
K72778 PTE. BROWN, S.T.	NO. 18 COMPANY C.F.C.
MAJOR D.A. MACPHAIL	NO. 15 COMPANY C.F.C.
MRS. ELIZABETH MCGREGOR	DISTRICT NURSE, KILFINNAN
MISS CHRISTINA MACKENZIE	THE SHOP, ALLANBURN, KILFINNAN
DONALD MACKENZIE	THE SHOP, ALLANBURN, KILFINNAN
G48164 PTE. NEIL, A.W.	NO. 15 COMPANY C.F.C.
G48181 PTE. WALSH, J.	NO. 15 COMPANY C.F.C.
G48187 S/SGT. SAVOIE, W.H.	NO. 5 DIST. WORKSHOP C.F.C.
K98516 CPL. BOWKER, J.V.	NO. 5 DIST. WORKSHOP, C.F.C.
K72694 PTE. JONES, J.A.	NO. 5 DIST. WORKSHOP, C.F.C.
MISS KATIE ANN BAIN	RAIGMORE HOSPITAL, INVERNESS
DR. S.K.R. GRAY	RAIGMORE HOSPITAL, INVERNESS
DETECTIVE SGT. G.C. URQUHART	INVERNESS-SHIRE CONSTABULARY THE CASTLE, INVERNESS.



Rough Sketch of locus in case of Joseph Lawrence Hayes and Ernest Patrick OWENS - Defence (General) Regulations, 1939, Regulation 28(1), at Kiltarlity.

[Sgd.] G.C. Urquhart
Detective Sergeant.

INVERNESS, 22/9/43.

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ARMY FORM B.296 (WAR). 99

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
S 40955	Pte.	Hayes J.L.	No. 15 Company, C.P.C.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.W.L. ..... Two times.

For Neglecting to obey ..... Two times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 7 Jan 41.

Date of last entry in Field Conduct Sheet 26 Sept 41.

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for Nil.

beginning on the N/A day of .....

4. The accused has been awaiting trial on the present charges for N/A days in civil custody; and for 85 days in military custody, *i.e.*, Nil. days in open arrest, 85 days in close arrest; of which Nil. days were spent in hospital.

5. The present age of the accused is 27 yrs 5 Mths.

6. The date of his attestation ~~calling up for military service~~ is 15 Aug 40

7. The service which the accused is allowed to reckon is 3 yrs 1 Mths.

8. The accused is in possession of† Nil.

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date—

	Date of Promotion
In the substantive rank of N/A	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

*Strike out if not applicable.

†State the military decorations (if any) held by accused.

(23116) W1 6871/1668 100,000 6/42 A.& E.W.Ltd. Gp.698 Forms/B.296(War)/1.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		Nil.		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 8th day of Dec. 43

C L. Akeyhurst

Officer i/c Records No. 15 Coy. C.P.C.

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No G.48055 Name HAYES, J.L. | Sqn., Battery, or Company # 15 Coy | Corps Cdn Forestry Corps | Date of enlistment 15/8/40 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. C.A. Williams Major

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Quebec, P.Q.	7/1/41	Pte.	-	A.W.L. 1 day	CSM Mott, AE	1 dys detn	9/1/41	Major C.A. Williams	Forf: 1 dys pay
Beauly	23/8/41	Pte	-	WOAS neglicting to obey ACI 24(4) d/25/1/41 not carrying a steel helmet & respirator.	L/C. McNulty L/C. Halkett	7 dys C.B.	30/8/41	Major C.A. Williams ED	
Lovat Camp	4/7/42	Pte	-	AA Sec 40: neglecting to obey an order given by a superior officer	Major C.L. Armstrong Cpl. Brown, OC	7 dys C.B. with extra fatigues	6/7/42	Capt. R.K. Allen	
Inverness	26/9/42	Pte	-	AA Sec 15(1) AWL from 2130 hrs 26/9/42 till 1000 hrs 27/9/42 (Absent 12 hrs, 30 minutes)	Lt. J.T. Westman Sgt. F.W. McAdam	Admonished	29/9/42	Capt. R.K. Allen	Forf: 1 dys pay

Certified true copy. (J.C.L. Akin) Lt. & Adjt., No. 15 Coy, CFC 15 Oct 43.

No.	Date of offence	Rank	Cases of drunkenness	OFFENCE	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				[illegible] "7" [illegible]				

115 R
Pte HAYES, W.A.

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here

115 R

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this 7th day of October, 1942. (Order convening the Court.)

Whereas it appears to me, the undersigned, an officer in Command of Corps Medium Artillery, First Canadian Army, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~xxxx

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
C53258, Pte HAYES, William Allan, 55 Can Bridge Coy, R.C.A.S.C.	First Charge: Army Act 40. CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE.	GUILTY.	GUILTY.	I confirm but direct that the sentence of two months detention be remitted.
	Second Charge: Army Act 15(1) ABSENT WITHOUT LEAVE.	GUILTY.	GUILTY.	
	Third Charge: Army Act 41 COMMITTING A CIVIL OFFENCE, THAT IS TO SAY HOUSEBREAKING AND LARCENY CONTRARY TO SECTION 26(1) OF THE LARCENY ACT 1916. (See Charge Sheet attached)	GUILTY.	GUILTY. 8 MONTHS DETENTION 15 October 42.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No

Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [signature] (Signed) [signature] President.

a/ Commanding Corps Medium Artillery
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated [illegible] after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

*(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B.

Certificate of President as to proceedings.

I certify that the above Court assembled on the 15 day of October, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) SHORT HAND WRITER & JUDGE ADVOCATE
*(4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this 15 day of OCTOBER 19 42

[signature]
President of the Court Martial.

C.

Certificate in case of death sentences.

* See footnote (*b*) on page 702 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D.

Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

Signed this 6th day of NOVEMBER 19 42

[signature]
Confirming Officer.
(R.J. Leach) Brigadier,
Comd. 1 Cdn Arty Gp - First Cdn Army.

Promulgated and extracts taken in the case of

(*a*) (Dated) 12-11-42 (Signed) [signature] Major
O.C. No. 55 Can Bridge Coy. R.C.A.S.C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The Accused C-53258 Pte. Hayes H.A. No. 85 Cdn. Bridge Coy, R.C.A.S.C., a soldier of the Canadian Army Overseas is charged with.

FIRST CHARGE.
Sec. 40
Army Act.

When on active service, " CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE."

in that he on 12 Sept.42 at 1730 hrs. when checked by the Cdn Provost Corps, at Waterloo Station, London, was in possession of a document purporting to be a genuine leave pass, knowing it not to be genuine.

SECOND CHARGE.
SEC. 15 (1)
Army Act.

When on Active service," ABSENTING HIMSELF WITHOUT LEAVE." in that he in the field did absent himself without leave from 1330 hrs. 7 Sept.42, until he was apprehended at 1730 hrs. 12 Sept. 42. (Absent 5 days. 4 hrs.)

THIRD CHARGE.
SEC. 41
ARMY ACT

When on active service, committing a civil offence that is to say, Housebreaking and larceny contrary to section 26 (1) of the Larceny Act 1916.

in that he in the field on Aug. 27/42 did break into and enter the N.A.A.F.I. Canteen and did therein steal.,

One metal Safe	Value	£ 8-5-0
Cash in safe	"	£ 105-10-3
Cash from cash Box	"	£ 2-0-0
25 Packets (20) Top Score Cigs,	"	£ 1-17-6
40 " (5) Woodbine Cigs.	"	£ 0-10-5
100 Gillette razor blades	"	£ 1-5-0
Total Value of property stolen		£ 119-8-2

All the property of the Navy, Army and Air Force Institute.

Field.
1 Oct. 42.

Alex ~~Sergeant Major~~
Commanding No. 85 Cdn. Bridge Coy,
R.C.A.S.C.

To be tried by Field General Court Martial.

Commanding Corps Medium Artillery

In the Field
7 Oct 42

Approved for the J.A.G.

(COPY)

No. 85 Cdn. Bridge Coy, R.C.A.S.C.
Canadian Army Overseas.

15 OCT 42.

MEDICAL OFFICER'S CERTIFICATE

I certify that the u/m are this day fit to undergo trial by Court-Martial.

D-123545	Pte.	Lee	J.R.M.
C-53258	"	Hayes	W.A.
D-123417	"	Hoyt	H.

Original medical certificate is enclosed in FGCM proceedings D123417 Pte Hoyt HE dated 15 Oct 42 183 Canadian Bde HQ ADJA First Cdn Army

Signed "R. J. Barron" Capt. RCAMC
Signature of Medical Officer.

PROCEEDINGS OF TRIAL BY FIELD GENERAL COURT MARTIAL OF C-83258 PTE. HAYES, WILLIAM ALLAN, 85 CDN BRIDGE COY, R.C.A.S.C., AT H.Q., 85 CDN BRIDGE COY, R.C.A.S.C., ON 15 OCT 42.

Court - President - Major D. W. Newlands, 61 Arty Coy, RCASC.
Members - Capt. D. F. MacRae, M.C., H.Q., First Cdn Army.
Capt. F. D. Hetherington, First Cdn Army Sigs.

Judge Advocate - Major T. G. Norris, M.C., D.J.A., First Cdn Army.

The Order Convening the Court, the Charge Sheet and the Summary of Evidence are laid before the Court.

The Court satisfy themselves as provided by Rs.J. 22, 23 and 106.

The Court opens and the accused is brought before the Court.

Prosecutor - Lieut. C. B. Kirk, First Cdn Army Signals.
Defending Officer - Lieut. G. C. Cormier, 1 Mob Wksp, RCASC.

Q.1 - C-83258 Pte. Hayes, William Allan, 85 Cdn Bridge Coy, RCASC, that is your number, name and unit?
A.1 - Yes, sir.
Q.2 - Do you object to Tpr. Parks as Court stenographer?
A.2 - No, sir.

The Court Reporter, D-36570 Tpr. R. V. Parks, 1 C.A.P.B., is duly sworn.

D.A.:

Pte. Hayes, you are here on a charge which will be read to you later. You are the person named in the Schedule of the Convening Order. There are three charges against you which will be read in due course. I will now read the Convening Order.

The Convening Order is read, signed by the President, marked Exhibit A and attached to the Proceedings.

The names of the President and Members of the Court are read over in the hearing of the accused and they severally answer to their names.

Court

Q.3 - Do you object to be tried by me as President, or by any of the Officers whose names you have heard read over?
A.3 - No, sir.

The Court, as above, is duly sworn.
The Judge Advocate is duly sworn.
The Waiting Member, Lieut. R. W. Webb, 85 Cdn Bridge Coy, RCASC, is directed to attend as an Officer under Instruction and is duly sworn.

At 0940 hrs the trial commences.

The Medical Certificate is produced by the Prosecutor, signed by the President, marked Exhibit B, and attached to the Proceedings.

The Charge Sheet is read, signed by the President, marked Exhibit C and attached to the Proceedings.

D.A.A.

Q.4 - C-53258 Pte. Hayes, William Allan, that is you?
A.4 - Yes, sir.
Q.5 - You have heard the charges against you. On the first charge how do you plead?
A.5 - Guilty, sir.
Q.6 - You have heard the second charge. How say you on that charge, are you guilty or not guilty?
A.6 - Guilty, sir.
Q.7 - You have heard the third charge read. On that charge how do you plead, guilty or not guilty?
A.7 - Not guilty, sir.

The provisions of R.A. 35(B) are complied with in respect to the charges on which the accused has pleaded guilty as follows.

D.A.A.

Q.8 - You have pleaded guilty to the first charge and to the second charge. You understand what that plea of guilty means. That means you admit every fact and every circumstance in each of these charges against you. You are not permitted to give any evidence or to make any answer to these charges at all. Evidence will be taken as to your character only and in mitigation of punishment. The procedure is entirely different to that on a plea of not guilty. You can call witnesses as to character only on a plea of guilty. Your pleas of guilty is in effect a judicial confession, the highest type of confession. If you think you should change your plea of guilty to not guilty you can do so now. Do you wish to change these pleas?
A.8 - No, sir.

The trial proceeds on the plea of not guilty.

Court

Q.9 - Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A.9 - No, sir.

The Prosecutor makes an opening address.

Prosecutor

Mr. President and Members of the Court, I hardly think it is necessary for me to make an opening address. The witnesses that I will call in this case are those who are named in the Summary of Evidence, and in addition to these I will call two men, O'Gorman and McAvoy, to tell what they know about this case. I understand that they know a great deal about it so far as this man is concerned.

D.A.A.

Has the Defending Officer had notice?

Defending Officer

Yes, sir. I was notified and make no objections.

D.A.A.

Are these the only two witnesses not mentioned in the Summary that you intend to call?

Prosecutor

Yes, sir.

J.A.

Do you intend to call the Corporal who apprehended the accused?

Prosecutor

I don't but would like to reserve the right to call him.

1st Witness for the Prosecution, Joseph Beard, Manager of the Navy Army and Air Force Institute Canteen at Marden Park Camp, Caterham, being duly sworn, is examined by the Prosecutor.

Q.10 - Your are Joseph Beard, Manager of the NAAFI Canteen at Marden Park?
A.10 - Yes, sir.
Q.11 - Will you tell the Court what you know about the alleged breaking and entry into the NAAFI Canteen?
A.11 - Yes, sir. On Thursday night, on closing the Canteen, on the 27th of August, the Canteen was locked up and left secure.

J.A.

Q.12 - Which Canteen?
A.12 - The NAAFI.

Prosecutor

Q.13 - Where is the Canteen?
A.13 - At Marden Park.

J.A.

You had better now bring out the location of the Canteen and any other points in respect of which objection is not likely to be made.

Prosecutor

Q.14 - Where is the canteen situated?
A.14 - The situation of the Canteen is at the end of Marden Park, the South end.
Q.15 - How far is it from the rest of the Camp or from the barracks?
A.15 - At the end of the barracks, sir, and there are two or three surrounding huts. One in front and one at either end, and the NAAFI cookhouse is directly outside it.

J.A.

Q.16 - Are there any other buildings or objects which will come into this case which he sould describe?
A.16 - There is a latrine at each end.

J.A.

What about the trees and hills, and so forth?

Prosecutor

Q.17 - Can you describe the surroundings of the Canteen?
A.17 - The Canteen is directly under a chestnut tree. The cookhouse is by the front door. And beside the Canteen and cookhouse there is a road. Across the road is a hut and at the end of the Canteen another hut and a latrine, and another living quarters.
Q.18 - Is there a hill?
A.18 - The hill comes up from the west side of the Canteen, and there are some trees on the hill.

Q.19 - Is the Canteen at the bottom of the hill?
A.19 - Yes, sir, at the bottom.
Q.20 - How far is the top of the hill and the trees from the Canteen?
A.20 - Approximately, I should think, about 200 yards.
Q.21 - Then will you go on with your story about the night in question?
A.21 - We cleared up Thursday evening, left the Canteen locked and secure.

[illegible]

Q.22 - What date was that?
A.22 - The 27th of August, sir. On Friday morning my charge hand and myself - .
Q.23 - What is a charge hand?
A.23 - He directs the staff to do their work. We went to the Canteen as we usually did that morning and on entering went around to my desk and saw the safe was missing. Then we rolled up the blackouts and found a window had been broken. We came back to the counter and gave a look in the showcase and saw cigarettes which had been in the showcase on the evening before were missing. Likewise I saw some Gillette razor blades were missing.

Prosecutor

Q.24 - Please describe the safe?
A.24 - It was a metal safe, painted green, with a nameplate on the front with the maker's name.
Q.25 - Was it, would you say, small, medium or large size?
A.25 - I would say medium sized, sir.
Q.26 - What was its approximate weight?
A.26 - I should imagine about a hundred-weight. I never tried lifting it on me own.
Q.27 - What were its approximate dimensions? Six feet high, two feet or what?
A.27 - Well, sir, it would be about two feet high and not quite two feet wide.
Q.28 - How did you determine exactly what was missing?
A.28 - Well, sir, my books. I have to take a cash conciliation every morning in my final ledger.
Q.29 - Did you then look round the room?
A.29 - No, sir, I looked round the room to see what I could see was missing and all I could discover at that time was the cigarettes and razor blades from the showcase.
Q.30 - What kind of cigarettes?
A.30 - Top Score and Woodbines.
Q.31 - Approximately how many cigarettes?
A.31 - Sixty packets, sir.
Q.32 - How many are in a packet?
A.32 - Twenty in the Top Scores and five in a Woodbine.
Q.33 - About how many cigarettes were missing?
A.33 - Somewhere between 800 and 1000.
Q.34 - After you found the things were missing, what did you do?
A.34 - I told my charge hand to lock up the place and immediately went to the Transport Office and asked them to ring up Sgt. Terry to come to the Canteen.

The Witness is cross-examined by the Defending Officer.

Q.35 - You mentioned you took the blackouts up?
A.35 - Yes, sir.
Q.36 - What type of blackouts are they?
A.36 - We use paper blinds.
Q.37 - How are they kept up?
A.37 - They are tacked at the top.
Q.38 - Explain how you took them up.
A.38 - We rolled them up.
Q.39 - When you left the Canteen on Thursday night were the blackouts up?
A.39 - Every blackout was down, sir.

Q.40 - This window that you mentioned was broken. How wide is it?
A.40 - The window is about the same width as one of those over there (pointing to Courtroom windows).
Q.41 - How wide would you say that is?
A.41 - about one foot seven inches.
Q.42 - How wide did you say the safe was?
A.42 - I said not quite two feet, sir.
Q.43 - Was it square?
A.43 - Not exactly square, sir. Squarish, I'd say.
Q.44 - Would the safe go through that window that was broken when it was opened?
A.44 - Yes, sir.
Q.45 - The cigarettes you say are missing. Did you give a list of this stuff to the Police?
A.45 - Yes, sir.
Q.46 - Do you remember that you told them how many cigarettes were missing and how many packets?
A.46 - Yes, sir, I told them about 400 Top Score cigarettes.
Q.47 - In how many packets?
A.47 - Forty packets.
Q.48 - How many Woodbines?
A.48 - There was about 200 Woodbines in packets.
Q.49 - How many are in a packet?
A.49 - Ten are in packets of five's.
Q.50 - Didn't you tell the Prosecutor a few minutes ago that there was 40 packets of Top Scores stolen?
A.50 - Yes, sir.
Q.50 - Are you sure that was the exact number of cigarettes missing?
A.50 - The Top Scores were in a NAAFI box under the counter. The Woodbine box on the counter had approximately 200 in it.
Q.51 - Going on then, could anyone cover up any shortages you have had?
A.51 - No, sir, I don't stand for shortages.
Q.52 - I didn't suggest that, but a shortage could have been covered up?

J.A. to Defending Officer.

Are you going to call evidence along this line?

Defending Officer

No, sir.

J.A.

Then you should not cast aspersions on this witness.

Defending Officer

I am not casting aspersions, merely making the suggestion that shortages could have been covered.

J.A.

You wont get very far with this Court unless you are prepared to substantiate suggestions.

Defending Officer

Q.53 - Now before this offence took place. Was the 27th of August pay night?
A.53 - Yes, sir.
Q.54 - Were there a great many men in the Canteen that night?
A.54 - A decent many, sir.
Q.55 - Do you recognize the accused as one of the men in the Canteen that night?
A.55 - Yes, sir.
Q.56 - Was the Accused drinking?
A.56 - Yes, sir.
Q.57 - Have you any idea how much he drank?
A.57 - I couldn't say, sir.

Q.58 - Would it have been very much?
A.58 - I can't answer that question. I go in and out of the NAAFI too much of a night to see.
Q.59 - Well, this night was there a keg of draught outside the Canteen?
A.59 - Yes, sir.
Q.60 - Was this keg full?
A.60 - Yes, sir.
Q.61 - It was left full when you went home that night?
A.61 - Yes, sir.
Q.62 - When you arrived in the morning was it empty?
A.62 - It wasn't empty but it was well down below the bung. I imagine there was three or four gallons left in it.
Q.63 - How many gallons did the keg hold?
A.63 - Approximately nine gallons.

Court

Q.64 - Mr. Beard, the blackouts you recall were fastened at the top and hung down over the window?
A.64 - Yes, sir.

Q.65 - Was the door locked when you came in next morning? It had not been tampered with?
A.65 - Yes, sir.
Q.66 - You have seen the accused. Did you know him any better than you know others?
A.66 - No better, sir.
Q.67 - How many men are there in the unit?
A.67 - I was given to understand, when the Canteen was opened, there would be approximately 500 men, but I couldn't say if there is or not.

Court

Q.68 - You say the safe was two feet wide?
A.68 - Well sir, that would be its approximate width only. I do know there was room for it to go through the window.
Q.69 - Did the Canteen door have a spring lock?
A.69 - Yes, sir, a master lock.
Q.70 - You don't have to turn a key outside to lock it?
A.70 - No, sir.
Q.71 - You afterwards recovered this safe?
A.71 - Yes, sir.
Q.72 - How did you find it?
A.72 - After a search, sir.
Q.73 - Had it been opened?
A.73 - No, sir.
Q.74 - You got the contents back?
A.74 - Yes, sir.
Q.75 - Where was the safe found?
A.75 - Up on top of the hill, sir.
Q.76 - You saw it was the same safe?
A.76 - I did, sir.
Q.77 - You had it brought down?
A.77 - The Police did, sir.
Q.78 - Did you notice anything about the safe in respect to its condition than when you saw it the night before?
A.78 - The only difference later on was I could see the bolts had been either chiselled or sawn through.
Q.79 - There were marks on it?
A.79 - Yes, sir. Also the bottom had been badly mauled.
Q.80 - As I understand, near the missing safe was a metal cash box. Was the cash in this box intact?
A.80 - No, sir. It was missing.
Q.81 - This cash amounted to about £2?
A.81 - Yes, sir.
Q.82 - And Top Score cigarettes, Woodbine cigarettes and razor blades were missing?
A.82 - Yes, sir.

2nd Witness for the Prosecution, Police Constable Harry Maurice Harding, No. 347, stationed at Caterham, Surrey, being duly sworn, is examined by the Prosecutor.

Q.83 - Are you P.C. Harry Maurice Harding, No. 347, stationed at Caterham?
A.83 - That is right.
Q.84 - Will you give your evidence regarding this case at the NAAFI Canteen at Marden Park which you investigated?
A.84 - At 8:50 a.m. on Friday, the 28th of August, 1942, in consequence of information received, I visited the NAAFI Institute Canteen at Marden Park Camp, where I found that a pane of glass near the catch of a casement window at the south west side of the Canteen had been broken. There being some loose Woodbine cigarettes on the ground outside and directly under the window, I then commenced inquiries and learned that a safe containing a sum of money from the Canteen cash box, also a quantity of cigarettes and razor blades were missing from the Canteen premises. Later a search was made for the missing articles.

Q.85 - By you?
A.85 - By me, sir. And the safe was found.
Q.86 - By you?
A.86 - No, sir, by the search party which I had organised. Upon examining the safe - .
Q.87 - Where was it found?
A.87 - I found the safe in a small copse about 400 yards from the Canteen in question. Upon examining the safe I found that an attempt had been made to open it.
Q.88 - Was it examined by you?
A.88 - Yes, sir. But this attempt to open it had been unsuccessful. The door was still secure. And upon being opened in the presence of the Police the money was found to be intact.
Q.89 - How much money was found in the safe?
A.89 - I didn't actually check that over, sir. On Monday, the 7th of September, 1942 - .

Prosecutor

Q.90 - Does this apply to this accused?
A.90 - It has some connection, sir. In consequence of further inquiries made with the aid of Sgt. Terry and the C.I.D. I later obtained under caution statements from Pte. Hoyt and Pte. McAvoy. That is my evidence, sir.
Q.91 - Can you give us any further information about the pane of the broken window?
A.91 - Yes. The pane of glass situated near the catch had been broken enough to get an arm through to release the catch.
Q.92 - Did you notice anything about the situation of the blackout on it?
A.92 - That was not there, sir, when I examined it.
Q.93 - When you found this safe in a small copse, where was it in relation to the hill?
A.93 - Coming up the hill nearly all the way, about 400 yards from the Canteen on the west side.
Q.94 - Half way up the hill or at the top?
A.94 - More than half way, approximately.

The witness is cross-examined by the Defending Officer.

Q.95 - Did you question the accused at all?
A.95 - I did not.
Q.96 - Were you present when he made a statement?
A.96 - I was not, sir.

Court

Q.97 - How high was the sill from the ground, of the window where you saw the pane of glass broken?

A.97 - Roughly about two feet, sir.
Q.98 - Then it was low to the floor?
A.98 - Quite low, sir.
Q.99 - Could the safe have been passed through the window?
A.99 - It could, sir.
Q.100 - How wide could the window be opened by undoing the catch?
A.100 - Roughly about two to three feet, sir.
Q.101 - How large a party did it take to lift the safe into the truck to bring it down the hill again?
A.101 - Definitely more than one man, sir.
Q.102 - Did you see it put on the truck?
A.102 - Definitely not, sir.
Q.103 - How heavy is the safe?
A.103 - About 200 pounds, sir.
Q.104 - You saw some Woodbine cigarettes on the ground near the safe?
A.104 - Yes, sir, trodden in to the ground.
Q.105 - Was there any money around the safe?
A.105 - No, sir, no money.

J.A.

Is there any reason why the Court should not view the locus? The Canteen isn't far from here is it?

Court

No, sir. Mr. Defending Officer, have you any objection?

Defending Officer

No, Sir.

Court

This Court will adjourn to view the locus. The accused and escort will accompany us. And Constable Harding, will come with us, please, in case there are any further questions there. I think also Mr. Beard should come with us, the NAAFI Manager.

The Court is closed until arrival at the Canteen where it is re-opened and the accused is again brought before it.

J.A. to Constable Harding, 2nd Witness for the Prosecution.

Q.106 - Where is the window you saw broken?
A.106 - This is it (shows window to Court who examine it).

Court

Is the safe still in here?

J.A.

Q.107 - Is that the safe (pointing to green, metal safe, lying on back near the window)?
A.107 - I will identify that, sir.
Q.108 - About two feet by two feet six inches?
A.108 - About two feet by three, sir.

Court

Q.109 - Were any fingerprints taken from the safe?
A.109 - It was tested for fingerprints, sir.
Q.110 - Were any found?
A.110 - Only glove smudges, sir.

Court - moving to behind Canteen counter.

I would like to see the original position of the safe.

J.A.

Q.111 - Constable Harding have you been in this Canteen before the night of the alleged breaking in?
A.111 - Yes, sir.
Q.112 - Where was the safe?
A.112 - Approximately the same position as it is now (indicating new safe against Canteen wall).
Q.113 - That is to say?
A.113 - At furthest end of Canteen behind the counter.
Q.114 - At the far end from the window which was broken?
A.114 - That is right, sir.
Q.115 - Were you in this Canteen the morning after the robbery?
A.115 - Yes, sir.
Q.116 - The counter was in the same position as it is now, approximately?
A.116 - Yes, sir.

Defending Officer

Q.117 - Now let us fix the position of the counter absolutely clear. The next morning was it just like this?
A.117 - It might have been moved a few inches from the wall, sir.
Q.118 - Were any objects behind the counter undisturbed or disturbed?
A.118 - Not that I noticed any disturbance but I don't know if there were as many objects then as there are now.

J.A.

Q.119 - Was the passage from the Manager's desk to the front of the Canteen the same as it is now?
A.119 - Approximately, sir.

Members of the Court raised the damaged safe from the Canteen floor to test its weight.

The Court exits from the Canteen to the west side, looking up the hill.

J.A.

Q.120 - Mr. Witness, where is the copse where you found the safe?
A.120 - About on a level with my finger, sir (pointing).

Prosecutor

Q.121 - Where did you find the cigarettes?
A.121 - On the cinders here, sir, and one or two were scattered about underneath the broken window.

Court walks to copse near hill top.

J.A.

Q.122 - Where was the safe found?
A.122 - There behind a tree (indicating).
Q.123 - It is about 200 to 250 yards from the Canteen to this spot where we are standing now?
A.123 - Yes, sir.

The Court adjourns to return to the Courtroom.

The Court is re-opened and the accused is again brought before it.

3rd Witness for the Prosecution, Detective Sergeant Tom Harris, No. 33, Caterham Police, having been duly sworn, is examined by the Prosecutor.

Q.124 - You are Sgt. Tom Harris, No. 33, of the Caterham Police?
A.124 - Yes, sir.
Q.125 - Will you tell the Court what you know about this case in relation to the accused?
A.125 - On the 28th of August this year I was called to the NAAFI Canteen at Marden Park Camp where I assisted in the investigation of breaking into the Canteen and the theft of certain property. Later that day a search was conducted on the grounds at Marden Park and a safe was found. The safe had been damaged near the hinges. The contents were intact. On the 11th of September, this year, in company with other officers, I saw the accused man, Hayes, in London being detained. I told him who I was, that I was making inquiries concerning the offence at Marden Park. That I had reason to believe he could assist me in this matter. He at first denied knowing anything about it. Later that day he was conveyed to Caterham Police Station. I further questioned him about it and told him I was satisfied he had some knowledge of it, asked him if he cared to give me any information he might know. We had some discussion with another escorting man who was present, the man, Lee. I got him then to make a statement.
Q.126 - Was he under caution at this time?
A.126 - At that stage, no, sir. After this discussion with Lee he said he would be glad to make a statement. Present at the time were the other prisoner, Lee, and Sgt. Frost and Sgt. Terry. After his discussion with the prisoner Lee he agreed to make a statement. I cautioned him and wrote the caution down. The words of the caution were, you are not obliged to say anything, but anything you may say will be taken down in writing and may be given in evidence. I explained to him the meaning of the caution.
Q.127 - At this time you say he had agreed to make a statement.
A.127 - He had agreed.
Q.128 - Before the caution from you?
A.128 - Oh, yes, sir.
Q.129 - Were you quite satisfied he understood the caution?
A.129 - I was quite satisfied, sir. I then wrote his statement down in the presence of Sgt. Frost, Sgt. Terry and Pte. Lee.
Q.130 - They were all present?
A.130 - Yes, sir. He signed the statement after it was taken down.
Q.131 - And then what happened?
A.131 - Later that day I accompanied Hayes to a spot in Marden Park, made a search of the spot indicated by him, and there found certain packets of Top Score cigarettes. He took us to another spot and in the arm of a tree and on the ground we recovered 42 razor blades. The cigarettes and razor blades were similar in kind to those reported stolen.
Q.132 - Did you know where these things were before you were told?
A.132 - No, sir. The accused man Hayes took us to the spot
Q.133 - Can you identify this package?
A.133 - Yes, sir. These are the packets of cigarettes found.
Q.134 - And that was found where?
A.134 - Near the top of the hill about thirty feet from where the safe was found, in a sort of undergrowth.
Q.135 - Who was it told you where to go?
A.135 - The accused man, Hayes.

The package is produced by the Prosecutor, signed by the President, marked Exhibit "D", admitted in evidence and attached to the Proceedings.

Q.136 - Can you identify this package?
A.136 - These are the razor blades found on the ground and in the arm of the tree indicated by the accused.

The package is produced by the Prosecutor, signed by the President, marked Exhibit "E", admitted in evidence and attached to the Proceedings.

Q.137 - Can you identify that document?
A.137 - This is a statement in my handwriting made to me by the accused man Hayes, signed by him and myself.

Defending Officer

I object to this document purporting to be a statement signed by the accused.

J.A.

On what grounds?

Defending Officer

Grounds that I shall attempt to bring out in my cross-examination.

Prosecutor

May I explain to the Court how what I have done and what I intend to do. Sgt. Harris has produced to you two packages as exhibits as a result of what the Accused told him. I contend that statement to which the Defending Officer has objected has been properly produced. I direct attention to the Manual of Military Law.

J.A.

May we leave arguments of law aside. What you are going to do is attempt to prove the voluntary nature of the statement. If you have any more questions to ask Sgt. Harris about the statement ask them now.

Prosecutor

Sir, I have one question to ask. I wanted a ruling on it first.

J.A.

We cannot give you a ruling until you ask it.

Prosecutor

Q.138 - What did the accused say to you in order to allow you to find these packets, the razor blades and cigarettes.
A.138 - His exact words I do not recall but in effect he told me where some razor blades and cigarettes were.

J.A.

Q.139 - Which cigarettes and razor blades?
A.139 - Some cigarettes taken from the Canteen.

J.A.

Q.140 - The witness has said not something he knows but what the accused told him. What did the accused tell you on this?
A.140 - We did not discuss the question. I was endeavouring to recover some of the missing articles.

J.A. to Defending Officer

What objection have you to that?

Defending Officer

I understood the witness to say some cigarettes and razor blades of the same kind as those stolen.

Court

The answer is admitted subject to the objection.

J.A.

I understand the whole question of the admissibility of this last question and its relation to the statement will be ruled upon after we have heard every witness who knows about the accused.

Defending Officer

Yes, sir.

The Witness is cross-examined by the Defending Officer.

Q.141 - Sgt. Harris, did you tell the accused that others had blamed him for the crime?
A.141 - I told him I had taken statements from other men.
Q.142 - Did you at any times in the accused's presence tell him in words to the effect that he would be tried by the Courts for the crime?
A.142 - No, sir.
Q.143 - Did you have any conversation in the presence of the accused with anyone discussing the punishments of Civil Courts and Military Courts?
A.143 - There was conversation regarding trial by Civil Courts and trial by Military Courts mainly by the accused man, Lee. The accused was present. It was brought up by Lee who said he would rather be dealt with by a Civil Court than a Military Court.
Q.144 - Any conversations that took place on this subject, then, took place in the presence of the accused, Hayes?
A.144 - Yes, sir, they did.

J.A.

Q.145 - Prior to statement or afterwards?
A.145 - After, sir.

Defending Officer

Q.146 - Did you state that in a Civil Court for an offence of this kind a fine would be charged?
A.146 - No, sir. The question of punishment was raised by the man Lee. He was not acquainted with the law in this country. He asked what punishments were given out here. I went into various offences and told what punishments I knew had been meted out on a few of them.
Q.147 - Did anyone say Civil Courts are much more lenient than Military Courts?
A.147 - No, sir.
Q.148 - Were you present all the time this conversation took place?
A.148 - I was one of those present at the conversation with Lee.
Q.149 - Did anyone else make statements on this subject?
A.149 - I don't recall, sir.
Q.150 - You don't recall?
A.150 - I don't.
Q.151 - Were you present?
A.151 - I was when the accused man Lee was talking to Hayes and myself.
Q.152 - Was this conversation before or after the caution?
A.152 - After the caution.
Q.153 - You took down the accused's statement yourself?
A.153 - I did, sir.
Q.154 - Did you question the accused?
A.154 - Not when the statement was being made.
Q.155 - Not on any words in the statement?
A.155 - No.
Q.156 - Did anyone else question him?
A.156 - No, sir.
Q.157 - How long did the questioning take?
A.157 - I didn't time it but I should say approximately half an hour.

J.A.

Q.158 - Sgt. Harris, why did you convey the accused to the Police Station at Caterham after you saw the accused in London?
A.158 - It was a matter of convenience, sir.

Q.159 - What do you mean?
A.159 - I mean it was more convenient to see the accused and talk to him in my office than standing on the street or somewhere else.
Q.160 - You were in London yourself?
A.160 - Yes, sir.
Q.161 - Why not question him there?
A.161 - He would not make a statement there.
Q.162 - You then brought him down to Caterham?
A.162 - Yes, sir.
Q.163 - And on the same day he was brought down the questioning took place?
A.163 - Yes, sir.
Q.164 - Now these cigarettes and razor blades were recovered by you in the place where the safe was located?
A.164 - Yes, sir.
Q.165 - What was the relation of the spot where they were found to where the safe was found?
A.165 - The cigarettes and razor blades were found approximately 30 to 35 feet from where the safe was found.
Q.166 - Which was found in the open?
A.166 - The cigarettes were on the ground and the razor blades in the centre of the hedge.
Q.167 - In the centre of the area outside this copse where the safe was found?
A.167 - Near the copse but approximately 200 to 300 yards from the Canteen.
Q.168 - Was it in consequence of statements made by the accused that he had lead you to these cigarettes and razor blades?
A.168 - Yes, sir.
Q.169 - Some evidence has been given that Lee in the presence of the accused said he preferred to be tried by a Civil Court, or spoke about trial by a Civil Court?
A.169 - He said he preferred being dealt with by a Civil Court because he felt he would receive a lighter sentence.
Q.170 - Did the accused join in this?
A.170 - No, sir. He was very quiet and allowed Lee to do the talking.
Q.171 - The accused took no part in this talk nor expressed any opinion or preference there?
A.171 - Took no part at all, sir.
Q.172 - Didn't join in the discussion?
A.172 - No, sir.

4th Witness for the Prosecution, W-21172 Sgt. J. R. Frost, of the Special Investigation Section of the Canadian Provost Corps at Canadian Military Headquarters, attached to H.Q., First Canadian Army, being duly sworn, is examined by the Prosecutor.

Q.173 - You are W-21172 Sgt. J.R. Frost of the Special Investigation Section of the Canadian Provost Corps?
A.173 - Yes, sir.
Q.174 - Can you tell the Court what you know about this investigation?
A.174 - At about 0800 hours on the 28th of August, 1942, I was informed by the Adjutant of the 65 Cdn Bridge Coy that the Canteen had been entered and some property removed. I proceeded there at once and made arrangements to question all guards and picquets who were on duty during the night. By that time the Civil Police had arrived. I proceeded to the Canteen and went on with the questioning of the guards and picquets. I organized a search party to look for the safe which was found a few hundred yards from the Canteen. The money was intact. There were few cigarettes lying around the safe. On the 13th of September, 1942, I accompanied Sgt. Harris to No. 6 Provost Coy in London where Pte. Hayes was detained as an absentee. In company with Sgt. Harris I brought him back to Caterham Police Station. I was present there when Sgt. Harris questioned Hayes and was present when Hayes made a statement which he signed. Later, in company with Sgt. Harris, Pte. Hayes took us to a spot where there were five or six packets of cigarettes and some razor blades of the type that had been stolen from the Canteen. That is all.

Q.175 - Who was present at this questioning at Caterham besides yourself and Sgt. Harris?
A.175 - Sgt. Terry was in and out at the time in part of the questioning. Pte. Lee was also present.
Q.176 - Were all these persons present during all the questioning of the accused?
A.176 - Yes, sir, that is to say except that Sgt. Terry was in and out.
Q.177 - Were the statements of Hayes made within the hearing of Lee?
A.177 - That is right. Yes.
Q.178 - Was the accused cautioned?
A.178 - He was.
Q.179 - At what stage?
A.179 - Before he made any statement.
Q.180 - Had he been questioned?
A.180 - No.
Q.181 - Was he questioned at London?
A.181 - He was told about the investigation and that he was being taken down to Caterham Police Station for questioning.
Q.182 - Can you give us any further information regarding the voluntary nature of this statement?
A.182 - Well, the statement was taken from Lee first, after Lee had some discussion with Hayes. Lee made a statement, at which time he said to Hayes, "You don't have to say the same as me".

Defending Officer

Sir, is that admissible - what Lee said?

J.A.

If it was said in the presence of the accused.

A.182A- Lee said, "I am going to make a statement. You (Hayes) can say what you like".

J.A.

That is not relevant unless it involved the accused.

Defending Officer

That is what I mean, sir.

Prosecutor

Q.183 - After the accused had spoken with Lee what was his attitude?
A.183 - He was willing to make a statement.
Q.184 - Was Hayes questioned in the Police Station regarding this offence?
A.184 - Yes, sir, he was.
Q.185 - What was the nature of that questioning?
A.185 - It was a routine to see if he was involved.

J.A.

You are speaking of the questioning before the caution?

Prosecutor

Yes, sir.

Q.186 - He was questioned to a considerable extent?
A.186 - Yes, sir, he was.
Q.187 - To take you back to when you were at the Canteen. Did anything there indicate the breaking into or entry or taking away?
A.187 - Yes, sir. The glass in a casement window had been broken. There were some loose cigarettes lying around outside. The safe apparently had been removed.
Q.188 - You told us that the accused led you to a place where certain articles were found, the cigarettes and razor blades. Can you tell us the words that were said that resulted in leading to the cigarettes?

A.188 - I am not just sure what was said. He gave us the impression he knew where they were.

The Witness is cross-examined by the Defending Officer.

Q.189 - How many people questioned the accused?
A.189 - Two people.
Q.190 - Who were they?
A.190 - Sgt. Harris and myself.
Q.191 - Did Sgt. Terry have anything to say to the accused?
A.191 - He may have had something to say.
Q.192 - Was the accused in your presence all the way from London
A.192 - Yes, sir.
Q.193 - Was there any conversation going on?
A.193 - There was nothing material.
Q.194 - At that stage, was the accused definitely suspected in this case?
A.194 - He was thought to be connected with it, to know something.
Q.195 - Where was Hayes picked up in London? At Henrietta Street?
A.195 - That is right.
Q.196 - Was he told that if he didn't make a statement he would be implicated by others?
A.196 - He wasn't told he was implicated.
Q.197 - How much was he told?
A.197 - Merely that he was to be questioned about the case.
Q.198 - Was he told, "Don't you take the rap for the others"?
A.198 - I don't think so.
Q.199 - Do you recall Sgt. Harris saying, "We might as well break the news to them now as they are going to be remanded to a Military Court"?
A.199 - There was something said to that effect.
Q.200 - Do you remember what it was?
A.200 - Something to that effect.
Q.201 - Can you recall anything else?
A.201 - I can't recall anything else, sir.
Q.202 - Do you remember a conversation taking place regarding punishment?
A.202 - Not to do with the accused. I may have discussed it with Sgt. Harris.
Q.203 - In the accused's presence?
A.203 - I could not say if it was or not.
Q.204 - When you were in this room at the Caterham Police Station with the accused, the man Lee, and Sgt. Harris, was this subject of trial and punishment mentioned?
A.204 - At some time, yes.
Q.205 - Did you, Lee and Hayes discuss Civil Courts?
A.205 - We discussed it from this point of view; it was said that Civil cases in the Army were dealt with by Civil Courts and Military Courts.
Q.206 - Did you mention punishments in Civil Courts - did you say "They give you fines for offences like this in Civil Courts"?
A.206 - No.
Q.207 - Are you sure?
A.207 - Definitely.
Q.208 - When you discussed the matter, did you talk about the maximum punishments for offences of this nature?
A.208 - Not to my knowledge.
Q.209 - You were discussing other offences?
A.209 - We were just discussing the subject.
Q.210 - But you did mention something about punishment?
A.210 - I don't think it was at that time.
Q.211 - When was it?
A.211 - On the following day.
Q.212 - After the statement?
A.212 - Yes, sir, after the statements were made.
Q.213 - Now in Sgt. Harris' room at the Caterham Police Station, would not this matter of punishments by Civil Courts have been discussed?
A.213 - No, it would not have been. At that time I was not sure whether the accused would be tried in a Civil or Military Court, and until I knew there was nothing to discuss.
Q.214 - Was this discussion before or after the statement was taken down?

A.214 - It was after the statement was taken.
Q.215 - Before the caution was given or afterwards?
A.215 - After. The statement was not taken until after the caution.
Q.216 - You can't recall anything that was said in reference to this crime and the Civil Courts?
A.216 - No, sir, on that, no.
Q.217 - But you admit it was discussed?
A.217 - Yes, sir.
Q.218 - Did you discuss anything about the punishment for this crime in Civil Courts?
A.218 - I don't think so. It was definitely not discussed before the statement was taken.

The Witness is re-examined by the Prosecutor.

Q.219 - About this discussion on Civil or Military Courts. Do you remember how the subject came up? What lead up to it? Did you bring it up?
A.219 - Yes, sir, I did.
Q.220 - You introduced the subject?
A.220 - I did.
Q.221 - Can you tell us why?
A.221 - From previously talking to the D.A.P.M.

J.A.:

Is this relevant?

Prosecutor

Some suspicion has been thrown on it.

J.A.:

What the D.A.P.M. said isn't relevant. There is some doubt in the mind of the Defending Officer but I don't see why you should worry about it.

Prosecutor

I thought the witness might bring out something else which would tell us clearly what this conversation was.

J.A. to Defending Officer

Did you finish cross-examining Sgt. Marris?

Defending Officer

No, sir. On the trial within a trial, no, I have not. Is Sgt. Terry going to be called?

Prosecutor

No, Sgt. Terry is not going to be called.

J.A. to Defending Officer

Do you, Mr. Defending Officer, want Sgt. Terry called?

Defending Officer

Either that or permission to speak to him for a few minutes.

J.A. to Prosecutor

Do you wish to call any other witnesses?

Prosecutor

Yes, sir.

J.A.

Are they named in the Summary of Evidence?

Prosecutor

No, sir.

J.A.

Who are they?

Prosecutor

McAvoy and O'Gorman, sir.

J.A.

On the question of admissibility?

Prosecutor

No.

J.A.

Mr. Defending Officer, do you want Sgt. Harris recalled now on the question of the admissibility of the document? The reason I ask that is that I thought perhaps the Court determined the admissibility of Sgt. Harris' evidence at my suggestion last time. Do you want to say anything else to him?

Defending Officer

No, I wont take him, sir.

J.A.

On the question of admissibility. Have you any evidence?

Defending Officer

That is what I want to see Sgt. Terry about.

Court

The Court adjourns for lunch until 1:15 o'clock.

At 1320 hrs the court is re-opened and the accused is again brought before it.

The document produced by the Prosecutor is marked for identification by the Court Reporter.

Production of the document in evidence is objected to by the Defending Officer.

Court

Has the Prosecutor any more witnesses to bring forward on the admissibility of the statement?

Prosecutor

No, sir.

Court

Very well, proceed. You are going to submit this evidence,

Prosecutor

I have shown that this statement was given voluntarily. From the time these men were detained in London and Sgt. Harris and the Provost Sergeant, Sgt. Frost, saw them and took them to the Caterham Police Station they were not questioned. Both Lee and Hayes were taken together and questioned at Caterham. I submit here that the police questioned this accused merely in regard to his connection with this offence until satisfied he was implicated, than obtaining a written statement from him. At that time I submit that caution was given. There has been no evidence brought forward that threats were made and as both witnesses have given evidence that the caution was made it must be taken that the accused understood the nature of that. I wish to point out both of these Police Officers were present - Sgt. Harris and Sgt. Frost, representing different branches of the Police - the Civil Police and the Provost, whose duty it is to bring back persons who are apprehended. I submit this confession in evidence after two witnesses representing the Military and Civil Police have sworn that the statement was made voluntarily. That is all I have to say on that point. There is one other point on which I have something to say. That is the situation from the Manual of Military Law on the admissibility of confessions, page 93, section 99.

D.A.A.

All right we have noted that.

Court

Has the Defence anything to say?

Defending Officer

I don't think this answers the definite of voluntary in regard to the statement. I submit here in this case that an inducement was put forward to the accused. I will say in a few minutes support this. I want to point out that a promise or inducement can be implied. I submit that this conversation that took place between the two Police Officers in the presence of the accused, talking about crime, punishment, the Courts, jurisdiction and maximum and minimum penalties, was definitely put forward in the hearing of the accused as an inducement. It gave him an idea he was to be tried by a Civil Court, held out a definite hope to him that he would be tried by a Civil Court, and convinced him that if he were tried by a Civil Court he would get off with a light sentence. Sgt. Frost told you this conversation took place definitely in the presence of the accused. I have before me - and will ask for a ruling from the Court - the Summary of Evidence. May I quote from that Summary?

D.A.A.

You should put somebody in the box.

Prosecutor

I have no objection.

Defending Officer

I asked Sgt. Frost if he heard the questions.

D.A.A.

If everything you refer to can be produced in evidence there is nothing to prevent you from referring to it. If not you can't refer to it. If you want to have a witness recalled you can do so.

Defending Officer

That is what I am not sure about.

D.A.A.

Which witness is it?

Defending Officer

Sgt. Harris.

3rd witness for the Prosecution, Detective Sergeant Tom Harris, No. [illegible], is recalled and questioned by the Defending Officer.

Q.222 - Do you remember being asked by Cpr. Lee in the taking of the Summary of Evidence against him on 28 Sep 42, "Did I ask if I was to be tried in a civilian or Military Court and did I say thank I was under the impression I was to be tried in a civilian Court when I made my statement?"? Did he ask you that question?

A.A.

And was that in the presence of the accused?

A.222 - At the Summary of Evidence it was not in the presence of the accused.

Civilian Officer

Q.223 - Was that question asked you in the presence of the accused?
A.223 - Not at the Summary of Evidence.

D.A.

Q.224 - Was that question referred to by Lee asked by Lee in the presence of the accused?
A.224 - A similar thing was said by Lee at the Police Station when the accused was present.
Q.225 - And this answer. Was it made in the presence of the accused?
A.225 - No, sir, not at the Summary of Evidence. At the Police Station, yes, sir.

Defending Officer

Q.226 - Was you answer similar at the Police Station?
A.226 - A similar answer, yes, sir.
Q.227 - Did you say you might as well break the news to them now that they were going to be remanded to a Military Court?
A.227 - Something was said to that effect in my presence of the accused at the Police Station. I had up to that time thought he would be brought before a Civil Court. However, the Civil Court ordered that they be handed over to the Military authorities. Then it was only fair to tell the accused about it.

Defending Officer

That is just about all I have to say except to submit a temptation was indirectly put forward to the accused in the police station to make his statement so that he was surprised when he found he was not to be tried by a Civil Court. I quote on this Phippson, page 290, a promise or threat need not be direct but can be inferred. I also cite Rex vs Thompson, 1907, 2 Queens Bench, 13. It need not be expressed and the way this conversation was brought on was with the direct purpose of getting this confessing or statement from the accused. The statement was made after the caution was given. But this was the inducement put forward by the Police Officer to get that confession.

Prosecutor

I would like to point out one sentence coming out of the passage read in the Summary of Evidence. "Lee brought the matter up." That is all I want to say.

The Court is closed to consider the submission.

The Court re-opens and the accused is again brought before it.

Court

The Court rules that the alleged confession is admissible as evidence.

Prosecutor

I submit this document, which has been marked for identification and identified as the statement made by the accused, in evidence.

The statement is read by the President, signed by the President, marked Exhibit "P" and attached to the Proceedings.

Prosecutor

I would like to call one more witness on this case, Pte. O'Gorman. I might as well get him in now.

Court

That is up to you.

Prosecutor

Perhaps I will not call him in this case unless the Defending Officer wants me to. That is the case for the Prosecution.

Defending Officer

May it please the Court, I will address the Court briefly on the case for the accused. I shall bring forward evidence to prove to the Court that on the night in question the accused and some other -.

J.A.

Before you do that I think we should comply with the provisions of R.P. 40.

J.A. to accused

Now you are the accused in this case of house breaking and larceny, the charge to which you have pleaded Not Guilty.

Q.222 - Do you wish to give evidence yourself?
A.222 - No, sir.
Q.223 - Do you intend to call in other witnesses?
A.223 - Yes, sir.
Q.224 - As to Character only?
A. 24 - No, sir.
Q.225 - Witnesses as to the facts in the case?
A.225 - That is right, sir.

J.A. to Defending Officer

Now will you go on, Mr. Defending Officer.

Defending Officer

May it please the Court, I shall prove that through the evidence of witnesses the accused went to the Canteen on the night in question and left at approximately 2130 hrs in an intoxicated condition. I will prove to you that theaccused was put to bed by his Corporal in a thoroughly intoxicated condition somewhere just before 11 o'clock. This witness will tell you he was so intoxicated as to be incapable. Another witness will testify, who was present when the accused was intoxicated, and who will satisfy you that at that time this accused was incapable.

J.A.

I take it that the Court is satisfied, and I am satisfied, that the provisions of R.P. 83(B) need not be complied with, both on the evidence already given and on that to be given.

Court

Yes, sir.

1st Witness for the Defence, Charles Freeman Clark, Charge Hand at the NAAFI Canteen at Marden Park Camp, Caterham, being duly sworn, is examined by the Defending Officer.

Q.226 - Do you remember the night of the 27th of August?
A.226 - Yes, sir.
Q.227 - Did you see the accused that night? This accused here?
A.227 - That's right, sir.
Q.228 - Where was he?
A.228 - Sitting at the first table in the Canteen.
Q.229 - Was he drinking?
A.229 - Yes.
Q.230 - Will you tell the Court what you know about his drinking that night?
A.230 - Well, there were ten men sitting around the table, and ten pints at a time were going on it. There was a fairish amount of beer brought to the table.
Q.231 - What time did the accused leave the Canteen that night?
A.231 - He left when the men were turned out, about half past nine.
Q.232 - What was his condition?
A.232 - Well, he was intoxicated.
Q.233 - Did he stagger?
A.233 - No, he was intoxicated, but capable to walk.

The Witness is cross-examined by the Prosecutor.

Q.234 - Do you know the accused better than any other man who stops in the Canteen?
A.234 - No, sir.
Q.235 - Do they serve anything stronger than beers in the Canteen?
A.235 - Beer and tea, sir. Nothing else intoxicating. We have ginger beer and lemonades.
Q.236 - When did you see the accused go into the Canteen that night?
A.236 - Just after it opened.
Q.237 - How long was he there?
A.237 - Between about a quarter past seven to half past nine.

Prosecutor to Court

That is all I have to ask, sir.

J.A.

Q.238 - At the time you say the accused was sitting at a table in you Canteen with other men. What time was that?
A.238 - A quarter past seven, sir.
Q.239 - Until half-past nine?
A.239 - Yes, sir.
Q.240 - To the time the Canteen closing hour?
A.240 - Yes, sir, to the last.
Q.241 - There were ten men at the table?
A.241 - Yes, sir.
Q.242 - Drinking steadily?
A.242 - Yes, sir.
Q.243 - Was the accused drinking more than the other?
A.243 - I couldn't say, sir.

Q.244 - Were you there when the safe was discovered to be missing?
A.244 - Yes, sir, I was in the Canteen door with the Manager.
Q.245 - What time was that in the morning?
A.245 - About a quarter past seven, sir.
Q.246 - Then you saw what had happened on the night before?
A.246 - Exactly.
Q.247 - Whilst the accused was at this table drinking, did you know any of the other soldiers with him?
A.247 - I only know one of them, sir.
Q.248 - Who was that?
A.248 - That was Lee, sir.
Q.249 - None of the others?
A.249 - No.
Q.250 - Where is that table that the accused and others were sitting at?
A.250 - It's the first on the left hand side.
Q.251 - In regard to the window that was broken - was the table near the window?
A.251 - No, sir, a long way from that window.
Q.252 - Near the counter, then?
A.252 - Near the Counter, but not on the same side, sir.
Q.253 - Do you know anything about a keg of beer being missing?
A.253 - Only what I have been told, sir.
Q.254 - Where was this beer?
A.254 - Outside the Canteen door, sir.
Q.255 - Why wasn't it brought inside at closing time? Do you leave beer outside?
A.255 - Well, waste beer, sir.

2nd Witness for the Defence, D-82919 Cpl. P. M. Dunaway, 8th Cdn Bridge Coy, RCASC, being duly sworn, is examined by the Defending Officer.

Q.256 - Do you remember the night of the 27th of August, Cpl.?
A.256 - Yes, sir.
Q.257 - Did you see the accused?
A.257 - Yes, sir, outside their hut.
Q.258 - Do you have anything to do with the accused?
A.259 - I am the Cpl. in their section. I was coming through the huts to see that everything was in order. I saw two men outside the hut.
Q.260 - What would you say as to their condition?
A.260 - They were definitely drunk.

I.A.

Q.261 - Who? The accused?
A.261 - Yes, sir.

Defending Officer

Q.262 - What time was that?
A.262 - It was after 10:30 when I went around.
Q.263 - What did you do then?
A.263 - I got them into the hut and up on their beds.
Q.264 - Were they incapable?
A.264 - They could walk, sir, but they didn't know what they were doing. They were sitting outside the hut when I actually found them.

The Witness is cross-examined by the Prosecutor.

Q.265 - Could you tell me some of the symptoms you observed.
A.265 - Well, it was more that they were unable to go anywhere.
Q.266 - What were they doing?
A.266 - I was in my own hut about 50 yards away. When I came out I saw the two of them.

I.A.

Q.267 - Which two?
A.267 - The accused and Lee. I saw them walk towards their hut from the Guard Room in our lines. I saw both men staggering up the road. By the time I got to them both were sitting on the ground.

Prosecutor

Q.268 - Did they object when you came to them?
A.268 - No, sir, they were quiet.
Q.269 - Did you have any conversation with them?
A.269 - No, sir, they didn't say much.
Q.270 - The only evidence of their drinking was they had a little difficulty getting up to the hut. They were not sick?
A.270 - No, sir.

I.A.

Q.271 - You know when a man is drinking?
A.271 - I think so, sir.
Q.272 - You know the accompanying signs of alcoholic consumption from the point of sobriety?
A.272 - Yes, sir.
Q.273 - The signs connected with strong drink?
A.273 - Yes, sir.
Q.274 - This man was in a condition normally known as drunk?
A.274 - Yes, sir.
Q.275 - Would you say they were capable of carrying anything, or doing any work?
A.275 - No, sir. They had all they could do to stand on their feet that night, sir.
Q.276 - Is this man in your section?
A.276 - Yes, sir.
Q.277 - When did you notice that he was absent
A.277 - I didn't.
Q.278 - The next morning?
A.278 - I wasn't there next morning. I had another job so I wasn't on morning parade.
Q.279 - While you are here, what do you think about this accused as to his general character?
A.279 - I was rather surprised to find him drunk. I hadn't known him to drink and he had been in the section some time before that.
Q.280 - How long was he in your section?
A.280 - About two months.
Q.281 - How is he as a worker?
A.281 - As a worker he was always very satisfactory.
Q.282 - He did his duties properly?
A.282 - Yes, sir.
Q.283 - How is he as a soldier?
A.283 - He is a very smart soldier.
Q.284 - Is he obedient?
Q.284 - Yes, sir.
Q.285 - Did you know the accused before he or you came together in this country?
A.285 - No, sir.

Court

Q.286 - When you found the accused before you got him to bed was there any evidence that he had been sick ir before he got into bed was he sick?
A.287 - Not as far as I know.
Q.288 - Was he asleep before you left?
A.288 - He was lying on the bed, almost asleep.
Q.289 - Was he undressed as he normally would be?
A.289 - We took off his tunic, pants and boots.
Q.290 - What time was that ?
A.290 - Between 10:30 and 11.

Q.291 - What time is Tattoo taken?
A.291 - At 11 o'clock, sir.
Q.292 - Did you take it?
A.292 - No, sir, another Corporal took Tattoo.
Q.293 - The Canteen closed at 9:30. Between 9:30 and 11, or when you put him to bed, did you see the accused?
A.293 - No, sir.
Q.294 - Did you see Lee?
A.294 - No, sir, I didn't see him.
Q.295 - Do you know if they left the hut after that time? Are you in the same hut?
A.295 - No, sir, I am in a different hut.
Q.296 - Is there any other place where beer can be bought?
A.296 - Only up at the public house and then not after 10:30. That's in Caterham.
Q.297 - How far is that from camp?
A.297 - About 15 minutes ride in a truck, sir.
Q.298 - Were there any trucks out that night to Caterham after the Canteen closed?
A.298 - It's unlikely, sir.
Q.299 - How long would it take to walk to the nearest public house?
A.299 - It would take them more than half an hour, sir.

Defending Officer

Q.300 - When did you next see the accused?
A.300 - It was after lunch the next day, the 28th.
Q.301 - What condition was he in then?
A.301 - He didn't look very good that day. He was sick on parade that afternoon.

Prosecutor

Q.302 - Did he report sick that day?
A.302 - He may have in the morning but I couldn't say.
Q.303 - You don't know?
A.303 - I wasn't there on parade in the morning.

1st Witness for the Prosecution, Joseph Beard, Manager of the NAAFI Canteen, is recalled and examined by the Court.

Q.304 - What time did you leave the Canteen premises on the evening of the 27th of August when this offence took place?
A.304 - Closing time was half-past nine. It was about ten when the last of the men had left. We closed up at about 11 o'clock when everything was done.
Q.305 - Then you left the Canteen about 11 and didn't return until next morning. The breaking in took place after 11 o'clock?
A.305 - Yes, sir.
Q.306 - You are quite sure of that?
A.306 - Yes, sir.

3rd Witness for the Defence P-108140 Pte. Foley, Timothy, of 85 Cdn Bridge Coy, R.C.A.S.C., being duly sworn, is examined by the Defending Officer.

Q.307 - You are P-108140 Pte. Timothy Foley?
A.307 - Yes, sir.
Q.308 - Do you recall the night of the 27th of August, Pte. Foley?
A.308 - Yes, sir, the night of the 27th, sir, or the 28th?
Q.309 - Well do you remember the night of the 28th or the 27th?
A.309 - It was the night of the 27th, sir.

J.A.

What makes you so sure it was the 27th?

Defending Officer

Q.310 - Do you remember the night before the robbery at the Canteen was discovered?
A.310 - No, sir.

Court

Q.311 - Do you remember pay night?
A.311 - Yes, sir.

Defending Officer

Q.312 - On pay night do you remember seeing the accused?
A.312 - Yes, sir.
Q.313 - Did you have a drink with the accused?
A.313 - On that night sir?
Q.314 - Yes, on that night?
A.314 - I did drink with one mate, sir.
Q.315 - Where?
A.315 - Down in a hollow, sir.

Court

Q.316 - Was that one man Hayes?
A.316 - No, sir.

Defending Officer

Q.317 - Do you remember drinking from a keg of beer there?
A.317 - Yes, sir.
Q.318 - Did you see the accused there?
A.318 - Yes, sir.
Q.319 - What was he doing?
A.319 - Drinking, sir.
Q.320 - Was he standing up?
A.320 - He was staggering all over the place.
Q.321 - What was he drinking out of?
A.321 - A mug, sir.
Q.322 - Did he have much to drink?
A.322 - Quite a lot. Drinking when I was there, sir.
Q.323 - Did you know where the keg of beer came from.
A.323 - No, sir.

Court

Q.324 - Were you drunk also?
A.324 - No, sir.

Defending Officer

Q.325 - What time was this?
A.325 - I don't know exactly, sir.
Q.326 - After 10 o'clock?
A.326 - After the Canteen closed.

The Witness is cross-examined by the Prosecutor.

Q.327 - What were you doing there?
A.327 - Well, I was invited to have a drink, sir.
Q.328 - And you had a drink?
A.328 - Yes, sir.

Court

Q.329 - Had you been to bed before you went out for a drink?
A.329 - Yes, sir.
Q.330 - You went out after the Orderly Corporal made his round?
A.330 - Yes, sir.
Q.331 - Who invited you?
A.331 - I think it was o'Gorman, sir.
Q.332 - Did you know everybody that was around drinking before this?
A.332 - I knew three of them.
Q.333 - Did you know Hayes?
A.333 - No, sir.
Q.334 - Did you know who Pte. Hayes was at that time?
A.334 - No, sir.

Q.335 - But you know him now?
A.335 - Yes, sir.
Q.336 - Did you not tell us you weren't drunk?
A.336 - Yes, sir.
Q.337 - But you didn't know him. How could you know now it was him?
A.337 - It was pretty dark, sir, but I know it was him.
Q.338 - Did you recognise him?
A.338 - I couldn't say, sir.
Q.339 - Do you recognise him now as the man you know as Pte. Hayes?
A.339 - Yes, sir.

J.A.

Q.340 - Where were you drinking this beer?
A.340 - On a hill past the Canteen in a bunch of trees.
Q.341 - And how long did this beer party last?
A.341 - About an hour, sir.
Q.342 - Did you drink all that time?
A.342 - I couldn't exactly say, sir.
Q.343 - What time did you leave?
A.343 - About half past 12, sir.
Q.344 - Who was there?
A.344 - There was O'Gorman, Hayes, Lee, Hoyt and Beavor.
Q.345 - Was there anyone else?
A.345 - No.
Q.346 - Was the safe there?
A.346 - No.
Q.347 - Cigarettes?
A.347 - No.
Q.348 - When you left, did you leave together?
A.348 - No, sir.
Q.349 - You left by yourself?
A.349 - Yes, sir.
Q.350 - Was there much left in the keg?
A.350 - Yes, sir.
Q.351 - Was it good beer?
A.351 - I don't know. It made me sick.
Q.352 - Did it make you drunk?
A.352 - Well, I felt I had four or five beers. I felt I had enough.
Q.353 - What do you mean?
A.353 - Well, I got sick after.

Court

Q.354 - Did you talk much up there?
A.354 - Yes, sir. Not me, but there was talk.
Q.355 - Did you talk to Pte. Hayes? Did you say anything to him or he to you?
A.355 - No, sir.
Q.356 - You didn't waste time in talking?
A.356 - No, sir.
Q.357 - Did you know the safe was to be moved from the Canteen later on?
A.357 - No, sir.
Q.358 - You heard no talk of going to get anything from the NAAFI?
A.358 - No, sir.

J.A. to Defending Officer

Have you any more evidence to go in?

Defending Officer

No, sir.

J.A.

Does the accused wish to make any statement under oath or in his own behalf?

Defending Officer

No, sir.

Court

Then will you make your closing address.

Defending Officer

May it please the Court, what I shall have to say briefly is this. There has been this one fact that has been proved to the Court. On the night in question the accused was very drunk. You have heard the NAAFI Charge Hand tell of his drinking. You have heard Cpl. Dunsmoor tell of putting him to bed. You have heard Pte. Foley who saw him staggering at the beer party. And I submit that night the accused was so drunk as to be incapable. I leave the Court to judge this. In the first place, supposing he committed this crime in such a state of incapability, unable to anticipate any consequences, then I maintain such a state should be considered as somewhat in the same light as insanity. In such a state the essential motive is lacking. And such a state has definitely been proven in this case. You have heard the evidence. How much beer was consumed, how many glasses were drunk in the Canteen and on the hill we can only imagine. But at least the accused was drunk. That is one thought. The second point of some basis is that if he was so drunk how could he possibly carry that safe or have had anything to do with that actual crime. I will leave you with that. The accused is given the benefit of the doubt in this case. I submit that there is grave doubt that he was capable. We have an account of his condition that night. We have heard something about his work and behaviour before this case. When a man is as drunk as he was that night it would be a pretty difficult job for him to have participated in this crime. And many witnesses have told you of his condition. I leave the Court with these points, then. His incapability of knowing what he was doing, that he could not anticipate his actions, and that he was incapable of having carried out any part in this offence.

Court

Has the Prosecution any more to say?

Prosecutor

Mr. President and Members. To sum up. The evidence of several witness has been brought before the Court and exhibits have been produced. The accused admits in his statement that he entered the Canteen and that he helped carry something away. We wont question the record. With regard to his drunkenness. That we do not know. We have heard he was drunk before this crime was committed. But if he was drunk earlier he was still capable of getting up after the Orderly Corporal made his rounds and he went for a walk passed the Canteen. We have Waye's evidence on this. At this time it was decided to enter the Canteen. He carried the safe away or helped carry it. No matter how drunk he may have been, at this stage he was still able to talk and to come to a decision, and know what he was doing. I submit this is the essential ingredient of a man's guilt.

J.A.

It is my duty to advise you on the law involved in this Court-Martial. You are the judges of the facts of the case. You will take my direction as to rules of law and will then judge the facts. You have heard and have followed the evidence. It is sufficient for me to say, I think, that there must be evidence before you of the facts alleged

in the particulars of this charge and you must be satisfied these have constituted the offence as charged. There are two or three other things. First, that the Court must be satisfied that the Prosecution has satisfied the burden of proof which rests upon it throughout this case. It always rests upon the Prosecution to prove this offence was committed by the accused. A very great British jurist in one of our very important cases has summed this matter up in these words. "Throughout the web of English Criminal Law one golden thread is always to be seen, that it is the duty of the Prosecution to prove the prisoner's guilt, subject to what I have said already about the defence of insanity and subject also to any statutory exception. If at the end and on the whole case there is a reasonable doubt created by the evidence given by either the Prosecution or the prisoner as to whether the prisoner killed the deceased with malicious intention, the Prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial the principle that the Prosecution must prove the guilt of the prisoner is part of the Common Law of England and no attempt to whittle it down can be entertained." Secondly, you must be convinced of the guilt of the accused beyond reasonable doubt. That doubt must be properly a common sense doubt. As reasonable men, that does not mean any fantastic doubt you might conjure up in your mind from the facts of this case. Now on the matter of the charge being established. The Defence has suggested drunkenness. Drunkenness is not an excuse for crime save to this extent. If it can be proved that a man was so drunk not to know the nature of his act and the difference between right or wrong then he may not be held responsible for what he does. The only Defence put forward in this case is that this man was drunk and didn't know what he was doing. Mr. Prosecutor and Mr. Defending Officer, are there are other matters on which you wish me to advise the Court?

Prosecutor

As to the burden of proof. They must be completely satisfied that I have fulfilled the burden of proof on the whole of the evidence. And my second point is that drunkenness must be proved by the Defence.

J.A.

I think I referred to that point on the matter of burden of proof. Mr. President and Members of the Court, are there any other matters on which you wish to be advised?

Court

No, sir.

The Court is closed to consider its findings.

The Court is re-opened and the accused is again brought before it.

J.A. to accused

On the pleas of guilty, I will now read the Summary of Evidence.

The Summary of Evidence is read, signed by the President, marked Exhibit G , and attached to the Proceedings.

J.A. to Prosecutor

Q.359 - Have you any evidence to produce as to the character and particulars of service of the accused?

Lieut. C. B. Kirk, the Prosecutor, of First Cdn Army Signals, being duly sworn, is examined by the Court.

A.359 - I have a statement of character and particulars of service of the accused and his field conduct sheet known as M.F.M.6, which I submit as evidence.

The State of Character and Particulars of Service of the Accused, M.F.B.355, is read, signed by the President, marked Exhibit "H", and attached to the Proceedings.

The M.F.M.6 is read, signed by the President, marked Exhibit "J", and attached to the Proceedings.

Q.360 - Does this Statement which you have just heard read relate to the accused?
A.360 - Yes, sir.
Q.361 - Have you compared the contents of the above statement with the regimental books?
A.361 - Not of my own knowledge, sir, but it has been certified by the Adjutant.
Q.362 - Are they true extracts from the regimental books and is the statement of entries in the field conduct sheet a fair and true summary of those entries?
A.362 - They have been certified as such by the Adjutant, sir.

J.A. to Defending Officer

Has the Defence any objection to the production of this evidence into the Proceedings?

Defending Officer

No objections.

Court

Has the accused anything to say in mitigation of sentence?

Defending Officer

Very briefly, sir. I ask the Court before determining the guilt of the accused in this case to remember one thing, that the offence mentioned on the charge sheet would not have been drawn up against this accused if he had not been drunk on one night, and committed the crimes for which he is before this Court. In awarding sentence, I would ask the Court to award sentences to run concurrently, and take into consideration the month already spent by the accused under close arrest awaiting trial. That is all, sir.

The Court is closed to consider the sentence.

Certified to be a true transcript of the shorthand notes taken by me at the trial described on 1st page.

Robt V. Parks

D-36570 Tpr. R. V. Parks,
Court Reporter.
26 Oct 42.

Accused.

Defending Officer.

TRIAL OF C-53258 PTE. HAYES, W.A.,
No. 85 CDN BRIDGE COY, R.C.A.S.C.

EXHIBIT "D" - Packets of Cigarettes

EXHIBIT "E" - Packets of Razor Blades

EXHIBIT "F"

Surrey Constabulary

Station or Section Caterham Division Coulsdon

Date 13th September 1942

C.1023—7/39—1/7/41.

SUBJECT MATTER

Name WILLIAM ALLAN HAYES
(In full—Block Letters)

Address Marden Park, Caterham

Age 21 years Occupation Private No C 8.3258

I have been cautioned that I need not make this statement unless I wish. The caution has been explained to me. I make this statement voluntarily.

W.A. Hayes

On the night in question we were in the canteen drinking. We left there when it closed and we were walking up and I walked down the road to our hut, we couldn't sleep so decided to get up and take a walk down the road and while we were passing the canteen we heard noises in the bushes so we thought we would go up and investigate and when we got up there we met Hoyt and he asked us if we wanted a drink which we accepted. One of the men there suggested that we go into the canteen. I do not know who put the tape on the windows but Hoyt and I went in. I thought it was only a few of beer he wanted but he

Signature of Person making statement W.A. Hayes

Witness to the above [illegible]

Surrey Constabulary

Station or Section Caterham Division Godstone

Date 13th September 1942.

C 11823—7/30—17/11.

SUBJECT MATTER

Name WILLIAM ALLAN HAYES.
(In full—Block Letters)

Address Shoot 2.

Age Occupation

Asked me to help him with the safe I put reaching under my breath I don't know what it was but I guess it must have been the cigarettes. He handed the safe out of the window and it was lowered to the ground. We then carried it up to the top of the lines. One of the fellows went down and got a jack I don't know who it was. One of them knocked off the hinges and when they found it couldn't be opened we all went down the lines.

I had about half of what came out of the cash box. I didn't know till the next day I had this money.

W A Hayes.

Signature of Person making statement

Witness to the above [illegible] 1533.

SUMMARY OF EVIDENCE IN THE CASE OF C-53258 Pte. Hayes, W.A. No. 85 Cdn. Bridge Coy, R.C.A.S.C., Marden Park, Caterham, Surrey.

The Officer Commanding, Major, Alex Gagnon, No. 85 Cdn. Bridge Coy, R.C.A.S.C., Cdn. Army Overseas, directs that evidence be taken on oath.

Charge (1)	possessing false pass.
" (2)	A.W.L.
" (3)	Larceny and storebreaking.

FIRST CHARGE.

First Witness:- Sgt. McDonough J. D-123539, Orderly Room Sgt. No. 85 Cdn. Bridge Coy, R.C.A.S.C. having been duly sworn states:-

" I am D-123539 Sgt. McDonough J., Orderly Room Sgt. of No. 85 Cdn. Bridge Coy, R.C.A.S.C., I produce the following documents relating to the accused which have been received at the Orderly Room. Documents contained are a pass, certificate of Apprehension and charge sheet (AFB 252) by Cdn. Provost Corps. and statement of evidence signed by C-12088 L/Cpl. Schreives and L-55282 L/Cpl. Ashton E.T.

There is no Officer by the name of Neale on the strength of this Unit.

The number on the pass relates to Pte. Hayes W.A. "

The accused declines to cross examine the witness.

G.

Pass.

Sgt. J. McDonough, O/R. Sgt.

Second Witness :- Statements of evidence of L/Cpl. Schrieves and L/Cpl. Ashton E.T. is read to the accused. (EXHIBIT 'B')

I certify that owing to exigencies of the service, including the expense and loss of time involved, the attendance of these witnesses cannot be readily procured!

C.B. Kirk

C.B. Kirk, Lieut.
First Cdn. Army Signals
Cdn. Army Overseas.

SECOND CHARGE.

First Witness:- D-121940 Cpl. Lauziere M. No. 85 Cdn. Bridge Coy, R.C.A.S.C having been duly sworn states:-

" I am D-121940 Cpl. Lauziere M. Of No. 85 Cdn. Bridge C R.C.A.S.C., on the 9 th Sept. 42, I took charge of "D" at 1330 hrs. I called the roll, Ptes. Lee and Hayes were absent. I left the Section two days later and they were still AWL.

The accused declines to cross examine the

M. Lauzière

D-121940 Cpl. Lauz

THIRD CHARGE.

First Witness:- Joseph Beard, Manager of N.A.A.F.I. Canteen, Marden Park Camp, Caterham, Surrey having been duly sworn states:-

" I am Joseph Beard, Manager of N.A.A.F.I. Canteen, Marden Park Camp, Caterham, Surrey. On the eve the robbery occurred we closed the N.A.A.F.I., everything was locked and secured, and going into the N.A.A.F.I. next morning discovered that the safe had been taken and £ 2 Cash float which remained in a box unlocked. On further examination we found approximately 50 Top Score Cigarettes in packets of 20 and about 100 Woodbine cigarettes in packets of 5 and a box containing 100 Gillette Blades missing.

We found the safe on the Friday afternoon; it was badly damaged but the cash was intact. (£ 105-0-0).
I went to the M.T. Office to call the Provost Sgt. (Sgt. Terry).

N.A.A.F.I. had been entered by tapping the window from the outside and then opening the catch."

The accused declines to cross examine the witness.

Joseph Beard

Joseph Beard, Manager N.A.A.F.I. Canteen.

Second Witness:- P.C. Harry Maurice Harding, No. 347 stationed at Caterham, Surrey, having beenduly sworn states:-

" I am P.C. Harry Maurice Harding, No. 347 Caterham Police. At 8.50 a.m. on Friday 28 Aug.42 in consequence of information received, I visited the N.A.A.F.I. Canteen, Marden Park, Caterham, where I found that a pane of glass near the catch of a casement window at the south west side of the of the canteen had been broken, there being some loose Woodbine cigarettes on the ground outside directly underneath this window.

I then commenced inquiries and learned that a safe containing £ 105-10-3 was missing also £ 2 in loose change from a cash box which stood near the safe. 500 Top Score cigarette in packets of 20, 200 Woodbine cigarettes in packets of 5 and 100 Blue Gillette Blades to the total value of £ 119-8-2. Later that day a search was made for the missing articles and the safe was found in a small copse about 400 yds

from the canteen. Upon examining the safe I found that an attempt had been made to open it but this had been unsuccesful, and upon being opened in the presence of the Police it was found that the contents were intact. On Monday 7 Sept. 42 after making further inquiries with the aid of Sgt. Terry and the CID I obtained statements under caution from Ptes. Hoyt and McAvoy, and after cautioning them as Quote:-

"You are not obliged to make a statement unless you wish to do so, any statement you make will be taken down in writing and may be given in evidence."

The accused declines to cross examine the witness.

Statement

Harry S. Harding P.C.347

P.C. Harding H.M. No. 347
Caterham Police.

Third Witness :- Sgt. Tom Harris, No. 33 Caterham Police, having been duly sworn states:-

" I am Sgt. Tom Harris, No. 33, Caterham Police; on the 28 Aug. 42 as a result of a complaint received I made enquiries at Marden Park, Caterham. On the 7 Sept. 42 I saw the Accused men, Ptes. Hoyt, O'Gorman and McAvoy at Caterham Police Station and I interrogated them. I cautioned each one of them as follows; "You are not obliged to say anything unless you wish and any thing you say will be take down in writing and may be used in evidence." I explained the caution to them.

I was present when statements were made by each man.

On hte 13 Sept. 42 I saw Ptes. Hayes and Lee at Caterham Police Station and after cautioning them in the same manner as above, each made a statement.

I identify all five of the accused men and statements which I now produce, refer to these men.

At 5.30 p.m. 13 Sept. 42, I was taken to a spot in Marden Park by Pte. Hayes and I then discovered 7 packets of cigarettes and 42 razor blades all being similar to the property stolen."

Statements and packets produced and marked as exhibits.

The accused declines to cross examine the witnes

Tom Harris

Sgt. T. Harris, No. 33
Caterham Police.

Fourth Witness:- B-21172 Sgt. Frost J.R. Special Investigation Section, C.M.H.Q., attached H.Q. First Cdn. Army H.Q. having been duly sworn states:-

" I am Sgt. Frost J.R. B-21172, Special Investigation Section, C.M.H.Q. attached to First Cdn. Army H.Q. About 0800 hrs. 28 Aug. 42, information was received from the Adjutant of No. 85 Cdn. Bridge Coy, RCASC that the N.A.A.F.I. Canteen had been entered. I proceeded to the Canteen where I was joined by Sgt. Harris, Caterham Police. We were informed by the Manager that the safe and also a quanitity of cigarettes and razor blades had been removed from the building the previous night.

About 1400 hrs. a search party set out to locate the safe; htis was found about 300 yds. from the canteen with hte contents intact. Canteen had been entered by breaking a glas in the window, there were a few Woodbine cigarettes packets in the vicinity

I was present when statements from Ptes. Lee and Hayes were taken by Sgt. Harris after they had been duly cautioned."

The accused declines to cross examine the witness.

" " "

J.R. Frost

Sgt. J.R.Frost,
Special Investigation Section
C.M.H.Q. att. H.Q.1st. Cdn. Army.

QUESTION TO ACCUSED

Do you wish to make any statement or give any evidence upon oath ? You are not obliged to say anything or give any evidence unless you wish to do so, whatever you may say or evidence you may give will be taken down in writing and may be given in evidence.

The accused declines to make any statement.

I certify that R.P. 4 (c) (d) (e) (f) have been complied with and taken down by me in the presence of the accused at Marden Park, Caterham, Surrey, this 28 th. day of Sept. 42.

C.B.Kirk

C.B.Kirk, Lieut.
1 st. Cdn. Army Signals
Cdn Army Overseas.

...military to his unit without waiting for instructions.

No 2 Sect Regiment 654 Port Maint Coy R.E.

PASS

P.C.M.S.

No. 3258 (Rank) Pte (Name) Hayes. W.

has permission to be absent from his (quarters/duty) from

A.D. 5/9/42 to 2359 hrs 12/9/42

for the purpose of proceeding to* Dover

(Station) Dibd

(Date) 5/9/42

No 85 BRIDGE COMPANY R.E.A.S.C.

for Commanding

* Destination not beyond radius distance to be exceed 24 hours, unless notification is desirable owing to local conditions or is necessary to enable purchase of a rail ticket at reduced rate.

( ) Delete whichever is not applicable.

[P.T.O.

CROWN COPYRIGHT RESERVED

	If not more than 2 miles away	Greater distances
[illegible]	4s. 6d. 6s. 0d.	An additional 6d. for each mile or part of a mile with a limit of £1 a visit.

[illegible] the soldier visits the surgery of a civilian doctor, the fee payable in respect of [illegible] is 2s. 6d. per visit.

The soldier will at once report the employment of the civilian doctor to a [illegible] Record Office or to his Commanding Officer to whom the civilian doctor will submit his claim [illegible] Army Form O 1807 for payment.

If hospital treatment is necessary, the soldier will at once report the fact, if possible, to the nearest Military, R. Naval or R. Air Force hospital, Military Recruiting Medical Inspection Room for Troops, and failing that to his Commanding Officer, when arrangements will be made, wherever possible, for any necessary treatment to be given in military centres. If a soldier is admitted to a R. Naval or R. Air Force hospital he will report the fact immediately to his Commanding Officer. If, in the [illegible] of emergency, a soldier is admitted to a civil hospital [illegible]

[illegible] Service authorities.

Where a soldier on leave is prevented by sickness, which must be properly certified, or by other unavoidable causes, from rejoining his Corps by the date on which his [illegible] expires, he is to report himself before that date—

To the nearest General or other Officer on the staff of the Army or to the Commanding Officer of any unit of the Regular Army, or if [illegible] there is none within convenient distance, to a Justice of the Peace.

If in time, he is to furnish the nearest [illegible] to his C.O.

A Soldier on leave or furlough who requires emergency dental treatment must apply for it to the nearest military, Royal Naval or Royal Air Force Hospital or Dental Centre.

If he resides more than two miles from such hospital or dental centre, he may apply to a civilian dental practitioner to whom he will show this pass; the dental practitioner will be paid only for urgently emergency treatment that at the time ultimately under the National Health Insurance Act (Dental Benefit Regulations).

The soldier will at once report the employment of the civilian dental practitioner to his Commanding Officer, and the practitioner will submit his claim for payment on Army Form O 1807 and forward it to the Deputy Director of Medical Services at the headquarters of the Command in which the soldier is temporarily residing.

These instructions, where applicable, will also be observed by soldiers in receipt of [illegible] than an officer) of the Auxiliary Territorial Service or of a Voluntary Aid Detachment [illegible] nurse or servant.

If his pass expires [illegible] hours a soldier is to leave his address with the Captain of his company, and he must at all times be prepared to return on the shortest notice, if [illegible] to do so.

Note.—The above instructions are not applicable to Soldiers on Field Service overseas.

File No. 14/90.....

Officer Commanding,
85th. Edge Coy. RCASC

Re: C-85258 Pte. Hays, W.A.

1. Forwarded for your information and necessary action, please, and disposal under C. A. Routine Orders (c) No. 588 dated 29th Oct. 1940.

2. The enclosed complaints

London
13-Sept-42

.....Lieut.
for Capt. H. E. Byers,
O. C. No. 6 Coy.,
Gdn. Provost Corps.

CERTIFICATE IN ACCORDANCE WITH P.C. 2787 of 10 APR 42

I CERTIFY that No. [illegible] Rank Pte. Name Hoyle, W.A.

Unit 85th. Cdn. Hdqs. Coy. RCASC was arrested at London (Place)

at 1730 (Hour) on 18-Sept-42 (Date) and that at the time of his arrest he was wearing (Military Uniform) or (Civilian Clothes)

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest.
(Strike out part inapplicable)

[signature]
.....Lieut.
Officer i/c Detention Room,
No. 6 Cdn. Provost Coy.

CHARGE

Army Form B 252
(See King's Regulations)

R.C.A.S.C. — Regiment

85th. Cdn. Bdge. Coy. — Battery / Squadron / Troop or Company

CHARGE against No C-53258 Rank Pte.

Name Hays, W.A.

Place London Date of Offence 12-Sept-42

OFFENCE W.O.A.S. Being in possession of and using a document purporting to be a genuine leave pass, knowing it not to be genuine when checked by the Canadian Provost Corps at Waterloo St, at about 1730 hrs. on the 12-Sept-42

Lieut.
O. i/c Detention Room
No. 6 Provost Company.

Names of Witnesses:—

L/Cpl. Schrieves, Canadian Provost Corps.

L/Cpl. Ashton, Canadian Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

(4488) Wt.W2187/2080 2,000,000 7/41 K. & H., Ltd. 5467/47

Statement of EVIDENCE in the case of
G-55258 Pte. Hays, W.A.
85th. Pdrs Coy. RCASC.

Sir;

At London on the 12-Sept-42 at about 1730 hrs. I was on duty at Waterloo Stn. in company with L/Cpl. Ashton, when I saw the a/m soldier I approached him and asked to see his pass. He produced one which showed him to be on leave from 5-Sept-42 to 12-Sept-42. On being questioned, he admitted that he was A.W.L. and that the pass was of no use. I placed him under arrest and escorted him to No 6 Cdn. Prov. Coy. Hqrs. where I turned him over to the N.C.O. i/c of cells to be detained.

London
12-Sept-42 .....L/Cpl.
(G-12088 Saltrieves, I.D.)

Sir;

I have read over and corroborate the above statement.

London
12-Sept-42 ..Ashton. R. T.....L/Cpl.
(L-55202 Ashton, R.T.)

REMARKS

M.F.B 355
H.Q. 1772-39-620
10M-8-40 (M19)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C-53258	Pte.	Hayes W.A.	No. 85 Bridge Coy RCASC

1. The following is a fair and true summary of the entries in the ~~Service and Casualty Regimental and Squadron, Battery~~ conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	A.A. Sec. 15 (1)	2 times	A.A. 15 (1)	5 times
For	A.A. Sec. 40	3 times	Drunkenness 25/5/41 (1st Offence)	times
For		times	A.A. Sec. 40	5 times
For		times		times

Number of instances of gallantry or distinguished conduct Nil

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act section 47 of the Army Act and dispensations with trial under A.A. 70 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for ..... days in civil custody, and ~~350~~ 35 days in military custody, making a total of ~~350~~ 35 days in custody, of which ..... days were spent in hospital.

5. The present age of the accused according to his record of service is 21 yrs. 6 months 8 days

6. The date of his ~~commission~~ attestation specified in his record of service is 30 Aug. 1940

7. The service which the accused is allowed to reckon towards discharge is Nil

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward.

Nil

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of .....~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number..... Rank.....

Name..... of.....Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15th day of October 42 R.S.M. Adjt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

C-53258 No. | HAYES W.A. Name | Sqn., Battery, or Company | No. 85 Cdn. Bridge Coy, Corps R.C.A.S.C. | Date of enlistment | 30-8-40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 A.F.B. 122 1M—7-41 (1219-26) H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character Poor

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Debert	21-2-41	Spr.		AWL (3 days 19 hrs.) A.A. Sec. 15 (1)	Sgt. Mann	7 days CB	26-2-41	Capt. Minshell	Forf. 4 days pay
Debert	22-3-41	Spr.		AWL (8 hrs.) A.A. Sec. 15 (1)	L/Sgt. Spalding	4 days CB extra fatigues	24-3-41	Capt. Walker	
Debert	2-5-41	Spr.	1	Drunkenness A.A. Sec. 19	Pte. Radoe Pte. Horton	Admonished	8-5-41	Capt. Dove	
Debert	2-5-41	Spr.	1	AWL (12 hours) Sec 15 (1)	Pte. Redoe Pte. Horton	7 days CB	6-5-41	Capt. Dove	1 days pay
Truro	2-5-41	Spr.	1	Conduct to the prej. &c. A.A. Sec. 40	Pte. Redoe Pte. Horton	7 days CB	6-5-41	Capt. Dove	
Debert	15-5-41	Spr.	1	Conduct to the prej &c. A.A. Sec 40	L/Sgt. Penning Sgt. Covaduck	14 days Detention	16-5-41	Major Stirrett	Forf 14 days pay
Swanthorpe	4-11-41	Spr.	1	Conduct to the prej. &c. A.A. Sec. 40	Sgt. Baizley Cpl. Rennie	28 days pay	27-12-41	Capt. Hamilton	

(F.T.O.)

C-53258 HAYES
No. Name W.A. Sqn., Battery, or Company No. 85 Cdn. Bridge Coy, Corps R.C.A.S.C. Date of enlistment 30-8-40 G.C. Badges Service or Proficiency Pay M.F.M. 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character Poor

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
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Debert	22-3-41	Spr.		AWL (8 hrs.) A.A. Sec. 15 (1)	L/Sgt. Spalding	4 days CB extra fatigues	24-3-41	Capt. Walker	
Debert	2-5-41	Spr.	1	Drunkenness A.A. Sec. 19	Pte. Radoe Pte. Horton	Admonished	8-5-41	Capt. Dove	
Debert	2-5-41	Spr.	1	AWL (12 hours) Sec 15 (1)	Pte. Redoe Pte. Horton	7 days CB	6-5-41	Capt. Dove	1 days pay
Truro	2-5-41	Spr.	1	Conduct to the prej. &c. A.A. Sec. 40	Pte. Redoe Pte. Horton	7 days CB	6-5-41	Capt. Dove	
Debert	15-5-41	Spr.	1	Conduct to the prej &c. A.A. Sec 40	L/Sgt. Penning Sgt. Covaduck	14 days Detention	16-5-41	Major Stirrett	Forf 14 days pay
Swanthorpe	4-11-41	Spr.	1	Conduct to the prej. &c. A.A. Sec. 40	Sgt. Baizley Cpl. Rennie	28 days pay	27-12-41	Capt. Hamilton	

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Rathcote	27-12-41	Spr.	1	AWL fromparade A.A. Sec. 15 (1)	Sgt. Hogan L.C. McLean	14 days FP	28-12-41	Capt. Hamilton	
Rathcote	12-3-42	Spr.	1	Conduct to the prej. &c. A.A. Sec. 40	L.C.Waller	7 days CB	14-3-42	Capt. Minshell	
Field	30-4-42	Pte.	1	AWL & Conduct to the prej. &c.	Sgt.Mortimer Cpl.Dunsmuir Pte.Pauquette Pte.Emond Pte. Allaire	27 days FP	1-5-42	C.O.	Forf. 27 days pay

Certified True Copy

(R.G. Davidson) Lieut. & Adjt.
No. 85 Cdn. Bridge Coy, R.C.A.S.C.

25 V (Case #2)

Pte. HAYES, W.A.

See 115 R for 1st case

Correspondence to be PINNED here

Army Form A.3.

25 V

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 20th day of NOVEMBER, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 1 CANADIAN ARTILLERY GROUP, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [illegible]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

[illegible]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	K. S. RITCHIE	6 Cdn C.C.S., RCAMC.

Members.

Rank.	Name.	Regiment.
A Captain	(To Be Detailed By)	O.C., 45 Cdn Gen Tpt Coy, RCASC.
A Lieutenant	(To Be Detailed By)	O.C., 62 Cdn Gen Tpt Coy, RCASC.
WAITING MEMBER A Lieutenant	(To Be Detailed By)	O.C., 41 Cdn Gen Tpt Coy, RCASC.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed W A Townsley
(W.A.TOWNSLEY) Lt.-Col.
Commanding 1 Cdn Arty Group.
Convening Officer.

Pres and two [illegible] warrant with convening authority
1 Cdn Bty Group and
1 Cdn Army Tk Bde
20 Dec 42

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C-53258 Pte. HAYES, W. A., 85 Canadian Bridge Company, R.C.A.S.C.	FIRST CHARGE A.A. Sec. 22 See Charge Sheet attached SECOND CHARGE A.A. Sec. 40 See Charge Sheet attached.	GUILTY GUILTY	GUILTY GUILTY SENTENCE: TEN MONTHS DETENTION 12 DEC '42	Confirm finding and sentence and remit to unexpired portion KH

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) W.A. Townsley (W.A. TOWNSLEY) Lt.-Col.
Commanding 1 Cdn Arty Croup
Convening Officer (c)

(Signed) K.S. Ritchie Maj. (K. S. Ritchie) Major
No. 6 Cdn C.C.S., RCAMC.
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the TWELTH day of DECEMBER, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) N/A
*(4. ~~The officers under instruction~~) N/A

were duly sworn.

* Omit if not applicable.

Signed this ~~THIRTEENTH~~ TWELTH day of DECEMBER 1942.

K.S. Ritchie Maj.
(K.S. Ritchie) President of the Court Martial. Major
No. 6 Cdn C.C.S., RCAMC.

C. Certificate in case of death sentences.

* See footnote (5) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 370 of 1918 have been complied with.~~

Signed this day of 19 .

~~President of the Court Martial.~~ K.J.R.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 15 day of December 19 42.

R.J. Leech
(R.J. Leech) Confirming Officer. Brigadier, Comd, 1 Cdn Arty Group

Promulgated and extracts taken in the case of

(a) (Dated) DEC 22 1942 (Signed) A. Leech. MAJOR, COMMANDANT, CANADIAN MILITARY PRISON AND DETENTION BARRACK.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

120/Hayes W.A./1/J

H.Q. First Cdn Army
31 Dec 42

25 V

REVIEW SHEET

F.G.C.M. PROCEEDINGS - Dated 12 Dec 42
C-53258 Pte. Hayes W.A., 85 Cdn Bridge Coy, RCASC.

1. Finding and Sentence duly confirmed and promulgated.

2. No comment.

3. Passed.

(T. G. Norris) Major
D. J. A.
First Cdn Army

EGM/RP

A.F.B.

CHARGE SHEET

The Accused, C-68286, Pte. HAYES, W.A. of No. 85 Cdn. Bridge Coy. R.C.A.S.C., a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Army Act
Sec. 82

WHEN ON ACTIVE SERVICE, WHEN IN CONFINEMENT ESCAPING

in that he

at Marden Park, at 1900 hours, 1 November, 1942, when in lawful custody awaiting promulgation of sentence of F.G.C.M., escaped.

SECOND CHARGE
Army Act
Sec. 40

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Marden Park, at approximately 1900 hours, 1 November, 1942, did take and use M.T. Vehicle CZ 222534 without permission, to enable him to escape, until apprehended by Sgt. Weston, Sgt. Terry and Cpl. Evans.

A.S. Ritchie Maj

In the Field
10 May 1943

(Alex Darnell) Major
Commanding
No. 85 Cdn Bridge Coy RCASC

To be tried by Field General Court Martial.

(W.A. TOWNSLEY) Lt.-Col.
Comd
1 Cdn Arty Group

In the Field
10 Nov 42

NO. 85 CDN. BRIDGE COY. R.C.A.S.C.
CANADIAN ARMY OVERSEAS

A. Victoria Hay

This is to certify that I have this date examined C-53258 Pte. Hayes, W.A. of 85 Cdn. Bridge Coy. RCASC and find him to be free from communicable disease and fit to undergo trial by Field General Court Martial.

J. Watkins Capt.
Medical Officer
Unit No. 1 C.C.C.

In the Field
12 Dec 42

PROCEEDINGS OF TRIAL

Accused C-53258 Pte. (Number) (Rank) Wm ARTHUR HAYES (Christian Names) (Surname) 58 Cdn. Bridge Coy R.C.E.S. (Unit)

Held in the Field in ENGLAND (Country) on 12 DEC. 1944

	Rank	Name	Unit
President	MAJOR	K.S. RITCHIE	6 Cdn. C.C.S. R.C.A.M.C.
Members	CAPTAIN	A.J. LABRIE	4 CDN CONSTR TNG Coy R.C.E.S.
	LIEUTENANT	W.G. BERBINGER	12 CDN BASE TNG Coy R.C.E.S.
Judge-Advocate (if any)			
Prosecuting Officer	LIEUTENANT M.E. CHARBONNEAU	Lawyer? Ans. NO.	
Defending Officer	LIEUTENANT K.W. CREBER	Lawyer? Ans. No	

(The following procedure must be actually carried out.)

The President produces the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs.P. 17(E); 22(A))

The President, in closed court (R.P. 22 fn 1), reads the Convening Order and the Charge Sheet(s) to the members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted, that the accused is (~~are~~) amenable to Military Law, and that each charge discloses an offence. (R.P.108)

The accused is (~~are~~) brought before the Court, and at 1015 hours the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can) 557 that the accused is (~~are~~) fit to undergo trial by court-martial. The certificate is initialled by the President, and attached to the proceedings.

President to accused
Do you object to _____ as interpreter? Ans. _____
Do you object to _____ as shorthand writer? Ans. _____

The names of the President and Members of the Court are read to the accused (R.P. 110)

President to accused
Do you object to be tried by me as President or by any of the officers whose names you have heard read over? Ans. No

The President, Members, Judge-Advocate, officers under instruction, interpreter and shorthand writer are duly sworn. (R.P. 26-27) (Forms of Oath, p.E)

The Charge Sheet(s) is (~~are~~) initialled by the President.

The Prosecuting Officer informs the Court that the accused has NOT (~~not~~) elected trial by court-martial. (A.A. 46(8))

President to accused
Do you wish to make any special pleas before arraignment, that is to say, before you plead guilty or not guilty? Ans. No.
(If special plea(s) is (are) made for separate trial on one or more charges (Rs.P. 62(E), 108); or as to the jurisdiction of the Court (R.P. 34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.30, R.P.57), record such plea and evidence (if any) on separate sheet(s) to be initialled by the President and attached to the proceedings.)

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:-

First Charge	Second Charge	Third Charge	Fourth Charge
Guilty	Guilty	—	—

(For procedure on alternative charges, see RP.37 fn 2.)
Further proceedings are recorded on Pages hereto attached.

PAGE "A"

(For Use When Accused Pleads Guilty to All Charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President.)

1. R.P. 35(B) is complied with, by the President ascertaining that accused understands the nature of the charge(s) (fn 3) and his plea thereto, explaining the difference in procedure by that plea (R.P. 37(B)) and advising him to withdraw his plea if he thinks the accused ought to plead "not guilty" thereto.

2. President to accused:-
Q. Do you desire to make any statement of the circumstances, in reference to the charge(s)? (R.P. 37(B)) Ans. No

(Statement, if any, not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon.)

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such Summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (R.P. 37(B))).

4. President to accused:-
Q. Do you wish to make any statement in mitigation of punishment (R.P. 37(C))? Ans. YES

(Statement, if any, is recorded on separate sheet, initialled by the President and attached hereto. No cross-examination.)

5. President to accused:-
Q. Do you wish to give evidence yourself or call any witnesses as to character (R.P. 37(C))? Ans. YES

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto.)

6. Lieut. M.E. CHARBONNEAU R.S. CONRIDGE Cpl R.C.A.F.C. sworn;
(Rank) (Christian Names) (Surname) (Unit)
produces Statement of Character and Service, and Field Conduct Sheet, duly certified by the Officer having custody of the Regimental Books. The said documents are read, marked "A", "B", initialled by the President and attached to the proceedings (R.P.46).

7. President to accused:-
Q. Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P. 46(D)) Ans. YES
No cross-examination.
(Record address, if any, on separate sheet, initialled by the President and attached hereto.)

8. The Court is now closed 1200 HRS. A.M. to consider sentence. (Record on p.3.)

(Punishments, A.A. 44, K.R.(Can) 563 - 566; one sentence only awarded, R.P.48; jurisdiction of F.G.C.M., R.P.116.)

The sentence is not announced to the accused by the Court.

A.D. Ritchie Maj
(Signature of President)

SUMMARY OF EVIDENCE IN THE CASE OF : C-53288
Pte. HAYES, W. A., No. 85 Cdn. Bridge Coy.
R.C.A.S.C., a soldier of the Canadian Army
Overseas.

CHARGES

1. When in Confinement, escaping

2. Conduct to the Prejudice of Good Order and Military Discipline.

The Commanding Officer directs that the evidence be taken on oath.

First Charge
First Witness

D-123160 Pte. Malouin, G., No. 85 Cdn. Bridge Coy. R.C.A.S.C. having been duly sworn, states :

"I am D-123160 Pte. Malouin, G. of No. 85 Cdn. Bridge Coy. R.C.A.S.C.

On 1 Nov. 42, I was posted as guard at the Main Guard Room at 1815 hours by Cpl. Guard. I checked the prisoners and found Pte. W.A. Hayes and Pte. Leblanc in the prisoner's Room. I then checked the bolt on the door. Soon afterwards Pte. Orsleau, R.P., brought in Pte. Hoyt through the rear door. I then checked the bolt on the outside of door to make sure it was locked. I then took my post in the Guard Room outside the prisoners room. The prisoners were making considerable noise and beating time like a drum; this was around 1835 hours after a short while the noise stopped, after listening for a few minutes I called out to the prisoners but received no answer and opened the door to investigate and found the back door open and Pte. Hayes and Leblanc missing. Pte. Hoyt was still in the prisoners room. I immediately ran around the outside of the building, bolted the door, got into the lorry used by the Guards and went to notify Sgt. Terry at M.H. Sgt. Terry came with me to the Guard Room and he instructed me to stay there on guard. Later on Sgt. Weston and Pte. Orsleau brought in Pte. Hayes who was placed in the prisoners room. Later on Cpl. Guard and Pte. Orsleau took Pte. Hayes out of prisoners room so he could be placed in Civil Custody".

The accused declined to cross examine the witness.

G Maloin
D-123160 Pte. G. Maloin
No. 85 Cdn. Bridge Coy RCASC

First Charge
Second Witness

D-117615 Sgt. Terry, J. M., No. 85 Cdn. Bridge Coy. R.C.A.S.C., having been duly sworn, states:

"I am D-117615 Sgt. Terry, J. M. of No. 85 Cdn. Bridge Coy. R.C.A.S.C.

At about 1900 hours on 1 Nov 42 Pte Maloin, R.P., reported to me at M.H. that Pte. Hayes and Leblanc were missing from the Guard Room. I immediately returned to Guard Room with Pte. Maloin and investigated and found the prisoners in question to be missing; the back door was still open and Pte. Hoyt still in the prisoners room. I bolted the

First Charge
Second Witness
(Cont'd)

door on the outside and left to report to the Orderly Officer. On the way I met the Orderly Sergeant, Sgt. Weston. We decided to organize a search at once and started off on foot to obtain a lorry. We discovered a Station Wagon on the side of the road in "G" Section Lines. The driver of the Station Wagon was engaged and gave us permission to use the vehicle within Camp limits. In company with Sgt. Weston and Cpl. Evans, (the Orderly Corporal) we drove towards the south gate. On the way to the South gate we overtook a 15 cwt lorry which had no tail lights. We stopped this lorry and I found Pte. Hayes and Leblanc in the cab with Pte. Leblanc behind the wheel. I got out of the station wagon and went around to the side of the 15 cwt where Pte. Hayes was sitting. Hayes got out of the cab with every apparent intention of doing what he was told, when suddenly the 15 cwt started off. Hayes broke away and ran after it. Sgt. Weston, Cpl. Evans and myself climbed into the station wagon and gave chase. The 15 cwt lorry was driven within a few yards of the south gate where it was abandoned. We searched the area and not finding any trace of the escaped prisoners returned to the H.Q. Orderly Room in the station wagon and left Sgt. Weston to drive back the 15 cwt lorry".

The accused declined to cross examine the witness.

John H. Terry

J117615 Sgt. J. H. Terry
No. 85 Cdn. Bridge Coy. RCASC.

First Charge
Third Witness

D-123389 Sgt. Weston, G.W., No. 85 Cdn. Bridge Coy. R.C.A.S.C., having been duly sworn, states:

"I am D-123389 Sgt. Weston, G.W., of No. 85 Cdn. Bridge Coy. R.C.A.S.C.

While carrying out my duties as Orderly Sergeant on 1 Nov. 42, the Orderly Corporal reported to me at about 1900 hours that Pte. Hayes and Leblanc had escaped from the Guard Room. In company with the Orderly Corporal I immediately proceeded with him to the Guard Room. On our way to the Guard Room we met Sgt. Terry who had been to the Guard Room already, and the three of us decided to go to the Canteen to see if Hayes and Leblanc were there. On our way there, we passed the duty station wagon. Cpl. Evans borrowed it from the driver and we drove on towards the Canteen. On the road just outside the Canteen we noticed a 15 cwt lorry proceeding slowly ahead of our station wagon. It had no rear lights showing and so we decided to stop it and warn the driver. We pulled up alongside the 15 cwt lorry and Sgt. Terry yelled for it to stop. Both Sgt. Terry and myself jumped out of the station wagon as we had recognized Pte. Leblanc behind the wheel of the 15 cwt lorry which had obeyed the order to stop. I ran around the front of the 15 cwt at which time I saw the door on the rear side of the lorry was open and Hayes standing on the side of the road with Sgt. Terry. As I stood in front of the 15 cwt to prevent it from moving, Sgt. Terry asked for my pistol. While I was taking the pistol out of the holster and handing it to him the lorry moved off. Both Sgt. Terry and myself got back into the station wagon and drove after the 15 cwt lorry. About 100 feet north of the south gate

First Charge
Third Witness
(Cont'd)

we came upon the 15 cwt lorry which was parked on the side of the road with the lights on, and motor shut off. There was no one in or around the lorry, so I went to warn the sentry on guard at the mouth gate. I then drove the 15 cwt back to my section Orderly Room, ('B' Section) and turned off the lights and motor, then went inside the Orderly Room to get ammunition and a work ticket for the 15 cwt lorry. Upon opening the door to come outside, the light from the door revealed someone standing on the opposite side of the 15 cwt lorry. I yelled "Stop!", went around to the opposite side of lorry and saw that the person was Pte. Hayes. I called to the Cpl. on duty in the Orderly Room and for two men to assist in escorting Hayes back to the Guard Room. I handed Hayes over to the R.P. at the Guard Room who placed him in the prisoners room and cautioned the R.P. to watch Hayes closely. While escorting Hayes to the Guard Room he threatened to burn the Guard Room down. I then accompanied Sgt. Terry to Caterham to make arrangements with Civil Authorities to place Hayes in Civil Custody. When Sgt. Terry and I came back to Camp to get Hayes from the Guard Room it was brought to our attention that all the screws had been removed from the hinges of the back door of the Guard Room. We then took the prisoner to Caterham and handed him over to Civil Police, then returned to Camp and reported to Orderly Officer."

The accused declined to cross examine the witness.

G.W. Weston
D-122369 Sgt. G.W. Weston
No. 85 Cdn. Bridge Coy. RCASC

First Charge
Fourth Witness

B-84795 Cpl. Evans, R.W., No. 85 Cdn. Bridge Coy. R.C.A.S.C., having been duly sworn, states :

"I am B-84795 Cpl. Evans, R. W., of No. 85 Cdn. Bridge Coy. R.C.A.S.C.

While carrying out my duties of Orderly Corporal on 1 Nov 42, I was told to report to the Guard Room by the Orderly Sergeant to see if everything was in order. On arriving there, I was told by L/Cpl. Duncan, Guard Commander, that two prisoners had escaped. On questioning him he said they were Pte. Hayes and Leblanc. I immediately asked him what time it was by his watch and he answered 1900 hours. I immediately reported back to the Orderly Sergeant. Sgt. Weston and I started out to search the Camp, when we met Sgt. Terry just outside the Guard Room. The three of us started along the road for the Canteen and on the way there we asked permission of Pte. Robinson for the use of his station wagon which was parked on the side of the road outside 'C' Section lines. We then proceeded to drive along the road towards the Canteen when we saw a 15 cwt lorry travelling in the same direction without any rear lights showing. Sgt. Terry ordered me to pull up alongside the 15 cwt lorry. On so doing I recognized Pte. Leblanc behind the wheel as Sgt. Terry had focussed his flashlight on him and also Pte. Hayes

First Charge
Fourth Witness
(Cont'd)

in the spare drivers seat. Sgts. Terry and Weston got out of station wagon and ordered Pte. Hayes and Leblanc to get out of the 15 cwt. Hayes obeyed the order and dismounted. In the matter of a few moments the 15 cwt pulled away. I saw Pte. Hayes run after the lorry by the light from the headlights of the station wagon and he disappeared in the blackness with Sgts. Weston and Terry in pursuit. Sgts. Terry and Weston came back and got into the station wagon and we drove along the road towards the south gate. At approximately 100 yards north of the south gate I saw the same 15 cwt with section number 'D-1' painted on the back of the lorry. We pulled up alongside the 15 cwt and found it empty. Sgt. Terry and I returned to H.Q. Orderly Room in the station wagon to get pistol and ammunition. We returned the station wagon to 'D' Section Lines and Sgt. Weston told me to report to the Orderly Officer, Lieut. Knott at approximately 2000 hours.

The accused declined to cross examine the witness.

R.84795 R.W. Evans

R.84795 Cpl. R. W. Evans
No. 85 Cdn. Bridge Coy. RCASC

First Charge
Fifth Witness

D-121938 Cpl. Huard, W., No. 85 Cdn. Bridge Coy. R.C.A.S.C., having been duly sworn, states :

"I am D-121938 Cpl. Huard, W.J., No. 85 Cdn. Bridge Coy. R.C.A.S.C.

While on duty as Corporal in charge of Regimental Police on 1 Nov 42 I escorted Ptes. Hayes and Leblanc back to Guard Room from supper with the help of Pte. Malouin, R.P., and placed them in the Prisoners Room. I checked the bolts on both doors leading to the Prisoners Room and detailed Pte. Malouin to stand on guard. Returned to H.Q. Orderly Room I ordered Pte. Groleau, R.P., to escort Pte. Hayes back to Guard Room. While in Caterham supervising the Recreational lorries, a D.R. reported to me that two prisoners had escaped. I then drove to Godstone to head them off. While there, I met Sgt. Terry who said he was looking after them there, and I returned to Camp and checked the Guard Room where I found Pte. Hayes confined. I returned to H.Q. Orderly Room where I was ordered by the Adjutant to take Pte. Hayes to Caterham and hand him over to Civil Police.

W. Huard Cpl

D-121938 Cpl. W. Huard
No. 85 Cdn. Bridge Coy. RCASC.

First Charge
Sixth Witness

D-123463 Pte. Groleau, C.J., No. 85 Cdn. Bridge Coy. R.C.A.S.C., having been duly sworn, states :

"I am D-123463 Pte. Groleau, C.J., No. 85 Cdn. Bridge Coy. R.C.A.S.C.

While on duty as an R.P., I was checking the blackout on 1 Nov 42. On my tour of duty, I dropped into the Guard Room between 1830 hours and 1900 hours.

First Charge
Sixth Witness
(Cont'd)

Pte. Malouin who was on duty there as R.P. told me that Pte. Hayes and Leblanc had escaped. I continued checking the blackouts and worked my way towards the Canteen. I met Sgt. Weston outside 'B' Section Orderly Room just pulling in with a lorry. He asked me to come into the Orderly Room with him and asked if I knew the two prisoners had escaped. On coming out of Orderly room with Sgt. Weston I saw Pte. Hayes getting into 15 cwt lorry, so we took him back to the Guard Room. I stayed in the Guard Room with Pte. Malouin, R.P., until Hayes was taken to Caterham. I went to Caterham as an escort and returned to Camp after Hayes was handed over to Civil Police.

The accused declined to cross examine the witness.

D-117615 Pte. C.J. Ireland
No. 85 Cdn. Bridge Coy. RCASC.

Second Charge
First Witness

D-117615 Sgt. Terry, J.H., No. 85 Cdn. Bridge Coy. R.C.A.S.C., having been duly sworn, states :

"I am D-117615 Sgt. Terry, J. H. of No. 85 Cdn. Bridge Coy. R.C.A.S.C.

On the night Hayes and Leblanc broke away from the Guard Room, this is to say the 1 November, 1942, at about 1915 hours in company with Sgt. Weston and Cpl. Evans whom I met on their way to the Guard Room, we started to look for the escaped prisoners. While passing 'B' Section lines, we saw a station wagon parked by the hut. We obtained permission to use the station wagon within camp area and started off in the direction of the south gate when we overtook a 15 cwt lorry moving without tail lights. We stopped the lorry and I focused my flashlight in the cab and I recognized Pte. Leblanc behind the wheel. I got out of the station wagon, went around to the other side of lorry and saw Pte. Hayes getting out of the cab. Hayes seemed willing to obey the order to return to the Guard Room with me, when suddenly the lorry started away and Hayes bolted in the darkness. We gave chase in station wagon, travelling towards the south gate and found the lorry a short distance north of the south gate and found the lorry a short distance north of the south gate with prisoners missing.

The accused declined to cross examine the witness.

John H Terry
D-117615 Sgt. J.H. Terry
No. 85 Cdn. Bridge Coy. RCASC

Second Charge
Second Witness

D-123369 Sgt. Weston, G.W., No. 85 Cdn. Bridge Coy. R.C.A.S.C., having been duly sworn, states :

"I am D-123369 Sgt. Weston, G.W., of No. 85 Cdn. Bridge Coy. R.C.A.S.C.

When carrying out my duties of Orderly Sergeant on 1 Nov 42, I was notified by Cpl. Evans that

Second Charge
Second Witness
(Cont'd)

two prisoners had escaped from the guard room. We immediately started for the Guard Room and met Sgt. Terry just outside of it. We decided to institute a search immediately. We started along the road in direction of the Canteen when passing 'G' section lines noticed a station wagon. Cpl. Evans went into the hut to ask the driver to take us to the Canteen. The driver gave Cpl. Evans permission to take the vehicle and the three of us drive toward the Canteen. On the road, just outside the Canteen we noticed a 15 cwt lorry proceeding along the road towards the south gate without any tail lights. We pulled up alongside the 15 cwt lorry to warn them about the lights when Sgt. Terry recognized the driver as one of the escaped prisoners. He yelled to him to stop, which he did. Sgt. Terry and I got out of station wagon and I recognized Pte. Leblanc behind the wheel. I ran around the lorry to the opposite side and saw the door of the 15 cwt open and Pte. Hayes standing a few feet away, near Sgt. Terry. Suddenly the lorry started away and Hayes made off in the darkness. Sgt. Terry and I got back into the station wagon and gave chase. We came upon the 15 cwt on the side of the road about 100 feet north of the south gate. Both doors were opened, motor off, lights on, and the prisoners were not in the vicinity of the lorry. I then drove the 15 cwt back to 'D' section lines and parked it outside the Orderly Room while I went inside to get a work ticket and ammunition. When I came outside I noticed someone on the opposite side of the 15 cwt. I yelled: "Stop!", and ran around the lorry, focused my light on the person and found him to be Pte. Hayes. I called for help and took the prisoner back to the Guard Room.

The accused declined to cross examine the witness.

D-123369 Sgt. Weston, C. W.,
No. 85 Cdn. Bridge Coy. RCASC

Second Charge
Third Witness

B-84795 Cpl. Evans, R. W., No. 85 Cdn. Bridge Coy. R.C.A.S.C., having been duly sworn, states :

"I am B-84795 Cpl. Evans, R.W., of No. 85 Cdn. Bridge Coy. R.C.A.S.C.

As Orderly Corporal on the 1 Nov 42 I was Ordered to report to the Guard Room by the Orderly Sergeant to check and see if everything was in order. Upon arriving there, the Guard Commander L/Cpl. Duncan told me that two prisoners Pte. Hayes and Leblanc had escaped. I then asked him the time which he replied was 1900 hours. I reported immediately to the Orderly Sergeant and in company with him started off in search of the escaped prisoners when we met Sgt. Terry. The three of us started towards the Canteen and on passing 'G' Section lines we saw a station wagon outside and got permission of the driver to use it. We drove towards the Canteen and I saw a 15 cwt driving along the woods towards the south gate without rear lights. We pulled up alongside the 15 cwt and I recognized Pte. Leblanc behind the wheel and Pte. Hayes in the spare driver's seat from the light of Sgt. Terry's flashlight. Sgt. Weston and Terry got out of station wagon and ordered the prisoners to get out of the lorry and Hayes obeyed.

Second Charge
Third Witness
(Cont'd)

I then saw the lorry suddenly start away with Pte. Leblanc still behind the wheel. I watched the 15 cwt start down the road from my seat in the station wagon and saw Pte. Hayes by the head lights from the station wagon running down the road after the 15 cwt with Sgts Terry and Weston in pursuit. Sgts. Terry and Weston came back and got into the station wagon with Sgt. Terry behind the wheel and we drove towards the south gate. About 100 yards from the south gate I saw the same 15 cwt with section number 'H-1' painted on the tail board. The vehicle was empty. I then came back in the station wagon with Sgt. Terry to the H.Q. Orderly Room.

The accused declined to cross examine the witness.

13 84795 Cpl Evans R.C.A.
D-84795 Cpl. Evans, R.C.
No. 85 Cdn. Bridge Coy R.C.E.

Second Charge
Fourth Witness

D-123463 Pte. Groleau, C. J., No. 85 Cdn. Bridge Coy. R.C.A.S.C., having been duly sworn, states:

"I am D-123463 Pte. Groleau, C. J., of No. 85 Cdn. Bridge Coy, R.C.A.S.C.

While checking the blackout in the Camp Area on 1 Nov 42, approximately between 1930 and 1930 hours I met Sgt. Weston (Orderly Sergeant) who asked me whether I knew that two prisoners had escaped. I replied, yes, as Pte. Malouin the N.P. at the Guard Room had told me a few minutes previously. Sgt. Weston asked me to stay with him for a while and we went to 'H' Section Orderly Room for Sgt. Weston to get some ammunition. On coming out of the Orderly Room with Sgt. Weston, I saw in the light from Sgt. Weston's torch, Pte. Hayes standing on the running board of a 15 cwt lorry. We apprehended Hayes with the assistance of Cpl. Kyle and placed him in the Guard Room and I remained on guard there until the prisoner was removed to Civil Custody in Caterham."

The accused declined to cross examine the witness.

D-123463 Pte. C.J. Groleau
No. 85 Cdn. Bridge Coy. R.C.A.S.C.

Question to the Accused -

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by Accused -

I have nothing to say.

I certify that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

Taken down by me in the presence of the accused at Marden Park, Woldingham, Surrey, this 10th. day of November, 1942.

H.C. Hawes-Smith

(H. C. Hawes) Lieut.,
No. 45 Cdn. Bridge Coy. RCASC.

DOCUMENTARY EVIDENCE

NIL

A. D. Ritchie Maj

Statement in Mitigation of Punishment
Made by.
Lieut. K. A. CROSBY. - Defending Officer.

The accused prior to his entry into army, did enjoy a very good reputation, his family life has been perfect so too his actual life, a short time during which he was employed in Toronto there has never been a complaint against him. He Volunteered for the army early in the war and due to bad influence got himself into trouble which has continued throughout his military history. This same influence regretably has made his history go from bad to worse. In connection with case before the court, the act committed was not pre-meditated - it was unplanned done on the spur of the moment due again to bad influences. The accused is young at present time only twenty one years of age and suffers from a more than usual dose of head strongness, which has been easily directed by this same bad influence.

I therefore submit that the accused is not basically bad as his military history may suggest but he being influenced by bad companions in the army and thus been allowed to follow his own youthful head strongness without ever receiving the guidance of a father or like advisor. I put he himself at the mercy of Court and pleads that the degree of punishment may be considered in the light of the above facts.

A. D. Ritchie Maj

A.P.S.R.

Evidence as to Character

C 5563 Pte STRUDWICK. W.
#1 Mobile Laundry.

Questioning defending officer: Do you recognize the accused?

Answer: Very well sir.

Questioning defending officer: How well do you know him?

Answer: I know Bill Boys as more or less a brother. I have been with Bill practically all my life. We attended Church, also we belong to the Broadview Y.M.C.A. in Toronto. We also worked together. Bill was delivering boy there & I was clerking behind the counter. As far as I know Bill was always good he never got into trouble back home. I believe he was one of the best liked boys in the neighborhood all the time that I knew him. I also know he had never got in trouble. I also knew his mother & father & they were very fine. I don't think Bill ever caused his father or mother any trouble. We were always occupied in sports & had no time to get into trouble. I believe that the reason Bill is getting into trouble now is that he has had very little to do with bad company since he has been in the Army.

A. S. Ritchie Maj

Exhibit A

A.J. Ritchie Maj.

M.F.B. 355
12M—8-40 (6435-6)
H.Q. 1772-39-670

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
G-83220	Pte.	HAYES, W. A.	"C" Cdn. Bridge Coy. R.C.A.S.C.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ R.S.C. ~~Regimental and Squadron, Battery~~ R.S.C. Conduct Sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

Within last 12 months		Since enlistment	
For A.W.L.	2 times	A.W.L.	2 times
For	times	Conduct to the Prejudice	1 times
For	times	Drunkenness	1 times
For	times		times

~~R.S.C. Number of instances of gallantry or distinguished conduct~~ R.S.C.

~~R.S.C. There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

~~R.S.C. The accused has not been previously convicted~~ R.S.C.

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ R.S.C. ~~A.F.A. 76~~ R.S.C. Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

~~R.S.C. The accused is not under sentence at the present time~~

~~or~~

The accused at the present time is under sentence for 6 months beginning on the 15th day of October, 1943

~~4. The accused has been in confinement awaiting trial on the present charge, for days in civil custody, and days in military custody, making a total of days in custody, of which days were spent in hospital.~~ R.S.C.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 21 years

6. The date of his ~~enrolment~~ attestation specified in his record of service is ~~attestation paper~~ 30-6-40 R.S.C.

~~R.S.C. The service which the accused is allowed to reckon towards discharge is~~

~~R.S.C. The accused is entitled to reckon service for the purpose of determining his pension, viz.~~

~~9. The accused is in possession of or entitled to no air force decoration or air force reward (or is in possession of or entitled to). State any air force decoration or reward~~ military military R.S.C.

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer was held the regimental rank of~~ R.S.C.

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit dated , and in his regiment (or corps), the rank of dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

~~In the rank of years.~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number [illegible] Rank Pte.

Name [illegible] of [illegible] Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.C.C.M.	15 Oct 42 Marden Park, Woldingham, Surrey	A.A. 40 A.A. 15 (1) A.A. 41	6 months detention	2 months

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th. day of November, 1942 (R.G. Davidson) Lieut., Adjutant No. 25 Can. Bridge Coy. R.C.E.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

No. C-63258 Name Hayes, W.A. Sqn., Battery, or Company No. 85 Can Bridge Coy. RCASC Corps Date of enlistment 30-8-40 G.C. Badges Service or Proficiency Pay

M.F.M. 6
A.F.B. 179.
(7134—7-41 (3259-26))
H.Q. 1772-21-1852

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
		Original	sheet	Restmyed in accordance with C.A.O.R.O. 319 on completion of six months service. Last entry 21-3-41					
Debert	22-3-41	Spr.		A.W.L. from his guard.	L/Sgt Spalding L/Cpl Davies	4 days C.B. & extra fatigue	24-3-41	Capt. Walker	
Debert	2-5-41	Spr.		(1) Sec. 19 ~~DRUNKENNESS~~ (2) A.W.L. 12 Hours.	Pte. Redoe Pte. Horton	Admonished 7 days C.B.	6-5-41	Capt. Dove	
Truro	3-5-41	Spr.		Sec. 40 had use of a pass knowing it not to be genuine.	Pte. Redoe Pte. Horton	7 days C.B.	6-5-41	Capt. Dove	
Debert	15-5-41	Spr.		Sec. 40 Creating a disturbance while	L/Sgt Penning L/Sgt Cavedon Spr. Coppins	14 days det.	16-5-41	Maj Stirrett	

Exhibit P-3

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30-4-42	Pte.		A.W.L. 1100 hrs to 1600 hrs (5 hrs)		27 dys F.P.	1-5-42	O.C.	Forfeits 27 dys pay
Fied	7-9-42	Pte		Tried by F.G.C.M. ~~and~~ f on A. A. SECTION 40, A.A. SECTION 15(1), A.A. Section 41					FR & I 149 (1)(b)
			X	Forfeits 242 days pay under F.R.&I. 149(1)(b). 6 days pay under F.R. & I. 149 (1)(a) and 32 Days pay under F.R.&I 149 (1)(c)(1). Total Forfeitures 280 days pay.					
				Certified true Copy 10-11-42 (R.G. Davidson) Lieut & Adjt for Alex Gamon, Major, O.C. No. 5 Can. Bridge Coy. R.C.A.S.C.		8 months Detention, 15 Oct. 42. by F.G.C.M.			
			X	Confirmation of finding and sentence by Brigadier Leach, but remit 2 months detention. Total forfeiture of pay is amended to read: 280 days.					

A.P.M.

Statement of Character, Service and Conduct in further mitigation of punishment, made by:

Lieut. K. J. Cuber. 85th Bn. Can. Tpt Coy. R.C.A.S.C.

One point which I would like to bring to the attention of the Court, that all things the evidence submitted in the Summary, that the accused when apprehended came willingly. I wish this to support my previous statement the act which the accused is now being tried is due entirely to thoughtlessness & bad influence & was not premeditated by him & was quickly repented and committed.

The accused has been a good soldier whilst with this unit - there are not petty crimes against him. He was a good citizen before joining the army & would have continued his good record & his military record had he received able & proper direction.

He submits these facts to the Court and puts himself at its mercy

K. J. Cuber Lieut

2 D. Mr. Hughes, Jr

A-18270 Spr. Haykus,F.
No.1 Cdn Eng Bldg Unit

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 8th day of September, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *and that it is not practicable that the trial should take place before a superior qualified officer;

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*It is not practicable that—
*(1. Three Officers to form the Court
*(2. A Field Officer to Preside
*(3. Three Officers having more than [illegible] service

be detailed to form the Court.

President.

Rank.	Name.	Regiment.
Major	M.C. Upper	No.1 Cdn Inf Bldg Unit

Members.

Rank.	Name.	Regiment.
Captain	A.M. Black	No.1 Cdn A.S.C. Bldg Unit
Lieutenant	J.R. Turner	No.3 Cdn Inf Bldg Unit
Lieutenant	W.D.E. Careless	No.1 Cdn A.S.C. Bldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [signature] Brigadier
Commanding Cdn Base Units, Cdn. Army.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A-18270 SPR. HAYKUS F. No.1 Cdn Engr Hldg Unit.	First Charge A.A. sec 15(1) See charge sheet attached.	TO UNDERGO DETENTION FOR A PERIOD OF NINETY DAYS W.C. Apper Major Guilty Guilty m.c.	Guilty. 90 days/ Detention with recommendation that this man be given subsequently a field unit on completion of sentence. W.C. Apper Major	Confirmed D.M. Mulan Brig

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) D.M. Mulan Brigadier (Signed) W.C. Apper Major

Commanding Cdn Base Units, Cdn Army. *President.*
Convening Officer (e)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the twelfth day of Sept 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 12th day of Sept. 1941.
W.C. Apper Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (6) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

Signed this day of 19

~~*President of the Court Martial*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 18th day of Sept 1941.
D.M. Mulan Brigadier.
Confirming Officer.

Promulgated and extracts taken in the case of A-18270 Spr. Haykus F.

(*a*) (Dated) 26 Sept 41 (Signed) T. A. Crich Lieut
ADJUTANT
No. 1 Cdn. Engineer Holding Unit C.A.

Promulgated and extracts taken in the case

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, No. A-16670, Sapper Frank Haykus, No.1 (Cdn) Engineer Holding Unit, a soldier of the Canadian Army (Overseas) is charged with:

First Charge
Sec 15(1)
Army Act

Absenting himself without leave,

in that he,

at Guillemont Barracks, COVE, Hants., absented himself without leave from 0745 hrs. on the 18th day of August 1941 until approximately 1530 hrs. on the 29th day of August 1941.

(L.E.Lee) Lt.-Col.,
Officer Commanding,
No.1 (Cdn) Engineer Holding Unit,
Canadian Army (Overseas).

COVE, Hants.,
3rd. Sept. 1941.

The Court recommends that on the completion of sentence Spr. Haykus, F.. be given service in a field unit.

Major

To be tried by Field General Court Martial

(F.R. Phelan) Brigadier
Commanding Cdn Base Units.

Bordon, Hants
This 5th day of Sept 41.

Major

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT COVE, Hants. ON THE 12th DAY OF SEP 41.

TRIAL OF:- No. A16270, Spr F. HAYKUS

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Lt S.W. Hawreliak (Unit) No 1 CEHU.

Defending Officer:- (Name) Lt W.A. McDill (Unit) No 1 CEHU.

At 1010 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1.-No, sir.

The President, members and Judge-advocate (if any) are duly sworn.

The officers under instruction are duly sworn.

Q2. ~~[illegible]~~

A2.-

~~[illegible]~~

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Q3. Do you wish to make any statement in mitigation of punishment?

A3.- No, sir.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4.- No, sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER.

Defending Officer:- Haykus seems to be laboring under a persecution complex. During time he has been here he has definitely had the impression he has been unfairly treated. He has started a number of training courses while here and unfortunately has never completed any of them. Each time he comes back he has to start again at the beginning, therefore he is consistently put back on the square and each time something happens and the thing repeats itself all over again. He also has an idea that he is being unfairly treated in the Holding Unit. It is probably that feeling which has made him go AWL in these cases.

Prosecutor, sworn, produces AF B296 and MFM-6.

President of Court Martial

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No.A-18270, Sapper Frank Maykus, No.1 (Cdn) Engineer Holding Unit, a soldier of the Canadian Army (Overseas).

Evidence taken on oath by order of Lt.-Col.L.F.Barnes, Officer Commanding No.1 (Cdn) Engineer Holding Unit.

FIRST WITNESS: R-10775, L/Sgt.Rolfe,R.G., No.1 (Cdn) Engineer Holding Unit, having been duly sworn states:

I, R-10775, L/Sgt Rolfe,R.G., Sec. Sgt.R 23 "D" Coy. No.1 (Cdn) Engineer Holding Unit, took the 0745 hrs. roll call on the 19 Aug 41. A-18270, Spr. Maykus,F., did not answer to his name when called.

I checked sick reports and his billet as to whether he was sick. Assured he was not sick I reported him absent and kept reporting him absent until Aug 20 when he was reposted to "A" Coy.

Sgt. Rolfe R.G. Sgt.

The accused declines to cross-examine this witness.

SECOND WITNESS: A-2136, Cpl. Gallup,R.I., No.1 (Cdn) Engineer Holding Unit, having been duly sworn states:

I am R-2136, Cpl. Gallup,R.I., Sec.Sgt. No.3 Sec. "A" Coy, No.1 (Cdn) Engineer Holding Unit.

On the 20 day of August 1941 A-18270, Spr. Maykus,F. was reposted from R 23 "D" Coy. to No.3 Sec. "A" Coy. I called the roll at tattoo but he did not answer. I know him by sight and am sure he was not present. I reported him absent on the A.W.L. list till 30 Aug, when I was informed that he had reported to the Unit Detention Police.

Cpl. R.I.Gallup Cpl.

The accused declines to cross-examine this witness.

THIRD WITNESS: C-2113, Cpl.Wilson,D.E., Regt. Police, No.1 (Can) Engineer Holding Unit, having been duly sworn states:

I am C-2113, Cpl. Wilson,D.E., of the Regt. Police of No.1 (Cdn) Engineer Holding Unit. On 29 Aug 41 at approximately 1320 hrs. A-18270, Spr. Maykus,F. reported to me from being A.W.O.L. I placed him under arrest and turned him over to the Unit detention commander.

Cpl D.E.Wilson Cpl.

The accused declines to cross-examine this witness.

The accused, after being duly cautioned as provided by R.F.4(E) declines to make a statement, reserving his defence.

Certified that R.F.4(C)(D)(E) and(F) have been complied with.

Taken down before me in the presence and hearing of the accused at Guillemont Barracks GOVE, Hants., this 3rd. day of September, 1941.

Lieut. (Quartermaster) Field
No.1 (Cdn) Engineer Holding Unit
Canadian Army (Overseas).

Major

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. A.19207 Spr. Hayhurst F.....

of Nat. Edn. Coy. W. D.....and in my opinion he

is ~~unfit~~ fit to undergo Trial by Court Martial.

Station Cove.....

Date 12 Sept. 1941.....

J. deyHDS DEC Capt

Medical Officer.

W.C. Coffin Major

#1 Destroyer 30-3-40 — 1st Field Park Coy RCE

OFFICER'S RECORDS

No. 1 Cdn. Engineers Holding Unit, C.A.

(A F B 122)
10M — 8-39 (7750)
H.Q. 1777-45-18

No. A-18970 Name Stoughton, Derrick | Sqn., Battery, or Company | Corps | Date of enlistment 22/9/39 | G.C. Badges | Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Petawawa	4/6/40	Spr.		AWL 1400 the 4/6/40 to 1/300 the 10-6-40	Lt Lt Shaffell	14 Days Detn	12/6/40	J.F.B. Lynch	Forfeits 6 days pay
Petawawa	6/7/40	Spr.		AWL 0359 the 16/7/40 to 1330 hrs 22/7/40	Lt Lt Starr	F 30 Days Pay	23/7/40	Lt Col Montague	F 7 Days
						CC 46 Regs (1)			F 2 Days 1149
Petawawa	2/9/40	Spr.		AWL 2200 hrs 2/9/40 to 1/300 hrs 12-9-40	1/6/Lt Thompson, Heyroum	8 Days Det	2/10/40	Maj Hall	F Holidays Pay
									F 8 x 8 1149 Reg
Petawawa	12/9/40	Spr.		AWL 2400 hrs the 14/12/40 to 1/300 hrs the 17/12/40	Lt Lt Shaffell	10 Days Det	16/12/40	Lt Payne	F 1 days pay
									F 8 x 8 1149
Petawawa Barracks	15-12	Spr.				Admonished	6 Feb 41	Lt Walsh	Forfeits 1 day
Borden	1 Feb 41	Spr.		AA Sec 5(2) AWL from 1100 hrs the 1 Feb 41 To 1100 hrs the 2 Feb 41 Absent 13 hrs	Lt Lt Cormack			Maj R.E.E. Lt Col Barnes	Regt'd 18 8 1149
Sussex Barracks Fredericton	14/3/41	Spr.	Nil	AA Sec 5(2) Absent from Church Parade	2nd Lt Graham Lt Payton Lt Edmonds	14 Days 6-13	19/3/41		

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Burden Hants	6/4/41	Spr		Soldier of the 6A (OS) WOAS failing to appear at Pass Parade & Parade at Quartel Up Line 6C	4/Cpl Kemp Tim Cpl Graham	7 Days C.B.	8/4/41	Lt Col Ingell, Mgr RE	
Burden, Hants	16/4/41	Spr		Soldier of the 6A (OS) WOAS AWL for 9 Hrs	Spr Mc Nab 4/Cpl Savage	168 Hrs Detn.	9/4/41	Lt Col Barnes	
Burden Hants	27 Apr 41	Spr		AA 12 (1) AWL from 2 Dep 27 Apr 41 to 1430 Hrs 2 May 41 About 10 days	4/Cpl Sedgen Cpl Fisher Documentary	21 Days Detn	12 May 41	Lt Col Andrews	Forfeits 11 days Pay 345 Hrs
Burden Hants	23/7/41	Spr		1 OR Showed not to the prejudice & good order and military discipline in that he at Burden on 23/7/41 after being warned to parade at 0900 Hrs on 23/7/41 spoke to Lt Col M Martin in a disrespectful manner	Lt Col M Martin 4/Cpl Watt		23/7/41	Lt Col Barnes	

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th day of Dec. 1941

OFFICER i/c RECORDS
No. 1 Cdn. Engineers Holding Unit, C.A.

Army Form B.296.

Statement as to Character and Particulars of Service of Accused.

1. The following is a fair and true summary of the entries in the [illegible] Regimental and Squadron, Battery or Company Conduct sheets† of the above-named accused, exclusive of convictions by a court martial or a civil court of which particulars are given in the schedule and of summary awards under Section 47 of the Army Act and of cases in which proceedings for trial has been dispensed with.

	*Within last 12 months.	*Since Enlistment.
For Absent without leave	4 times	Seven (7) times.
For [illegible]	2 times	Two (2) times.
For [illegible]	1 time	One (1) time.
For	times	times.

Number of instances of gallantry or distinguished conduct.

Nil.

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted.

Nil.

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

W.O. 65/46/8864 50,000 8/40 M & S Ltd. 81—9824

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for
beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges

for ——— days in Civil Custody,

and 10 days in Military Custody.

Total 10 days.

Of which ——— days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 20 yrs. 7 mths.

6. The date of his commission / attestation specified in his record of service / attestation paper is 29th Sept. 1942

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr. 12 mths.

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr 11/12 years' service.

9. The accused is entitled to reckon 1 yr 11/12 years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward for is in possession of or entitled to

11. [illegible]

12. [illegible] dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion.
In the rank of	,	years,
In the rank of	,	years,
In the rank of	,	years,

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ———, signed by the president, and annexed to the proceedings.

Major

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer imposing or confirming the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(Continued overleaf)

40-63

Pte Hayman R.

O. H. M. S.

M. F. B. 270

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B- 46355 Pte Hayman R Argyll & Sutherland's Regt X3 list Attached to 1 / 9 FDS

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not guilty	guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of list see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under 62.)

Sentence Awarded by the Court:

To be imprisoned with hard labor for two years

(Sgd) Gordon H. Jermyn, Judge-Advocate, if any. Capt — 27 Dec 44, Date awarded. — (Sgd) F. Chown Major, President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) R. Gough Brigadier (JRR Gough)

Date 29 Dec 44 — Commanding A Tps Area, First Cdn Army — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B-46355 Pte HAYMAN R	30 Dec 44	GAW Currie Major O. C. 9 Cdn F.D.S. RCAMC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECEIVED 8 Feb 45 JAG BRANCH CMHQ

RECORDED AT CMHQ IN AB 160

410-63.

FIELD GENERAL COURT-MARTIAL

CFAAS (in lieu of AF A23) (C.F.A.S. 1098 (2804))

Convened by Order of Brig. J.R.R. Gough Comd A Tps Area dated 24 Dec 44 First Cdn Army

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B- 46355	Pte	Ray	Hayman	Argyll & Sutherland H'ld's Regt. X-3 list Attached 9 Cdn F.D.S.

D.J.A., Cdn Sec GHQ 2 Echn, 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 27 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for paths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1020 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Mr. Cornsel Schoenman ~~as Interpreter~~ ? Ans No Sir

The Interpreter is sworn.(1) ~~Do you object to ..... as shorthand writer ? Ans .....~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	F. Chown	10 Cdn Fd Hyg Sec RCAMC
Member	CAPT	K.I. Greber	86 Cdn Bridge Coy RCASC
Member	CAPT	W.V. Cann	2 Cdn Inf Tps Hosp RCAMC
Judge-Advocate	CAPT	G.H. Jermyn	HQ A Tps Area First Cdn Army
Prosecutor	CAPT	G.V. Downing	9 F.D.S. RCAMC
Defending Offr	CAPT	L.V. Perry	Argyll & Sutherland Highrs Regt

Questions by President: Is the Prosecutor a lawyer ? Ans ..... Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~not~~ plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in this to RoP cited. Insert in AB read and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 42; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D&B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*ii*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p. 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras C1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No Sir (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~no~~) no opening address.(1)
(*1. RP 29(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The ~~Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. I will give evidence. Do you intend to call witnesses on your behalf?
Ans. No. Are they witnesses as to character only? Ans. N A
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President ~~announces the findings, if any, of Not Guilty, and~~ states to the accused that the findings of the Court on the 2 nd charge(s), being subject to confirmation, will be promulgated later.(1)
Or ~~The President announces that the accused is found Not Guilty on all charges and is to be released forth with and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. Yes Sir
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement~~s~~ as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet~~s~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(I) (g) (h), and (ii) they purport to refer to (a) soldier~~s~~ having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E and Ex F respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement~~s~~ and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes Sir by my defending officer.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) ~~The~~
(*1. When several accused tried separately see RP 102. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B-46355 Pte Roy Hayman Argyll & Sutherland's H Regt. S.O.S. X-3 List. Attached to 9 Cdn Field Dressing Station R.C.A.M.C. a soldier of the Canadian Army Overseas is charged with:-

First Charge
A.A. Sec 41

WHEN ON ACTIVE SERVICE

COMMITTING A CIVILIAN OFFENCE THAT IS TO SAY STEALING

in that he

in the field on 21 Dec 44 at about 2330 hrs stole one pocketbook, 1 Identity card bearing #71284 and 400 Belgium Francs the property of Mr A.L. Hens a Civilian.

G.A.W. Currie
(G.A.W. Currie) Major
Officer Commanding,
9 Cdn F.D.S. RCAMC.

Approved on behalf of J.A.G. Cdn Army Overseas pursuant to K.R. (Can) 540 and overseas R.O. 4756 (1)

G.H. Jermyn Capt
24 Dec 44
A.D.J.A. H.Q. Army tps Area
First Canadian Army

In the Field
23 Dec 44
TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field
24 Dec 44

R. Gough
(JHR Gough) Brigadier
Comd A Try Area, First Cdn Army

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B 46355	Pte	Pte	Roy	Maymun	Argyll & Sutherland's H Regt att 9 Cdn Fd Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 24 Dec 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
MAJOR	F. CROWN		10 Cdn Fd Hyg Section

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	K.J. CRIMIN		86 Cdn Bridge Coy RCASC
Capt	W.V. CANN		2 Cdn Inf Tps Wksp RCEME

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
LIEUT	To be detailed by OC 86 Cdn Bridge Coy RCASC		

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
CAPTAIN	C.N. SMYTH ADJA		HQ A Tps Area, First Cdn Army

On Active Service in the Fd

in HOLLAND (Country.)

C. Gough (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(JRR Gough)

Date 24 Dec 44

Commanding A Tps Area, First Cdn Army
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA85 (In lieu of AFA81) 40-P & S-1887 (4851)

(See overleaf for oaths and notes for use on trial.)

Wed 27 December 1944

I certify that I have this day examined B-46355 Pte Hayman Roy and have found him FIT to undergo trial by Field General Court Martial.

Signed H.I. Williams Capt
(H.I. Williams) Capt
M.O. 9 Cdn Field Dressing Station RCAMC

Procution

First Witness

80599 Cpl Stobo L.C. 9 Cdn F.D.S. sworn states:

Pte Hayman was admitted to 9 FDS on 21 Dec 44 to undergo treatment next day. There is no check until they are on treatment except by ward orders which that no patient is allowed outside the ward and lights out is at 2230 hrs. I produce a certified true copy of standing orders which are posted in the ward to which accused was assigned. STANDING ORDER EXHIBIT A

No- Cross-Examination

R.P. 83 (b) complies with

SECOND WITNESS

Mr. Hens Albert, 5 Guldensporenzei Turnhout, Belgium, sworn states:

Last Thursday night about 11o'clock I was going home and in Reniers-nieder Strast I met a soldier, The soldier put his hand inside his coat and said "Give me your money". I said Ionly had 7 francs. I said I have no more. Then the soldier said "I want more". I said I have no more. The soldier said "Come on". Then I took out my pocket-book. I took out of it a 100 franc note and gave it to the soldier. The soldier then took my pocket-book and took out 3-100 franc notes. The soldier said "its not enough I want more". Then the soldier went away with my pocket-book. I followed him and saw talking with another soldier. I told my story to the other soldier who told the first soldier if you have the money you have to give it back. The soldier who took the money brought out a bottle of cognac. He asked the other soldier to drink but he didnt. I told my story again but the soldier said he had not stolen my money. He said here is a cigarette for you and now go home and I thought it was the best thing to do so I went home arriving about half past eleven. The following morning I went and informed both civilian and military polic. Then I came here to pick out the soldier. I had no trouble identifying him. That is the soldier who robbed me. Points to accused. There were two big 100 franc notes and 2 small ones and 7 one franc pieces. It is a small black pocket-book witha place for papers on each sides. My identity card and some other papers were in it.

Black-Billfold pocket book produced marked EXHIBIT B

Green identity card #71284 produced marked EXHIBIT C

The soldier went up the right side of the street and I went up the side. I had no difficulty following him. There was no one else on the street.

Cross-Examination

He said "Give your Belgium money". I understood and can speak a little English. He said "Give your Belgian money" and he said "I want more" and I understood.

I did not see any gun. I saw that the soldier took the bottle from the same place as he put his hand before. The soldier had been drinking. He did not walk as well as other soldiers but he was not drunk. The soldier put his hand on my shoulder and his hand inside his blouse and the first thing he said was "Come give me your Belgian money".

BY THE COURT

I thought the soldier had a pistol inside his coat and because of that I gave him the money.

I thought the second soldier was a military policeman. He was dressed the same as a military policeman.

R.P. 83 (b) complied with.

THIRD WITNESS

M-66562 Dur Weigel, S.A. 66Cdn Tps Coy RCASC sworn states:

About 23 00 hrs 21 Dec 44 I was on Regtl Police duties at Coy HQ. I saw a soldier run into a doorway. I walked up to him and asked what was wrong. He asked me where #9 F.D.S. was. A civilian came running across the road and grabbed me by the arm and pointed to the soldier and said in English that the soldier had his identification , wallet and 400 francs. I asked the soldier if it was true and he said no that he didnt have it. Then I asked him to give it back to the civilian if he did have it. The soldier was going to strike the civilian. I was standing between them so he let him go. He offered the civilian a cigarette and the civilian walked off. When the civilian was gone the soldier said probably I have got the money and wallet and showed me 400 francs- 2 large ones and 2 small ones. Then he pulled out a black wallet and an identification card. I told him to give them to me but he threw them into the street. He picked up the identity card and gave it to me. I picked up the wallet.

On 22 Dec at about 1000 hrs I gave the identification card and wallet to L/Cpl Corston of the Provost Corps.

At 1300 hrs on 22 Dec I came down here and identified the soldier among thirteen others. That is the soldier who was there that night-Points to accused. This is the wallet Ex. B.and this is the identity card Ex. C.

I was wearing white webbing that night. There were very few people on the street. The civilians name was Hens.

Cross-Examination:

He said "Probably I have got it" and pulled out 400 francs. He wasnt drunk. Icouldnt say whether he was doing it as a joke or not. He offered me a drink but I would not take it. I was going to give it back to the civilian in the morning. I knew the civilian was going to the Provosts so I was going to hold onto it until morning. He gave it to me and told me to get rid of the fingerprints on it. I said I'd see about it. He didnt offer me any money. I was going to lock him up but I could'nt do it myself. I knew where he was going. I did'nt ask him his name or unit.

R.P. 83(b) complied with.

FOURTH WITNESS

D-81529 S/Sgt Bishop,K.W. 9 Cdn F.D.S.sworn states:s

At about 1230 hrs 22Dec 44 I held an identification parade of 9 Cdn FDS personnel. At about 1245 hrs I held another parade of ward patients. I had all the patients m/file in the courtyard. I went down the lines with L/Cpl Corston a civilian Mr Hens, and a Sht Provost. On going down the second file the accused was picked out by the civilian. He just pointed at him and said thats' the man. The accused was placed under arrest and taken to the guard room.

I arranged the accused with 13 other Ptes of this unit and when Dur Miegel entered the guardroom he immediately picked out the accused.

At about 1800 hrs 22 Dec L/Cpl Corston turned over to me 1 black pocket book, Exhibit B, 1 identification card, Exhibit C and 3-100 francBelgian notes small type, 3-100 franc Belgian notes large type and 7-one franc coinsand one brown billfold, a pay book Part I 2 & 3 of the accused Pte Hayman, R. I produce the 807 Belgian Francs, EXHIBIT D

Cross Examination:

I got the 807 francs fromthe Provost. There were some Dutch money in the pocket-book.

A.P.83(b) complied with.

FIFTH WITNESS

H-11028 L/Cpl Corston J.J. #7 Cdn Pro Corps G. Section sworn states,

On 22 Dec 44 at about 0900 Mr Hens came to the Provost office

On 22 Dec 44 Pte Meigel, S.A. gave me a black wallet, and an identity card. I came to 9 FDS and arranged an identification parade. Mr Hens did'nt identify anyone on the unit parade but on the patients parade he identified the accused who is sitting there (points to Pte Hayman) Pte Hayman was put under arrest. Shortly after at another identification parade he was picked out again by Dur Meigel. I searched the accused and found 807 francs Belgian ins brown leather wallet. There were 3 large bills and 5 small ones, all 100 francs notes and 7 one franc coins.

Cross Examination

There was some Dutch money in the wallet but we did'nt pay much attention to it, all we were looking for was Belgians Francs.

R.P. 83(b) complied with.

DEFENCE

FIRST WITNESS

B-46355 Pte Hayman, R sworn states:

I went out right supper drinking. I bought a bottle for 45 giulders. I drank in cafes and from the bottle until the cafes closed. I met this civilian tapped him on the shoulder and at the same time I put my hand on the bottle in my tunic. I guess the civilian thought i was going to rob him. He nervously started to hand me the money, first the change, then the bills, then his wallet. He moved away pretty fast. I did'nt think much of it. If he wanted to hand me his money it was all right with me. I just walked up the street and I do recall jumping into the doorway when the lights caught me because I knew I was out late and did'nt want to be caught by the Provosts. Pte Meigel came up and asked me what I was doing. I did'nt answer that but asked him where 9FDS was. The civilian came and grabbed his arm and right away accused me of robbing him. We argued back and forth I got kind of angry because he accused me of robbing him.

He finally left still thinking it a big joke. I did pull the money out in front of Drvr Meigel. I also pulled the wallet and said I had not better not hang onto this it might be the stolen wallet and threw it out into the centre of the road. Drvr Meigel said don't leave it there. I'll take it in and burn it. So I went [illegible] and picked up what I could findof it and handed it over to him. I was half DRUNK The robbery was not intentional. Then I asked Drvr Meigel how to get back to 9 FDS and he told me and I left. I was not altogether sober or altogether drunk. I was just feeling good enough not to care. I did offer Drvr Meigel a drink but he did'nt take it.

Cross Examination:

I was going to ask him where 9 FDS was. I did'nt get a chance to ask him anything. I don't think I said "Give me your money". He just started handing his money over. I asked what It was all about. I havent made any statement since.

By the Court

I heard the civilian say "I have been robbed". I did'nt want to be caught with the wallet so I threw it on the street. I did'nt think It strange to be given 400 francs. I had close to 600 Belgian Francs and 120Dutch Guilders when I went out that night.

R.P. 83 (b) complied with.

PROSICUTING OFFICERS CLOSING ADDRESS

No doubt about a theft. Taking,intent both shown by the evidence.

DEFENDING OFFICERS CLOSING ADDRESS

Point out evidence to show that there was no pre-meditation. It may have been improper possession from the stupidity of the civilian but it is not theft. He was not reaching for a gun but a bottle. The civilian jumped to conclusions. Hayman had ample money with him. He did not need money. The whole affair is discreditable but it does'nt amount to stealing . No intent.

SUMMING UP OF J.A.

Burden of proof. Definition of theft M.M.L.P.118 para 90. Intent drunkenness in relation to intent M.M.L.P.25 para 42 and P.106 para 9. presumption of innocence, reasonable doubt defined.

J.A. Mr President, are there any further matters on which you wish me to advise the Court?

Pres. No

J.A. Mr Prosecuting Officer, are there any further matters on which you wish me to advise the Court?

Pros. No

J.A. Mr. Defending Officer, are there any further matters on which you wish me to advise the court?

Def. No

CHARACTER EVIDENCE

Capt L. V. Perry sworn state.

I have known the accused for about 2½ to 3 months and he has been a member of my Coy for that time. He has only on e occasion of A.W.L. and I made a point then to find out what sort of a soldier he was and had been in the past. I am convinced that he is a well trained and capable soldier who has through nothing more than boyish foolishness (reason to believe that he is vicious or evil) been involved in minor offences in the army. I have found no reason to believe that he is vicious or evil. He has always performed his military duties well and willingly.

No Cross-Examination

R.P.83(b) complied with

DEFENDING OFFICER IN MITIGATION

Accused has had a number of drunkenness offences, The other offences although numerous are all of minor nature and I would the court to take consideration these facts and that the accused is not a criminal type. The accused is a well trained soldier. He came to France with the unit and served well in action.

G. Jermyn
J.A. Capt.

9 CANADIAN FIELD DRESSING STATION RCAMC

STANDING ORDERS

FOR V.D. WARD'S 5 Dec 44

1. All Patients will be confined to the ward

2. Patients will use only lavatories Marked for their use

3. Ablutions will be carried out in a specified place and will not be done in wards

4. Patients will have their meals served in the ward at the following times

0715 hrs-- 1215 hrs-- 1715 hrs

5. Patients will be responsible to see that the wards are kept in a clean and tidy condition at all times

6. A ward inspection will be carried out every morning at 1000 hrs

7. Patients will come under 9 Cdn Field Dressing Station for discipline whilst attached for treatment.

8. ALL Patients will come under the N.C.O.i/c Ward

9. Reveille will be at 0630hrs LIGHTS OUT 2230 hrs

10. Outgoing mail MUST be handed to the N.C.O.i/c Ward before 1700 hrs

11. Patients WILL NOT redirect their mail to this unit

CERTIFIED TRUE COPY
GAW CURRIE
Major

(G.A.W.Currie) Major
O.C. 9 Cdn Field Dressing Station
R.C.A.M.C.

3/17 MFM 6 (AFB 122)

No. B46355 Name Hayman R | Sqn, Battery, or Company "B" | Corps Coy Corps Inf | Date of enlistment | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk 3 26-9-42 | Period not reckoning towards freedom from extra fine | Sheet No 2A | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Jamacia	1 May 42	Pte		(1) AWL from 2359 hrs 1 May 43 until 0100 hrs 2 May 43. (2) Cond to prej. (unfit for duty due to prev. Indulg. in alcohol stimulants)(3)Break Bks.(4)AWL from 1100 hrs 2 May 43 until 1530 hrs 2 May 43.	Cpl Drill Sgt Black Pte Blaza	168 hrs detention	3 May 43	Lt. Col Sinclair	
	(2 3-4)								
	2 May 43								Forfeits 3days pay FRI
Niagra	13Jun43	Pte		AWL from 0600 hrs 13 Jun until 1245 hrs 15 Jun 43	Sgt Henderson	10 days deduction of Pay	16 Jun43	Lt. Col. Sinclair	
Niagra	8 Jul43	Pte		AWL from 0600 hrs 8-7-43 until 1000 8-7-42	Sgt.Henderson	14 days C.B. 1 days pay	9 Jul 43	Capt Coons	Forf. 1 days pay FRI
Camp Sussex	11Jul43	Pte		Cond to the prej.(failed to comply with an order).	Sgt.Henderson	10 days pay	12 Jul 43	Maj.A.M.Hay	
Field	28 Oct43	Pte		Neg. to the Prej. (Neg to clean his bayonnet & scabbard.)	Sgt Hamilton Lt. Flint	7 days CB	29 Oct 43	Major Coons	
Field	8/3/44	Pte		Sec.11 A.A. Neglecting to obey regi-	Documentary	10 days pay	13 Mar 44	Lt. Col A.J.	

(PTO)

No B4355 Name Hayman R | Sqn, Battery, or Company "B" | Corps A.S.C. of C.Inf | Date of enlistment 18-9-40 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) | Character BAD

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Chippawa	12-2-41	Pte		AWL from 2359 hrs, 12-2-41 to 2030 hrs 13-2-41	CSM Campbell	14 days C.B.	14-2-41	Lt Col Greenfield	Forfeits 1 days pay under
Chippawa	9-4-41	Pte		AWL from 0630 hrs, 9-4-41 to 0630 hrs 14-4-41	"	7 days C.B.	15-4-41	Major McClement	Forfeits (FRI) 5 days pay under FRI
Niagara	16-5-41	Pte		AWL from 0630 hrs, 16-5-41 to 0630 hrs 18-5-41	"	7 days C.B.	26-5-41	Major McClement	Forfeits 2 day pay under FRI
Jamacia	22-9-41	Pte	1	Drunkenness. 1st offence	Lt Whitesde	Admonished	24-9-41	Lt Col I.W.R. Sinclair	
Jamacia	1-10-41	Pte		Con to prej. out of bounds.	L/Cpl Powell	72 hrs Det.	4-10-41	Lt Col I.W.R. Sinclair	
Jamacia	14-1-41	Pte		Cond. to the prej. (caused a disturbance at the U.S.O. Canteen)	Pte Harrison Cpl Bingham	7 days deduction	15-1-41	Lt Col Sinclair	
Kingston	11-11-41	Pte		AWL from 2200 hrs 11-11-41 to 2330 hrs 11-11-41 A.A.15	Sgt Caffery	5 days C.B.	14-11-41	Major McClement	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Mental Orders Improperly dressed. Sec. 15(1) AA. AWL 2359 hrs 15/4/44 1200 hrs 16/4/44	Sgt McDonald	14 days pay	20-4-44	Lt. Col A.J. Hayes	
Field	15-4-44	Pte						Lt. Col. J.D. Stewart	Auto forf of 1 Days pay under (FRAI)
Field	1-May 44	Pte		Cond to the prej (Did assume an insubordinate attitude to his superior officer AA [illegible]40	Lt. Girard	7 days C.B.	2 May 44	Maj. Coons	
Field	30/5/44	Pte		Sec. 15(3) Out of Bounds.	Doc. Evidence	14 days pay	26 May 44	Lt. Col. J.D Stewart	
Field	18-7-44	Pte		Sec. 15(1) AA AWL from 0800 hrs 13/7/44 to 0700 hrs 14/7/44	Sgt Tyler	21 days pay	17 Jul 44	Lt. Col. J.D. Stewart	Auto. forf of 1 day Pat under FRAI
Field	4-12-44	Pte		Sec. 15 (1) AA AWL 0800 hrs 4-12-44 0930 hrs 7-12-44	Col. Prickett Doc Evidence	Cost of App & Escort 7/2 21 days pay	12 Dec 44	Lt Col J.D. Stewart	Auto forf of 4 days Pay undeer FRAI
					Doc Evidence				
						G.A.W.Currie Major Officer Commanding 9 Cdn F.D.S. RCAMC			

CERTIFIED A TRUE COPY

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Kingston	21-11-41	Pte		AWL from 2200 hrs 21-11-41 to 0600 hrs 22-11-41 AA 15	L/Cpl Davis	5 days C.B.	22-11-41	Major McClement	
Jamacia									
Jamacia	4-7-42	Pte		AWL from 0230 hrs 2-7-42 to 0730 hrs 2-7-42	Sgt Grafton Sgt Swan	10 days C.B.	6-7-42	Major Bliss	
Up Park Camp	22-8-42	Pte		AWL from 2245 hrs 22-8-42 to 2325 hrs 22-8-42 A.A. 15 (1)	Pte Halstead	3 days C.B.	25-8-42	Capt W.H.Bottrill	
Kingston	5-9-42	Pte		AWL from 2315 hrs 5-9-42 to 0135 hrs 6-9-42 A.A. 15(1)	Cpl Berkhold	7 days C.B.	7-9-42	Lt W.E. Whiteside	
Jamacia									
Up Park Camp	20-9-42	Pte	2	Drunkenness 2nd offence	Cpl Berkhold	$5.00 Fine	21-9-42	Major McClement	
Kingston	26-9-42	Pte	3	Drunkenness. (3rd offence). (a) Out of bounds	Cpl Berkhold	$10.00 Fine 9 days pay	29-9-42	Lt Col Sinclair	
Up Park	11-11-42	Pte		Leaving guard duty without relief or leave A.A. 15 (2)(b)	Lt Harper	7 days C.B.	13-11-42	Capt W.H. Bottrill	
n Camp									
Jamacia	28-11-42	Pte		AWL from 2300 hrs 28-11-42 to 0830 hrs 29-11-42	Pte Harrison	12 hrs Detn.	30-11-42	Lt Col Sinclair	
Jamacia	23-1-43	Pte		Cond to the prej. (not alert on IC s	Lt Harstone	7 days Deduction of pay	24-1-43	Lt. Col	Sinclair

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-30-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-46355	Private	Roy HAYMAN	Argyll & Sutherland's Regt S.C.S. X-3 List Attached to 9 Cdn F.D.S. RCAMC

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A. Sec 10 Drunkenness	times	3 times
For A.A. Sec 15 A.W.L.	Four 4 times	Eighteen 18 times
For A.A. Sec 10 Breaking out of an area	Once 1 time	1 times
For A.A. Sec 11 Neglect to obey Orders	One 1 time	1 times
For A.A. Sec 40 Cond to the Prej.	One 1 time	Seven 7 TIMES

Number of instances of gallantry or distinguished conduct

N/A

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for~~ beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for Three 3 days in Air Force civil custody, and ~~days~~ in military custody, making a total of Three 3 days in custody, of which N/A days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is SWLF IS 22Yrs

6. The date of his ~~enlistment~~ specified in his ~~record of service is~~ attestation paper is WFS IS 18 Sep 1940

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military military possession of or entitled to). State any air force decoration or reward.

military C.W.S.M. & CLASP

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number R-46355 Rank Private Unit

Name Roy Hayman of Att 9 Cdn F.D.S. Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27 day of December 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

G.A.W. Currie Major
Officer Commanding 9 Cdn FDSH&AMC

SUMMARY OF EVIDENCE

Summary of Evidence in the case of D46385 Pte Hayman R. Argyll and Sutherland's Reg't. S.O.S. K-3 List, Attached to No 9 Cdn F.D.S. RCAMC charged with committing a civil offence, namely stealing (A.A. Sec 41)

By direction of the Commanding Officer the evidence is taken on oath.

First Witness K 80599 Cpl. Stobo L.C. 9 Cdn F.D.S. RCAMC having been duly sworn states:-

The accused was admitted to this unit as a patient to the V.D. ward on 21 Dec 44. As he was not undergoing treatment until the following day, there was no detailed check kept on him. Standing orders for V.D. wards were posted on the main door of the ward in which he was admitted and states that all patient admitted will be confined to the ward and lights out 2230 hrs.

I submit a certified true copy of the unit Standing Orders for V.D. patients.

The accused declines to cross-examine this witness.

L.C. Stobo
(Cpl. Stobo L.C.

The Standing Orders referred to in this evidence of the above witness is attached hereto as Exhibit "A"

Second Witness D81589 S/Sgt. Bishop K.W. 9 Cdn F.D.S. RCAMC having been duly sworn states:-

At approximately 1040 hrs 22 Dec 44 L/Cpl. Corston Cdn Provost Corps asked me to hold an identification parade of the unit. I told him I would do so. At 1830 hrs I held a Unit muster parade and no identifications were made by Mr Hens. I then held a muster parade of the patients and Mr. Hens recognized the accused, I suggested we make a second identification to check and the accused was re-identified by Mr Hens and placed under close arrest by the Sgt provost. At approximately 1900 hrs Pte Meigle was brought to the unit guard room to identify the soldier who had asked him the night previous, the whereabouts of 9 F.D.S. I arranged the accused with 13 other soldiers of this unit and Pte Meigel picked out the accused immediately as the the soldier who had asked where 9 F.D.S. was located the previous night.

At approximately 1800 hrs 22 Dec 44 L/Cpl. Corston turned over to me statements of witnesses, one black pocket book, one identification card bearing No 71284, the property of Mr Hens L. Pt's 1,11,111, of the accused's pay book, plus one dark brown bill fold, the property of the accused. In additions three 100 Fr notes (Belgian Large type) five 100 Fr notes (Belgian small type) and six 1 Fr Belgian coins. I wish to present to the court the above mentioned 806 Frs one black pocket book belonging to Mr Hens and one identification card No 71284, belonging to Mr. Hens.

The 806 Fr mentioned in the evidence of the above witness is accepted as Exhibit "B"

The black pocket book mentioned in the evidence of the above witness is accepted as Exhibit "C"

The Identidy Card (No. 71284) mentioned in the evidence of the above witness is accepted as Exhibit "D"

The accused declined to cross-examine this witness.

K.W.Bishop
(S/Sgt. Bishop K.W.)

Third witness K 78428 C S M Underwood C.R. 66 Cdn Gen Tpt Coy RCASC having been duly sworn states:-

On the night of 21 - 22 Dec 44 Pte Meigle, who was on R.T.P. duty at H.Q. Main door came into the orderly room and handed me a pocket book and identity card. I put them in a file box and left them there. The following morning I gave Pte Meigle permission to take this pocket book and identity card on an identification parade.

I now identify Exhibits "C" and "D" as those mentioned in my above evidence.

The accused declines to cross-examine witness.

C.R. Underwood
(C.S.M. Underwood C.R.

Fourth Witness Mr Hens Albert Belgian Civilian 5 Guldensporenel Turnhout, Belgium. having been duly sworn states:-

At approximately 2300 hrs 21 Dec 44 as I was walking from the Zeshoek to my home, a soldier, who I believed to be a Canadian, came out from Station St. and said "Give your money". At the same time he put his hand inside his coat as if he was holding a pistol, but he did not bring any out. I answered "I have no money, only seven francs". I have him these seven francs, but he said that he wanted more. I took out my pocket-book containing four one hundred franc notes. Of these were two of the large type and two the smaller type. In the pocket book there was also my passport, number tag from civil labour, and a few papers. I intended to give him one hundred francs but he took my pocket book and disappeared in the direction of the Zeshoek. I started to look for him and found him with a soldier on Rinierslaeder straat, who I believed to be a policeman. I told him my story. The soldier who took my pocket book said that he did not have my money. We stood there talking for approximately twenty minutes. The soldier had been drinking and took a bottle of cognac out of his pocket. He then got very angry and I thought the best thing I could do was to go home. I arrived home at approximately 2325 hrs.

Question- Were you on an identification parade at this unit on 22 Dec 44?
Answer- Yes
Question- No. There were two parades. I did not find him in the first
Answer- company, but I found him in the second company. I identified him again in this group in a different position.
Question- Did you have any difficulty in identifying the accused?
Question- Do you identify Exhibits "C" and "D" as your pocket-book and your identity card?
Answer - Yes
Question- Can you identify any of the 806 Francs (Exhibit "B") as your Money?
Answer- Not for certain.

Cross-examined by the accused

Question- At what time was the accused supposed to have robbed you?
Answer- At night at approximately a few minutes past eleven.
Question- At what time was it dark?
Answer- Yes, it was dark. I could see persons thirty yards apart.
Question- Could you see distinct features of any persons?
Answer- I could not see it when it was dark, but I could see it in the lights of trucks that were driving along the street.
Question- At the time of the robbery you said you believed that it had been a Canadian, but were not sure.
Answer- At the time of the robbery I could not see that it was a Canadien soldier. I found the soldier and I saw the soldier by the light of a truck talking to another soldier.
Question- Was the robbery in a different place than where the accused was talking to the other soldier?
Answer- It was not the same place.
Question- Why do you think that the man who robbed you was the same man who you found talking to the policeman?
Answer- I was sure. I followed the soldier and I could always follow him by the light of the trucks driving in the street.

A.L. Hens
(A.L. Hens)

In the above witness's evidence and cross-examination, Mr. C.L. Schoenmaeckers, 2 Tramstraat Vosselaar Belgium, acted as interpreter where required.

C.L. Schoenmaeckers
(C.L. Schoenmaeckers)

Fifth Witness- M66562 Dvr Meigel S.A. 66 Cdn Tpt Coy RCASC having been duly sworn states:-

At approximately 2330 hrs 21 Dec 44 I was on Regt Police duty at the entrance to my H.Q. orderly room on Reniersnieder Straat Turnhout. At this time two vehicles drove by, and by their headlights I could see a soldier running into a doorway. I walked over and asked him what he was doing, He did'nt answer my question but asked me where 9 Cdn F.D.S. was. At this point a civilian came over and held on to my arm and pointed at the soldier and said that he had taken his identification card and four hundred francs from him. I asked the soldier if this was true and he said he did not have it. The soldier then grabbed the civilian and motioned to strike him, as I stood between them, the soldier let go of him. The soldier then gave the civilian a cigarette and the civilian walked away. As soon as the civilian left, the soldier told me that he probably had the money and he showed me four one hundred franc notes. Two of them were the large type and the other two were the smaller type. He then showed me a black bill fold and an identification card which he then threw on the street. I told him to pick them up and give them to me. He picked up the identification card but could not find the wallet. I searched for the bill fold and found it on the street. The soldier then walked away. I turned the bill fold and identity card over to the Sgt-Major and found the name on the identification card to be Hens Albert Guldensperenlei 5 Turnhout.

At approximately 1000 hrs 22 Dec 44 I have the bill fold and card to L/Cpl Corston of the Canadian Provost Corps and I informed him of what happened.

At approximately 1300 hrs 22 Dec 44 I was requested by L/Cpl Corston to attend an identification parade at 9 Cdn F.D.S. At the parade amongst 14 soldiers, I identified the soldier whose Name I was told was B46355 Pte Hayman R.

Question- Do you identify the identity card (Exhibit "D") and the pocket book (Exhibit "C") as the same as mentioned in your statement?

Answer- Yes

The accused declined to cross-examine this witness

S.A.Meigel
(Dvr Meigel S.A.)

Sixth Witness- M11028 L/Cpl Corston J.J. No 7 Cdn Provost Corps (G Sec) having been duly sworn states:-

At 0930 hrs 22 Dec 44 Mr A Hens of 5 Guldensperenlei Turnhout reported to this section that he had been robbed of four hundred francs and identification card and a bill fold at approximately 2300 hrs ~~XXX~~ 21 Dec 44 by a soldier. At approximately 1000 hrs 22 Dec 44 I proceeded to No 66 Cdn Tpt Coy where I contacted M 66562 Dvr Meigel S.A. of the Regt Police of that unit. He was in possession of the billfold and identity card stolen from Mr Hens. Meigel informed me that he had taken them from a Canadian soldier the previous night when a civilian had informed him that the soldier had robbed him.. Meigel also stated that the soldier had asked the way to 9 Cdn F.D.S. I then proceeded to (9 Cdn F. D.S. and arranged for an identification parade. This parade was held at 1300 hrs 22 Dec 44 Mr Hens Picked out Pte Hayman R and informed me that he was the soldier who had robbed him. Hayman was then placed under close arrest and held at 9 Cdn F.D.S. At approximately 1330 hrs 22DEC 44 another identification parade was held and Dvr Meigel also picked out Pte Hayman R as being the man he received the billfold and the identity card from. I then searched Pte Hayman and found him to be in possession of 807 francs. There were three large 100 fr notes (Belgian) There were also 76 Dutch guilden. Hayman refused to answer any questions or make any statements. The accused declines to cross-examine this witness

J.J. Corston
(L/Cpl Corston J.J.)

The accused was cautioned as follow:-

Question:- Do you wish to make any statement or to give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but ~~XXXXXXXXXX~~ whatever you say or any evidence you give will be taken down in writting and may be given in evidence.

Answer-No

The accused deed not call any witness.

I certify that the foregoing Summary of Evidence, consisting of (4) (4) pages was taken down by me in the presence of the accused and that R.P.4(C),(D),(E), and(F) have been complied with.

G. M. Downing
(G.M. Downing) Capt
9 Cdn F.D.S. RCAMC

In the Field
24 Dec 44

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B- 46355 Pte Hayman R Argyll & Sutherland's Regt X3 list Attached to # 9 FDS

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not guilty ~~Guilty~~		
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labor for two years

(Sgd) Gordon H. Jermyn Judge-Advocate, if any. Capt — 27 Dec 44 Date awarded. — (Sgd) F. Chown Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 17(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) B. Gough Brigadier (JRR Gough)

Date 29 Dec 44 — Commanding A Tps Area, First Cdn Army — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B-46355 Pte HAYMAN R	30 Dec 44	GAW Currie Major O. C. 9 Cdn F.D.S. RCAMC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

40 63

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AF A3) 40 (1) A.G.R. (1908) (2884)

Convened by Order of Brig. J.R.R. Gough Comd A Tps Area First Cdn Army dated 24 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B- 46355	Pte	certified true copy W.H. Waugh Maj.	Ray	Hayman	Argyll & Sutherland Highrs Regt. X-3 list Attached 9 Cdn F.D.S.

D J A,
Cdn Sec G.H.Q. 2 Echn 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 27 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 18/25

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any, assemble~~, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RPs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s)[1] attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(2).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~Mr.~~ Corneal Schoenmakers ~~Interpreter~~ Interpreter? Ans No Sir

The Interpreter is sworn.(1) ~~Do you object to ... as shorthand writer?~~ Ans ...
The ~~shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 148, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	F. Chown	10 Cdn Fd Syg Sec RCASC
Member	CAPT	K.J. Creber	86 Cdn Bridge Coy RCAMC
Member	CAPT	W.V. Cann	2 Cdn Inf Tps Wksp RCEME
Judge-Advocate	CAPT	G.H. Jermyn	HQ A Tps Area First Cdn Army
Prosecutor	CAPT	G.M. Downing	9 F.D.S. RCAMC
Defending Offr	CAPT	L.V. Perry	Argyll & Sutherland Highrs Regt

Questions by President: Is the Prosecutor a lawyer? Ans ... Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dif p 3.)

A8. The accused ... before arraignment make(s) (no) (~~a~~) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D&B

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PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pros to record proceedings see RP 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty,(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans _____(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on _____ charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ____, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have not had sufficient opportunity to prepare your defence? Ans No Sir (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the _____ charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the _____ charge(s), and allowed on the _____ charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans I will give evidence Do you intend to call witnesses on your behalf?
Ans No Are they witnesses as to character only? Ans N A .
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is ~~are~~ recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and states~~ to the accused that the finding(s) of the Court on the 2 St charge(s), being subject to confirmation, will be promulgated later.(1)
Or, ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(1. AA 54(3) (6), RP 45, 120(6). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans Yes Sir
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~(ies)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 2 and Ex 3 respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes sir by my defending officer (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) ~~as~~
(1. When several accused tried separately see RP 240(f). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 96, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B-46355 Pte Roy Hayman Argyll & Sutherland's H Regt. S.O.S. X-3 List. Attached to 9 Cdn Field Dressing Station R.C.A.M.C. a soldier of the Canadian Army Overseas is charged with:-

First Charge
A.A. Sec 41

WHEN ON ACTIVE SERVICE

COMMITTING A CIVILIAN OFFENCE THAT IS TO SAY STEALING

in that he

in the field on 21 Dec 44 at about 2230 hrs stole one pocketbook, 1 Identity card bearing #71384 and 400 Belgium Francs the property of Mr A.L. Hens a Civilian.

G.A.W. Currie
(G.A.W. Currie) Major
Officer Commanding,
9 Cdn F.D.S. RCAMC.

Approved on behalf of J.A.G. Cdn Army Overseas pursuant to K.R. (Can) 540 and overseas R.O. 4756 (15)

G.H. Jermyn Capt
24 Dec 44
A.D.J.A. H.Q. Army tps Area
First Canadian Army

In the Field
23 Dec 44
TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field
24 Dec 44

R. Gough
(JRR Gough) Brigadier
Comd A Trp Area, First Cdn Army

CRYSGE 2HEL

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 40355	Pte	Pte	Roy	Heyman	Argyll & Sutherland's H Rest Att 9 Cdn FDS

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 24 Dec 44 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint~~ (a) three Offrs to form the Court, ~~(b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	F. CROWN	10 Cdn Fd Hyg Section

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	W.J. CRIMER	86 Cdn Bridge Coy RCASC
Capt	W.V. CANN	2 Cdn Inf Tps Wksp RCEME

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
LIEUT	To be detailed by OC 86 Cdn Bridge Coy RCASC	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
CAPTAIN	G.N. JEROTH ADJA	HQ A Tps Area, First Cdn Army

On Active Service in the Fd

in HOLLAND (Country.)

G. Gough (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 24 Dec 44

(J.M. Gough)
A Tps Area, First Cdn Army
Commanding
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPAss (In lieu of AFA3) 40/P & S/1697 (4851)

(See overleaf for oaths and notes for use on trial.)

Wed 27 December 1944

I certify that I have this day examined B-46355 Pte Hayman Roy and have found him FIT to undergo trial by Field General Court Martial.

Signed H.I. Williams Capt
(H.I. Williams) Capt
M.O. 9 Cdn Field Dressing Station RCAMC

Prosution

First Witness

B0599 Cpl Stobo L.C. 9 Cdn F.D.S. sworn states:

Pte Hayman was admitted to 9 FDS on 21 Dec 44 to undergo treatment next day. There is no check until they are on treatment except by ward orders which that no patient is allowed outside the ward and lights out is at 2230 hrs. I produce a certified true copy of standing orders which are posted in the ward to which accused was assigned. STANDING ORDER EXHIBIT A

No Cross-Examination

R.P. 83 (b) complies with

SECOND WITNESS

Mr. Hens Albert. 5 Guldensporenzei Turnhout, Belgium, sworn states:

Last Thursday night about 11o'clock I was going home and in Reniersnieder Straat I met a soldier, The soldier put his hand inside his coat and said "Give me your money" I said I only had 7 francs. I said I have no more. Then the soldier said "I want more". I said I have no more. The soldier said "Come on". Then I took out my pocket-book. I took out of it a 100 franc note and gave it to the soldier. The soldier then took my pocket-book and took out 3-100 franc notes. The soldier said "its not enough I want more". Then the soldier went away with my pocket-book. I followed him and saw talking with another soldier. I told my story to the other soldier who told the first soldier if you have the money you have to give it back. The soldier who took the money brought out a bottle of cognac. He asked the other soldier to drink but he didnt. I told my story again but the soldier said he had not stolen my money. He said here is a cigarette for you and now go home and I thought it was the best thing to do so I went home arriving about half past eleven. The following morning I went and informed both civilian and military polic. Then I came here to pick out the soldier. I had no trouble identifying him. That is the soldier who robbed me. Points to accused. There were two big 100 franc notes and 2 small ones and 7 one franc pieces. It is a small black pocket-book witha place for papers on each sides. My identity card and some other papers were in it.

Black-Billfold pocket book produced marked EXHIBIT B

Green identity card 71284 produced marked EXHIBIT C

The soldier went up the right side of the street and I went up the side. I had no difficulty following him. There was no one else on the street.

Cross-Examination

He said "Give your Belgium money". I understood and can speak a little English. He said "Give your Belgian money" and he said "I want more" and I understood.

I did not see any gun. I saw that the soldier took the bottle from the same place as he put his hand before. The soldier had been drinking. He did not walk as well as other soldiers but he was not drunk. The soldier put his hand on my shoulder and his hand inside his blouse and the first thing he said was "Come give me your Belgian money".

BY THE COURT

I thought the soldier had a pistol inside his coat and because of that I gave him the money.

I thought the second soldier was a military policeman. He was dressed the same as a military policeman.

R.P. 83 (b) complied with.

THIRD WITNESS

[redacted] Bar Weigel, S.A. 660dn Tpt Coy RCASC sworn states:

About 23 00 hrs 21 Dec 44 I was on Regtl Police duties at Coy HQ. I saw a soldier run into a doorway. I walked up to him and asked what was wrong. He asked me where 9 F.D.S. was. A civilian came running across the road and grabbed me by the arm and pointed to the soldier and said in English that the soldier had his identification , wallet and 400 francs. I asked the soldier if it was true and he said no that he didnt have it. Then I asked him to give it back to the civilian if he did have it. The soldier was going to strike the civilian. I was standing between them so he let him go. He offered the civilian a cigarette and the civilian walked off. When the civilian was gone the soldier said probably I have got the money and wallet and showed me 400 francs- 2 large ones and 2 small ones. Then he pulled out a black wallet and an identification card. I told him to give them to me but he threw them into the street. He picked up the identity card and gave it to me. I picked up the wallet.

On 22 Dec at about 1000 hrs I gave the identification card and wallet to L/Cpl Corston of the Provost Corps.

At 1800 hrs on 22 Dec I came down here and identified the soldier among thirteen others. That is the soldier who was there that night-Points to accused. This is the wallet MEx B and this is the identity card MEx C.

I was wearing white webbing that night. There were very few people on the street. The civilians name was Hens.

Cross-Examination:

He said "Probably I have got it" and pulled out 400 francs. He wasnt drunk. Icouldnt say whether he was doing it as a joke or not. He offered me a drink but I would not take it. I was going to give it back to the civilian in the morning. I knew the civilian was going to the Provosts so I was going to hold onto it until morning. He gave it to me and told me to get rid of the fingerprints on it. I said I'd see about it. He didnt offer me any money. I was going to look him up but I could'nt do it myself. I knew where he was going. I did'nt ask him his name or unit.

R.P. 83(b) complied with.

FOURTH WITNESS

D-81529 S/Sgt Bishop,K.W. 9 Cdn F.D.S.sworn states:

At about 1230 hrs 22Dec 44 I held an identification parade of 9 Cdn FDS personnel. At about 1245 hrs I held another parade of ward patients. I had all the patients m/file in the courtyard. I went down the lines with L/Cpl Corston a civilian Mr Hens, and a Sht Provost. On going down the second file the accused was picked out by the civilian. He just pointed at him and said thats' the man. The accused was placed under arrest and taken to the guard room.

I arranged the accused with 13 other Ptes of this unit and when Dur Miegel entered the guardroom he immediately picked out the accused.

At about 1800 hrs 22 Dec L/Cpl Corston turned over to me 1 black pocket book, Exhibit B, 1 identification card, Exhibit C and 5-100 francBelgian notes small type, 3-100 franc Belgian notes large type and 7-one franc coinsand one brown billfold, a pay book Part I 2 & 3 of the accused Pte Hayman, R. I produce the 807 Belgian Francs, EXHIBIT D

Cross Examination:

I got the 807 francs fromthe Provost. There were some Dutch money in the pocket-book.

A.P.83(b) complied with.

FIFTH WITNESS

H-11628 L/Cpl Corston J.J. #7 Cdn Pro Corps C. Section sworn states,

On 22 Dec 44 at about 0900 Hr Hens came to the Provost office

On 22 Dec 44 Pte Meigel, E.A. gave me a black wallet, and an identity card. I came to 9 FDS and arranged an identification parade. Mr Hens did'nt identify anyone on the unit parade but on the patients parade he identified the accused who is sitting there (points to Pte Hayman) Pte Hayman was put under arrest. Shortly after at another identification parade he was picked out again by Dur Meigal. I searched the accused an found 807 francs Belgian ins brown leather wallet. There were 3 large bills and 5 small ones, all 100 francs notes and 7 one franc coins.

Cross Examination

There was some Dutch money in the wallet but we did'nt pay much attention to it, all we were looking for was Belgians Francs.

R.P. 83(b) complied with.

DEFENCE

FIRST WITNESS

B-46355 Pte Hayman, R sworn states:

I went out right supper drinking. I bought a bottle for 45 guilders. I drank in cafes and from the bottle until the cafes closed. I met this civilian tapped him on the shoulder and at the same time I put my hand on the bottle in my tunic. I guess the civilian thought i was going to rob him. He nervously started to hand me the money, first the change, then the bills, then his wallet. He moved away pretty fast. I did'nt think much of it. If he wanted to hand me his money it was all right with me. I just walked up the street and I do recall jumping into a doorway when the lights caught me because I knew I was out late and did'nt want to be caught by the Provosts. Pte Meigel came up and asked me what I was doing. I did'nt answer that but asked him where 9 FDS was. The civilian came and grabbed his arm and right away accused me of robbing him. We argued back and forth,I got kind of angry because he accused me of robbing him.

He finally left still thinking it a big joke. I did pull the money out in front of Drvr Neigel. I also pulled the wallet and said I had not better not hang onto this it might be the stolen wallet and threw it out into the centre of the road. Drvr Neigel said don't leave it there. I'll take it in and burn it. So I went over and picked up what I could findof it and handed it over to him. I was half DRUNK The robbery was not intentional. Then I asked Drvr Neigel how to get back to 9 FDS and he told me and I left. I was not altogether sober or altogether drunk. I was just feeling good enough not to care. I did offer Drvr Neigel a drink but he did'nt take it.

Cross Examination

I was going to ask him where 9 FDS was. I did'nt get a chance to ask him anything. I don't think I said "Give me your money". He just started handing his money over. I asked what It was all about. I havent made any statement since.

By the Court

I heard the civilian say "I have been robbed". I did'nt want to be caught with the wallet so I threw it on the street. I did'nt think It strange to be given 400 francs. I had close to 600 Belgian Francs and 120Dutch Guilders when I went out that night.

R.P. 83 (b) complied with.

PROSECUTING OFFICERS CLOSING ADDRESS

No doubt about a theft. Taking,intent both shown by the evidence.

DEFENDING OFFICERS CLOSING ADDRESS

Point out evidence to show that there was no pre-meditation. It may have been improper possession from the stupidity of the civilian but it is not theft. He was not reaching for a gun but a bottle. The civilian jumped to conclusions. Hayman had ample money with him. He did not need money. The whole affair is discreditable but it does'nt amount to stealing . No intent.

SUMMING UP OF J.A.

Burden of proof. Definition of theft M.M.L.P.118 para 90. Intent drunkenness in relation to intent M.M.L.P.25 para 48 and P.196 para 9. presumption of innocence, reasonable doubt defined.

J.A. Mr President, are there any further matters on which you wish me to advise the Court?

Pres. No

J.A. Mr prosecuting Officer, are there any further matters on which you wish me to advise the Court?

Pros. No

J.A. Mr. Defending Officer, are there any further matters on which you wish me to advise the court?

Def. No

CHARACTER EVIDENCE

Capt L. V. Perry sworn state.

I have known the accused for about 2½to 3 months and he has been a member of my Coy for that time. He has only on e occasion of A.W.L. and I made a point then tofind out what sort of a soldier he was and had been in the past. I am convinced that he is a well trained and capable soldier whohas through nothing more than boyish foolishness (reason to believe that he is vicious or evil)
been involved in minor offences in the army. I have found no reason to believe that he is vicious or evil. He has always performed his military duties well and willingly.

No Cross-Examination

R.P. 83(b) complied with

DEFENDING OFFICER IN MITIGATION

Accused has had a number of drunkenness offences, The other offences although numerous are all of minor nature and I would the court to take consideration these facts and that the accused is not a criminal type. The accused is a well trained soldier. He came to France with the unit and served well in action.

G. Jerwyn
J.A. Capt.

9 CANADIAN FIELD DRESSING STATION RCAMC

STANDING ORDERS

FOR V.D. WARD'S 5 Dec 44

1. All Patients will be confined to the ward

2. Patients will use only lavatories Marked for their use

3. Ablutions will be carried out in a specified place and will not be done in wards

4. Patients will have their meals served in the ward at the following times

0715 hrs-- 1215 hrs-- 1715 hrs

5. Patients will be responsible to see that the wards are kept in a clean and tidy condition at all times

6. A ward inspection will be carried out every morning at 1000 hrs

7. Patients still come under 9 Cdn Field Dressing Station for discipline whilst attached for treatment.

8. ALL Patients will come under the N.C.O.i/c Ward

9. Reveille will be at 0630hrs LIGHTS OUT 2230 hrs

10. Outgoing mail MUST be handed to the N.C.O.i/c Ward before 1700 hrs

11. Patients WILL NOT redirect their mail to this unit

CERTIFIED TRUE COPY
CAM CURRIE
Major

(C.A.W.Currie) Major
O.C. 9 Cdn Field Dressing Station
R.C.A.M.C.

No. B46355 Name Hayman R | Sqn, Battery, or Company "B" Coy | Corps Inf | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&C/36 (5412)

Date of last entry in Company Conduct Sheet | No. and date of last drunk 3 26-9-42 | Period not reckoning towards freedom from extra fine | Sheet No 2A | Signature OC Company, etc | Character BAD

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Jamaica	1 May 43 (2 3 4) 2 May 43	Pte		(1) AWL from 2359 hrs 1 May 43 until 0100 hrs 2 May 43. (2) Cond to prej. (unfit for duty due to prov. indulg. in L/C Blaza alcohol stimulants)(3)Break Bks.(4)AWL from 1100 hrs 2 May 43 until 1520 hrs 2 May 43.	Cpl Brill Sgt Black	168 hrs detention	3 May43	Lt. Col Sinclair	
Miagra	13Jun43	Pte		AWL from 0600 hrs 13 Jun until 1845 hrs 15 Jun 43	Sgt Henderso	10 days deduction of Pay	16 Jun43	Lt. Col. Sinclair	Forfeits 3days pay FRI
Miagra	8 Jul43	Pte		AWL from 0600 hrs 8-7-43 until 1800 8-7-43	Sgt.Hendersc	14 days C.B. 1 days pay	9 Jul 43	Capt Coons	Forf. 1 days pay FRI.
Camp Sussex	11Jul43	Pte		Cond to the prej.(failed to comply with an order).	Sgt.Henderson	10 days pay	12 Jul 43	Maj.A.H.Mac	
Field	28 Oct43	Pte		Neg. to the Prej. (Neg to clean his bayonnet & scabbard.)	Sgt Hamilton Lt. Plant	7 days CB	29 Oct 43	Major Coons	
Field	2/3/44	Pte		Sec.11 A.A. Neglecting to obey regi-	Documentary	10 days pay	13 Mar 44	Lt. Col A.F.	(PTO)

No B-46355 Name Hayman R | Sqn, Battery or Company "B" | Corps A.& S.H. of C. Inf | Date of enlistment 18-9-40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&C/36 (5458)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Chippawa	12-2-41	Pte		AWL from 2359 hrs. 12-2-41 to 2030 hrs 13-2-41	CSM Campbell	14 days C.B.	14-2-41	Lt. Col. Greenfield	Forfeits 1 days pay under
Chippawa	9-4-41	Pte		AWL from 0630 hrs. 9-4-41 to 0630 hrs 14-4-41	"	7 days C. B.	15-4-41	Major McClement	Forfeirs (FRI) 5 days pay under FRI
Niagara	16-8-41	Pte		AWL from 0630 hrs. 16-8-41 to 0630 hrs 18-8-41	"	7 days C. B.	26-8-41	Major McClement	Forfeits 2 days pay under FRI.
Jamaica	22-9-41	Pte	1	Drunkenness, 1st offence.	Lt. Wileside	Admonished	24-9-41	Lt. Col T.M.R. Sinclair	
Jamaica	1-10-41	Pte		Con to proj. out of bounds.	L/Cpl.Powell	72 hrs det.	4-10-41	Lt. Col T.M.R. Sinclair	
Jamaica	14-1-42	Pte		Cond. to the prej. (caused a disturvance at the U.S.O. Canteen).	Pte. Harrison	7 days deduction of pay	15-1-42	Lt. Col Sinclair	
Kingston	11-11-41	Pte		AWL from 2200 hrs 11-11-41 to 2230 hrs 11-11-41 A.A. 19	Cpl. Bingham Sgt.Caffery	5 days C.B.	14-11-41	Major McClement	

(PTO)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Mental Orders Improperly dressed.				Lt. Col A.J. Hays	
Field	15-4-44	Pte		Sec. 15(1) AA. AWL 2359 hrs 15/4/44 1200 hrs 16/4/44	Sgt McDonald	14 days pay	20-4-44	Lt. Col. J.D. Stewart	Auto forf of 1 Days pay under (FR&I)
Field	1-May 44	Pte		Cond to the prej (Did assume an insubordinate attitude to his superior officer AA ####C	Lt. Girard	7 days C.B.	2 May 44	Maj. Coons	
Field	20/5/44	Pte		Sec. 15(3) Out of Bounds.	Doc. Evidence	14 days pay	26 May 44	Lt. Col. J.D Stewart	
Field	18-7-44	Pte		Sec, 15(1) AA AWL from 0800 hrs 13/7/44 to 0700 hrs 14/7/44	Sgt Tyler	21 days pay	17 Jul 44	Lt. Col. J.D. Stewart	Auto. forf of 1 day Pat under FR&I
Field	4-12-44	Pte		Sec. 15 (1) AA AWL 0800 hrs 4-12-44 0930 hrs 7-12-44	Col. Prickett Doc Evidence Doc Evidence	Cost of App & Escort 7/2 21 days pay	12 Dec 44	Lt Col J.D. Stewart	Auto forf of 4 days Pay under FR&I

CERTIFIED A TRUE COPY

G.A.W.Currie Major
Officer Commanding
9 Cdn F.D.S., RCASC

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Kingston Jamaica	21-11-41	Pte		AWL from 2200 hrs 21-11-41 to 0600 hrs 22-11-41 A.A. 15	L/Cpl.Davis	5 days C.B.	22-11-41	Major McClement	
"	4-7-42	Pte		AWL from 0230 hrs 2-7-42 to 0720 hrs 2-7-42	Sgt. Grafton Sgt. Swan	10 days C.B.	6-7-42	Major Bliss	
Up Park Camp	22-8-42	Pte		AWL from 2345 hrs 22-8-42 to 2225 hrs 22-8-42 A.A. 15(1)	Pte Halstead	3 days C.B.	25-8-42	Capt. W.E. Bottrill	
Kingston Jamaica	5-9-42	Pte		AWL from 2215 hrs 5-9-42 to 0135 hrs 6-9-42 A.A. 15(1)	Cpl. Berkheld	7 days C.B.	7-9-42	Lt. W.E. Whiteside	
Up Park Camp	20-9-42	Pte	2	Drunkenness. 2nd offence	Cpl Berkheld	$5.00 Fine	21-9-42	Major McClement	
Kingston	26-9-42	Pte	3	Drunkenness. (3rd offence). (a) Out of bounds	Cpl Berkheld	$10.00 Fine 9 days pay	29-9-42	Lt. Col Sinclair	
Up Park Camp	21-11-42	Pte		Leaving guard duty without relief or leave A.A. 18 (2)(b)	Lt. Harper	7 days C.B.	12-11-42	Capt W.E. Bottrill	
Jamaica	28-11-42	Pte		AWL from 2300 hrs 28-11-42 to 0830 hrs 29-11-42	Pte. Harrison	72 hrs Detn.	30-11-42	Lt. Col. Sinclair	
Jamaica	23-1-43	Pte		Cond. to the Prej.(not alert on I.C. guard	Lt. Harstone Documentary	7 days deduction of pay	25-1-43	Lt. Col Sinclair	

M.F.B. 335
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-46355	Private	Roy HAYMAN	Argyll & Sutherland's Regt S.O.S. X-3 List attached to 9 Cdn F.D.S. RCAMC

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. Sec 19 Drunkenness	times THREE	2	times
For	A.A. Sec 15 A.W.L. Four	4 times Barracks Eighteen	18	times
For	A.A. Sec 10 Breaking out of	times One	1	times
For	A.A. Sec 11 Neglect to obey	an order times One	1	times
	A.A. Sec 40 Cond to the Prej.	Conduct Seven	7	TIMES

or,

N/A

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act Section 47 of the Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for ..... beginning on the~~ day of .....

4. The accused has been in confinement awaiting trial on the present charges, for Three 5 days in civil custody, and ..... days in Air Force military custody, making a total of Three 5 days in custody, of which N/A days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation papers

6. The date of his ~~commission~~ specified in his ~~record of service is~~ attestation paper IS 22Yrs

7. The service which the accused is allowed to reckon towards discharge is MFM 14 IS 18 Sep 1940

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military possession of or entitled to). State any air force decoration or reward. military military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of C.U.S.M. & CLASS

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force
.....dated....., and in his regiment (or corps), the rank of unit
.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.
In the rank of.....years.
In the rank of.....years.
In the rank of.....years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with, of accused, Number B-46355 Rank Private Air Force Act, and of cases in which trial has been dispensed with, of accused, Number.....Rank.....

Name Roy Haynan of Att 9 Cdn F.D.S. Unit

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27 day of December 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked.....signed by the president, and annexed to the proceedings.

G.A.W. Currie Major
Officer Commanding 9 Cdn FDSRCAMC

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B46355 Pte Hayman R. Argyll and Sutherland's Reg't. S.O.S. K-3 List, Attached to No 9 Cdn F.D.S. RCAMC charged with committing a civil offence, namely stealing (A.A. Sec 41)
By direction of the Commanding Officer the evidence is taken on oath.
First Witness K 80599 Cpl. Stobo L.C. 9 Cdn F.D.S. RCAMC having been duly sworn states:-

The accused was admitted to this unit as a patient to the V.D. ward on 21 Dec 44. As he was not undergoing treatment until the following day, there was no detailed check kept on him. Standing orders for V.D. wards are posted on the main door of the ward in which he was admitted and states that all patient admitted will be confined to the ward and lights out 2230 hrs.

I submit a certified true copy of the unit Standing Orders for V.D. patients.

The accused declines to cross-examine this witness.

L.C. Stobo
(Cpl. Stobo L.C.

The Standing Orders referred to in this evidence of the above witness is attached hereto as Exhibit "A"

Second Witness D61529 S/Sgt. Bishop K.W. 9 Cdn F.D.S. RCAMC having been duly sworn states:-

At approximately 1045 hrs 22 Dec 44 L/Cpl. Corston Cdn Provost Corps asked me to hold an identification parade of the unit. I told him I would do so. At 1230 hrs I held a Unit muster parade and no identifications were made by Mr Hens. I then held a muster parade of the patients and Mr. Hens recognized the accused. I suggested we make a second identification to check and the accused was re-identified by Mr Hens and placed under close arrest by the Sgt provost. At approximately 1300 hrs Pte Neigle was brought to the unit guard room to identify the soldier who had asked him the night previous, the whereabouts of 9 F.D.S. I arranged the accused with 13 other soldiers of this unit and Pte Neigel picked out the accused immediately as the the soldier who had asked where 9 F.D.S. was located the previous night.

At approximately 1800 hrs 22 Dec 44 L/Cpl. Corston turned over to me statements of witnesses, one black pocket book, one identification card bearing No 71284, the property of Mr Hens L. Pt's I,II,III, of the accused's pay book, plus one dark brown bill fold, the property of the accused. In additionn three 100 Fr notes (Belgian Large type) five 100 Fr notes (Belgian small type) and six 1 Fr Belgian coins. I wish to present to the court the above mentioned 806 Frs one black pocket book belonging to Mr Hens and one identification card No 71284, belonging to Mr. Hens.

The 806 Fr mentioned in the evidence of the above witness is accepted as Exhibit "B"

The black pocket book mentioned in the evidence of the above witness is accepted as Exhibit "C"

The Identity Card (No. 71284) mentioned in the evidence of the above witness is accepted as Exhibit "D"

The accused declined to cross-examine this witness.

K.W.Bishop
(S/Sgt. Bishop K.W.)

Third witness K 78428 C S M Underwood C.R. 66 Cdn Gen Tpt Coy RCASC having been duly sworn states:-

On the night of 21 - 22 Dec 44 Pte Neigle, who was on R&P duty at H.Q. Mess door came into the orderly room and handed me a pocket book and identity card. I put them in a file box and left them there. The following morning I gave Pte Neigle permission to take this pocket book and identity card on an identification parade.

I now identify Exhibits "C" and "D" as these mentioned in my above evidence.

The accused declines to cross-examine witness.

C.R. Underwood
(C.S.M. Underwood C.R.

Fourth Witness Mr Hens Albert Belgian Civilian 5 Guldensporenei Turnhout, Belgium, having been duly sworn states:-

At approximately 2300 hrs 21 Dec 44 as I was walking from the Zeshoek to my home, a soldier, who I believed to be a Canadian, came out from Station St. and said "Give your money". At the same time he put his hand inside his coat as if he was holding a pistol, but he did not bring any out. I answered "I have no money, only seven francs". I have him these seven francs, but he said that he wanted more. I took out my pocket-book containing four one hundred franc notes. Of these were two of the large type and two the smaller type. In the pocket book there was also my pass-port, number tag from civil labour, and a few papers. I intended to give him one hundred francs but he took my pocket book and disappeared in the direction of the Zeshoek. I started to look for him and found him with a soldier on Rinierenlaer straat, who I believed to be a policeman. I told him my story. The soldier who took my pocket book said that he did not have my money. We stood there talking for approximately twenty minutes. The soldier had been drinking and took a bottle of cognac out of his pocket. He then got very angry and I thought the best thing I could do was to go home. I arrived home at approximately 2325 hrs.

Question- Were you on an identification parade at this unit on 22 Dec 44?

Answer- Yes

Question- Did you have any difficulty in identifying the accused?

Answer- No. There were two parades. I did not find him in the first company, but I found him in the second company. I identified him again in this group in a different position.

Question- Do you identify Exhibits "C" and "D" as your pocket-book and your identity card?

Answer - Yes

Question- Can you identify any of the 806 Francs (Exhibit "B") as your Money?

Answer- Not for certain.

Cross-examined by the accused

Question- At what time was the accused supposed to have robbed you?

Answer- At night at approximately a few minutes past eleven.

Question- At what time was it dark?

Answer- Yes, it was dark. I could see persons thirty yards apart.

Question- Could you see distinct features of any persons?

Answer- I could not see it when it was dark, but I could see it in the lights of trucks that were driving along the street.

Question- At the time of the robbery you said you believed that it had been a Canadian, but were not sure.

Answer- At the time of the robbery I could not see that it was a Canadian soldier. I found the soldier and I saw the soldier by the light of a truck talking to another soldier.

Question- Was the robbery in a different place than where the accused was talking to the other soldier?

Answer- It was not the same place.

Question- Why do you think that the man who robbed you was the same man who you found talking to the policeman?

Answer- I was sure. I followed the soldier and I could always follow him by the light of the trucks driving in the street.

A.L. Hens
(A.L. Hens)

In the above witness's evidence and cross-examination. Mr. C.L. Schoenmaekers, 2 Tramstraat Vosselaar Belgium, acted as interpreter where required.

C.L. Schoenmaekers
(C.L. Schoenmaekers)

Fifth Witness- M66562 Dvr Neigel S.A. 66 Cdn Tpt Coy RCASC having been duly sworn states:-

At approximately 2330 hrs 21 Dec 44 I was on Regt Police duty at the entrance to my H.Q. orderly room on Reniersnieder Street Turnhout. At this time two vehicles drove by, and by their headlights I could see a soldier running into a doorway. I walked over and asked him what he was doing. He did'nt answer my question but asked me where 9 Cdn F.D.S. was. At this point a civilian came over and held on to my arm and peirted at the soldier and said that he had taken his identification card and four hundred francs from him. I asked the soldier if this was true and he said he did not have it. The soldier then grabbed the civilian and motioned to strike him, as I stood between them, the soldier let go of him. The soldier then gave the civilian a cigarette and the civilian walked away. As soon as the civilian left, the soldier told me that he probably had the money and he showed me four one hundred franc notes. Two of them were the large type and the other two were the smaller type. He then showed me a black bill fold and an identification card which he then threw on the street. I told him to pick them up and give them to me. He picked up the identification card but could not find the wallet. I searched for the bill fold and found it on the street. The soldier then walked away. I turned the bill fold and identity card over to the Sgt-Major and found the name on the identification card to be Hens Albert Guldensporenlei 5 Turnhout.

At approximately 1000 hrs 22 Dec 44 I have the bill fold and card to L/Cpl Corston of the Canadian Provost Corps and I informed him of what happened.

At approximately 1300 hrs 22 Dec 44 I was requested by L/Cpl Corston to attend an identification parade at 9 Cdn F.D.S. At the parade amongst 14 soldiers, I identified the soldier whose Name I was told was B46355 Pte Hayman R.

Question- Do you identify the identity card (Exhibit "D") and the pocket book (Exhibit "C") as the same as mentioned in your statement?

Answer- Yes

The accused declined to cross-examine this witness

S.A.Neigel
(Dvr Neigel S.A.)

Sixth Witness- M11028 L/Cpl Corston J.J. No 7 Cdn Provost Corps (G Sec) having been duly sworn states:-

At 0950 hrs 22 Dec 44 Mr A Hens of 5 Guldensporenlei Turnhout reported to this section that he had been robbed of four hundred francs and identification card and a bill fold at approximately 2300 hrs ~~XXX~~ 21 Dec 44 by a soldier. At approximately 1000 hrs 22 Dec 44 I proceeded to No 66 Cdn Tpt Coy where I contacted M 66562 Dvr Neigel S.A. of the Regt Police of that unit. He was in possession of the billfold and identity card stolen from Mr Hens. Neigel informed me that he had taken them from a Canadian soldier the previous night when a civilian had informed him that the soldier had robbed him.. Neigel also stated that the soldier had asked the way to 9thCdn F.D.S' I then proceeded to (9 Cdn F. D.S. and arranged for an identification parade. This parade was held at 1300 hrs 22 Dec 44 Mr Hens Picked out Pte Hayman R and informed me that he was the soldier who had robbed him. Hayman was then placed under close arrest and held at 9 Cdn F.D.S. At approximately 1330 hrs 22~~XX~~ 44 another identification parade was held and Dvr Neigel also picked out Pte Hayman R as being the man he received the billfold and the identity card from. I then searched Pte Hayman and found him to be in possession of 807 francs. There were three large 100 fr notes (Belgian) There were also 76 Dutch guilders. Hayman refused to answer any questions or make any statements. The accused declines to cross-examine this witness

J.J. Corston
(L/Cpl Corston J.J.)

The accused was cautioned as follows:-

Question- Do you wish to make any statement or to give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but ~~XXXXXXXXXX~~ whatever you say or any evidence you give will be taken do wn in writting and may ve given in evidence.

Answer- No

The accused deed not call any witness.

I certify that the foregoing Summary of Evidence, consisting of (6 (4) pages was taken down by me in the presence of the accused and that R.P.4(C),(D),(E), and(F) have been complied with.

G.M. Downing
(G.M. Downing) Capt
9 Cdn F.D.S. RCASC

In the Field
24 Dec 44

XXX-68

L/CPL. HAYNES, K.W.G.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: KS74074 L/Cpl. HAYNES K.W.G. C.A.C. Tpg. Unit.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. SEC. 40 MTG. WATCH 1ST SHIFT			
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for [illegible] beginning on (date) [illegible] (1)

Time in confinement awaiting present trial—a total of [illegible] days, of which [illegible] days were spent in hospital.(1)
(1. See RP 49(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: [illegible] K.B.L.

(Sgd) [illegible]
Judge-Advocate, if any.

19 AUG. 44.
Date awarded.

(Sgd) K.B.L. 1st Lieut.
President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd)
Date
Commanding
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 26 SEP 1944 JAG BRANCH G.H.Q.

RECORDED AT C.M.H.Q. IN AB 160 XXX-68.

FIELD GENERAL COURT-MARTIAL

CF A96 (In lieu of AFA3) 40-P.M.R./1098 (2864)

Convened by order of BRIG. E.W. HALDENBY, M.C. Comd 1 C.B.R.Gp. dated 29 SEP 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
KS74074	L/Cpl.	KENNETH WALLACE GRANT	HAYNES	C.A.C.

PROCEEDINGS REVIEWED 17 SEP 44
REVIEWING OFFICER JAG BRANCH G.H.Q.
Joyce R. Deguerville Capt

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) CANADA at C.M.H.Q. on (date(s)) 19 AUG. 44.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs as now to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(2)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to the interpreter? Ans.~~ ~~The Interpreter is sworn.(1) Do you object to the shorthand writer? Ans.~~ ~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans. NO SIR.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	R.A.H. THOMPSON (K.I.L.)	2 BN. R. FUS.
Member	CAPT.	R.W. GAMMON (C.A.P.C.)	S. BN. 2 C.B.R.D.
Member	LIEUT.	W. de S. BOSSÉ (C.A.C.)	S. BN. 2 C.B.R.D.
Judge-Advocate			
Prosecutor	LIEUT.	A.E. ARMSTRONG (C.A.C.)	C.A.P.T.U.
Defending Offr	LIEUT.	R.P. MACLELLAN (C.A.C.)	C.A.P.T.U.

Questions by President: Is the Prosecutor a lawyer? Ans. NO SIR. Is the Defending Offr a lawyer? Ans. NO SIR.
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused KS74074 L/CPL. HAYNES, K.W.G. before arraignment make(s) (no) ~~no~~ plea. NOT G.
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form RP 2.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*II*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*ii*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*D*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO, SIR.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~am~~) (no) opening address.(1) K.R.&I.
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the RP III 1ST CHARGE charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is ~~disallowed~~ on the K.R.&I. charge(s), and allowed on the 1ST CHARGE charge(s), ~~and that, accordingly, the trial will proceed on the former, but~~ the accused is ~~(are)~~ found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. 5. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans.....
Do you intend to call witnesses on your behalf?
Ans.....
Are they witnesses as to character only? Ans..... K.R.&I.
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans.....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3) R.B.2
(*1. MFB 353 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2327, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A.P.I.T.

CHARGE SHEET

The accused K54074 L/Cpl. Haynes, Kenneth Wallace Grant, C.A.C. Training Unit a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
A.A. Sec 40

When on Active Service, An act to the prejudice of Good Order and Military Discipline

in that he

in the Field, in Italy, at 2020 hrs 6 July 44 when apprehended outside Camp Bounds, was improperly in possession of one blanket, public property.

In the Field
In Italy
10 July 1944

(W.E. Dunbar) Major
Commanding
Cdn Armd Corps Trg Unit

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
29 Jul 44

(E. W. HALDENBY) Brigadier
Comd 1 Cdn Base Rft Gp
Cdn Army - CMF

T.B.L.T.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
E54074	L/Cpl.		Kenneth Wallace Grant	HAYNES	CAC Trg Unit

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 29 Jul 44 endorsed by me, ~~(or by an offr of my staff (or me))~~, "To be tried by Field General Court-Martial". G.W.H.

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ G.W.H.

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ G.W.H.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	R. B. L. THOMPSON (Must be named. RP 106.)	(CIC)	2 Bn 1 CBRD (Unit.)

MEMBERS.

Capt	R. W. GAMMON	(CAC)	5 Bn 2 CBRD
Capt (Rank.)	R. W. STEWART (Named or detailed. RP 106.)	(CAC)	5 Bn 2 CBRD (Unit.)

WAITING MEMBER.

Capt or Lieut to be detailed by OC 5 Bn 2 CBRD (Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
~~JUDGE-ADVOCATE~~ G.W.H.		
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

G.W.H. Haldenby (Signed personally. RP 105 fn 2.) (E. W. HALDENBY) Brigadier (Rank.)

Date 29 Jul 44 Commanding 1 Cdn Base Rft Gp - CMF Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFAMS (TD) (Sec of AFA3) 40-7-8 & 8-7-1697 (4001)) (See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE
(K.R. Can 557)

A.R.L.T.

I certify that I have this morning examined K84074 L/Cpl Haynes K.W.G. of C.A.C. Training Unit and in my opinion he is fit to undergo trial by Court Martial

Date 31.7.44

S. B. Marcellus Capt
Medical Officer

to me stating that blanket was taken from L/Cpl. Hayes. This blanket, (EX. HH) is recognized by me as the blanket in Court. As normal, drafts arrived with two blankets at C.A.G.T.U., they were then issued with two more blankets. In the middle of June I called in one blanket from all drafts. The accused, whom I recognize, turned in one blanket according to the records.

NO CROSS EXAM. by Defending Officer

Questions by COURT — There are a few exceptions when the drafts have less than two blankets, but I do not recall them having more than two.

(RP 83 B complied with) R.B.R.T.

DEFENDING OFFICER — Applies for dismissal on grounds that prosecution does not establish a prima facie case against the accused under K.R. 40.

The submission is allowed.

A/ CAPT. R.W. Stewart C.A.C. S'BN 2 C.R.R.D. not being available due to other Military Duties, M.W. de S. Bosse 5 BN. 2 C.R.R.D. Waiting Nominal Roll, takes his place in the Court.

Dg — 1ST WITNESS PROS. — SGT. REARDON, A.S., P.E. C.A.C.T.C. duly sworn is examined by PROS.

Q. On the 6 JULY 44 were you on a patrol during a period of time effects belonging to Govt. such as equipment, clothing etc. were disappearing. Every draft going out, generally on previous nights — had articles missing. You started out tours of duty approx. 1730 hrs. 6 JULY 44 which carried you on a road and area surrounding the Camp to ROCCA SAN FELICE, it had been reported that all equipment upon information received we were ordered to check all equipment personnel going from Camp. Upon returning to Camp at approx. 2020 hrs. on 6 JULY 44, I encountered the accused approx. 200 yds. from Camp walking in the direction of ROCCA SAN FELICE. I stopped the accused as he looked out of proportion with regard to the top half of his body, from the waist up. He was wearing a khaki shirt, also had a gas cape rolled under his arm. I asked him if I could see inside the gas cape. It was empty. I then asked him to open his khaki shirt. The accused accompanied me back to the Camp to the Officers Mess had another prisoner to take over to the detention tent. That was the last I saw of the accused that evening. The accused opened two of his buttons on khaki shirt and

to my leaving. I saw what looked to me like a blanket. I thought it similar to W.D. property.

No Cross Exam. by Defending Officer.

Questions by Court -

I did not check to see whether or not the accused had a pass. The weather was cloudy. (RP 83-B complied with)

2ND WITNESS PROS. { F21633 SSgt. KIDD A.J., A/R.S.M. of P.E. C.A.C.T.U. duly sworn is examined by Pros. Officer. —

On the evening of 6 JULY 44 I accompanied Sgt. Reardon and myself left on a routine patrol from Camp, in order to curb sale of W.D. property and equipment by natives, as quite a lot of this was going on. At approx 2020 hrs. as Sgt. Reardon and myself were proceeding back to Camp we met the accused coming down the road from Camp. He looked very bulky around the waist. We stopped the accused and had him return to Camp with us. I took the accused to my room and had him remove a blanket from underneath his shirt. I recognized the blanket as W.D. property. I recognize the blanket (Ex "A") as being the blanket in question. This blanket has been in my possession since taking it from the accused. After taking the blanket from the accused I had Sgt. Webber, A/S.Sgt. of Tank Sqn., give the accused a bath inspector.

He reported to me that the accused was deficient one blanket. I kept the blanket and had accused placed under close arrest and sent to detention Camp.

CROSS EXAM. by Defending Officer. —

To my knowledge the accused did not attempt to sell the blanket. (RP 83 D complied with)

3RD WITNESS PROS. { 6205 Sgt. Webber C.H., A/S.S.M.S. for the Tank Sqn. at C.A.C. T.U. duly sworn is examined by PROS. Officer.

During the evening of 6 JULY 44 I received an order to check the list of L/Cpl. HAYNES. I asked the accused for Pt. "A" of Part 3 of A.B. 64 Form No. 1. I found no blanket in Pt. "A". I asked accused, whom I recognize, I asked him how many blankets he brought to C.A.C.T.U. He admitted he brought three blankets. The records showed that L/Cpl. Haynes had been issued two blankets upon arrival at C.A.C.T.U. The records also showed that one blanket had been called in. Upon checking the accused's blankets I found only three blankets.

NO, CROSS EXAM. by Defending Officer (RP 83 B complied with)

4th WITNESS PROS. { B36216 S.S.M.S. Dunbar, C. for Tank Sqn. at C.A.C.T.U. duly sworn is examined by PROS. Officer.

On evening 6 JULY 44, 444 at 2100 hrs. A/R.S.M. Kidd handed over a blanket

Summary of Evidence in the case of: F.B.C.T.

K 54074 L/c. Haynes K. W. G.
Cdn. Sqn. 1 Armd Rft. Regt.

By the direction of the C.O. the evidence is taken on oath.

First Witness

136107 Sgt Reardon A. S. Having been duly sworn states:—

I am Sgt Reardon A.S on the Permanent Establishment at C.A.C.T.U. (Cdn Sqn 1 A.R.R.). On 6 July 44 at approx 2020 hrs in company with S.S.M. Kidd while returning to camp between Rocco S. Felice we encountered the accused coming from camp. He was approx two hundred yards from camp walking in the direction of Rocco S. Felice. S.S.M. Kidd and myself had taken up a position between the camp and Rocco S. Felice to stop and question any personnel leaving the camp, as there has been a large quantity of army goods reported stolen over a period of time. The accused looked bulky around the middle and it appeared he was concealing something. We returned to camp and in the presence of Capt Nicol the accused opened his battle shirt and revealed an Army blanket.

A. S. Reardon

Accused declines to ~~question~~ cross examine this witness

Second Witness. F29633 SSM. Kidd A.J. having been duly sworn states.-

I am F29633 SSM Kidd A.J. on permanent establishment of the Cdn. Sqn 1. A.R.R. On 6 July 44 [redacted] in company with Sgt Reardon we left camp on a patrol between the camp and Rocco S. Felice. We occasionally make this patrol to stop the sale of army goods to the Italians. At appro 2020 hours we were returning to camp when I noticed the accused whom I now recognize coming down the road from the direction of camps. He appeared bulky and he looked as if he was concealing something under his bush shirt. We stopped the accused and brought him back to camp, and upon opening his bush shirt I saw an army blanket rolled around his waist. I called Sgt Webber acting S.SM.S of the tank sqn to give the accused a kit inspection. The kit inspection revealed the man was one blanket short. I then placed the accused under close arrest. I checked the booking out register of the Tank Sqn and found the accused had failed to book out before leaving camps.

A. J. Kidd SSM.

The accused declines to cross examine this witness

This Witness C 208 Sgt Webber G. H. having been duly sworn states:-

I am Sgt Webber G H acting S.Q.M.S. of the Tank Squadron C.A.C.T.U. (Cdn Sqn 1 A.R.R.) At approx 2030 hrs on 6 July 44, SSM Kidd asked me to inspect the accused mans kit, which I did. No blankets were charged to the accused in his M.F.M. 1 part three. The accused stated he had brought three blankets with him to C.A.C.T.U. and had drawn two more upon arrival. Later one blanket was recalled into stores. Upon the completion of this kit inspection I found the accused had only three blankets.

G H Webber Sgt

The accused declines to cross examine this witness.

Fourth Witness

D 36216 S.Q.M.S. Duchemin C. having been duly sworn states. —

I am S.Q.M.S. Duchemin C. Quartermaster for the Canadian Squadron of 1. A.R.R. On the 6 July 44 at about 2100 hrs. S.S.M. Kidd handed me a blanket stating it was the blanket taken from 4/c Waynes. I recognized the blanket as W.D. property. Upon arrival at this unit

On the 8th of April the accused was issued with two blankets from stores. On or about the 15th June one blanket was recalled from all ranks and the accused turned one blanket into stores.

C Duchemin

Accused declines to cross examine this witness.

The accused having been cautioned in accordance with Rules of Procedure, 4.(E) resumes his defence.

I certify that RP: 4(C)(D)(E) and(F) were complied with

Taken before me this 9th day of July 1944

A. E. Armstrong Lieut.

RECEIPT FOR SUMMARY OF EVIDENCE

I,

K54074 L/Cpl. Haynes K.W.G.

hereby acknowledge receipt of a true copy of the Charge Sheet and Summary of Evidence in connection with the charges pending against me.

In the Field

In Italy

10 July 44

K Haynes

K54074 L/Cpl. Haynes K.W.G.

Witnessed by:-

(S.A. Nicol) Captain

REQUEST FOR DEFENDING OFFICER

I,

K54074 L/Cpl. Haynes K.W.G.

request that in the event of a Court Martial being held, Lieut. J.B. Allen be appointed to defend me.

K.W. Haynes
K54074 L/Cpl. Haynes K.W.G.

Witnessed by:
(S.A.Nicol) Captain

I certify that Lieut. J.B. Allen is available to act as defending officer.

(S.A. Nicol) Captain

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Haynes R. D Cpl.

5 Feb 42 Orig. proceedings of Ass'y (Navy)

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this 29th day of November, 1941.

Whereas it appears to me, the undersigned, an officer in Command of Canadian Military Headquarters, on active service, that the person named in the annexed Schedule, being subject to Military Law, has committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial;

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said person and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

Judge Advocate

Captain A.H.Friedgut,K.C., J.A.G.Branch, C.M.H.Q.

President.

Rank.	Name.	Regiment.
Captain	John Collins	No.1 Cdn Conv Depot RCAPC

Members.

Rank.	Name.	Regiment.
Captain	J.D.Mathieu	No.1 Cdn Conv Depot RCAMC
Captain	Rene Lavallee	No.1 Cdn Conv Depot,C.D.C.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (J.C.Murchie) Brigadier

Commanding Canadian Military Headquarters.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.60979 Corporal HAYNES, R.D. 11th A/Tk Bn R.C.A.	First Charge A.A.Sec 8(2)	not guilty	guilty	
	Second Charge A.A.Sec 8(2)	not guilty	guilty	
			To be reduced to the ranks 3/12/41	Confirmed (P. J. Montague) Major-General Senior Officer Canadian Military Headquarters. 11 DEC 1941

(See Charge Sheet attached)

* Question to be asked of accused, if he pleads not guilty (R. of P. 36 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) J.C.Murchie
(J.C.Murchie) Brigadier
Commanding Canadian Military Headquarters.
Convening Officer (c)

(Signed) J Collins Capt
A/T Sjt Prosecutor
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the second day of December 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court and the Judge Advocate
2. The witnesses
*(3. ~~The interpreter~~ The Shorthand writer
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this second day of December 1941.

J. Collins Capt
President of the Court Martial.

A/T Sjt Prosecutor
Judge Advocate.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (f) on page 76 of M.M.L. 1939.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I direct that the soldier named in the margin be not committed to prison until further orders.~~)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 11th day of December 1941.

(P. J. Montague) Major-General
Confirming Officer.
Senior Officer
Canadian Military Headquarters.
11 DEC 1941

Promulgated and extracts taken in the case of
No.B-60979 Cpl.Haynes R.D. 11th Anti Tank Bn R.C.A.
(a) (Dated) D.C.194. 20 Dec 41. (Signed) (G.Kerr Wright.) Lieut-Col. O.C.No.1.Can.Conv.Depot.R.C.A.M.C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

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SUMMARY OF EVIDENCE

IN THE CASE OF.

B-60979 Cpl. Haynes,R.D. of the Anti Tank Battalion,R.C.A. and attached as a convalescent to No.1.Canadian Convalescent Depot, R.C.A.M.C., C.A.(O).

Upon instructions from the Commanding Officer, the following evidence is taken on oath.

D-105048 C.S.M.Gill, A.C. of the Staff of No.1 Canadian Convalescent Depot, R.C.A.M.C., C.A.(O) being duly sworn states:

FIRST WITNESS FOR THE PROSECUTION

I am D-105048 C.S.M.Gill, A.C. of the Staff of No.1 Canadian Convalescent Depot. R.C.A.M.C. C.A.(O) and on Wednesday night 12 Nov 41 at about 2225 hours I was going into the recreation room at Dolphin Camp and on my approach there I heard an argument at the door of the Recreation room. Considerable obscene language was being used by Cpl.Haines, whom I now recognize as the accused, in speaking to Sapper Gilmour No.M-5143 and when I spoke to Cpl.Haynes he said to me "You son of a bitch, you told me something this morning" and immediately attempted to strike me. I cautioned him that he would get himself into trouble. Cpl.Haynes then said to me "Fuck off you bastard". He reached out and seized my right arm again attempting to strike me. I was forced to run around the flower bed with him chasing me. I went into the recreation room to get two details to place Cpl.Haynes under arrest. I called Cpl.Noades and one Imperial soldier. When I got outside recreation room Cpl.Haynes had disappeared.

I then proceeded to the medical room as I found my wrist had been scratched. I had my wrist cleaned and dressed by Pte.Galitzine at approximately 2240 hours.

I then met C.S.M.McGowan, the Orderly Officer and asked him to have Cpl.Haynes placed under arrest.

D-105048 CSM. AC Gill

The accused declined to question the above witness.

C-4929 Pte.HICKS P.N., of the Hastings and Prince Edward Regiment, and a convalescent to No.1.Canadian Convalescent Depot.R.C.A.M.C., C.A.(O) being duly sworn states;

SECOND WITNESS FOR THE PROSECUTION

I am C-4929 Pte.Hicks,P.N. of the Hastings and Prince Edward Regiment and a convalescent attached to No.1 Canadian Convalescent Depot,R.C.A.M.C,C.A.(O) being sworn states that as I was coming out of the door of the mens canteen Dolphin Camp Nov 12,1941 at 2225 hours, Cpl.Haynes was arguing with Spr.Gilmour. C.S.M.Gill came along and asked them to break it up and Cpl.Haynes reached out for the Serjeant Major and said "You son of a bitch you said something to me this morning" and then said "Fuck off before I hit you". Cpl.Haynes made a pass at Sjt-Major Gill and C.S.M.Gill broke away from him. Cpl.Haynes chased C.S.M.Gill and C.S.M.Gill went back to the canteen. Cpl.Haynes started for St.Mary's Camp.

C4929 pte P.N. Hicks

The accused declined to question the above witness.

M-5143 Spr.Gilmour M, 13th Field Coy,R.C.E. and attached as a convalescent to No.1.Canadian Convalescent Depot, R.C.A.M.C.,C.A.(O) being duly sworn states;

THIRD WITNESS FOR THE PROSECUTION

I am M-5143 Spr.Gilmour,M., of the 13th Field Co.,R.C.E. C.A.(O) and attached as a convalescent to No.1.Canadian Convalescent Depot, R.C.A.M.C. C.A.(O) and on 12 Nov 1941 at approximately 2225 hours, the Corporal who is standing in this room and whom I know recognize as the same who was present at the time stated, we were arguing in front of the main hall at Dolphin Camp and Serjeant Major Gill came up and told us to get off to bed. The Cpl. whom I recognize had words with Serjeant-Major Gill and one of the statements was fuck off you bastard. I then stepped inside the hall and that is as far as I know.

M 5143
Spr Gilmour M.M.

The accused declined to question the above witness.

D-95165 Cpl.Noades D.A. on the staff of No.1 Canadian Convalescent Depot, R.C.A.M.C. C.A.(O) being duly sworn states;

FOURTH WITNESS FOR THE PROSECUTION

I am D-95165 Cpl.Noades D.A. on the staff of No.1.Canadian Convalescent Depot, R.C.A.M.C. C.A.(O) and on the night of the 12th Nov 1941 at 2230 hours I was in the canteen when C.S.M.Gill came into the canteen and told me to arrest a man. I took one of the Imperial soldiers as an escort as I did not know the rank of the man I was to arrest. Going outside of the canteen, in front of the main entrance I was unable to locate the individual I was called upon to arrest. I searched the nearby buildings with C.S.M.Gill and did not find the person I was to arrest.

D95165 D Noades Cpl

The accused declined to question the above witness.

FIFTH WITNESS FOR THE PROSECUTION

D-92513 C.S.M.McGowan H, on the staff of No.1. Canadian Convalescent Depot, R.C.A.M.C., C.A.(O) being duly sworn states;

I am D-92513 C.S.M.McGowan H. on the staff of No.1.Canadian Convalescent Depot,R.C.A.M.C.,C.A.(O) and on the night of the 13th Nov 1941 I was Orderly Officer on duty and was proceeding to Dolphin Camp at about 2225 hours C.S.M.Gill requested me to place a man answering the description of Cpl.Haynes whom I now recognize, under arrest, this I did at 0700 hours 14 Nov 1941.

The date given above as 13 Nov 41 should read 12 Nov 41 and 14 Nov 1941 should read 13 Nov 1941.

D92513 W. H. McGowan CSM.

The accused declined to question the above witness.

Captain I.Sutton, of No.1.Canadian Convalescent Depot, R.C.A.M.C., C.A.(O) being duly sworn states;

SIXTH WITNESS FOR THE PROSECUTION

I am Captainx I.Sutton, Medical Officer of No.1 Canadian Convalescent Depot,R.C.A.M.C,C.A.(O) and our medical records show that C.S.M.Gill reported to the M.I.R. at approximately 2245 hours 12 Nov 1941. He was attended to by Pte.Galitzine who was on duty at the time. At 1000 hours 13 Nov 41 C.S.M.Gill reported to me and I examined his injury. On examination 3 small lacerations, superficial, were found on the anterior surface of the right wrist. No other treatment other than a dry treatment was prescribed.

I Sutton Capt RCAMC.

Upon reading above statmant witness requests "dry treatment" to read as dry dressing.

I Sutton Capt RCAMC.

The accused declined to question the above witness.

D-95160 Pte.Galitzine, T. of No.1.Canadian Convalescent Depot, R.C.A.M.C.,C.A.(O) being duly sworn states:

SEVENTH WITNESS FOR THE PROSECUTION

I am D-95160 Pte.Galitzine, T. of No.1.Canadian Convalescent Depot,C.A.(O) and at 2245 hours on the 12th day of Nov 1941 C.S.M.Gill came in to the medical room where I was on duty, He showed me his right wrist where he had three small lacerations on the anterior surface. I proceeded to wash his wrist and then applied iodine and a dry dressing.

Deane Pte Galitzine

The accused declined to question the above witness.

Having been duly cautioned in accordance with R.P.4 (c) the accused declined to make a statement.

Certified that the above evidence was taken down by me in the presence and hearing of the accused and that R.P.4 (c) (d) and (e) have been complied with.

S.King

S.King.Lieut-Adjutant.
No.1.Cdn.Convalescent Depot.
R.C.A.M.C. C.A.(O).

Taken down at
Brixham, Devonshire.
this 15th day of Nov 1941.

CHARGE SHEET

The accused No.B.60979 Corporal HAYNES R.D. of the 11th.Anti Tank Battalion, R.C.A. Canadian Army (A.F.) attached as a convalescent to No.1. Canadian Convalescent Depot, R.C.A.M.C. (A.F.), is charged with:-

FIRST CHARGE
ARMY ACT
SEC. 8(2)

WHEN ON ACTIVE SERVICE, USING VIOLENCE TO HIS SUPERIOR OFFICER

in that he

at Dolphin Camp, Brixham, Devonshire on 12 Nov. 41 when checked by Company Sergeant Major Gill A.C. of No.1.Cdn. Convalescent Depot R.C.A.M.C. violently contacted the said C.S.M. Gill A.C. by seizing his right wrist.

SECOND CHARGE
ARMY ACT
SEC 8(2)

WHEN ON ACTIVE SERVICE, USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

IN THAT HE

at Dolphin Camp, Brixham, Devonshire on 12 Nov. 41 when checked by his Superior Officer, Company Sergeant Major Gill A.C. of No.1. Cdn. Convalescent Depot, R.C.A.M.C. said to the latter, "You son of a bitch", and "Fuck off, you bastard".

Officer Commanding
No.1.Cdn. Convalescent Depot,
R.C.A.M.C., C.A. (A.F.)

BRIXHAM,
Devonshire,
15 Nov. 41.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(J.C.Murchie) Brigadier
Commanding
Canadian Military Headquarters.

London
29 Nov 41.

Proceedings of a FIELD GENERAL COURT MARTIAL in the case of No.R.60979 Corporal HAYNES R.D., Anti Tank Battalion R.C.A. attached to No.1. Cdn. Convalescent Depot, held in the FIELD on TUESDAY 2nd. DECEMBER 1941

President:- Capt. John Collins No.1. Cdn. Conv. Depot.

Member:- Capt. J.D. Mathieu No.1. Cdn. Conv. Depot.

Member:- Capt. Rene Lavallee No.1. Cdn. Conv. Depot.

Judge Advocate:- Capt. A.H. Friedgut, K.C., JAG Reh. CMHQ.

Officer under instruction:- Major J.B. Morison. Cam. of Canada.

Prosecuting Officer, Lieut. S. King, No.1. Cdn. Conv. Depot.

Defending Officer. Capt. L. Le Brun, Cadet Services of Can.

Court Stenographer:- No.S.95703 S/Sgt. Warren, JAG, Reh. CMHQ.

The Convening order, the Charge Sheet and the Summary of evidence are laid before the Court.

The Court have already satisfied themselves as provided by R.P.22 and 23 on a previous case.

It was considered by the Court that the expediency consistent with Regimental duties, that this trial be proceeded with after 1800 hours.

Trial commenced at 1910 hours.

The accused is brought before the Court.

Judge Advocate read the Convening Order.

Q.1. Do you object to be tried by me as President, or by any of the Officers whose names you have heard read over?
A.1. No Sir.

Q.2. Have you any objection to S/Sgt. Warren as Shorthand Writer?
A.2. No Sir.

The President, Members, Judge Advocate, Officer under Instruction and shorthand Writer were all sworn on a previous case.

Charge Sheet is read by the President.

Q.3. Are you guilty or not guilty of the first charge against you which you have heard read?
A.3. Not Guilty Sir.
Q.4. Are you Guilty or Not Guilty of the Second Charge against you
A.4. which you have heard read?
Not Guilty Sir.

The Prosecutor does not make a Opening address.

1st. WITNESS No.D.105048 C.S.M. Gill A.C. No.1. Cdn. Conv. Depot having been sworn is examined by the Prosecutor.
Prosecution

Q.5. Do you recognise the accused?
A.5. Yes Sir.
Q.6. What are your duties here?
A.6. In charge of the Orderly Room.
Q.7. Will you tell the Court of the occurrence that took place on the night of 12 Nov. 41?

A.7. On Wednesday night 12th. of Nov. at about 1030 p.m. I was coming back to Camp and I was going to the recreation Room and I heard an argument at the door, I noticed that Corporal Haynes was arguing with Sapper Gilmour. I told him to break it up. Pte. Hicks was also there, and with that Cpl. Haynes said to me, "Fuck off you bastard" and he chased me around the flower bed. I went into the recreation room and when I came out again he was gone.

Q.8. Why did he chase you?

A.8. He was swinging at me and I broke away and ran around the flower bed.

Q.9. Had the Last Post gone before this occurred?

A.9. Just gone Sir.

Q.10. What time is the Last Post?

A.10. 22.30

Q.11. What were the lighting conditions at the door of the Canteen?

A.11. The Canteen door was open and the light was shining through, I also had my torch.

Q.12. How many doors are there?

A.12. Two doors Sir and both were open.

Q.13. Approximately how far would the beam of light extend?

A.13. About 12' feet Sir.

Q.14. And in your action of breaking away from the accused did you pass through the beam?

A.14. I backed away from it Sir.

Q.15. Where did the light strike?

A.15. On the three men and on the galvanized tin reflector.

Q.16. When you were breaking away was your torch on?

A.16. No Sir.

Q.17. You were quite steady when the torch was on?

A.17. Yes Sir.

Q.18. Did you address any of those present?

A.18. Yes Sir.

Q.19. How did you recognise them?

A.19. By the Torch.

Q.20. Did you name any of the men?

A.20. No Sir Pte. Hicks named me Sir.

Witness cross-examined by the Defence

Q.21. Will you tell the Court, if there was a Moon that night?

A.21. No Sir, it was quite dark.

Q.22. How did you recognise the man facing you, was Haynes?

A.22. Through C.S.M. McGowan.

Q.23. Was McGowan present?

A.23. No Sir.

Q.24. When did he arrive?

A.24. Ten minutes after.

Q.25. How do you know that Sapper Gilmour was there?

A.25. I recognized him Sir.

Q.25. How?

A.25. Through the light shining on them.

Q.26. Now you said you had enough light coming through the doors, there were two doors and there was enough light for twelve feet?

A.26. Yes Sir.

Q.27. Now will you demonstrate how the supposed assailiant seized you by the right wrist?

A.27. (Indicating) He simply grabbed my right arm and swung at me, Sapper Hicks standing on the step of the door and Gilmour behind him.

Q.28. And you are sure it was that man that grabbed your wrist?

A.28. I could not be mistaken Sir.

Q.29. For the information of the Court, how are your eyes at night without glasses?

A.29. Very good.

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Q.30. You said you ran, broke away from him around the flower bed, and then you went into the canteen for Cpl. Noades and an Imperial Soldier and when you came out he had disappeared, how did you see it was him?

A.30. Because he was arguing with Gilmour and Hicks inside the door over some matter that happened the night before.

Q.31. Then you preceded to the Medical Room and found your wrist had been scratched?

A.31. Yes,

Q.32. What time was that?

A.32. 2240, and then I met C.S.M. McGowan and asked him to have Cpl. Haynes placed under arrest.

J.A. Q.33. How long have you known the accused?

A.33. Only since his entry into the camp.

Q.34. How long?

A.34. Three or four weeks.

Q.35. You have seen him off and on?

A.35. Yes Sir.

Witness re-examined by the Prosecutor.

Q.36. In the use of your torch was it directed to all three of those in the group?

A.36. It was on Haynes.

Q.37. It was on Haynes, as illuminated by the torch?

A.37. Yes Sir,

Q.38. You made a statement that you knew it was Cpl. Haynes through a conversation with McGowan?

J.A. Q.39. Was the accused present?

A.39. No Sir.

Q.40. Therefore this witness would be giving only hearsay evidence?

Pros: Q.41. Is there any question in your mind that the man upon whom you flashed the beam of the torch was the accused?

A.41. No Sir.

J.A. That is a leading question.

Pros: Q.42. Is there anybody whom you know is the man upon whom you flashed the torch?

A.42. Yes Sir.

Q.43. Whom?

A.43. Cpl. Haynes.

Q.44. Can you remember how far away from the others you were when you broke away from the accused?

A.44. About 20 feet.

Q.45. The others were about 20 feet away from you?

A.45. Yes Sir.

Q.46. Where was he when he seized you?

A.46. Just besides the steps.

Q.47. Within that 20 feet did anybody else seized you?

A.47. No Sir.

Q.48. Did you feel any pain when you broke away from the accused?

A.48. Just the scratch.

Q.49. When you were ten feet away from Noades and Gilmour where was the accused?

A.49. Noades was not there, it was Hicks.

Q.50. After you broke away what did you do.

A.50. I proceeded into the Medical Room and got Cpl. Noades and another soldier and when we got outside Haynes had gone.

Q.51. Did you take any further action that night?

A.51. Yes Sir. I asked C.S.M. McGowan to place him under arrest.

Court Q.52. When you say that you spoke to McGowan and asked him to arrest him who did you ask him to arrest?
A.52. Cpl. Haynes, Sir, I did not know the man's name, I do not know everyone in camp.
J.A. Q.53. At the time of the incident you did not know his name?
A.53. No Sir.
Q.54. You got the name from McGowan?
A.54. No Sir I got his name from Hicks & Gilmour.

Witness re-cross-examined by the Defence

Q.55. When you met Cpl. Noades in the Canteen did you say to him, "Go and arrest Corporal Haynes"?
A.55. No Sir.
Q.56. Please repeat the 2nd. sentence that is supposed to have k said by Corporal Haynes on that night?
A.56. The first one was, "You son of a bitch, you told me something this morning". and the second was, "Fuck off you bastard".

2nd. Witness Prosecution. No. D.95160 Pte. Galitzine T. No.1. Cdn. Conv. Depot, having been duly sworn is examined by the Prosecutor.

Q.57. Did Sergt. Major. Gill come to you for attention at any time?
A.57. Yes Sir.
Q.58. Will you tell the Court when he came and the injury?
A.58. It was Wednesday night the 12th. of November at 2245 hours he came in. He had three small lacerations on his ri right wrist, the front of the wrist. (Indicating the position on his own hand). I washed it and applied iodine and dressed it.
Q.59. You remember the nature of the injuries when you dressed it at that time?
A.59. Looked like small punctures.
Q.6 0. You know Sergt. Major Gill quite well?
A.60. Yes Sir.
Q.61. For what period, how long have you known him?
A.61. Since January 1940.

Witness cross-examined by the Defence.

Q.62. Did you keep a record of what happened that night?
A.62. Yes Sir. We keep the record and the hour, in the Medical Room.

J.A. Q.63. Could the punctures or scratches have been made by finger nails?
A.63. I cannot say that Sir.
Q.64. Can you tell at all how they might have been made?
A.64. No Sir.

3rd. Witness Prosecution No.C.4929 Pte. Hicks P.N. Hastings and Prince Edward Regt. att. No.1. Cdn. Conv. Depot. having been duly sworn is examined by the Prosecutor.

Q.65. Were you ever convalescent here?
A.65. Yes Sir.
Q.66. When?
A.66. From 12th. Aug. to 18th. November 1941.
Q.67. Do you recognize the accused?
A.67. Yes Sir.
Q.68. How long have you known him?
A.68. Since about the 20th. or 25th. of October.

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Q.69. That is when you first met him?
A.69. Yes Sir.
Q.70. And you have known him since then?
A.70. Yes Sir.
Q.71. On the night of November 12th. there was an occurrence, what do you remember about it?
A.71. Sir, there was an argument between Cpl. Haynes and Gilmour.
Q.72. Where?
A.72. In front of the Canteen, just outside the door.
Q.73. Were they outside the Building?
A.73. Just outside Sir.
Q.74. What was the position of the Doors?
A.74. The door was open.
Q.75. Was there any light shining from the Canteen?
A.75. Very Little light Sir, they were arguing and Sergt. Major Gill came up and asked them to break it up and go to bed, and Haynes reached over to him and said, "You said something this morning", and made a pass at him.
Q.76. Could you recognise anybody by the light coming from the door?
A.76. Yes Sir.
Q.77. How did you know who it was that approached the Door?
A.77. I know Gill very well Sir.
Q.78. Did you know anyone else there?
A.78. Corporal Haynes and Gilmour, Sir.
Q.79. After Sergt. Major Gill Broke away from Haynes, where did Corporal Haynes go, what direction did he go?
A.79. In the Direction of St. Mary's Camp.

Witness Cross-examined by the Defence.

Q.80. You just told the Court what happened at the night of 12th. November, what hour was that?
A.80. About 2220
Q.81. Are you sure that the man was Corporal Haynes. How could you tell that the man chasing Gill was Corporal Haynes?
A.81. I have known him for some time Sir.
Q.82. Was it dark?
A.82. Not so terribly Sir.
Q.83. Where were you?
A.83. Just come out of the canteen.
Q.84. You say that there was light coming through the doors?
A.84. Yes Sir.
Q.85. You know the two doors?
A.85. Yes Sir.
Q.86. What kind of doors are they?
A.86. They are double doors and only one opens on the right inside.
Q.87. Now the doors on the outside?
A.87. Double doors.
Q.88. What kind of glass?
A.88. Glazed glass.
Q.89. Covered with what?
A.89. Metallic.
Q.90. They are opened by pulling which way?
A.90. On the inside.
Q.91. Both the doors were working?
A.91. They were open at the time.
Q.92. On the inside door, the one that opens on the right, what kind of glass?
A.92. Covered with metallic.
Q.93. How many lights have we got between the two doors?
A.93. Two inside, one at each end of the Hall and one at the doors.

Q.94. Will you repeat the two sentences that Cpl. Haynes is supposed to have made to Sergt. Major Gill?
A.94. He said Sir, "You said something tome this morning, I will get even with you now if you don't fuck off".
Q.95. When Gill entered where were you?
A.95. I had walked towards the lavatory.
Q.96. Did they have anything happen in the Camp?
A.96. I do not know Sir I was down town.

Witness re-examined by the Prosecutor.

Q.97. The Inner, as you said is the door that opens on the right of the pair of doors?
A.97. Yes Sir.
Q.98. At this particular time this door was open?
A.98. Yes Sir.
Q.99. And held open by itself?
A.99. It was Sir.
Q.100. In what Camp are you located?
A.100. At Dolphin.
Q.101. When you left the Canteen after this affair where did you go?
A.101. I tried to locate Haynes and went to the lavatory and back to the chalet.
Q.102. About how long was that?
A.102. I would say about five to seven minutes.

4th. Witness Prosecution — Captain I. Sutton, No.1. Cdn. Conv. Depot, RCAMC having been duly sworn is examined by the Prosecutor.

Q.103. What are you duties at this Depot?
A.103. I am attached as Medical Officer.
Q.104. Do you know C.S.M. Gill?
A.104. Yes Sir.
Q.105. Has he ever visited you for attention?
A.105. Yes.
Q.106. Will you tell the Court when Sergt. Major Gill visited you the last time he visited you on the 13th. November?
A.106. The only time he visited me was on 13th. November at 1000 hours for medical reasons.
Q.107. Will you tell the Court the detail as to that?
A.107. He had suffered an injury to his wrist, he had three superficial lacerations on the right wrist?
Q.108. In your opinion could these injuries be made by finger nails"
A.108. Yes most probably they could easily be made by finger nails.
Q.109. Is it possible for you to indicate how recently they had happened?
A.109. About 24 Hours.

Witness cross-examined by the Defence.

Q.110. Will you tell the Court where you took the hour of your records that you gave in your depositions as 2245 in the Summary of Evidence?
A.110. Well it is exactly as it is stated in the records in the admissions and discharges book and that is where we keep that information.
Q.111. Your men on duty have been told by you that they should be entered in the book that day and the hour and the name of the patient?
A.111. Yes Sir, that should be done.

5th. Witness Prosecution. No.M.5143 Spr. Gilmour M. 12th. Field Coy. RCE attached to No.1. Cdn. Conv. Depot. RCAMC having been duly sworn is examined by the Prosecutor.

Q.112. Have you been a Patient in No.1. Cdn. Conv. Depot.?
A.112. Yes Sir.
Q.113. When did you enter?
A.113. 10th. of June 1941.
Q.114. You are still a convalescent?
A.114. Yes Sir.
Q.115. Do you recognise the accused?
A.115. Yes Sir.
Q.116. You recognise him as whom?
A.116. The fellow I had the argument with.
Q.117. Do you know his name?
A.117. No Sir.
Q.118. Will you tell the Court what happened?
A.118. The Corporal and I were having an argument, Gill came up, and he told Gill to "fuck off"
Q.119. Have you any idea of the time?
A.119. About 2225 hours.
Q.120. How did you recognise Gill?
A.120. The doors were open and the light coming through the doors.
Q.121. Which doors?
A.121. The doors at Dolphin Canteen.

J.A. to Pros: What fact do you want to establish?
Pros: There are two doors and the light comes through these doors?
J.A. Well you have established that by this witness.

Pros: Q.122. Did you recognise anybody else?
A.122. There was a group.
Q.123. How many?
A.123. There might have been four or five, The Corporal, Gilmour and myself.
Q.124. Which Corporal?
A.124. This Corporal, Sir, (Indicating the accused)
Q.125. Did you have any difficulty knowing who they were?
A.125. No Sir.
Q.126. Did you hear any statement made?
A.126. Just the one that the Corporal told Gill, to "Fuck off you bastard".

Witness cross-examined by the defence.

Q.127. Where were you when Gill arrived?
A.127. Standing outside the front door of the Dolphin Camp Canteen talking to the Corporal.
Q.128. Did Gill have a package in his hand?
A.128. I did not see that Sir.
Q.129. It was too dark?
A.129. I did not see anything.
Q.130. You were close to the Doors.
A.130. Yes Sir.

6th. Witness Prosecution No.D.95165 Cpl. Noades D.A. No.1. Cdn. Conv. Depot, having been duly sworn is examined by the Prosecutor.

J.A. Is the evidence of this witness the same evidence as he gave at the Summary?
Pros: Yes Sir, just the same.
Def: I would like to ask one question Sir.
Pros: I will rest on what may arise from your question.

Witness cross-examined by the Defence.

Q.131. At the Summary you said that at 2230 hours C.S.M. Gill came to the Canteen and asked you to arrest a man, who was it?
A.131. No name was given.

Q.132. And then you asked an escort?
A.132. One of the Devons was there and I took him Sir.
Q.133. There are two doors to the canteen?
A.133. Yes Sir.
Q.134. Which one did you take when you went out?
A.134. The right one.
Q.135. You went through the main door, which side?
A.135. The left hand side.
Q.136. You went out to arrest a man?
A.136. Yes Sir, no name mentioned.
Q.137. Was Gill there?
A.137. Yes, I went with Gill and looked in the Lavatory and other places, and Gill said, "Leave it until morning"
Q.138. And you did not know who it was?
A.138. No Sir.
Q.139. Why?
A.139. Because I do not ask my Superior Officer questions.

Prosecution no questions.

Pros: to Court: Would you glance at the testimony of C.S.M. McGowan and if in your opinion it is not necessary to call him I will not?

J.A. I do not think it is necessary.

Def: I would like to ask one question Sir.

7th. Witness Prosecution. No.D.92513 C.S.M. McGowan H. No.1. Cdn. Conv. Depot, having been duly sworn is examined by the Defence.

Q.140. You made a correction in the Summary of the 13th. for the 12th. and the 14th. for the 13th. correction in days?
A.140. Yes at the Summary I believe so.
Q.141. What time did you meet Sergt. Major Gill on the night of the 12th.?
A.141. Approximately 2245 hours.
Q.142. After he had told you what happened, is it not true that you had a man arrested and put here in the detention room?
A.142. It is untrue.

Pros: That closes the case for the Prosecution Sir.

Def

D E F E N C E

Court: Q.143 Do you apply to give evidence yourself as a witness?
A.143. Yes Sir.
Q.144. Do you intend to call any other witness?
A.144. Just one Sir on one point.
Q.145. Is he a witness as to character or fact?
A.145. Facts Sir.

1st. Witness Defence. No.D.95158 Sergt. Pelletier A. No.1. Cdn. Conv. Depot. having been duly sworn is examined by the Defence.

Q.146. Do you recall an incident that happened on the 12th. Nov. 41.?
A.146. On 12th. Nov. 41 we had few men in Close arrest and I remember we had one man at night about ten to eleven o'clock but he was released the next morning.
Q.147. By whom?
A.147. The Orderly Officer.
Q.148. Will you tell the Court why that man was arrested and what name was given to place in your book in the Guard Room?
A.148. If I remember, the man's name was Haight and he was released in the morning by the Orderly Officer.
Q.149. He was arrested and released the next morning by the Orderly Officer?
A.149. Yes Sir.

Witness cross-examined by the Prosecutor.

Q.150. Can you recall the charge that was laid against this man?
A.150. There was no charge against this man Sir.

J.A. Q.151. Were you Sergeant of the Guard that night?
A.151. Provost Sergeant.
Q.152. Is there a record kept of the men?
A.152. Every day they are registered.
Q.153. When a men is in Close arrest, is that put in the book?
A.153. No, the Guard Report.
Q.154. Is there a book that we can refer to now?
A.154. Only the Guard Reports Sir.
Q.155. Where are they?
A.155. In the Orderly Room.

Court: Q.156. That means that every man that is brought to you, his name is on the Guard Report?
A.156. Yes Sir.

J.A. Q.157. What makes you remember that incident?
A.157. It was a special night I believe. I came back from town and the men were quite rough. The Guard Commander told me in the morning there had been a man in close arrest and was released that morning.
Q.158. I do not know Sir.

J.A. That is hearsay evidence, why did you not call the Corporal of the Guard?
Def: He has been discharged from the Depot Sir, and I have tried to get Sergt. Haight.

Def: Q.158. Who was the Orderly Officer that night?
A.158. C.S.M. McGowan.

2nd. Witness DEFENCE

No.B.60979 Corporal Haynes R.D. Anti Tank Battalion R.C.A. attached to No.1. Cdn. Cov. Depot. having been duly sowrn is examined by the Defence:

Q.159 Will you tell the Court what happened on the 12th. November about 2230 hours?

A.159 That night of the 12th. November Sapper Gilmour and myself were arguing outside the Main Door at Dolphin Camp. We were talking very loud and using strong language to stress our points which were being discussed.

Q.160. What was being discussed?

A.160. Sports News from Canada, all of a sudden a voice said "Stop that noise, stop using that language, get off to bed" or words to that effect.

Q.161. And then what happened?

A.161. It was rather dark at the time and I did not know whose voice it was and being in heated argument I said, "Bugger off you have nothing to do with this argument", Someone came over and said, "You had better clear off from here", and there were a few more words, and that is about all, and I went over to my chalet at St. Mary's.

Q.162. Were you sober?

A.162. Yes Sir.

Q.163. If light was coming through the doors could you have recognized who it was that was addressing you?

A.163. The doors are kind of shadded and would not shine outside.

Q.164. But if lights had been shining through could you have recognized who it was?

A.164. No Sir.

Q.165. If lights had been reflected on that man you would have seen his rank?

A.165. If the lights had been strong enough I would have seen his rank.

Q.166. And what would you have said?

A.166. I would have known right away that he was an Officer of the Camp and would have obeyed the order.

Witness cross-examined by the Prosecution.

Q.167. When the doors of the Canteen are closed can you recognise anybody outside the doors?

A.167. Well it all depends what kind of night it is?

Q.168. What kind of night was it?

A.168. Very dark night Sir.

Q.169. In your opinion if the doors had been open would it improve the lighing conditions on the outside?

A.169. On the outside?

Q.170. Yes on the outside?

A.170. Not very much Sir.

Q.171. The doors are not in direct line?

A.171. No Sir.

Q.172. But certain portions of each door over-lap?

A.172. Yes Sir.

Q.173. Do you recall as to the position of the doors?

A.173. Open or closed Sir?

Q.174. Yes.

A.174. I did not take much notice of that Sir.

Q.175. Was the inner door open?

A.175. I do not know Sir I was not inside.

Q.176. Was one of the doors open?
A.176. I do not know.
Q.177. When this discussion took place where were you?
A.177. Outside, away from the doors.
Q.178. Where was Sapper Gilmour?
A.178. We were standing about five feet away from the door.
Q.179. On the outside?
A.179. Yes Sir.
Q.180. And where was Hicks?
A.180. I did not see Hicks Sir.
Q.181. Did you face the doorway at all?
A.181. Well we were standing to the side of the door Sir.
Q.182. Would you be facing the door?
A.182. No Sir.
Q.183. It is quite possible that in that position you would not notice whether the door was open or not?
A.183. Possibly Sir Yes.
Q.184. During the altercation did you hear any rank mentioned? I mean military rank?
A.184. No Sir.
Q.185. At the time that Gill approached, did you hear Hicks?
A.185. I did not see Hicks Sir.
Q.186. You could hear what Gilmour said?
A.186. Gilmour and I was arguing Sir.
Q.187. And his remarks were directed to you?
A.187. Yes Sir.
Q.188. Did you hear him make use of the term C.S.M.?
A.188. No Sir.
Q.189. When this person approached this group, did you address him at all?
A.189. None other than what I have already said Sir. That the argument had nothing to do with him and bugger off.
Q.190. In your argument, or during the time that you had the argument did you at any time use the word, "morning".
A.190. No Sir I cannot remember Sir.
Q.191. Did you have any discussion with C.S.M. McGowan that morning?
A.191. No Sir I never spoke to him, not McGowan Sir,
Q.192. Did you speak to any C.S.M.?
A.192. Not that I know of Sir.
Q.193. Did you catch hold of anybody at any time?
A.193. During the argument Sir.
Q.194. After this person approached, did you clutch anybody?
A.194. No Sir.
Q.195. Did you leave your group at all, were you always close to Sapper Gilmour?
A.195. Until I left to come back to this Camp.
Q.196. Well what happened after this individual approached and spoke?
A.196. I was arguing with Gilmour, he was told it was none of his business and to bugger off, Gilmour went inside and I left.
Q.197. What happened after you told him that it was none of his business?
A.197. Nothing Sir, Gilmour left and I left and came over to St. Mary's Camp.
Q.198. Did you clench you fist at all?
A.198. No Sir.
Q.199. And what time you do say it was?
A.199. 2220 hours approximately.
Q.200. How do you determine that?
A.200. Well it was Gilmour's job to see that everything was shut off.
Q.201. And you did not have any contact with this third party?
A.201. No Sir.

Witness questioned by the Judge Advocate

Q.202 Did you see or hear anybody running away from the scene?
A.202 Well there was quite a bit of activity that night, there was a Mock attack on Sir.
Q.203. I am not talking about that, I am talking about your little group?
A.203. No Sir.
Q.204. What happened to the party that spoke to you?
A.204. He left Sir.
Q.205. He did not run away?
A.205. No Sir.
Q.206. As a Corporal you should not use that kind of language?
A.206. Well I might have use a little strong language Sir it is usual.
Q.207. Did you have anything to drink that night?
A.207. Yes, it was the day after Pay Day.
Q.208. Did you have any conversation with Gill?
A.208. No Sir.
Q.209. Had nothing against him?
A.209. No Sir.
Q.210. Ever had any argument with Hicks or Gilmour?
A.210. No Sir, I did not know them I knew that Gilmour looked after the Radio in the mens' room.
Q.211. Can you suggest why they should tell untruths?
A.211. No Sir.
Q.212. You say you used the expression, "It has nothing to do with you, bugger off",
A.212. Yes Sir.
Q.213. Why would you say that if you did not know who it was?
A.213. Well he was was not in the argument Sir.
Q.214. It might have been an officer?
A.214. Yes Sir had there been sufficient light I might have known who it was Sir.

Address by the Defence.

In reviewing the case, the witnesses for the defence and the Prosecution, I will take the First Charge, "Using violence to his Superior Officer" There is nothing to show that Haynes was the man who took hold of Gill's wrist, Gill says he did and Haynes says he did not, nobody knows. The C.S.M. then asked Noades to go outside and arrest a man, he did not know who. If he had the name if could have gone straight to the man and arrested him, and it is evident that there was a man arrested and put in the Guard Room.

J.A. There is no eveidence to show that he had anything to do with the accused?

Defence. As to the time, Gill says it was at 2225 and at 2240 he went to the Medical Room and McGowan says it was 2230, and if that is the case he would arrive there in the middle of the argument if it had been at that time. As for violence that night, I am sure it was just an argument and Haynes did not know who it was, and in the heat of the argument, he may have said, "Oh just go away or something" but there is no proof that he held anybodys wrist or used insubordinate language, it must have the intention and I am sure he had no intention to be insubordinate, had he known who it was he would never have used them and in that case I think "Insubordinate Language to his Superior Officer" is not proved.

Prosecution has nothing to say.

By concensus of opinion of the Court the Summing up of the Judge Advocate can be dispensed with.

Court is closed for consideration of the Finding.

Court adjourned at 2120 hours until 0915 hours Wednesday 3rd. December 1941.

Court re-opened at 0920 hours 3rd. December 1941.

The accused is brought before the Court.

Pres: Q.215 Have you any evidence to produce as to character and particulars of Service of the accused?

Lieut. S. King, No.1. Cdn. Conv. having been duly sworn states:-

A.215. I produce A.F.B.296 and M.F.M.6 in the matter of Corporal Haynes with the qualifying statement that these records cover the period he has been at No.1. Cdn. Convl. Depot inasmuch as no documents accompany these soldiers to this camp.

Q.216. Is the accused, the person named in this document?
A.216. Yes Sir.
Q.217. Have you compared the contents of the above statement with the regimental books,
A.217. No Sir they are not available.

Has the Defence any questions to ask this witness?
Def; No Sir.

Pres: Have you anything to say in mitigation of sentence?

Def: I would like to say to the Court in the case of Corporal Haynes. All the witnesses you heard brought out the facts as fair as possible to get the truth of the facts which were brought before the Court as clearly as they could remember. There is one thing I would like to impress upon the Court that there is no doubt but that it was very dark, they were not sure of the amount of light. The doors did not open on the same side and the light cannot shine through easily and the doors were blocked and it was not proven that the man that was arrested, and was supposed to be the man who made the statement alleged, and it was not proven that that man was Corporal Haynes, and that fact before this Court must cause doubt. It is also known that the man arrested and who was known around this Camp and released the next morning was supposed to be Corporal Haynes and we know it was not. The accused Corporal Haynes has been a member of the Army since September 1939, he has had no crime since he enlisted in the Army. He is now in the Tank Corps and all men in that have to work hard and if one man is a bad egg then all the work is upset. They are all disciplinarians and must have respect and that is how Corporal Haynes got his stripes, but I must say he should have known better than to make such statements.

J.A. How long has he been a Corporal?
Def: Since June 1941
J.A. When did he enlist?
Def: September 1939.

Had he known who this man was, a Corporal with his training, would have immediately have apologised and returned to his billet, and he has given his story of his own free will.

Court closed for consideration of the sentence.

C.O.S.

Ex "H" Ft. J. Rollins Ltd President

ARMY FORM B 200

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-60979	Corporal	HAYNES R.D.	11th A.T.Bn. Army Tank Brigade.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the numbers of entries in the conduct sheets, the maximum being given for the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For unknown	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for ~~three~~ twenty days ~~in civil custody, and~~ Yorkshire Area 28 days in military custody, making a total of twenty days, ~~of which days were spent in hospital~~.

5. The present age of the accused according to his ~~record of service~~ attestation paper is No records accompanied accused to No.1.Cdn.Convalescent Depot.

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is ditto

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is ditto

8. The accused is entitled to deferred pay or gratuity in respect of ditto service.

9. The accused is entitled to reckon ditto service for the purpose of determining his pension, etc.

10. ~~The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of, or entitled to (state any) military decoration or award).~~

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer held the regimental rank of~~

12. ~~(In the case of an officer.) The accused holds in the army the rank of and in his regiment (or corps or department) the rank of~~

(*18548) W1.30248/802 75,000 12/40 A.& E.W.Ltd. Gp.499

A.H.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-60979 Rank Corporal Name HAYNES R.D. of 11th A.T.Bn. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispositions with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted

N I L
UNKNOWN

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15th day of Nov 1941.

S.King. Lieut-Adjutant.
No.1.Cdn.Convalescent Depot.
R.C.A.M.C. C.A.(O).

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of ..... years, ... Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years, ...

(INSTRUCTION.—If any matter shown in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through except that in the case of Trial by field general court-martial the information may be collected from such sources as are available and the paragraphs completed accordingly.)

No. B-60978 Name HAYNES R.D. Sqn., Battery, or Company 11th A.T.Bn. Corps Date of enlistment G.C. Badges Service or Proficiency Pay M.F.M. 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				No previous record while with this Depot.					

Certified True Copy.

S.King.

S.King. Lieut-Adjutant.
No.1.Cdn.Convalescent Depot.RCAMC.CA(O).

No. 1 Cdn. Convalescent Depot. R.C.A.M.C.
Canadian Army (A.F.)

2 Dec 41.

This is to certify that I have examined B-60979 Cpl. HAYNES R.D. this date and found him fit to undergo trial by Court-Martial.

[illegible] Captain. R.C.A.M.C.
No.1.Cdn.Conv.Depot. R.C.A.M.C. (A.F.)

NO.1, CANADIAN CONVALESCENT DEPOT., R.C.A.M.C. C.A.(A.F.)

I certify that No. B-60979 Corporal Haynes R.D. 11th. A.T.Bn.
is fit to undergo trial by Court-Martial.

Signature of Medical Officer

3 Dec.1941.

LIST OF WITNESSES FOR THE PROSECUTION.

C-4929	Pte. HICKS P.N.	Hastings Prince Edward Regiment.C.A.(O).
M-5143	Spr. GILMOUR M.	13 Fld Coy. R.C.E. C.A.(O).
D-95165	Cpl. NOADES D.A.	No.1.Cdn.Convalescent Depot. RCAMC.CA(O).
D-92513	CSM. McGOWAN H.P.	No.1.Cdn.Convalescent Depot.RCAMC. CA(O).
D-105048	CSM.GILL A.C.	No.1.Cdn.Convalescent Depot. RCAMC.CA(O).
	Capt.I.Sutton.	No.1.Cdn.Convalescent Depot. RCAMC. CA(O).

Statement by the accused in Accordance with R.P.14(B).

I, No.B-60979 Corporal HAYNES R.D. of the 11th Anti Tank Bn. Canadian Army (Overseas), desire to have an Officer appointed by the Convening Officer to represent me at my trial by Court-Martial.

I desire the services of Major.J.O'Brien, 11th Army Tank Bn., if he is available.

Cpl. Haynes R.D.

B-60979 Cpl.Haynes.R.D.
11th A.T.Bn. C.A.(O).

FFF-149

SSM HAINES R.D.

ENTERED IN RECORDS OF C.M. Ex 'A1'
FF5149 A.W. Leslie Major

D 141

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty-Eighth day of February, 19 44.

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn Armd Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~and that it is not practicable to delay the trial for reference to a superior General officer~~.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

~~*I am unable to appoint—~~
~~Three Officers to form the Court~~
~~A Field Officer as President~~
~~for the following reason (specify)~~

PROCEEDINGS REVIEWED
W. Deane-Drake
Copy.
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	A.W. Leslie	14 Cdn Armd Regt

Members.

Rank.	Name.	Regiment.
Capt	W.B. Wells	12 Cdn Armd Regt
Capt	W.R. Crooks	12 Cdn Armd Regt

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (W.C. Murphy) Brig
Commanding 1 Cdn Armd Bde
Convening Officer

SCHEDULE

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-60979 SSM HAYNES, Rodman Delmar 11 Cdn Armd Regt	First Charge Sec 37(1) A.A.	GUILTY	GUILTY - GUILTY ON BOTH CHARGES	Confirmed
	Second Charge Sec 19 A.A.		TO BE REDUCED TO THE RANKS	
	For particulars of above charges see attached Charge Sheet			

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :— "NO"

(Signed) (W.C. Murphy) Brig
Commanding 1 Cdn Armd Bde
Convening Officer (e)

(Signed) (A.W. Leslie) Major
14 Cdn Armd Regt
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 28 ~~February~~ day of February 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

*Omit if not applicable.

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

Signed this 28 day of February 1944

(A.W. Leslie) Major
President of the Court Martial.
(A.W. Leslie) Major
14 Cdn Armd Regt

C. Certificate in case of death sentences.

*See footnote (b) on page 767 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted where penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

Signed this 2 day of March 1944

(W.C. Murphy) Brig
Confirming Officer.
(W.C. Murphy) Brig
Comd, 1 Cdn Armd Bde

Promulgated and extracts taken in the case of B-60979 SSM HAYNES, Rodman Delmar 11 Cdn Armd Regt

(a) (Dated) 4th March 44 (Signed) D. Cameron Lt.-Col. 11 Cdn Armd Regt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] W1-47535-242 [illegible] 1942 A.G.R.(C.R.Ltd.) Gp.698

A Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at in the field
on the 28th day of February 1944 by order of
BRIG. W.C. MURPHY
Commanding 1 Cdn Armd Bde
dated the 28th day of February 1944
President.
MAJOR A.W. LESLIE
14 CDN ARMD REGT
Members.
CAPT W.S. WADDS
12 CDN ARMD REGT
CAPT W.R. CROOKS
12 CDN ARMD REGT

, ~~Judge Advocate~~.

Trial of* B60979 S.S.M. HAYNES, RODMAN DELMAR
11 CDN ARMD REGT

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ is not available to serve owing to

, ~~waiting member takes his place as a member of the Court~~.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† CAPT J.I. NICOL 11 CDN ARMD REGT

~~Counsel~~ or defending officer† CAPT W.D.G. STANLEY 12 CDN ARMD REGT

At 1430 o'clock the Trial commences.

The order convening the Court is read, and is marked EX 'A1' signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* NO SIR

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

20057 W1 W4152/227 10,000 pds. 12/43 K. & H., Ltd. G427/31. Forms 19/28.

B

The President, members ~~and judge-advocate~~ are duly sworn.

N/A ~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Question to the accused.

Answer.

GUILTY

Are you guilty or not guilty of the second charge against you, which you have heard read?

Question.

Answer.

GUILTY

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~

Question.

N/A

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~

Question.

N/A

Answer.

The accused having pleaded Guilty to BOTH charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

EX "B2"
Mayor

CHARGE SHEET

The accused, No. B60979 S.S.M. Rodman Delmar HAYNES, the 11th Canadian Armoured Regiment (Ont. R.), a soldier of the Canadian Army Overseas, is charged with when on active service:

~~1st CHARGE~~
~~AA 39 (1)~~

Striking a soldier,

in that he,

At LANCIANO on 15 Feb 44, at approximately 1900 hrs, did strike 7689937 Cpl BRADBURY, E., a member of C.M. Police, in the execution of his duty.

~~2nd CHARGE~~
~~AA 19~~

Drunkenness,

in that he,

At LANCIANO on 15 Feb 44, at approximately 1900 hrs, was drunk.

(R.L. Purves) Lt-Col
Comd, 11 Cdn Armd Regt (Ont. R.)

28 Feb 44
Field/Italy

To be tried by Field General Court-Martial.

(W.C. Murphy) Brigadier
Comd, 1 Cdn Armd Bde

28 Feb 44

EX "A2

MEDICAL CERTIFICATE

This is to certfy that I have this date examined B60979 S.S.M. Haynes R.D., 11th Cdn Armd Regt., and found him fit to undergo trial by Court Martial.

.....Capt RCAMC
R.M.O., 11 Cdn Armd Regtl

Field,
28 Feb 44.

CC

Proceedings on Plea of Guilty.

* To be struck out in case on plea of "Not Guilty" has been proceeded with.

~~*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again:]~~

The accused B60979 S.S.M. HAYNES, RODMAN DELMAR is found guilty of (1) ~~Striking~~ a soldier.
(2) Drunkenness

†The summary (or abstract) of evidence is read, marked 'B3' signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment ~~says~~ —

~~[made in a written statement, which is read]~~ marked EX 'E3', signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

"YES SIR" to call a witness

Answer.

Evidence as to character.

The accused calls witness, MAJOR H.A. SMITH, 11 Cdn Armd Regt

Major H.A. Smith's statement is marked, [NOTES 'E1'], and is attached to the proceedings.

E

Finding.*

**To be struck out except in cases where trial has taken place on a plea of "Not Guilty."*

The Court is closed for the consideration of the finding.

The Court find that the accused

N/A

Proceedings on Conviction *before Sentence.*

**When the Court is already open this sentence will be struck out.*

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

CAPT J.I. NICOL, 11 CDN ARMD REGT is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* YES SIR

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked EX D5 / D4 signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* YES SIR

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* YES SIR

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. YES SIR

~~Cross-examined by the accused.~~

[Instruction.—If by reason of the nature of the service of the accused in a department, corps, or situation, the finding of the Court renders him liable to any exceptional punishment on addition to that to be awarded by the Court the president must call the attention of the Court to the fact, and the Court must inquire into the nature and severity of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* NO SIR

The Court is closed for the consideration of the sentence.

F

Sentence.

Sentence

The Court sentence the accused

TO BE REDUCED TO THE RANKS.

NOTES E 3

A.H. Leslie Major President

STATEMENT BY ACCUSED

On the afternoon and evening 15 Feb 44 W.O. + Sgts of the 11 Coln armd Regt were issued with an amount of Wiskey to which we drank considerable in the late afternoon and evening. I was in a pretty drunken condition due to this when the Military Police were investigating a complaint at our Quarters and more or less was in a stupor as to what occured. I holds nothing against the MPs and words or actions were due to liquor consumed. If sober I can truthfully say this would not have happened.

I am sorry about the whole business.

NOTES E1.

Major H.A. Smith having been duly sworn states:-

I am Major H.A. Smith 11 Cdn Armd Regt and O.C. 'C' Sqn. During the 4 years I have been with the unit I have known the accused quite familiarly. The last six months he has been SSM of 'C' Sqn during all the time he has worked for me he carried out his duties in a very efficient manner. He has set a good example to all under him and at no time has he been any source of trouble.

During periods when we were in action he has again set a very high standard.

During the time of his service in the unit he has always been held in very high esteem by everyone.

EXHIBIT 'A'

I No 6/60979 S.S.M HAYNES R.A.M 7th Cav. ARM. Rgt. having been duly cautioned by 16708737 Cpl BENBURY SPECIAL INVESTIGATION BRANCH R.M. Police that I am not obliged to say anything unless I wish to do so but anything I do say will be taken down in writing and may be given in evidence voluntarily state :-

On 15/2/44 at about 1900 hrs I was in my room with Pte Ohio 3658. We had just had our meal of wheaty and we were having relaxation.

At about 20 hrs a Cpl of the Military Police came in and told Pte O. I understood I was wanted also and went to the room of the Sgt.

I was pretty well drunk at the time and argued with a few of the Police. The Cpl told me to desist or afraid he would. I thought by now working consideration a bit a few cups of tea. I looked out at the Cpl but I don't know if it hit him or not. I was feeling pretty mad at the time. One of my mates got hold of me & the Military Police went away.

The above statement has been read over by me. It is true and correct about I desire voluntarily

S.S.M Haynes

LIST OF WITNESSES

FOR THE PROSECUTION

7689937	Cpl. Bradbury E.	SIB, CMP, Eighth Army
6015121	L/Cpl Tyler W.	CM Police, 8 Ind Div Provost Unit.
5621205	L/Cpl. Marks R.	CM Police, 8 Ind Div Provost

FOR THE DEFENCE

NIL

LIST OF EXHIBITS

Exhibit "A"	Statement by B60979 SSM Haynes D.H.

EX "B 3"

SUMMARY OF EVIDENCE

in the case of

B60979 S.S.M. Rodman, Delmar, HAYNES, The 11 Canadian Armoured Regt.

At the direction of the Commanding Officer the evidence is taken on oath.

1ST WITNESS FOR THE PROSECUTION: 7689937 Cpl. BRADBURY, Eric, Special Investigation Branch C.M. Police, Eighth Army, having been duly sworn states:-

"At LANCIANO, about 1900 hrs 15 Feb 44, a complaint was received by an Italian civilian. In answer to this complaint, I accompanied the civilian back to the house in which he lived. This civilian pointed out an upstairs room in which four or five Canadian soldiers were billited. I went into the room and spoke to one Sgt. and informed him who I was and the nature of the complaint. I asked the Sgt. if I could see an Officer, but was told that there were none residing in the house. I then asked if I could speak to the Senior N.C.O. Then a soldier, who was dressed in a pullover, not showing any badge of rank, shouted, "We are all bloody Sgts. in this joint. Get the hell out of here, I will shoot the lot of you bastards." I didn't answer but continued to question the Sgt. This soldier who was dressed in the pullover then began to argue with and swear at L/Cpl. Tyler. I instructed L/Cpl Tyler not to speak or answer him. The soldier then became excited and walked over to me and shouted, "I have told you once to get the hell out of here." He struck a blow at my face which I partly warded with my hand. It struck me on the mouth however, cutting my lip and making it bleed. At this point I thought it unwise to take any further action in the matter as it was obvious some of the Sgts were drinking whiskey and were in an aggressive mood. The soldier dressed in the pullover attempted again to come to blows with me. At this stage the Sgt I had previously spoken to and who seemed quite sober got hold of the soldier in the pullover and restrained him. I instructed the L/Cpl to leave the house and followed myself." Upon my return I immediately reported the matter to Coy S.S.M. Glynn, SIB, CMP. I recognize the accused as the soldier who was wearing the pullover." Attached is a copy of statement made by the accused.

The accused declines to cross-examine the witness.

(7689937) E. BRADBURY, Cpl.
SIB, CMP, Eighth Army

E Bradbury Cpl SIB CMP

2ND WITNESS FOR THE PROSECUTION: 6015121 L/Cpl. Tyler, W., ~~Special Investigation Branch~~, C.M. Police, Eighth Army, having been duly sworn states:

"At LANCIANO, on the 15 Feb 44, at approximately 1610 hrs I accompanied L/Cpl Marks to the house in question to investigate a complaint made by a civilian. On arriving we went into the room occupied by the civilians and found that no damage had been incurred to the room or persons there. We then went upstairs to the room the soldiers occupied as a billet and found four men present drinking. I spoke to one of them and told him what the civilian had reported and warned him not to let any more disturbance occur that night. He promised to do so. I then returned and reported the matter to the SIB. At approximately 1930 hours, I accompanied Cpl. Bradbury and L/Cpl Marks to the same house. Cpl. Bradbury interrogated the civilian and then accompanied by L/Cpl Marks and myself, he proceeded upstairs to the room occupied as a billet.

2ND WITNESS FOR THE PROSECUTION: (CONTINUED)

The four men were still present. Cpl. Bradbury asked if there was an officer at hand. One of the soldiers replied no. Cpl. Bradbury then asked who was the Senior man present. The soldier replied we are all bloody Sgts here. One man present, wearing a pullover shouted, " Get the hell out of here or I'll shoot the bloody lot of you bastards." One of the other soldiers present in the room restrained him and asked Cpl. Bradbury what he wanted, stating that he was willing to collaborate with him. Cpl. Bradbury then began to question him. The soldier with the pullover on, then came over to me and began to argue. He said, "What the hell do you want, get out of here." I replied that the Italians below had sent in a word of complaint. He replied, "What word", and repeated this two or three times, and then he went on and said, "The Royal Corps of Military Police do not like us Canadian Armoured Corps." He argued a bit more. He had been drinking and his conversation did not make sense. I then referred him to Cpl. Bradbury who was in charge of the case. He then turned around to Cpl. Bradbury and spoke but I did not hear what he said. Then he struck Cpl. Bradbury on the mouth. Cpl. Bradbury ordered L/Cpl Marks and myself downstairs. I recognize the accused as the soldier wearing the pullover.

The accused elects to cross-examine the witness as follows:

Ques: "What colour was the pullover?"
Ans: "Grey"

W. Tyler Hqtr C.M. Police
(6015121 Tyler W., L/Cpl.

3RD WITNESS FOR THE PROSECUTION:

5621205 L/Cpl Marks, R., ~~Special Investigation Branch~~, C.M. Police, Eighth Army, having been duly sworn states:-

"At LANCIANO, 15 Feb 44, at approximately 1630 hours, I was reporting to the Orderly Corporal for town patrol when I was told to proceed with L/Cpl Tyler to a house where there had been reported some trouble. Arriving there we found everything in order and then reported back to the SIB. We were then ordered to proceed with Cpl. Bradbury to the house were trouble had been reported. We went upstairs and found a room full of Canadians. Cpl. Bradbury asked the Sgt. if he could see an officer. He was informed that there were no officers living there. He then asked for the Senior N.C.O. and a soldier wearing a pullover, whose rank could not be identified, said that they were all Sgts. He then said, "Get out or I'LL shoot the lot of you bastards". While Cpl. Bradbury with the aid of the Sgt., was getting things straightened out, the soldier wearing the pullover was using obscene language to L/Cpl Tyler. Cpl. Bradbury then told L/Cpl Tyler to back out of the door, when he was struck on the mouth, by a blow from the soldier wearing the pullover. We then came out and reported back to the SIB H.Q. I recognize the accused as the soldier in the pullover."

The accused elects to cross-examine the witness as follows:

Ques: "What colour was the pullover?"
Ans: "It was an ordinary army pullover."

(5621205) Marks, R., L/Cpl.
[redacted], CM Police, Eighth Army.
R. Marks Sgt C. M. Police

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused declined to make a statement.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary, consisting of Three pages, was taken down by me in the presence of the accused and that Rules of Procedure 4(c),(d),(e) and (f) have been complied with.

(W.G. Harrod) Lieut.
The 11 Cdn Armd Regt. (Ont. R.)

FIELD/ITALY.
19 Feb 44.

No. 3.60977 Name HAYNES. R.C. Sqn., Battery, or Company (COPY) Corps C.A.C. Date of enlistment 21 Sept. 39 G.C. Badges Service or Proficiency Pay EX PY Signature O.C. Company, etc. [illegible] Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Last sheet discharged upon attaining rank of Sgt. (W.O. II) eff. 15 May 42									

I hereby certify that this is a true copy from the regimental books in my custody.

Private No. Pucket, Capt. & Adjt.

(P.T.O.)

EX B3

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
Cat. B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B60979	S.S.M. (WO II)	HAYNES R.D.	11 C.A.R.

1. The following is a fair and true summary of the entries in the ~~Regimental and Squadron, Battery~~ Conduct sheets ~~of the accused, exclusive of convictions by a Court-Martial or a Civil Court,~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	times	times
For	NIL times	times
For	times	times
For	times	times

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 75 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for N/A beginning on the N/A day of N/A

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and nil days in military custody, making a total of nil days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 41

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is N/A 21 Sep 39

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward, military NIL military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Sarjeant

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated ..... and in his regiment (or corps), the rank of dated N/A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

15 May 43 Date of promotion.

In the rank of L/Cpl for one month ~~XXX~~

In the rank of Cpl. for one month ~~XXXX~~

In the rank of Sgt for 1 month ~~XXXX~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~Air Force~~

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank ..... Unit ..... Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26th day of February 1944 Duncan McPhail Capt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked EX "B5" signed by the president, and annexed to the proceedings.

COUNTER NUMBER 165021

HOUR 2030

OPERATOR'S INITIALS GMS

RELIEVING OPERATOR

Pte Haynes Jack.

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here.

Haynes + Essex

P1 1/1

F.G.C.M.
A1966
Pte Lund 18 Names
A/T Regt No
President

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this eighteenth day of NOVEMBER, 1941.

Whereas it appears to me, the undersigned, an officer in Command of FOURTH CANADIAN INFANTRY BRIGADE, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

~~*[I am unable to appoint:—~~
~~(1.—Three Officers to form the Court.)~~
~~*(2.—A Field Officer as President.)~~
~~for the following reasons, namely:—]~~

In my opinion military exigencies; namely, the dispersion of units and difficulties of communication and other difficulties render it inexpedient to observe the provisions of those rules inconsistent with Appx.A. to D.R.O.772 on the trial of the person named in the annexed schedule.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	H.F.Lazier	R.H.L.I.

Members.

Rank.	Name.	Regiment.
Capt.	C.P. Wilkinson	HQ 4 CDN INF BDE
Lieut.	A.J. O'Donohoe	R.H.L.I.

Waiting Member - One subaltern to be detailed by the O.C., R. Regt. C.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (C.B. TOPP) Brigadier,
Commanding 4th Canadian Infantry Brigade
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A.21966 Private Frederick HAYNES ESSEX SCOTTISH REGIMENT Canadian Army (Active).	FIRST CHARGE A.A. Sec 15(1) Absenting himself without leave. SECOND CHARGE A.A. SEC 24(2) Losing by neglect his equipment and regimental necessities. (SEE CHARGE SHEET ATTACHED)	Guilty Not guilty	Guilty Guilty to the extent of £4 11s 7½d A.H.F.	158 days detention and to undergo stoppages to the extent of three pounds eleven shillings seven pence and one half penny (£3. 11. 7½) A.F. Hughes Maj President I vary the sentence so that it shall be as follows: 90 days detention and to be placed under stoppages for three pounds, eleven shillings and seven pence half penny (£3-11-7½) and confirm the finding and the sentence as so varied. 28 Nov. 41 C.W.L. TOPP Brig. 4 Cdn Inf Bde

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" NO
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) C.W.L. TOPP (Signed) A.F. Hughes Maj R.A.F.
(C.W.L. TOPP) Brigadier, Commanding 4th Canadian Infantry Brigade.
Convening Officer (e) *President.*

(*d*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

29

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the twentieth day of November 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The interpreter~~ A.H.F.
4. ~~The officers under instruction~~ A.H.F.

* Omit if not applicable.

were duly sworn.

Signed this 28th day of November 1941.

A.F. Hughes Maj
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 102 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~ C.W.L.T.

Signed this 28th day of Nov. 1941.

C.W.L. TOPP Brig.
Confirming Officer.

Promulgated and extracts taken in the case of A21966 PTE. HAYNES, F.

(*a*) (Dated) 2 DEC. 41 (Signed) Norman Yates LIEUT. A/ADJUTANT, ESSEX SCOT.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W. 4792/1937 20 M. 3/41 K.,L./326952 Gp. 698.3

P2 3

MEDICAL OFFICER'S REPORT

FGCM A21966
Pte Fred B Haynes
A/T Lafferty, Maj
President

I certify that No. A21966 Pte. Haynes F.
of Essex Scottish Reg. is in a good state of health,
and is fit to undergo Trial by Court Martial.

R.S. Hanger Lt
Medical Officer
Capt. RCAMC

Station Field.

Date Nov 20/41.

M.F.B. 246
WT A 8570

COPY A.21966 Pte. Frederick Haynes, Essex Scottish 2.

F.G.C.M.

President - Major H.F. Lazier, R.H.L.I.
Members - Capt.C.P.Wilkinson, 4 CIB.
Lieut.A.J. O'Donohoe, RHLI.
Prosecutor- Lieut.J.R.Turnbull, Essex Scot.
Defending Officer - Lieut. McCorkle, Essex Scot.

Court duly Sworn
R.P.35(3) complied with
R.P.40 complied with

List of Exhibits on Second Charge

P.1 Convening Order
P.2 Medical Officer's Certificate.
P.3. Charge Sheet
P.4 A.F.B.115.

3 pages of evidence initialled "H.F.L."

List of Exhibits on First Charge

P.5 Abstract of Evidence
P.6 Charge Sheet
P.7 A.F.B.296
P.8 M.F.M.6

No statement made in mitigation.

(sgd) H.F. Lazier, Major,
R.H.L.I.
President.

(392)

Lt. Col. Mr. Broughall

CHARGE SHEET

The accused No. A21966 Private Frederick Haynes, 1st Bn., Essex Scottish Regiment, a soldier of the Canadian Army, Overseas, is charged with, while on active service:-

FIRST CHARGE
Section 15(1) Army Act

Absenting himself without leave,
in that he,
at Camberley, absented himself without leave from 2230 hrs on the 26th day of September, 1941, until surrendering himself to Cdn. Prov. Corps at London at 2010 hrs on the 27th day of October, 1941.

SECOND CHARGE
Section 24(2) Army Act

Losing by neglect his equipment and regimental necessaries,
in that he,
at Camberley, on the 5th day of October 1941, was deficient:

		Value
Anklets, web, pairs	1	£ 0. 4. 4d.
Badges, arm, worsted, CANADA, pr.	1	0. 0. 5½.
Badges, cap	1	0. 0. 6 .
Badges, shoulder, worsted, E.S.pr.	1	0. 0. 7½.
Badges, shoulder, metal, E.S.pr.	1	0. 0. 7½.
Battle Dress, Blouses, serge		2. 5. 0 .
~~Battle Dress, Trousers~~		1. 0. 6 .
Blackening, Tins	1	0. 0. 6 .
Bonnet, Tam O' Shanter	1	0. 2. 11 .
Boots, ankle, prs.	2	2. 5. 0..
Brasses, button	1	0. 1. 2 .
Brushes, hair	1	0. 2. 6 .
Brushes, boot polishing	1	0. 2. 1 .
Brushes, boot blackening	1	0. 0. 8½.
Brushes, shaving	1	0. 1. 2 .
Brushes, tooth	1	0. 0. 5 .
Comb, hair	1	0. 0. 2 .
Discs, identity with cord sets	1	0. 0. 6 .
Drawers, cotton, shorts, prs.	1	0. 4. 4 .
Dressing, first field	1	0. 1. 1 .
Forks	1	0. 1. 11 .
Gloves, woollen, khaki, prs	1	0. 0. 4½.
Holdalls	1	0. 0. 9 .
Jackets, sweater	1	0. 8. 6 .
Knife, clasp and lanyard	1	0. 2. 10 .
Puttees, S.D., prs.	1	0. 7. 0..
Razors	1	0. 0. 5½.
Shirts, flannel, khaki	1	0. 10. 0 .
Shirts, under, cotton	1	0. 1. 11 .
Socks, prs.	2	0. 3. 10 .
Shirts, cotton, khaki, with ss	1	0. 4. ½.
Towels, hand	1	0. 1. 11 .
Bags, ration	1	0. 0. 2½.
Helmets, steel	1	0. 9. 6 .
Shirts, gym	2	0. 8. 0 .
Sheets, ground	1	0. 10. 0 .
Respirator, A/G, complete	1	0. 19. ½.
Protectors, ear	2	0. 0. 5 .
Eyeshields, A/G	6	0. 2. 3 .
Ointment, A/G	2	0. 1. 6 .
Detectors, Sleeve	2	0. 0. 8 .
		£11. 9s. 8½d.

Trial of A2I966 Pte.HAYNES,F.,Essex Scottish.

Held at RYE on 20 Nov I94I

Court:Maj.H.F.Lazier,R.H.L.I.,President.

Capt.C.P.Wilkinson,H.Q.4 C.I.B.

Lieut.A.J.O'Donohoe,R.H.L.I., Members.

Prosecutor:Lieut. J.R.Turnbull,Essex Scottish.

Defending Officer:Lieut.McCorkle,Essex Scottish.

The accused is arraigned and pleads GUILTY tomthe first charge.
R.P.35(B) is complied with.

The accused pleads NOT GUILTY to the second charge.
R.P.39(A) is complied with; the accused answers NO.

Evidence is then heard on the second charge.
The is closed for finding. Finding duly recorded.

The Court is re_opened.
The abstract of evidence is read and A.F.B.~~296~~/252.
The Prosecutor files AFB 296 and certified copy of MFM 6.
No statement in mitigation of made and no witnesses as to character called.
The Court is closed for consideration of sentence.

Certified that the foregoing, three pages of evidence all initialled "H.F.L.", and the exhibits attached form the true record of this trial.
Dated this 20th day of November,I94I.

H. F. Lazier, Major
President

(1) 11

H.G.C.M. Pte Haynes.
Charge 1st

Def. Off.

On return of the accused record of kit shown to be lost has been returned Pte Haynes shall sign a list of certain articles in his possession.

1st witness: A/Sgt Major C.Q.M.S. Hurnard
J. C.Q.M.S. of A Coy

Q. Regarding proof of kits articles to you know anything about them?

A No.

Q Were they issued into your stores?

A No.

Q Regarding battles were one each have been marked off has they been issued in

A Yes.

Q So they were not issued in

A No.

Q Pte Haynes Has Pte Haynes had two suits Gym issued to him

A. His Acc shows that he has.

Cross-examined by Defence

Q When did you receive Pte Haynes Acc sheet first

A May 1941

Q. When was 1st issue of Gym suits made?

A April 15/41

Q. When was 2nd issue

A While we were in Camberley

Q Is it not a fact that Pte on Coaching duty were not issued second suit of Gym clothing

12 A: Yes. (4)
Q. Was he cooking for your Coy
A. No he came to us from the Kitchen
Q. When did
Stat of Pte Haynes
I came to A Coy in March 1941
Q. to Pte H When did you cook for A Coy
A. Only real cooking I ever did was for D Coy

Q. to C.M.P. Nominal
Your boots inspected by medical
You were in Camberley
A. No general inspection But Pte Haynes might have his condemned by no. I have no record of this.
Q. When Haynes joined Your Coy did you inspect his kit.
A Yes it was complete.
Examined by Defence
Q. Were Haynes boots received & issued for his boots if you have received them
A No
Exhibits for the Defence Sent J K Hunter Jan Platoon Officer in which Haynes is
Q. Have you had an inspection by no. recently
A. Yes. At that time Pte Haynes Kit Appeared the no. and Coy

his boots condemned the NCO gave him a slip ~~[illegible]~~ to take to C.Q.M.S. Stores. I do not know where he took it or got

Q. In your opinion is it possible for boots to be turned in to stores instead of

them

A. Yes

Q When you made your last Kit Inspection did you find any pullees in the platoon

A I cannot say.

Q Do you know how many of your men actually have pullees?

A No

Defence calls no evidence

Q What did you do with slip for Boots

A Gave it to C.Q.M.S. Munro

Q Did you get any receipt in exchange

A No

Q Did you give the Orderly N.C.O. the boots

A Yes.

A.H.L.

P5 78
F.G.C.M. A21966
Pte Fred Haynes
4 Pioneer Coy

ABSTRACT OF EVIDENCE

In the case of:-
A21966 Private Frederick Haynes.

Prepared by Lieut. J.R. Turnbull, Essex Scottish Regt., Canadian Army, Overseas.

FIRST WITNESS A21124 L/Cpl. Woodiwiss, J.E., Essex Scottish Regt., states:

"On the night of 26th Sep. 41, I was duty N.C.O. in No. 8 Pln billet at Camberley. Pte. Haynes, F. did not report in at 2230 hrs., which he was required to do. I checked the billets and at 0300 hrs. 27 Sep. 41 reported Pte. Haynes absent to the "A" Coy. Orderly Room."

SECOND WITNESS Lieut. J. K. Hunter, Essex Scottish Regt., states:

"On the morning of 27th Sep. 41, at Camberley, L/Cpl. Woodiwiss reported to me the absence without leave of A21966 Pte. Haynes. On 5th Oct. 41, on returning from a scheme I had his equipment sent to Coy. Stores for safe keeping. He has not been with my platoon since."

THIRD WITNESS A21130 C.Q.M.S. Munroe, F., of "A" Coy., Essex Scottish Regt., states:

"On the 5th of October, 1941, I checked the equipment of A21966 Pte. Haynes, F., who was absent without leave and found the deficiencies set out as follows:

		£	s.	d.
Anklets, web, prs. 1		0.	4.	4.
Badges, arm, worsted, CANADA, prs. 1		0.	0.	5½.
Badges, cap	1	0.	0.	6 .
Badges, shoulder, worsted, E.S. pr.1		0.	0.	7½.
Badges, shoulder, metal, E.S. prs. 1		0.	0.	7½.
Battle Dress, blouses, serge		2.	5.	0 .
Battle Dress, trousers, serge		1.	0.	6 .
Blackening, tins	1	0.	0.	6 .
Bonnet, Tam O' Shanter	1	0.	2.	11 .
Boots, ankle, prs.	2	2.	5.	0 .
Brasses, button	1	0.	1.	2 .
Brushes, hair	1	0.	2.	6 .
Brushes, boot blackening	1	0.	0.	8½.
Brushes, boot polishing	1	0.	2.	1 .
Brushes, shaving	1	0.	1.	2 .
Brushes, tooth	1	0.	0.	5 .
Comb, hair	1	0.	0.	2 .
Discs, Identity, with cord sets	1	0.	0.	6 .
Drawers, cotton, shorts, prs.	1	0.	4.	4 .
Dressing, first field	1	0.	1.	1 .
Forks	1	0.	1.	11 .
Gloves, woollen, khaki, prs.	1	0.	0.	4½.
Holdalls	1	0.	0.	9 .
Jackets, sweater	1	0.	8.	6 .
Knife, clasp and lanyard	1	0.	2.	10 .
Puttees, S.D. prs.	1	0.	7.	0 .
Razors	1	0.	0.	5½.
Shirts, flannel, khaki	1	0.	10.	0 .
Shirts, under, cotton	1	0.	1.	11 .
Socks, prs.	2	0.	3.	10 .

THIRD WITNESS
(Continued)

Shirts, cotton, khaki, with ss	1	£ 0.	4.	½.
Towels, hand	1		0. 1.	11 .
Bags, ration	1		0. 0.	2½.
Helmets, steel	1		0. 9.	6 .
Suits, gym	2		0. 8.	0 .
Sheets, ground	1		0. 10.	0 .
Respirator, A/G, complete	1		0. 19.	½.
Protectors, ear	2		0. 0.	5 .
Eyeshields, A/G	6		0. 2.	3 .
Ointment, A/G	2		0. 1.	6 .
Detectors, sleeve	2		0. 0.	8 .
		£ 11.	9.	8½.

The above statements are certified correct statements of the witnesses to me.

(signed) ..J.R.Trowbridge..Lieut.,
pa K-in-C Detg Camp

Army Form B 115. 19

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at RYE, Sussex on the 30 day of October, 1941, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. A21966 Pte. Haynes, F. of "A" Coy., Essex Scot., C.A. (O/S)

DECLARATION.

The Court declare A21966 Pte. Haynes, F., Essex Scot. CA(O/S) illegally absented himself without leave at Camberley at 2230hrs the 26th day of September 1941, that he is still so absent, and that he was deficient, and that he is still deficient of the following articles. (to the value of £11.9.8½)

	£	s.	d.
Anklets, web, prs 1		4	4
Badges, arm, worsted, Cameo pr			5½
Badges, cap			6
Badges, shoulder, worsted, 1 pr			7½
Badges, shoulder, metal, RS, 1 pr			7½
Battledress, blouses, serge	2	5	0
Battledress, trousers, serge	1	0	6
Blackening, tins, 1			6
Bonnet, tam-O'shanter, 1		2	11
Boots, ankle, prs 2	2	5	0
Brasses, button, 1		1	2
Brushes, hair 1		2	6
Brushes, boot blacking 1			8½
Brushes, boot, polishing 1		2	1
Brushes, shaving 1		1	2
Brushes, tooth, 1			5
Comb, hair 1			2
Discs, identity, with cord sets, 1			6

Returned

P1

F.G.C.M

A21966 Pte Haynes F

(CONTINUED OVERLEAF)

Names of President and Members

J.D. Green, Major PRESIDENT

B.J.Mothersill, Capt.) MEMBERS
J.T.Anderson, Lieut.)

Signature of Commanding Officer (sgd)(A. S. Pearson)Lt.-Col.

CERTIFIED TRUE COPY.

LIEUT. & A/ADJT.

Signature of Officer having custody of the Original Record.

(42521) Wt.34514/3823 75,000 10/39 A.& E.W.Ltd. Gp.498 Forms/B115/54
(51443) Wt.41720/760 225,000 1/40 " "

THIRD WITNESS
(Continued)

Shirts, cotton, khaki, with ss	1	£ 0.	4.	½.
Towels, hand	1	0.	1.	11.
Bags, ration	1	0.	0.	2½.
Helmets, steel	1	0.	9.	6.
Suits, gym	2	0.	8.	0.
Sheets, ground	1	0.	10.	0.
Respirator, A/G, complete	1	0.	19.	½.
Protectors, ear	2	0.	0.	5.
Eyeshields, A/G	6	0.	2.	3.
Ointment, A/G	2	0.	1.	6.
Detectors, sleeve	2	0.	0.	8.
		£ 11.	9.	8½.

The above statements are certified correct statements of the witnesses to me.

(signed) ..J. R. Trowbridge. Lieut.
pro Tem Staff Lieut.

Proceeding to Lapthorn 15th May following Mg Fleury
WD vehicle crossing x rd in village at 20 to 25 m/s. H
Another 30 cwt truck from left, Fleury to rt Centre of road
Possibly convoy.

Cross examined
In Stn wagon - Behind Fleury 30". Pilot came right up behind F
Mg F stopped dead at corner. Then a 30 cwt passed in front F started
up again, then a 2nd 30 cwt appeared. F's truck right on main
road, Could see up other rd 30 or 40. Then F started a hairpin
turn but changed and went straight across

Army Form B 115. 19

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at RYE, Sussex on the 30 day of October, 1941, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. A21966 Pte. Haynes, F. of "A" Coy., Essex Scot., C.A. (O/S)

DECLARATION.

The Court declare A21966 Pte. Haynes, F., Essex Scot. CA(O/S) illegally absented himself without leave at Camberley at 2230hrs the 26th day of September 1941, that he is still so absent, and that he was deficient, and that he is still deficient of the following articles. (to the value of £11.9.8½)

	£	s.	d.	
Anklets, web, prs 1			5½	✓ Returned
Badges, arm, worsted, Canadapr			6	
Badges, cap			7½	
Badges, shoulder, worsted, 1 pr			7½	
Badges, shoulder, metal, RD, 1 pr			6	
Battledress, blouses, serge	2	5	0	
Battledress, trousers, serge	1	9	6	✓
Blackening, tins, 1			6	✓
Bonnet, tam-O'Shanter, 1		2	11	✓
Boots, ankle, prs 2	2	5	0	✓
Brasses, button, 1		1	2	
Brushes, hair 1		2	6	
Brushes, boot blacking 1			8½	
Brushes, boot, polishing 1		2	1	✓
Brushes, shaving 1		1	2	✓
Brushes, tooth, 1			5	✓
Comb, hair 1			2	✓
Discs, identity, with cord sets 1			6	✓

(CONTINUED OVERLEAF)

Names of President and Members

J.D. Green, Major PRESIDENT

B.J.Mothersill, Capt.) MEMBERS
J.T.Anderson, Lieut.)

Signature of Commanding Officer (sgd)(A. S. Pearson)Lt.-Col.

CERTIFIED TRUE COPY.

LIEUT. & A/ADJT.

Signature of Officer having custody of the Original Record.

(15243) WL5431/3822 75,000 10/39 A.& E.W.Ltd. Gp.698 Forms/B115/56
(15243) WL4752/760 250,000 1/40

CONT'D

	£.	S.	d.
Drawers, cotton, shorts, prs 1		4	4
Dressing, first field 1		1	1
Forks , 1			4½
Gloves, woolen, khaki, prs 1		1	11
Holdalls, 1			9
Jackets, sweater, 1		8	6
Knife, clasp and lanyard, 1		2	10
Puttees, S.D. prs, 1		7	0
Razors, 1			5½
Shirts, flannel, khaki, 1		10	0
Shirts, under, cotton, 1		1	11
Socks, prs 2		3	10
Shirts, cotton, khaki, sh. sleeves, 1		4	0½
Towels, hand, 1		1	11
Bags, ration, 1			2½
Helmets, steel, 1		9	6
Suits, gym, 2		8	0
Sheets, ground, 1		10	0
Respirator, A.G. complete, 1		19	0½
Protectors, ear, 2			5
Eyeshields, A.G. 6		2	3
Ointment, A.G., 2		1	6
Detectors, sleeve, ₩ 2,			8
	£11.	9 .	8½

CHARGE 794 "C" (16) 21

Army Form B 252
(See King's Regulations)

1st Battalion, Essex Scottish Regiment

Battery / Squadron / Troop or Company

CHARGE against No. A-21966 Rank Pte.

Name Haynes Frederick

Place London Date of Offence 27 Oct. 41.

OFFENCE W.O.A.S. was A.W.L. from 1113 hrs, 26 Sept 41 until surrendering himself to the Cdn. Prov. C. at the Beaver Club at about 2010 hrs. on the 27 Oct. 41.

CANADIAN MILITARY POLICE

RETURNED TO UNIT 1600 hrs, 28 OCT.

Names of Witnesses:

L/Cpl Hun Canadian Provost Corps

L/Cpl. Fleet Canadian Provost Corps

Signature of O.C. Battery, Squadron, Troop or Company: P6 A21966

Punishment Awarded: F.G.C.M. Pte Fwd 18 Haynes

By whom Awarded:

Adjutant.

P.T.O.

HAYNES S.O.S. AS DESERTER EFFECTIVE 20 OCT.

Statement of **EVIDENCE** in the case of
A-21966 Pte. Haynes F.
1st Bn., Essex Scottish.

Sir:
At London at about 2010 hrs. on the 27 Oct.41 in company with L/Cpl. Fleet I was on duty at the Beaver Club when the a/m soldier surrender-ed to me as being an absentee. I conducted him to No.6 Cdn. Prov. Coy. H.Q. where I handed him over to the M.C.O.i/c cells to be detained.

London
27 Oct.41. F. F. Ham L/Cpl.
B-74091 (H.F.Ham)

Sir:
I have read over and corroborate the above statement.

London
27 Oct.41. C. F. Fleet L/Cpl.
B-73485 (C.Fleet)

REMARKS

The accused was duly cautioned
Remanded for abstract of evidence. 30 Oct 41 11-

P7

23

F.G.C.M. A21966
Pte Fred[k] Haynes
H. Phillips Maj
President

(Substitute for A.F.B. 296)
or M.F.B. 355

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No. A21966 Name Pte. HAYNES, Frederick UNIT ESSEX SCOTTISH REGT.

AGE 28 MARRIED OR SINGLE S No. OF DEPENDENTS None

DATE OF ATTESTATION 13 Dec. 1939.

No. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL Nil MILITARY 24 HOSPITAL Nil TOTAL 24.

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY

N I L.

A CERTIFIED TRUE COPY OF M.F.M. 6 MUST ACCOMPANY THIS FORM

(Officer i/c Records)

[illegible] Unit.

a/a dft - 2 sec Lieut.

Dated at RYE, SUSSEX.

This 20th day of Nov. 1941.

(Tod be dated and signed as of date of trial)

Prosecutor - Lieut J. R. Turnbull.

M.F.M. 6
(A.F.B. 122)

No A21966 Name HAYNES, F. Sqn., Battery, or Company "A" Corps ESSEX SCOTTISH Date of enlistment 13/12/39 G.C. Badges

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Signature O.C. Company, etc. | Sheet No. | Service or Proficiency Pay | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				THIS SOLDIER HAVING COMPLETED SIX MONTHS SERVICE - FIRST CONDUCT SHEET DESTROYED.					
CAMP BORDEN	31/5/40	PTE.		ABSENT WITHOUT LEAVE FROM 1900 HRS. 31/5/40 UNTIL 1800 HRS. 1/6/40	SGT. SMITH	4 DAYS C.B.	4 JUN 40	F.H. WILLIAMS MAJOR	FORFEITS ONE DAYS PAY.
ALDERSHOT	16/2/41	PTE.		A.W.L. 2359 HRS. 16/2/41 TO 1400 HRS 18/3/41 A.A.15 (1)	SGT. BIGGS, J.C.	28 DAYS DETN.	19/3/41	LT. COL. A.S. PEARSON C.O.	FORF. 56 DAYS PAY. FR. 81 149
ALDERSHOT	7/6/41	PTE.		A.W.L. FROM 2359 HRS. 7/6/41 UNTIL 2345 HRS. 27/6/41 A.A. 15(1)	CPL. LUCAS, C.V. L/C. WOODRIDGE, E.	27 DAYS F.P.	28/6/41	A.S. PEARSON LT. COL.	FORF. 47 DAYS PAY FR. 81

CERTIFIED COPY OF ORIGINAL W.F.W. 6

9/9/41

(P.T.O.)

27

Rgt. 8 Nov 1941

I desire to be represented by
counsel at my proposed
F. G. C. M. I prefer to have

Lieut W. Kimball.

Pte. G. Hayes

A21966. Pte Hayes F.

5 B 102

Pte Hayward C.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F.54931 Pte Clarence Russell HAYWARD

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	Guilty	Guilty	
2nd AA 15(1)	Guilty	Guilty	
3rd AA 15(1)	Guilty	Guilty	
4th AA 15(1)	Guilty	Guilty	
5th AA 15(1)	NOT GUILTY	Guilty but surrendered himself and was not apprehendered as charged.	
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for "AWR" commencing on the (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 58 days, of which 36 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under F2.)

Sentence Awarded by the Court :

TO BE IMPRISONED WITH HARD LABOUR FOR TWO YEARS AND TO BE DISCHARGED WITH IGNOMINY FROM HIS MAJESTY'S SERVICE.

(Sgd) "D.W. Rose" Capt — 22 Jan 45 — (Sgd) "A.M. RUSSELL" Maj

Judge-Advocate, if any. — Date awarded. — President. (RP 45, 56.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 33(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation ; KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

CONFIRMED

~~I direct that the accused be cot martialled be given at detention barracks until further ordered.~~(1) "TGG"

(1. AA 57A. Delete if not used.)

(Sgd) "T.G. GIBSON" Brig

Date Jan 29 1945 — COMMANDER — Commanding 1 Cdn Base Rft Group — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F-54931 Pte HAYWARD Clarence Russell	1 FEB 45	"Vincent McKENNA" Lt Col. Officer Commanding 1 Bn 1 Cdn Base Reinforcement Depot

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY (D. [illegible] CDN SIG 2nd ECH APO 1 Feb 45

RECORDED AT CMHQ IN AS [illegible] 58-102

FIELD GENERAL COURT-MARTIAL

(CFA96 (In lieu of AFA3) 10/P.S./1668 (2804))

Convened by Order of LtCol Vincent McKenna T/Comd 1 Cdn Base Rft Gp CMF dated 11 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.54931	Pte	Clarence Russell	HAYWARD	1 Bn 1 CBRD

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 22 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3) "A.M.R"

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2) "A.M.R"

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to as interpreter ? Ans

The Interpreter is sworn.(1) Do You object to "A.M." as shorthand writer ? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	A.M. RUSSELL	(CIC)	1 Bn 1 CBRD Centre
Member	Lieut	H.B. FOSTER	(CIC)	2 Cdn Re-Alloc Centre
Member	Lieut	M. PRATTE	(CIC)	2 Cdn Re-Alloc
Judge-Advocate	Capt	D.W. ROSE	(CIC)	HQ 1 CBRGp
Prosecutor	Lieut	F.R. LaFLECHE	(CIC)	1 Bn 1 CBRD
Defending Offr/ Counsel	A.35205 Sgt MacLatchy F.H. (A member in good standing of the Ontario Bar)			18 Cdn Spec Emp Coy.

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans Yes "A.M.R"

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no) plea (1) "A.M.R"

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. "A.M.R"

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (withdraws) and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C "A.M.R"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 75(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A)(i)*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(B) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. RP 37(E). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). [Part I of the Schedule is amended accordingly.]
(1. Court may be cleared to consider the statement. Delete words or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ..... , initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any pleas standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D6 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4) ..... "AMR"
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Yes on oath. Do you intend to call witnesses on your behalf ? Ans NO Are they witnesses as to character only ? Ans NO
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the Finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).) "AMR"

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the Fifth charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed. "AMR"
(1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117(A) (1a). Statement, if any, recorded per Notes. Charges are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes make a statement on oath
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(d) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex P 2 and Ex P3 respectively.(3) "AMR"
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No Address in mitigation "AMR" (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

WHEREAS by the Convening Order issued by me in the Field, Italy, on the 11th day of January 1945 in the matter of a Field General Court Martial for the joint trial of F40943 Pte Bernard Joseph Thibeault and F54931 Pte Clarence Russell Hayward both of 1 Cdn Base R'ft Bn 1 Cdn Base R'ft Depot at HQ 1 CBRGp on the 16th day of January 1945, the following court was appointed or detailed:-

PRESIDENT

Major A M RUSSELL (CIC) 1 Bn 1 CBRD

MEMBERS

Lieut H FRENFONTAINE (CIC) 2 Cdn Reallocation Centre
Lieut H E FOSTER (CIC) 2 Cdn Reallocation Centre

WAITING MEMBER

Capt or Lieut to be detailed by the OC 2 Cdn Reallocation Centre

JUDGE ADVOCATE

Capt D V MOSS (CIC) HQ 1 C B R Gp

AND WHEREAS by the said Convening Order the accused F40943 Pte Bernard Joseph Thibeault and F54931 Pte Clarence Russell Hayward are jointly charged on Charge Sheet No 1 and separately charged on Charge sheets No 2 and 3 respectively;

AND WHEREAS at the said Field General Court Martial the accused F40943 Pte Bernard Joseph Thibeault and F54931 Pte Clarence Russell Hayward, were arraigned on the 4th, 5th and 6th charges on Charge Sheet No 1 on 16th day of January 1945;

AND WHEREAS it is not possible to dispose of the charges which the accused, F40943 Pte Bernard Joseph Thibeault is jointly charged with the accused F54931 Pte Clarence Russell Hayward on Charge sheet No 1 before the aforementioned Court;

NOW THEREFORE I hereby direct that the court thereby constituted be and the same is hereby dissolved in so far as Charge sheets No 1 and 2 are concerned.

Signed this 23rd day of January 1945 "VINCENT McNAMARA"
(Vincent McNAMARA) Lt-col.
Convening Officer.

No 3 "ATR"

CHARGE SHEET

The accused, K.54931, Pte Clarence Russell HAYWARD, 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

Sec. 15(1)

Army Act. in that he,

In the Field, in Italy, at about 2200 hrs. 6 Jan .1944, absented himself without leave until apprehended at about 1000 hrs. 3 Mar ch, 1944. (Absent, 56 days, 12 hours).

SECOND CHARGE WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

Sec 15(1)

Army Act. in that he,

In the Field, in Italy, at about 2030 hrs. 12 Mar 1944, absented himself without leave until apprehended at about 2015 hrs. 21 July 1944. (Absent, 130 days, 23 hours, 45 minutes.)

THIRD CHARGE WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

Sec. 15(1)

Army Act. in that he,

In the Field, in Italy, at about 0200 hrs. 7 Sept. 1944, absented himself without leave until aprehended at 0001 hrs. 10 October, 1944. (Absent, 32 days, 22 hours, 1 minute.).

FOURTH CHARGE WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

Sec. 15(1)

Army Act. in that he,

In the Field, in Italy, at about 2330 hrs. 11 October 1944, absented himself without leave until apprehended at about 0600 hrs. 30 October, 1944 (Absent, 18 days, 6 hours, 30 minutes.)

CHARGE SHEET re: F. 54931, Pte. Clarence Russell HAYWARD. (CONT'D)

FIFTH CHARGE Sec. 15(1) Army Act. I	WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE, in that he, In the Field, in Italy, at about 0630 hrs. 13 Nov. 1944, absented himself without leave until apprehended at about 1000 hours 25 Nov. 1944. (Absent, 12 days 3 hours, 30 minutes.)

In the Field,
30 Dec. 1944.

"VINCENT McKENNA" Lt-Col.
(VINCENT McKENNA),
Officer Commanding,
1 Cdn Base Rft Gp, 1 C.B.R.D.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
In Italy
11 Jan 45

"VINCENT McKENNA"
(VINCENT McKENNA) Lt-col
T/Comd 1 Cdn Base Rft Group
Cdn Army-CMF

The appointment of Capt D W ROSE, an offr having Legal qualifications, as Judge Advocate, is hereby approved by me on behalf of the JAG, pursuant to Overseas R O 4756. "W.B. DATE" HQ "DWR"
("W.B. DATE")(Capt) ADJA 1 CBRGp "DWR"

FIELD GENERAL COURT-MARTIAL

CFA65 (In lieu of AFA3)
40/PAS/1497 (2503)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 40943	Pte		Bernard Joseph	THIBEAULT	1 Bn 1 CBRD
F54931	Pte		Clarence Russell	Hayward	1 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, did (on) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 15 Nov 44 endorsed by me, (or by an offr of my staff for me): " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.) "VK"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "VK
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	A H RUSSELL	(CIC)	1 Bn 1 CBRD.

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Lieut	R PREFONTAINE	(CIC)	2 Cdn Reallocation Centre
Lieut	H E FOSTER	(CIC)	2 Cdn Reallocation Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by the OC 2 Cdn Reallocation Centre		

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	D W ROSE	(CIC)	HQ 1 C B R Gp

On Active Service in the Fd

in Italy (Country.)

"VINCENT MCKENNA"
(Vincent McKENNA) (Signed personally. RP 105 fn 2.)

Lt-col. (Rank.)

Date 11 Jan 45

T/ Commanding 1 Cdn Base Rft Gp- CMF
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE "AAA"
RR (CAN) 557

I certify that I have this morning examined No F 54931 Rank Pte

Name HAYWARD C R of #1 Sn and in my opinion he is fit to

undergo trial by Court Martial.

In the Field

Date. 22.1.45 "??????????" MEDICAL OFFICER 5

charge sheet No 3 as set out in Para A9 of CPA96.

P-3

1st Witness for Prosecution: C65572 CPL RICHARDS, R.E. 1Sn 1 CaRD duly sworn is examined by prosecution.

I am the Orderly R. n Clerk 1 Sn 1 CaRD. I produce X List CaY Regt P.II Order No 125 d/24 NOV 44 issued by Cdn Sec CMQ 2 Reh AAI which states that the accused was AWL from 0630 hrs 13 Nov 44:- Marked Exhibit K1. I also produce Cert of Arrest made in accordance with AI Sec 103(1)(ii) which certifies that the accused was arrested at NOLA at 1000 hrs 29 Nov 44. This document purports to be signed by Capt JA WILKinson RCA? OC 69 Sec CIC Cdn - Marked Exhibit K1. Exhibit K1 and K1 refer to the accused who is in court.

No Cross Exam:

No Quest by Court: Re 83(2) Complied with.

MEDICAL OFFICER'S CERTIFICATE "AHR"
ER (CAN) 557

I certify that I have this morning examined No F 34931 Rank Pte
Name HAYWARD C R of #1 Sn and in my opinion he is fit to
undergo trial by Court Martial.

In the Field

Date. 22.1.45 "?????????" MEDICAL OFFICER 5

The Court reassembled at 0930 hrs 22 Jan 45, the same members being present.

The Prosecutor informed the court that F40943 Pte THIBAULTS J one of the ~~2~~ accused had escaped from custody and suggested that the charges against F54931 Pte Hayward, C.H. set out in charge sheet No 3 be proceeded with at this time.

Statement by Prosecutor appended hereto as Exhibit D

The Defence Counsel stated that the accused, Pte Hayward had no objections to the court proceeding with the charges contained in charge sheet No. 3

The court accordingly arraigned F54931 Pte Hayward C.H. on charge sheet No 3 as set out in Para A7 of CFA96.

D-3

1st Witness for Prosecution

C65572 CPL RICHARDS, R.E. 1Bn 1 CMHD duly sworn is examined by prosecution.

I am the Orderly R ~~o~~ m Clerk 1 Bn 1 CMHD. I produce A List C&Y Regt P.IF Order No 125 d/24 NOV 44 issued by Cdn Sec GHQ 2 Sch AAI which states that the accused was AWL from 0630 hrs 13 Nov 44:- Marked Exhibit M1. I also produce Cert of Arrest made in accordance with AA Sec 163(1)(jj) which certifies that the accused was arrested at NDLA at 1000 hrs 25 Nov 44. This document purports to be signed by Capt AA Wilkinson RCAMC OC 69 Gen Hosp CMF - Marked Exhibit M1. Exhibit M1 and M1 refer to the accused who is in court.

No Cross Exam:

No Quest by Court:

AA 83(B) Complied with.

Page 1 Continued.

D 6 1st Witness for Defence. F54931 PTE HAYWARD C.H. the accused, duly sworn is examined by the Defence Counsel:

I came to NOLA on 25 Nov 44 at about 1000 hrs. There I met my girl friends sister who told me that my girl friend was in goal. I then went to the police station at Chiminida and surrendered myself to a Sgt of 69 Bde Coy. I didn't meet any M.P.s in NOLA prior to this time. The Sgt told me that it was good for me to turn myself in and said that he would help me at my court martial. At the time another L/Cpl was talking over the telephone and told whoever he was speaking to that they had arrested Pte THIBEAULT at 2400 HRS 24 Nov 44 and that they also had HAYWARD who had surrendered, himself at about 1015 hrs 25 Nov 44. CHIMINIDA is about half a mile from NOLA.

No X Exam:

No Quest by Court RP 83(3) complied with.

2. "DAH"

Prosecutor's Address:

The evidence as to the length of absence is the same both in the prosecution and defence evidence, the only question is whether or not the accused surrendered himself or was apprehended.

Defence Counsels Reply:

The accused states he surrendered himself and that he was not apprehended. I submit the evidence of the accused should be excepted on this point.

E 1 1st Witness for Defence. The accused recalled is examined by Defence Counsels

At 7 CIRU in England, after being discharged from the Detn Bks Headley Downs. I passed a cooking course and was transferred to the Catering Corps. When I arrived at 7 CIRU I paraparaded before the O.C. and asked about my transfer, to that corps. He said it had been granted but that I couldn't go to the Catering corps. I asked why and he told me that as I was a driver Mech. I was to go on draft to the C & Y Regt. I told him I was not a qualified Dr Mech but a qualified cook. He then told me it made no difference but to see my coy comd in my unit wherever I landed. In North Africa I got no satisfaction, in Italy it was the same. I then went AWL. On 12 Mar 44 I was arrested by the Can Prov Corps. After a few days under arrest I was taken to be identified by some Italians. While being identified I was in the centre of two M.P.s Thus I figured I wasn't getting a right deal so I went AWL a second time. Every Identification since was the same way. If I had been given a square deal I would have been here and done my time long ago.

No Cross-Exam:

By COURT:

I am not married.

I have never served in this theatre with the C & Y Regt.

R.P. 83(3) complied with.

Exhibit K 1 "DWR" "AMR"

A/List Carleton & York Regiment No 125

Page 2 24 Nov 44

3. ABSENT WITHOUT LEAVE

(B) AWL from 0630 hrs 13 Nov 44. Still absent 0630 hrs 21 Nov 44 (8th day)

F 54931 Pte HAYWARD C.R. 14 Inf (I Bn)

"W.W. Laughlin" Lt
for (J.L. HAYNES) Captain
for Officer i/c
Cdn Section GHQ 2nd Echelon AAI

Certified true copy
"W Jas RINN" Lieut.
Officer having custody of Regt'l Books.

This is Exhibit "K" referred to in the Summary of Evidence in the case of P54931 Pte Hayward C R taken before me this 28day of Dec44.

"W. Jas RINN" Lieut
Signature(W. Jas RINN) Lieut
of Officer taking Summary.

This is Exhibit "M" referred to in the Summary of Evidence in the case of P54931Pte Hayward C R taken before me this 28day of Dec 44.

Signature of Officer having custody Summary of Evidence
"W. Jas RINN" Lieut.

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT SEC 163 (1)(II)

A5E(1) This is exhibit "E" referred to in the Summary of Evidence in the case of F54931 Pte HAYWARD C R taken before me this 28 day of Dec 44.

"W. Jas KIRK" Lieut
Signature of Officer taking Summary of Evidence.

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT SEC 163(1)(JJ) "DWR"

I certify that "AMR"

No F54931 Rank Pte Name Hayward C R

of the Carlton and Yorks Regt Canadian Army.

was arrested at NOLA at 1000 hrs.

on the 25 Nov 44.

S "J.A. WILKINSON"
w Rank Captain
t

Appointment (if any) DAPM

Commanding 69 Cent SIB CMPolice.

Date 26 Nov 44

F54931 Exhibit E1 at FOCH Pte Hayward C R "D.W. R.S.M."

SUMMARY OF EVIDENCE Exhibit B 5 "DWR"

in the case of

F54931 Pte HAYWARD Clarence Russell, 1 Canadian Base Reinforcement Battalion, 1 Canadains Base Reinforcement Depot, a soldier of the Canadian Army Overseas.

The commanding officer directs that the evidence be taken under oath.

First Witness For Prosecution. C-65572 CPL RICHARDS R.E., Orderly Room Clerk, 1 Bn 1 CBRD. having been duly sworn states.

I am C65572 CPL RICHARDS R.E. Orderly Room Clerk, 1 Bn 1 CBRD. I produce X List Carlton &York Regiment Part II Order No 24 dated 13 Mar 44 which shows F-54931 Pte HAYWARD C.R. S.O.S. as a deserter with effect 27 Jan 44 having been declared illegally absent by a court of Inquiry from 2200 hrs 6 Jan 44. This Order also shows F-54931 Pte HAYWARD C.R. T.O.S. on apprehension from desertion with effect 1000 hrs 3 Mar 44 presented as Exhibit "A"

I also produce "Z" List Carlton & York Regiment Part II Order No 48 dated the 27 May 44 issued by Cdn Sec HQ 2nd Echelon, AAI which shows that

2. "DWR"

F-54931 PTE HAYWARD C.R. was SOS A-4 List 1 Bn as a deserter 16 May 44 having been declared illegally absent by a court of Inquiry from 2030 hrs 12 Mar. 44, presented as Exhibit "B"

I also produce Certificate of Apprehension under Army act Sec 163 (1)(JJ) which certifies that F-54931 Pte HAYWARD C.R. was apprehended by 1 Cdn L of C Provost Company at Avellino at approx 2015 hrs 21 July 44 and that at the time of his apprehension he was wearing American Staff Sergeant's uniform. This document is signed by Capt R.F. LAW Officer Commanding 1 Cdn L of C Prov Coy. Presented as Exhibit "C"

I also produce "A" List Carlton & York Regiment Part II order No 107 dated 7 Oct 44 which shows that F-54931 Pte HAYWARD C.R. was SOS A4 List 1 Bn as a deserter 5 Oct 44 having been declared illegally absent from 0200 hrs 7 Sept 44 Presented as Exhibit "D"

3. "DWR"

I also produce "X" List Carlton & York Part II Order No 110 dated 17 Oct 44 issued by Cdn Section, G.H.Q. 2nd Echelon A.A.I. which shows that F-54931 Pte HAYWARD C.R. was T.O.S. A-3 from desertion, (hour not known) 10 Oct 44. Presented as Exhibit "E"

I also produce "L" List Carlton & York Regiment Part II Order No. 120 dated 9 Nov 44 issued by Cdn Section G.H.Q., 2nd ECHELON, A.A.I which shows that F-54931 Pte Hayward C R. A3 List was AWL from 2330 hrs 11 Oct 44 and apprehended 0600 Hrs 30 Oct 44. Presented as Exhibit "F"

I also produce Certificate of Arrest under Army Act Sec 163 (1)(JJ) which certifies that F-54931 Pte Hayward, C.R. was arrested at NOLA at 0600 hrs.

10 Oct 44. This document is signed by Captain V.D. KELLARTT DAPM Commanding detachment C.M. Police, NOLA . Present as exhibit KJ J.

I also produce "L" List Carlton & York Regt Daily Order No 125 dated 24 Nov 44 issued by Cdn Section G.H.Q. 2nd Echelon AAI which shows that F-54931 Pte HAYWARD C H was AWL from 0630 hrs 13 Nov 44. Presented as Exhibit "K".

I also produce Certificate of Arrest under Army act Sec 163 (1)(jj) which certifies that F-54931 Pte HAYWARD C H was arrested at NOLA at 1000 hrs 25 Nov 44. This document is signed by Capt J.A. Wilkinson DAPM Commanding 69 Sec SIB CMPolice. Presented as Exhibit M

" CPL RICHARDS RE"

The accused declines to cross examine the witness.

5.

QUESTION TO THE ACCUSED:

"Do you wish to make a statement or to give evidence under oath? You are not obliged to do so but anything you say or any statement you make will be taken down in writing and may be given in evidence.

ANSWER BY THE ACCUSED: I reserve my defence.

I certify that the foregoing Summary of Evidence consisting of five (5) pages was taken down by me in the presence of the accused and that Rules of Procedure 4(c)(d)(e) (f) and (g) have been complied with.

In the Field
28 Dec 1944.

"W. Jas RINN" Lieut
Officer taking Summary of Evidence.

This is Exhibit "A" referred to in the Summary of Evidence in the case of F54931 Pte Hayward C R taken before me this 28 day of Dec 44.

"W. Jas RIMR" Lieut
Signature of Officer taking Summary.

"AMR" "DWR"

Last Order No 23 11 Mar 44

X LIST CARLETON & YORK REGIMENT
PART II ORDERS ISSUED BY
CANADIAN SECTION GHQ 2nd ECHELON C.M.F.

Order No 24 13 Mar 44.

"B" OTHER RANKS

2. STRENGTH INCREASE
(a) T.O.S. on app from des w.e.f. 1000 hrs 3 Mar 44.
F-54931 Pte HAYWARD C.R.

Page 8

6. STRENGTH DECREASE
(a) SOS as a deserter w.e.f. 27 Jan 44, having been declared illegally absent by a court of inquiry from 2200 hrs 6 Jan 44. Def in Kit to the value of $24.25

F-54931 Pte HAYWARD C.R. (X 4 List (1 Jan)

"W.J. SAUNDERS"
(W.J. SAUNDERS) Lieut
for Officer i/c
Cdn Sec GHQ 2nd Ech - CMF

CERTIFIED TRUE COPY

"W.Jas RIMR" Lieut
Officer having custody of Regt'l Books.

This is Exhibit "B" referred to in the Summary of Evidence in the case of F54931 Pte HAYWARD C R taken before me this 28 day of Dec 44.

"W. Jas RINN" Lieut
Officer taking Summary of Evidence.

Last Order No 47 26 May 44 — X LIST CARLETON AND YORK REGIMENT Part II Orders issued by Canadian Section G.H.Q. 2nd Echelon A.A.I. — This Order No 48 27 May 44

"B" OTHER RANKS Page 3

8. STRENGTH DECREASE
(b) SOS X 4 List (1 Bn) as a deserter 16 may 44 having been declared illegally absent by a court of inquiry from 2030 hrs 12 Mar 44. Deficient in kit to the value of $35.61.
F-54931 Pte. HAYWARD C.R.

"C.B. FERGUSON" Capt
for (G.A. DOYLE) Lcdnt
for Officer i/c
Cdn Sec GHQ 2nd Ech. A.A.I.

CERTIFIED TRUE COPY

"W. Jas RINN" Lieut
Officer having custody of Regt'l Books.

Exhibit "D" "AMR" "DMR"

CERTIFICATE OF APPREHENSION

In accordance with Army Act Sec 163 (1)(JJ)

I certify that Regt No F54931 Rank Pte

Name HAYWARD C R Unit 1 Bn 1 C.B.R.D.

was apprehended by No 1 C dn L of C Provost Company

at AVELLINO Italy, at approx 2015 hrs 21 Jul 1944.

At the time of his apprehension he was wearing American Staff Sergeant's Uniform.

Signature "H F LAW"
(H.F. Law) Captain
Officer Commanding
1 Cdn L of C Provost Coy.

Over side.

This is Exhibit "D" referred to in the Summary of Evidence in the case of F-54931 Pte Hayward C R taken before me this 28th day of December 1944.

"W. Jas RINN" Lieut
Signature of Officer taking Summary.

This is Exhibit "E" referred to in the Summary of Evidence in the case of F54931 PTE HAYWARD C R taken before me this 28th day of Dec 44.
"W. Jas Rinn" Lieut
Officer taking having custody of Regt'l Books
1 Cdn Base Rft Bn
C&YR "DWR" "AMR"

Last Order No. 106 6 Oct 44 — X-LIST CARLETON & YORK REGIMENT Part II Orders issued by CANADIAN SECTION G.H.Q. 2nd ECHELON A.A.I. — This Order No. 107 7 Oct 44

"B" OTHER RANKS Page two

8. STRENGTH DECREASE
(d) SOS X-4 List (1 Bn) as a deserter 5 Oct 44
having been declared illegally absent from 0200 hrs 7 Sep 44
by a Ct of Inquiry (Def of kit: $35.61)
F54931 Pte Hayward C.R.

"W.H. Laughlin" Lt
(W H LAUGHLIN) Lieut,
for Officer i/c
Cdn Section G H Q 2nd Echelon AAI

Certified true copy
"W. Jas RINN" Lieut
Officer having Custody
of Regt'l Books.

This is Exhibit "F" referred to in the Summary of Evidence in the case of F54931 Pte HAYWARD C R taken before me this 28 day of Dec 44.
"W. Jas RINN" Lieut
Signature of Officer taking Summary.

C&YR "DWR" "AMR"
1 Cdn Base Rft Bn

Last Order No. 109 14 Oct 44 — X-LIST CARLETON & YORK REGIMENT Part II Orders issued by Cdn Section G.H.Q. 2nd Echelon AAI — This Order No. 110 17 Oct 44

"B" OTHER RANKS Page 1

2. STRENGTH INCREASE
(f) TOS X-3 List from desertion (hr not known) 10 Oct 44
F-54931 Pte HAYWARD C.R.

"H.L. HAYES"
(H.L. HAYES) Capt.,
for Officer i/c
Cdn Section GHQ 2nd Echelon AAI

Certified true copy
"W. Jas RINN" Lieut
Officer having Custody of
Regt'l Books.

This is Exhibit "H" referred to in the Summary of Evidence in the case of F-54931 Pte HAYWARD C R taken before me this 28day of Dec 44, "W. Jas RINN" Lieut
Signature of Officer taking Summary.

"AMR"
"DWR"

Last Order No. 119 6 Nov 44 — X-LIST CARLETON & YORK REGIMENT Part II Orders issued by Cdn Section G.H.Q. 2nd Echelon A.A.I. — This Order No 120 9 Nov 44

"B" OTHER RANKS Page 2.

5. ABSENT WITHOUT LEAVE
(b) AWL from 2330 hrs 11 Oct 44 App 0600 hrs 30 Oct 44
P-54931 Pte HAYWARD CR X-3 List.

"F.F. Knight" Lieut
for (H.L HAYES) Capt.
for Officer i/c
Canadian Section G.H.Q. 2nd Echelon A.A.I.

This is Exhibit "J" referred to in the Summary of Evidence "AMR"
in the case of F54931 Pte HAYWARD, C.R. "DWR"
taken before me this 28 day of Dec 44. "W. Jas RINN" Lieut
Signature of Officer taking Summary.

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT SEC 163 (1)(JJ)

I certify that No F54931 Rank Pte Name HAYWARD C R

of the Carleton & York Reg 1 St Canadian Div

was arrested at NOLA at 0600 hrs.

on the 30 day of October 1944.

S "V.D. BELAULT"
w Rank Capt.
t Appointment(if any) DAPM
Commanding Det C.M. Police NOLA

Date 30 Oct 44

Pub in Pt II X120/44 "LFM"
X C & Y R

Exhibit E 3 "AMR" "DWR"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
F-54931	Pte	HAYWARD C.R.	1 CBRBn, 1 CBRD

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For A.A. Sec 15(1) ..... 5 times.

For A.A. Sec 40 ..... 1 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for .....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 58 days in military custody, i.e., ---- days in open arrest, ---- days in close arrest; of which 36 days were spent in hospital.

5. The present age of the accused is 24 yrs.

6. The date of his attestation / calling up for military service is 30 Jan 1940

7. The service which the accused is allowed to reckon is .....

†State the military decoration (if any) held by accused.

8. The accused is in possession of †

9. (If the accused is a warrant officer or N.C.O.). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of .....

In the war substantive rank of .....

In the acting rank of .....

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Wt. 13479/5857 30,000 5/44 H-432 T.&S. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F.G.C.M.	Field 8/6/43	A.A. Sec 15(1) (Absent 129 days 11 hrs 40 mins)	7 months detention	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 22 day of January 45

"T.R.C. STEELE" Lieut

"W. Jas RINN" Lieut
Officer taking custody of Regt'l Books

Old sheet destroyed 5/9/42 (Signed) A. J. MacSween Capt Exhibit E 2

No P54931 Name HAYWARD C R | Sqn, Battery or Company | Corps C.B. Highrs | Date of enlistment | GC Badges | Service or Proficiency Pay "AMR" "DWR" | MFM 6 (AFB 522)

Date of last entry in Company Conduct Sheet: n-a | No and date of last drunk: n-a | Period not reckoning towards freedom from extra fine: n-a | Sheet No 1 | Signature OC Company, etc: N.A. MacSween Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	21/7/41	Pte		AWL from 0100 hrs 21/7/41 till 1145 hrs 2/8/41 when appreh by MPs at North Sydney N.S. (Absent 12 days 10 hrs 45 mins)	Sgt ---	21 dys detn	7/8/41	Lt-col	Auto forf 13 dys pay, plus EH SMALL cost of appreh.
Camp Debert	27/10/41	Pte		AA Sec 15(1) AWL from 0600 hrs 27)10/41 till apprh at N.Sydney (Absent 2 days 11 hrs)	Dec. Evid N.S. at 1715	168 hrs detn hrs 29/19/41.	30/10/41	Lt-col	Auto forf 3 dys EH SMALL pay-plus cost of appr
Field	1/8/42	Pte		WOAS AWL from 0600 hrs 1/8/42 till 1130 hrs 1/8/42 (Absent 5 hrs 30 mins)	Sgt Warren	3 days CB	4/8/42	Capt Dunn	
Field	5/9/42	Pte		AA Sec 40 WOAS cond to prej etc late for breakfast parade at 0745 hrs.	Cpl ----	5 dys CB	5/9/42	Capt AJ MacSWEEN	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				AA Sec 15(1) AWL from 2300 hrs 14 Nov 42 (Tattoo Roll Call)				Major ?????	Auto forf
Field	14/11/42	Pte		till 2340 hrs 15 Nov 42(Absent 24 hrs 40 mins) Under close arrest from 2340 hrs 15/11/42 till 0820hrs 16 Nov 42	Cpl McIsaac.	14 days CB 5 days pay	16 Nov 42	(for) Capt MacSween	2 dys pay 149(1)(a)
Field	16 Nov 42	Pte		AA Se c 15(1) WOAS AWL from 1850 hrs 16 Nov 42 when at work in kitchen on fatigue as defaulter, until 1950 hrs 16 Nov 43(absent 1 hr)	Sgt Petrie H	1 days CB 7 days pay	17 Nov 42	Maj ---(for) Capt. Ma cSween	
Field	21 Jan 43	Pte		AA Sec 15(1) AWL FROM 0800 hrs 21 Jan 43 till 1940 hrs 31 May 43 (Absent 129 days 11 hrs 40 mins)		7 mos detn stopp of pay- -£0-12-6	8 jun43	FGCM	214 days pay FR&I 149(1)(b) 130 dys pay FR&I 149(1)(a)
CERTIFIED	TRUE	COBY	FROM	REGTL BOOKS IN MY CUSTODY "W. Jas RINN" Lieut (Officer in Custody of Regtl Books)				7 days pay-	FR&I-149(1)(c)(1)

SB 100, 101

Pte Shibeacil N. B. T.

Pte Hayward C R

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F40943 Pte Bernard Joseph THIBEAULT 1 Cdn Inf Base Rft Bn
F54931 Pte Clarence Russell HAYWARD 1 Cdn Inf Base Rft Bn

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 41	Not Guilty	Not Guilty	
2nd	AA Sec 41	Not Guilty	Not Guilty	
3rd	AA Sec 41	Not Guilty	Not Guilty	
4th	AA Sec 41	Not Guilty	Not Guilty	
5th	AA Sec 41	Not Guilty	Not Guilty	
6th	AA Sec 41	Not Guilty	Not Guilty	

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

(Sgd) W.D. Guenn Major 15 Mar 45 (Sgd) H.W. Meadows, Maj.
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Noted

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

Date 16 Mar 45 (Sgd) Lake Coe
Commanding 1 Cdn Base Rft Gp
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 27 MAR 1945 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN RE 100-5-8-101

FIELD GENERAL COURT-MARTIAL

CPA86 (To Lieu of AFA3) 40/P & S/1608 (4910) 4/38B

Convened at ..... (1) Coe LA Lee Comd 1 Cdn Base Rft Gp dated 10 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/apptmt	Full Christian Names.	Surname.	Unit.
F40943	Pte	Bernard Joseph	THIBEAULT	1 Cdn Inf Base Rft Gp
F54931	Pte	Clarence Russell	HAYWARD	1 Cdn Inf Base Rft Gp

PROCEEDINGS REVIEWED
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 13, 14, 15 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

2J-15
2J-16

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 103-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1005 hours 15 Mar 45 trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Mr William H HUNSTON as interpreter? Ans No

The Interpreter is sworn.(1) ~~Do you object to ..... as shorthand writer? Ans .....~~ ~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(E). If objection, see procedure AA 51, RP 25, 71, 1E, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H.W. Meadows	HQ 1 CBRGp
Member	Capt	J.G.A. Barette MBE	HQ 1 CBRGp
Member	Lieut	E.R. Parsons	3 CBRBn
Judge-Advocate	Major	W.D. Guenn	HQ 1 CBRGp
Prosecutor	Major	H. Thekston	1 CIBRBn
Defending Counsel	A35205 Sgt	Macfatchy F.H.	1 CIBRBn

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending NCO a lawyer? Ans Yes (1) (Number of Bar in Province of Court)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea(s) Both Guilty (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (re-assembles and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35(B). 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 2. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them,) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No.(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the first three charge(s).(2) The Court is re-opened, and the President announces that the submission is disallowed on the first three charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans neither

Ans No Do you intend to call witnesses on your behalf ? Are they witnesses as to character only ? Ans .....

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A93. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(E).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(E).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the findings of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.

Or, The President announces that the accused is found Not Guilty of ..... charge(s), and that the remaining ..... charge(s) are accordingly severed, and he states to the accused that the ..... charge(s) will be proceeded with later.(1)

(1. AA 54(3) (5), RP 43, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one of more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans .....

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)

(1. MFB 355 or AFB 296. 2. MFB 355 or AFB 296. 3. RP 46 fn 1, AA 163(1) (g) (h), KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 68, 118, 119(A), KR Can 308, 330, 563-564. Overseas 40 days, 213, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st			
2nd	See page 4 of outer copy of CFA 96		
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

(Sgd) W K Thom Maj — 15 Mar 45 — (Sgd) J McCathern, Maj
Judge-Advocate, if any. — Date awarded. — President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....
Date .....
Commanding .....
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. — Date. — Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA81) 40/P & D/1868 (1943) 4/38B

Convened by Order of ..... Comd ..... dated .....

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ..... on (date(s)) .....

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES. OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for duties and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and such charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At ..... hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans .....
The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans .....(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 53, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President .....
Member .....
Member .....
Judge-Advocate .....
Prosecutor .....
Defending Offr .....

Questions by President : Is the Prosecutor a lawyer ? Ans ..... Is the Defending Offr a lawyer ? Ans .....(1)
(1. RP 26, 27, 109, 111. List of offrs under instr, if any, and all offrs necessarily with proceedings for information of Conv Offr.)

A8. The accused ..... before arraignment make(s) (no) (a) plea .....(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF AF6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(1)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination : and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 39(B), fn 5 para 7, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (a) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ~~prin~~ fourth, fifth, sixth charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the fourth, fifth, sixth charge(s), ~~and allowed on the ..... charge(s)~~ and that, accordingly, the trial will proceed ~~on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Neither. Do you intend to call witnesses on your behalf ?
Ans No. ~~Are they witnesses as to character only ?~~ Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

~~D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)~~

Or, The President announces that the accused is found Not Guilty on all charges ~~and is to be released forthwith~~, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

~~D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(*1. MFB 355 or AFB 296. 2. AA 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas Act 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see insert on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

NO. 1

J O I N T C H A R G E S H E E T

The accused, F. 40943, Pte. Bernard Joseph THIBEAULT, and F. 54931, Pte. Clarence Russell HAYWARD, - both 1 Canadian Infantry Base Reinforcement Battalion, 1 Canadian Base Reinforcement Group, soldiers of the Canadian Army Overseas, are charged with :-

FIRST CHARGE

Sec. 41

Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ROBBERY WITH AGGRAVATION, CONTRARY TO SEC. 23(1)(a) OF THE LARCENY ACT 1916,

in that they,

In the Field, in Italy, together with another person unknown, on or about the 15th of July 1944, robbed D'Angelo Giovanni of a Fiat Sedan 1500, property of Dr. Montone Gennaro.

SECOND CHARGE

Sec. 41

Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ROBBERY WITH AGGRAVATION, CONTRARY TO SEC. 23(1)(a) OF THE LARCENY ACT 1916,

in that they,

In the Field, in Italy, together with another person unknown, on or about the 15th of July 1944, robbed D'Angelo Giovanni of 8,400 Lire.

THIRD CHARGE

Sec. 41

Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ROBBERY WITH AGGRAVATION, CONTRARY TO SEC. 23(1)(a) OF THE LARCENY ACT 1916,

in that they,

In the Field, in Italy, together with another person unknown, on or about the 15th of July 1944, robbed Carrella Francisco of 8,000 Lire in money and 500 Lire in receipts.

FOURTH CHARGE

Sec. 41

Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ROBBERY WITH AGGRAVATION, CONTRARY TO SEC. 23(1)(a) OF THE LARCENY ACT 1916,

in that they,

In the Field, in Italy, together with several other persons unknown, on or about the 4 Oct. 1944, robbed 34101515, Pfc. Lloyd G. Howe, 205 M.P. Coy, U.S. Army, of one (1) lanyard, one (1) .45 Pistol, Colt, Automatic #38838.

Clerk.

NO.1 JOINT CHARGE SHEET re: F. 40943, Pte. THIBEAULT, Bernard Joseph,
and F. 54931, Pte. HAYWARD, Clarence Russell
(Continued)

FIFTH CHARGE

Sec. 41

Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ROBBERY WITH AGGRAVATION, CONTRARY TO SEC.23(1)(a) OF THE LARCENY ACT 1916,

in that they,

In the Field, in Italy, together with several other persons unknown, on or about the 4 Oct. 1944, robbed 34090983, Pfc. Carl A. Starr, 205 M.P. Coy, U.S. Army, of one (1) leather holster and leather equipment.

SIXTH CHARGE

Sec. 41

Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ROBBERY WITH AGGRAVATION, CONTRARY TO SEC.23(1)(a) OF THE LARCENY ACT 1916,

in that they,

In the Field, in Italy, together with several other persons unknown, on or about the 4 Oct. 1944, robbed 34101515, Pfc. Lloyd G. Rowe, and 34090983, Pfc. Carl A. Starr, both of 205 M.P. Coy, U.S. Army, of one vehicle, Jeep, #3045022, the property of 205 M.P. Coy, U.S. Army.

Vincent McKenna Lt-Col.
(VINCENT McKENNA,)
Officer Commanding,
1 Cdn Inf Base Rft Bn, 1 CBRGp.

In the Field,
15 Feb. 1945.

approved and ordered, JAG's Office,
pursuant to K.R. & Regs (1944)
Orders RO 4756
W. H. Lumsden Major
A.D.J.A.
Italy
10 Mar 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
10 Mar 45

(S.A., LEM.) Colonel
Comd 1 Cdn Base Rft Gp

Clerm.

CFA 95 (In lieu of AFASI 40-P&N/1697 [2nd])

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if outhorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate outhy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 730.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.40943	Pte		Bernard Joseph	THIBEAULT	1 Cdn Inf Base Rft Bn
F.54931	Pte		Clarence Russell	HAYWARD	1 Cdn Inf Base Rft Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, ~~has~~ (have) committed the offence(s) set forth in the Charge Sheet~~s~~ attached and on (date) 10 Mar 45 endorsed by me, ~~or by an offr of my staff for me~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial, ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~
(Delete part in brackets when not required for compliance with RP 106(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have stated herein.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	D.W. McAdam (Must be named. RP 106.)	(CIC)	HQ 1 CBRGp (Unit.)

MEMBERS.

Capt	L.G.A. Baretta MBE	(CIC)	HQ 1 CBRGp
Lt (Rank.)	C.R. Parsons (Named or detailed. RP 106.)	(CIC)	3 Cdn Gen Base Rft Bn (Unit.)

WAITING MEMBER.

Capt (Rank.)	G.W.C. Brinkhurst (Named or detailed, if any. RP 106.)	(CIC)	HQ 1 CBRGp (Unit.)

JUDGE-ADVOCATE.

Major (Rank.)	W.A.D. Gunn (Must be named, if any. RP 106.)	ADJA	HQ 1 CBRGp (Unit.)

On Active Service in the Fd

in Italy (Country.)

(Signed personally. RP 105 fn 2.)
(S.H. LEE)
Commanding 1 Cdn Base Rft Gp
Convening Officer.

Colonel (Rank.)

Date 10 Mar 45

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

I hereby certify that I have this day examined

No J40943 Rank Pte Name Thibeault B.J.

and in my opinion is fit to undergo trial by Court Martial

Date 13 March 45

(Medical Officer)

MEDICAL OFFICER'S CERTIFICATE

Deem.

I hereby certify that I have this day examined

No J34931 Rank Pte Name Hayward CR.

and in my opinion is fit to undergo trial by Court Martial

Date 13 March 45

J E Cowle Capt
(Medical Officer)

mar 14/45

D.C.M.

Pte Hayward C.R. F 54931
Pte Thibeault B.J. F 40943.

I have examined the a/m soldiers & find them fit to stand trial by court-martial

[illegible]
M.O. - #2 echelon.

Mar 15/45 Clerk.

I have examined the w/m soldiers & find them fit to stand trial by court-martial

Pte Hayward C.R. F 54931
Pte Thibeault B.J. F 40943

O/C Lobb Coy
No. # 2 Reception.

Vesuviano. I was living in a hired house. My employer lived in San Felice Acanello. That is 20 kilometres from where I live. I was employed as a chauffeur. I left car at San Felice Acanello. That where Dr lived. I walked home & back forth, first time by a horse & take the car; this was 2 months before the appn happened. During these 2 months I kept the car when I went to my house I put car under archway near my house. During the 2 months I worked for Dr the car was in my possession at my house, I only drive the car 2 or 3 times during this 2 months. When Dr had work I was be called me. I only drive car 2 or 3 times for Dr. Other times the car was always at the house. The car looked after & mine tubes. If car looked after & tubes thrown Dr car right 15th. There was always accidents with tires & tubes, that why only had it so few times. No accidents on 15th.

I first saw the accused when we were stopped. Was saw them before that night. That day I came from the hospital at Naples. We were coming towards San Genaro. It is ~~from~~ where I live in the same village. The village Brusciano is about 20 kil. from where I live. Brusciano from Dr's house is about 20 kilometres. Brusciano is, about distance from my house or from the doctors house. Not there were at night, round about 10 p.m. I had lights on the car. There was need of the lights on the car. It was a clear evening, but still lights were necessary It was about 9 o'clock. The men were in the middle of the road & signal had. I was about ~~100~~ 50 to 60 metres from them when they signal back. a metre is 3'3". ~~I was 60 metres away~~ They were across

~~Prosecution~~

~~Defence~~ ~~Prosecution~~ makes a motion to the effect that charges one, two and three be tried together and charges four five and six be tried together. Court grants the motion pursuant to R.P. 62(E). Trial proceeds on charges 1, 2 and 3

D'Angelo Giovanni having been duly sworn states:-

I am D'Angelo Giovanni Via Barra

18 Naples. I am a chauffeur - a driver -

I was driving a car, I was coming from the hospital. I was going towards San Genaro Vesuviano. It was 10 p.m. 3 soldiers dressed as police stopped me and asked for a permit. They said this Italian permit is no good. Let us go to our commander. We want a warrant there are two women in the car. Let two get down & we will take the car to his house in San Genaro. and ~~one man~~ to his house in San Genaro. and then we will come back & pick up the other two. They made the other 2 people get into the car & we went towards Naples. at ~~the~~ Brusciano in a country lane they told me to stop the car, they ordered the car to be stopped. They made us get down from the car & they stuck a revolver into the stomach of all three - one revolver for each person. They made us put our hands up & they took everything. They took the car & we were left standing on the ground. What I said to the men with me was such words, this wife of ~~mine~~ & this son in law. ~~Those~~ only was in the car belonged to Mortone Gennaro. Mortone was not in car. It was a Fiat 15 w. My towns were stolen from me 8, 4 or 5 lire from my pocket & a gold ring which I had put into my pocket

from the two other persons I saw stuff taken. They were Francesco Caputo and I have forgotten name of other person. I saw taken from where name I don't know one suit of the other one pair of trousers. Could you recognize any of those who held up the car - yes - They have turned - one of one trousers, the other of English, I cannot those were those. The was dressed just the same as the Eyelet. Two had shirts like Eyelet shirts. Witness identifies 4 points out the two accused in court as two of the three who held up the car on the night in question. The two accused were dressed as follows - the shirts of the two was dressed as Eyelet's dress, same cap, same shirt & a khaki uniform, almost the same as Eyelet's. That's all. I can identify the one who stuck the revolver into my stomach. I can identify him in this court room. Witness points out Abbruzzi as the one who stuck the revolver in his stomach. All three had revolvers & when two accused in court were two of the three. I can identify in court the person who took the suit & coats from the person whose name I forget & from Francesco Caputo. I can identify in court the one who took trousers. The three bandits went away with the car. It was bright light when the events were taken.

~~Cross examined~~ Witness stood aside to be recalled shortly as it was necessary to call another witness at this moment due to the exigencies of the service.

Pte Gerard Lynch duly sworn states;-

I am Asst. Cdy. 1 Bn 1 CIS R Sgt.

A sgt has been detailed to round up the Italian witness in this case. He was present 14 Cdo hrs yesterday & could have sworn a full report.

I do not wish to give evidence owing to the availability of the Italian witnesses in this case. I detailed the sgt to round them up. To the best of my knowledge he did so through fact of his work. The was detailed at 1 Cdo hrs Sunday 11 Mch 45, a veh. was placed at his disposal & he reported to me at 2 Cdo hrs that same day. I was informed (via Argentina by defence) that one witness is dead, another witness was brought in, one witness was sick in bed and one witness could be picked up at 0 7 Cdo hrs next morning (and on checking the available Italian witness to 1 Bn HQ he would then proceed to obtain the other witness. I have not questioned the Sgt. as to the report of the last witness. My reason for not questioning him was that I was not present in Cdo's yesterday afternoon as I was engaged in preparing other witnesses i.e. Canadian witnesses. On my return to 1 Bn yesterday evening I was informed that it would be necessary to try and produce the available Italian witness, which was done. The Sgt detailed was present in this court room at 14 Cdo hrs yesterday & a full report could have been obtained from him by the prosecution. The Sgt is Sgt Belsiano is employed in Civ Internees Office 1 Bn 1 CIS R Sgt & can speak Italian fluently. The Italians to be picked up after 1 Cdo hrs on 11 March 45 my a certificate witness.

R.P. 83 (1) complied with

The first witness for the prosecution G'Angelo Giovanni is recalled to continue his evidence in chief & is cross examined by defence;- On 15 April I was living in San Giovanni

I have stated that I went to have of Dr's Bottle in how workshop then I went & got a pair of trousers ~~after 15 got it was until I saw~~ day, the accused I saw the accused in prison some 15 or 20 days after the happening. ~~Have not seen~~ ~~not~~ Never seen them again. Only saw them in prison. I was now in this building before.

We re examination
To the court — Type of vehicle was I ton 15 cwt fully closed car.

To judge advocate - The incident took place on 15th of July 1944

R. P. 83 (1) complied with

Prosecuting Officer reports adjournment until ~~1000~~ 0930 hrs on 14 Nov 45 on the ground that it is necessary to obtain further witness who are necessarily absent. Adjournment granted.

At 1440 hrs the court adjourn until 0930 hrs on the 14 Nov 45.

On the 14 Nov 45 at 0930 hrs the court reassemble pursuant to adjournment; present the same members as on the 13 Nov 45

Carello Francesco of San Donato Vesuviano, Italy being duly sworn states:- ~~He was~~ we were ~~at~~ on the hospital in Naples, I, my father in law, brother in law and the driver. On the return Highway Naples we were stopped by three soldiers who were the Military Police and they asked us for our documents. They asked us we could not speak

the word tunnels signs to them. They just signalled for us to halt. When they signalled me I stopped. I stopped ~~from the~~ when I noticed along side of them, on the right, 3 soldiers there. They had revolvers at that time. When I saw the revolvers I went afraid. I that they were police. ~~Did~~ ~~you recognise the man~~ When I stopped the car a soldier came near me and asked for my permit. I showed him my permit for the purpose. The soldier said this is no good - we want true permit from our commander. I felt out of car at this time also. They wanted me get in back seat of car. Two tunnels two got down from car, Total 3 soldiers pleased themselves in front. One soldier drove car. One soldier drove car with sick woman to his home. I told soldier where sick woman lived. I and sick woman came and then came back & parked up the two on the road. Sick woman got out of car, some woman helped him into house. I was parked by one of three soldiers from getting out of car. He sat in front seat. Military identity I believe one produced. The other soldier then did not get out of the car. One returned after 2 min. Then went to Brusciano. Then took many turns, car & suit. I was aware that in 4 turns & found - no accident. We went back & picked up the 2 men at Brusciano. In Brusciano went to pick up 2 men, ~~at~~ on the bridge & then went to Brusciano. From where picked up the two men we then drove about 7 or 8 kilometer. Went to Brusciano & went into a lane. From Brusciano this would be near. stopped the car in the lane. ~~Naples~~ People forced to go further away from village.

~~How car went astray~~ How pr did you go from car. We didn't go further into the enemy side. Why dont you tell me I write you that when you got into the car you were ~~turned~~ further up the lane away from the village. We I got out of the car the car was there, was the car on the left hand side, there they took off the clothing, unifs, and then they (three soldiers) re entered the car & we remained on the ground. We were found by the car. In relation to the car we went were the car was on the left hand side. ~~two~~ all were on left hand side of car in front of car. all to the left in front of the car. The lights were on the car. ~~They~~ We were about 2 the car on the left. ~~Them~~ all three soldiers had revolvers. They handled them in order to make us stays. The pursuit made us stays. I had taken from me - Crosses, money & the ring which was in my left trousers pocket. a pair of trousers & a whole suit was also taken. They made us lie down on the ground. Can say who took the suit. I don't remember anything at all because I have been ill. after the accident I ~~felt it~~ did not feel well at all. I was ill.

I remember being questioned by the presentor, ~~I don't remember~~ I don't remember what I have told him, what I have said to the presentor is the truth.

Do you remember telling Presentor I can identify in this court the person who took the suit & points from Capito & the other man whose name I do not know. Yes I remember I said it. It is the truth. Why dont you just say you couldn't see as we were ~~attacked~~ to lie down. How can I remember, more than a year has passed. It is right.

~~I can identify in court~~ at the moment all three took the things. How can I identify them. I can identify the things. I am ~~not certain~~ certain as to what happened that night.

After the accident I went very well. I was escorted. After car drove away we went under an English Sentinel & told what happened. Sentinel said could do nothing as nobody was there. We went home. That is to my own home, my temporary home.

Next morning I reported Dr as to the car being stolen.

~~At the hospital~~ Dr Manuel Guerra told that on 15 Jul I lent my car to my driver for the week end about 3 or 4 days after my driver came back without the car saying that 3 soldiers took car. That is the truth. I did not tell the Dr directly I told the ~~brother~~ in law at 5 a.m. because I ~~brother~~ had to go there on foot. after I saw the ~~brother~~ in law I went to my home as I have a wife & 6 children. ~~I did~~ I didn't stay to see the Dr as I was naked.

In my temporary home I have a pair of old trousers. I told the ~~Dr~~ brother in law as soon as I arrived in the morning. After I left English Sentinel I went on foot to the village of San Sebastian de Gomera Vesuvious. That is the village where my temporary home is. After that I went to my home to the ~~doctor~~ relatives of the doctor. why didn't you get a pair of pants when you went to your home — I took a pair of trousers I.

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dark. The two were war ms. witness nodded his head towards the two accused in court. I do not recognize the 3rd man because he was further away. I only saw him in prison when he was making his statement. That is when I was making a statement. I identified him at that time. How could you identify him when you didn't know who he was. I identified him because he was talking, right of Nyang I did see the 3rd soldier & when I saw him in prison I recognized him. First of all he was rather distant, then he came near to me, I was able to see him there as he was in the lights of the head lights. After turned into lonely road first thing we did was to go straight ahead on the lonely road. The car was turned & stopped near a small house & they made us get out. They put us in a row in front of car & made us undress. They began to search us. From my wife in law they took watch & fountain pen, pocket book & keys. During this the car was on the right, witness & companions to left of car & the three soldiers were in front of them. The lights were shining in the soldiers faces. After they finished searching me I stayed in company with wife in law & chauffeur. We were threatened after they had stolen from us. To go down the lonely road we went straight ahead without turning around. We walked towards the country side. Car was pointed towards main road. When I was searched I was in front of the car. Took 10 steps towards country side & then turned to the left to go behind a wall. We were afraid they would fire. Soon as we got behind wall they got into car & went away. We looked to see which way they went. From time falling out of car was in rows, stripped us, threatened us,

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the necessary documents given to us by the headquarters of the commune. They said, they the documents were not good, & they wanted to take us to their commune. We insisted that the sick man could not stay in the car but it was not possible. They made me & my wife in law get out & the three of them got into the car & took my father in law home. When they returned they made me & my wife in law get into the car, saying that they were taking us to their commune. On the road was the village of Bourciaux they took us into a lonely road say their commune was there. All the three got out of the car, they stood us up in a row in front of the car and began to strip us. and take away from us everything we had in our pockets. With the revolvers in their hands they threatened us, ordering us to go away from the car, so that we be going few meters away from the car after which they were going to shot us in front of. We went away & they got into the car and went away. That's all. The three soldiers were dressed in English uniforms - all three in English uniforms. When car stopped it was about 11 h 11.30 p.m. Can you identify anyone in this court room as some of those who stopped the car yes - witness identifies both accused in court ~~that three soldiers were armed with~~ I saw two soldiers with revolvers, third has - witness pointed to Hayward as being one with weapon and Thibault not with a weapon. When the soldiers took car up the lane rushed us to get out my car what did they take from you - from me they took my trousers, then money, then a pocket book. I had about 8 or 10 kilos. The 2000 kilo was taken from me.

The money was in the form of cheques - 5 or 6 in each packet in cheques, and in packet both was documents & nothing else. Had two cheques each of 5 or 6 lire and all the rest around about 5 or 6 or 8 lire in each.
How was the money taken from you — The chauffer was stood — an witness kept the witness from where their hands in chauffers pocket & packets & I took out my packet book, & gave it to them.
There is nothing forth. The soldiers held the revolvers in their hands at that time, witness ~~identified~~ several emergency soldiers who took stuff from chauffer because two soldiers only stood us. Stood about Thirlwall, one ~~of~~ second, was standing behind me (the witness) but he had no revolver in his hand.
Name of chauffeur is Giovanni d'angelo. Can you identify soldier who took money from you — No I cannot. Make of car was a Fiat 15 or. ~~Name of car was Or~~ I don't know name of owner of car but ~~he is~~ ~~this~~ he is a penal doctor and lives at avenzo Di San Felice

was examined by defence:-

When did you go after ~~you~~ last you or would want to have ~~for~~ help & to clothes ourselves. Afterwards went to consulate of English police. Went to police before getting clothes. After go to police went to Brescia because it was at Brescia we were stood. We saw us we there as it was my first time. From Brescia went to the workshop of the Carabinieri. It was after they stole from us. It was the same eve — When went to workshop there was a soldier from the English examined I, my wife in law & the chauffeur. This after losing clothes was about ½ hour. Name of chauffeur, car is D'Angelo from

Our party 15 of last year he was living as a refugee in San Severa. He had a house there & lived there. ~~It was certain~~ Stayed at Carbonara, made our statement there. There was a room in general. Workshop called. I, my wife & Charles walked to the Carbonara - One only made statement. My wife in law walked to workshop. Chauffeur did not walk to workshop. He was now when my wife in law walked to workshop. Conversation took place in station. Wife in law made declaration because they had stolen from us. Stayed in station quite awhile. We went to Salo by railway with Carabinieri. Stayed at Salo railway about 5 minutes. Then I went home. The three of us went together. I lived in same village as chauffeur or 15 quite. From Salo railway bridge where I live is about 16 kilometres. To village where I live about 5 a.m. Then went to our home. ~~All three~~ Each one went to his own home. Next saw chauffeur the same day as we live near other. ~~chauffer told truth is~~

I understand emergency Italian soldier. Only emergency two of them. Did you ever point out those soldiers that stood you - No -
~~I made by [illegible]~~

Witness is handed original [illegible] and identifies it as the statement of his signature. Answered yes. We turned down road leading into country, they arrived at at certain point where they stopped the car. They told us to get out and that we were arrested at the police Commandos place. They ordered us to get in line. He (pointing to Thirlwall) was behind me. He (pointing to witness) was searching us. He took from me five lire in money and 5 or six in receipts.

I told the truth at that time. I saw 3rd man in prison but later I forgot him. I don't see the 3rd man in court. Why did you tell me a moment ago you were identified the 3rd man — Because I was sure him I was

belongs to Dr Gerard. This car identified by both witnesses as a Dodge 15 cwt, of which Gerard was the chauffeur. The facts, Case are that both accused were present at both car & subsequently. Both accused took part in assault on both witnesses & both accused drove away in the Dodge 15 cwt. Both witnesses pointed out accused in court & stood to gross in main facts on cross examination no advantage to them to lie. Before produced no witnesses. Asks court to find accused guilty on all three charges.

Summing up by Defence Counsel:-

This Case involves 2 Italians & 2 Can soldiers. Two witnesses agree on one point i.e. they come to court to identify two men sitting with hats off. On basis a single fact do both witnesses agree. What happened subsequent to alleged robbery. This must be in their minds. One witness said they went to see an English sentry & from there to his home. Then he went to Dr's both in town & reported car stolen. Why stayed at Dr's both in town time for 5 or 10 minutes was because he was worked & had a wife & kids. Other witness said they went & saw English soldiers & from there to cenotaph & stayed there time to make declaration & then to scene of crime & from there to Gen Gerard. Are these two statements compatible with truth-givers. If they lie about one thing might they not lie about two things. Just witness on identification said he could identify one who took money from unknown englishman, he said he could identify who took the money. Said he could remember any thing at all as he was ill. He said how can I remember when more than a year has passed

we took 10 steps, ~~they~~ got behind would on left hand side. They drove away.

Were at any time were compelled to lie down on our backs or faces. I could see all the men well. Chauffeur did not have to lie down on the ground. If the chauffeur said we had to lie down on the ground on our backs he would not be telling the truth. We were not forced to lie upon the ground.

I am a bus driver. My car is situated in Via Nola San Gennaro, Vesuvius. During occupation I did not see any Canadian soldiers. Each soldier looks different.

The 3 soldiers I saw might be 18 but were dressed as soldiers. Don't know difference between English & Canadians. Know difference between American uniforms, some of the three that might were dressed in American uniforms. I know difference between American Cap & English & Can Cap.

Soldiers were dressed as follows - as soldiers - three American, one had ~~sgts stripes on sleeve~~ sgts stripes on his arms, and on arm band with letters MP on it. Didn't pay much attention to rings. Can't say if he had gunbat as it was dark, didn't pay attention to trousers. But I am sure all were dressed as military men, cannot say if English or not. I do not say they were English soldiers but I say they were dressed as military men. Can't say if they were dressed as americans or Canadian Soldiers. ~~They were dressed as military men, neither as English or Canadian~~

About the 3 men I remember one had an arm band with MP on it & that they were dressed in khaki clothes. I just know about colour. I don't remember if they had hats on or not.

I identify him because he asked me for my documents & I saw his face. I did not pay attention if were caps or not. I do not remember.

Defendg' counsel proceed to examine witness further as to Exhibit A. Accepted by Court & marked Exh "A" as re encounters

By Court — witness is asked if he identifies accused Hayward as the one who struck him the night in question — answer is no, but all three walked together. Witness is asked if he identifies accused Habanek as the one who struck him the night in question — answer is no. Witness points out accused Hayward and says that he and other threatened the three civilians. Witness is asked if he identified accused Habanek as the one who struck the character — answer is no.

R.P. 83(1) complied with

The remaining witnesses who testified at the Summary of Evidence are not available to give evidence at this trial. The defending counsel admitted that he did not require them.

Prosecution closed.

Defending Officer makes motion that there is no prima facie case on the following grounds:-

(1) No knowledge of anything stolen except what was stated by the Italian witnesses. All knew about car is a Fiat 1500. Owner of car not called & has not complained of any loss of veh. No evidence before court as to anything about car except as to what was stated by Italian witnesses. Don't know if it was insured or was returned. As regards the money only know of that from the Italians. No evidence before court that anything was found on accused.

Prosecution's Officer does not make a reply.

Court is closed to consider this motion.

Motion disallowed.

Court is reopened & the accused informed as to the finding of the court.

At 1200 hrs the court adjourns until 1330 hrs on the 14 Nov 45.

On 14 Nov 45 at 1330 hrs the court reassembles, pursuant to adjournment; present the same members as on the 14 Nov 45 in the morning.

Summing up by Prosecuting Officer

All accused were identified by Giovini & Francesco first & second witness & points out on this Ct. as 2 of the 3 soldiers that held them up & what them that night. 1st witness stated all soldiers had revolvers which were pointed at the witness in order they are seated to left. Second witness said 2 of soldiers had revolvers in their hands. Both witnesses were confused as to details of dress of soldiers, the second one stating they were dressed as soldiers. This is natural as affair took place 8 months ago. A civilian is not an authority on military uniforms which changes frequently similar. At time of offence 1st witness said he was afraid of 8 4 or less & his pants. Said all 3 soldiers were there & had revolvers in their hands. Francesco stated he had 5 or 6,000 lire & two shillings of 5 or less & states from him at same time. Both witnesses identified Habanek. 1st witness said he accidentally took money from him & had a revolver to his stomach & the 2nd witness stated Habanek was standing behind him when he handed over his wallet & money. Hayward is identified as being there at that time with a revolver in his hand by Francesco. Both witnesses said all 3 soldiers, having already identified the accused as 2 of the 3, took the car

He has a car - reported it was a.m. He didn't say [illegible]
Several witnesses - Re uniforms. - ~~1st witness~~ said all dressed in English uniforms. 1st witness said ammo + English. 2nd witness finally said they were dressed as soldiers. Remember his evidence re Watson - said he doubted see Watson right of robbery. When I showed him his own statement he changed his story. Said he couldn't recog 3rd soldier, I only saw 2. Identified Watson because he was taller.
~~Couldn't tell~~ 2nd witness said we were forced to say ~~again~~ again. Several witnesses said we were not forced to say down. In their consistent with the truth.
~~Submitted statements not possibly true.~~ Perhaps they don't love car + money. ~~Well Sorry~~
Submitted there is not sufficient evidence to warrant conviction. Doubts of innocence or guilt. Court go by evidence that we believe exactly as ought to exist, must go by evidence which has been produced before the Court.

Summing up by JA
Explained duties of JA. Take law from him. Duties for the court. Burden of proof - reasonable doubt - Presumptions - Intent - Definition of robbery and ingredients necessary Several principals - Credibility of witness - Reasons of points.

DLLM

Def witness for Prosecution

Capt F. W. Taylor DAPM 63 Sec 5 I.B. C.M.P

having been duly sworn states:-

I recognize the two accused in court today. On 6 Oct 44 I obtained statements in writing from both accused. I saw the two accused detained in Police HQ in Salerno. I interviewed them separately. I interviewed T Hobart first. I told him who I was & that I had reason to believe they had been concerned together in a series of thefts in the area of Salerno. I asked them if they would give me a statement as to their movements on the days in question. I had obtained to write a statement. I cautioned them separately by saying "you are not obliged to say anything unless you wish to do so, but anything you do say may be used in evidence. I made out the particulars of each man together with the caution and they signed it. I made the statement at their dictation & after reading it, they each signed their statement. I interviewed them. When they were first brought in & to ~~them~~ I made any statement they cared to make. I told them into my office. Capt Stoby was in the office at that time. Capt Stoby did not say anything to either time. Capt Stoby did not say anything to either of the accused. Hobart came into my office first & I obtained his statement. At that time Hayward was in custody of one or two sgts of my section in an outer office. I took the individual statements of the accused. After I got T Hobarts statement I did not give it to Hayward to read now when I got Haywards statement did I give it to T Hobart to read. When Hayward came into my office Capt Stoby was there. He did not speak on that occasion. It was sometime between 2 & 3 pm & 4 pm When I obtained the statements from T Hobart & Hayward. It took about 15 or 20 minutes to complete the T Hobarts statement & also the Hayward statement. The statements were written down by me as they were dictated by both T Hobart & Hayward. To the best of my knowledge

before they went back a copy of the accused's statement while executing the warrant. The accused's statements. Both accused were present at the time I obtained their statements.

Cross examined by defending counsel:-

The caution I gave was the ordinary police caution. When they came into the office I told them who I was etc. Both were together at the time. I told them before they were arrested in thefts in the area. I put them to office to make statement - I obtained print. I put the heading on the paper & also his particulars. The caution was written on the top of the paper. accused read it & signed it. Then went on with his statement. I wrote the statement in long hand. I read it back to him & he signed it. I invited & invited him if he wanted to explain it. I read it & invited him if he wanted to explain it. I told Then I sent the statement out & put to Haywood. I told Haywood what I took statement & he agreed to make a statement. statements were the chief. I was interested in. after I got the two statements the two accused were put in guard room at Salerno. I don't know if accused ever got a copy of the statement.

The prosecution has no other witness to call from the facts surrounding the obtaining of the two statements (

the accused.

The defending counsel is asked if he wishes to call the accused or any other witness to testify concerning the facts surrounding the obtaining of the two statements from the accused. Defending counsel does not call any witness nor does he wish to call either or both the accused.

The judge advocate instructs the court as to the law concerning the admissibility of the accused's statements. Reads para 74a page 90 M.M.L. and also the top portion of page 93 M.M.

Court is closed to consider the admissibility of the statements.

Court opened and accused informed that statements are admissable.

Witness reminded of the oath and continues his evidence.

Prosecuting Officer hands the witness a document and asks him what it is. It is the original statement made by Thobanet which I wrote down on 6 Oct 44 at Police HQ Sekondi at his dictation. I witnessed his signature in three places after the caution, the body of the statement and the certificate at the end. It is in my hand writing. The statement is read to the court. Marked Exhibit "B" by President of Court.

~~Prosecuting Officer hands the witness a document and asks him what it is. It is the original statement made by Pte Hayward at SIB HQ on 6 Oct 44 at his dictation. It is signed in three places after the caution, the body of the statement and the certificate. It is in my handwriting. The statement is read to the court. Marked Exhibit "C" by President of Court.~~

Cross examined by defence:

Since Hayward & Thobanet were taken into custody at Sekondi they have done something for SIB. Thobanet was able to take numbers of my section which I was OC at that time to various places during the course of which a number of stations were omitted & he was very helpful to us in clearing up a certain district. I don't know anything about him breaking a certain part of his hand.

Procter H.W. (Lieut) 63 Sec SIB duly sworn states:-

I identify Thobanet & Hayward both accused in court today. On 6 Oct 44 about 2200 hrs I was on the Sekondi Takoradi road in Dixcove when I saw Pte Thobanet & Hayward who were detained by the military Police. They were sitting in rear of 15 cwt Ford

I took from Pte Hayward a set of leather equipment a Webb holster & an ammunition pouch on belt which he was wearing on his armand a .45 Colt. From Thibeault I took a white lanyard and an old rusty pistol. They were both dressed in military uniform K.D. type. ~~I took a pistol~~ I handed properly I took from both accused one to military police.

Witness identifies white lanyard similar to the one taken from Pte Thibeault the accused, marked Ex "D" by president of Court. Witness identifies one leather belt and leather holster with cross straps similar to that which I took from Pte Hayward the accused. ~~Witness identifies~~ ~~Colt revolver # 38838 taken from Pte Hayward~~ marked Exhibit "E" by president of Court. ~~He identifies~~ also identifies Colt revolver # 38838 taken from Pte Hayward. marked Ex "F"

The accused Hayward had Ex "E" on him ~~and Ex "F"~~ Ex "F" was not in the holster. Ex "F" was with military police Cpl. ~~taking charge of his person~~. His name is Wells.

accused were wearing common type Khaki drill uniforms.

The american flag was produced to the Court by the 15 cwt truck in which I took the two accused. I don't know the number of the Jeep. I produced the Jeep to an American officer on 9 Oct 44. I don't say his name. I handed it to him.

Cross examination:-

after Hayward & Thibeault were in custody they were a great help to us. Thibeault took us to the floors covering Stokoe's car & as a result we cleaned up the area. As a result of his work we got about 30 convictions. Hayward also took us to places where Stokoe's were carrying on black market activities. I was present when Thibeault hurt his wrist.

To the Court:- I was present when pistol Ex F was taken from Hayward the pistol Ex F was taken from the holster similar to Ex E by Cpl Wells.

When the convictions of both accused we were awarded to clean up the Nola area.

- at 1615 hrs the court adjourn until 093045 on 15 Nov 45
On 15 Nov 45 at 093045 the court reassemble pursuant to adjournment; present the same members as on the 14 Nov 45

1st Sgt T/4 William C. Litalejo Jr 34034689 205 M.P. Coy United States army being duly sworn states:-
This witness did not testify at the Summary of Evidence.
The defence is asked if an adjournment is wanted and the reply is no - no adjournment is necessary.
A/T Jeep # 2045022 belongs to 205 M.P. Coy. United States army.
This vehicle belonged to 205 M.P. Coy on or about 4 Oct 44.
On that date the veh. was used for M.P patrol. I was with an Officer Lieutenant Miller of 205 M.P. Coy when the above mentioned veh was picked up at Saloons from the British M.P. I dont remember the date. Court remember what month it was. Court remember what year it was. I dont know name of British individual or individuals from whom we picked up the vehicle. After getting the veh we took it back to 205 M.P Coy. It was just the veh we received from the British. The veh was in fair condition. On or about 4 Oct 44 the above veh 2045022 was Pte (1st class) Rowe. He belonged to 205 M.P. Coy. On or about 4 Oct 44 he was on M.P. patrol. He was using veh no 2045022. On this date Pte (1st class) Rowe is in the U.S.A. I know Pte (1st class) Stow of 205 M.P. Coy. He is now in the U.S.A. These two men are not available as witnesses for this court. Lieutenant Miller of 205 M.P. Coy is not available as a witness due to exigencies of the service.

No cross examination
Questioned by court:- P.(F.C.) Stow also accompanied P(FC) Rowe on patrol, the date which I do not remember. R.P. 83(b) complied with
Prosecution is closed.

Defending officer makes motion re Provost Court on 3 charges.
(1) That it is a matter of conjecture as crime proven as per charges are concerned.

Prosecuting officer does not wish to reply.
Court closes to consider motion.
Court disallows motion. Court reopened and the finding is made known to the accused.

Summary by Prosecuting officer

Joint witness Capt Tarbox 2d A P M 9 SIB who identified one of 6 Brit H.K. produced signed statements by two accused, which were submitted by the court. ~~note to statements both~~ ~~accused admitted pte~~ The accused admits being amongst party that stole a jeep. admits that they took gun & jeep from American MP's.

Mr Porter sworn witness stated on 6 that he saw two accused. Had been arrested that day & had taken from one of accused (Hayward) a 45 Colt. Identified Colt 45. Also the belt from Hayward as leather belt & one set of leather equipment which were similar to ours produced in court. Also took one which Longford put on Thebaud, similar to one produced in court.

witness this morning Sgt Littlejohn of 205 M.P. Coy (American) told us that Pte Rowe & Starr patrolled in jeep 2045022 property of 205 M P Coy. This is jeep that is mentioned in 6 charge as being stolen from Pte Rowe & Starr on a patrol H Qrs H.K. witness (American) is not sure of date jeep was returned. Both accused admitted taking a jeep. Both ordered about by American MP's. The driver which was taken in 77 Provost person from Hayward is the one mentioned in 4th charge. Both accused mentioned taking equipment from American MP's in their statements. Mr Porter took American equipment the same as or similar to that identified in court as taken from accused. Owing to exigencies of the service that is all evidence that has been produced. Court to decide if that is sufficient evidence I think it is

Summing up by defending counsel:

By omitting into charge you do not automatically put the facts set out in that charge into the record of the trial - Crown must prove facts as set forth in various charges. Ownership must be proven - In no case in any of these charges has prosecution proved ownership - enjoyment only facts - Don't know if stolen, lost, theft, equipment was stolen or not. No proof that anyone owned the articles alleged. Jeep - no proof that it was stolen - Ice Sgt said jeep was in length of Adam's log. Not presumption of jeep on unknown date and unknown year. How many jeeps and various stolen in this country. Certain statements are before court. Can't get no clams. How do you know ownership of articles. Every man is innocent until proven guilty. Prosecution must prove all allegations in charge. Submitted that prosecution has failed to fulfil onus necessary. No attempt to defend reputation of two accused.

Summing up by Judge Advocate:

Duties of J. A. - Facts for court - Law from J. A. Only matters for weighty reasons & must be set forth in proceedings. - Burden of proof - Reasonable doubt - Presumptions - innocent until proven guilty - Person intends natural & probable consequences of his act. - Nothing defined and its ingredients - Principles - Credibility witnesses - Power of facts - Confessions - When dealing with confessions - if Hayward said anything about Thebaud what said about Thebaud must be disregarded and viceversa

Item

Exhibit "A"

CONJOINT SUMMARY OF EVIDENCE

in the case of,

F 40993 Pte THIBEAULT B.J., F 54931 Pte. HAYWARD C.B. and A 11605 Pte WATSON F.B., 1 Battalion, 1 Canadian Base Reinforcement Depot, soldiers of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

B 87957 Sgt MARMELLO, A.G., 8 Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is sworn in as interpreter.

FIRST WITNESS
For the Prosecution.

D'Angelo Geovanni, Tourist driver, Via Ferravia, San Gennaro Vesuviano, Provincia di Napoli, having been duly sworn states:- On the 15 July 1944 at approximately 2359 hours, while en route from Napels to Cola three soldiers dressed as American Military Policemen stop me whom I recognise here. They asked for my permit. I showed them my permit of curfew. They told us "This permit is no good and you need a permit from Allied Government". We were five passengers in the car. The soldiers told to two of us to get out the car. Michele Capulto and Francesco Carrello got out and were told to wait because there were too many people in the vehicle. We had a sick man whom we took at home, at San Gennaro Vesuviano. Then I was told to return and get the other two men left on the road. Then we picked up the two men above mentioned and we were told by the three soldiers that we have to proceed to their Commander. We halted at a town Brusciono. They said "we have arrived at our Commanders" They told us to get out the car and thn they searched us. They told me to take off my pants so I did. Then on their order I took the money I had in my pants and handle it to the soldiers. I did not before taking off my pants. They did they the same with the other. They took from me 8400 Lire. The three soldiers during all that time were pointing revolvers at us. They they took the car and drove away leaving us there. I am driving for Dr Martone Cesmaro. The car is a 1500 Fiat the property of my boss Dr. Martone.

Sgd. D'Angelo Geovanni.

I certify that this statement is a true translation from Italian into English to the best of my ability.

Sgd A.G. Marmello.

The accused soldiers decline to cross examine the witness.

SUMMARY OF EVIDENCE-(Cont) In the case of F 40943 Pte Thibeault E.J., F 54931 Pte HAYWARD C.B and A 11605 Pte Watson F.M.

SECOND WITNESS For the Prosecution

Caputo Nicola di Francisco, Professor of Elementary School, Gennoio Vesuviano, 78 via Napoli, having been duly sworn states:- On the 15 July 1944 at approximately 2330 hours I was comin from Naples in a Fiat car belonging to Mr Montone Germnaro, driven by D'Angelo Giavanni, I was accompanying my father, who was sick, to hospital. Just before arriving to Nola those three soldiers whom I now recognize here, dressed in American military Police stop us. This soldier here (The witness points to Thibeault) asked for our permit. I showed him a permit for curfew from the Italian Government for the purpose of taking my father to hospital. The same soldier told us that the permit was no good and that I must a permit from Allied Government. I was told that I have to go to Nola where their Commander was. I was told that there were too many persons in the car and that I had to get out along with another passenger, Frabeviesco Carrello, my brother-in-law. We both got out of the car and were searched by this one (The witness points to Hayward). They searched us as policemen. They did not take any thing from me. They left me and my brother in law there and said thy were going to see their commander, and told us to wait. Thibeault was driving the car. After awhile they returned with D'Angelo Giovanni only then they told us to get in the car. We stayed ther for about ten simtes then we drove towards Naples. On the way the three soldiers were looking right and left telling that they were not sure if it was the commanders place then they turned around and drove in the opposite direction. When we arrived at Bruscieno where we turned off on to a road that leads in the country they then turned around again and stopped the car. We were told to get out of the car. They told us to get near the wooden path of a house near them. They were pointing revolvers at us. This soldier (Pointing at Hayward) took my sun glasses and my wallet. This other one (pointing at Thibeault) took my money out of m left trousers pocket. I had in my pocket a little more than 2000 lire and in the wallet was some less in the wallet. Altogether not less than 2000 lire and still pointing at Thaibeault, he took off my wrist watch. My wrist watch is Longene. They ordered me to take off my trousers and jacket. When they were ordered by Hayward to proceed towards the country down that road. So we did. They got in the car and drove away.

Nicola Caputo
Nicola Caputo

I certify that this statement is a true translation from Italian into English to the best of my ability.

A.C. Interpreter

The accused soldiers decline to cross examine the witness.

SUMMARY OF EVIDENCE (Cont) In the case of F 40973 Pte Thibeault B.J., F 54931 Pte Hayward C.B. and A 11605 Pte Watson F.M.

THIRD WITNESS For the Prosecution.

Carrell Francesco, owner of a Bar, San Gennaro, Vesuviano, 46 Via Nola, Prov Naples, having been duly sworn states:
On the 15 July 1944 at about 2359 hours I was coming from the hospital towards Nola in a 1500 Fiat car belonging to a doctor. Just past Monpliano we were stopped by three soldiers wearing American Military Police Uniforms. This one make the sign to stop us (Witness points to Thibeault) I recognize these three soldiers here present as the same who stopus. They asked us for our permit. They made me and my brother-in-law Capruto Michelle get out of the car. The three soldiers got in and drove away telling us to wait. After awhile they came back. When the three soldiers come back they three of them with the driver of the Car. They took us in the car saying that we have to go and see the Commander of the Police. We proceed towards Naples. While on route they said they missed the road and turned around going in the opposite direction. We arrived at Brusciano. We turned down a road leading in the country. They arrived at a certain point there they stop the car. They told us to get out and that we were arrived at the police Commander's place. They ordered us to get in line. He (Pointing to Thibeault) was behind me. (He (Pointing to Watson) was searching me. He took from me 8000 lire in money and 900 lire in receipt.) They ordered me to take off my trousers. Then told us to walk down the road all the time I saw those two (pointing at Hayward and Watson) pointing pistols at us. So we went away and the three soldiers got in the car and drove away. Carrella Francesco

Sgd Carrell Francesco

I certify that this statement is a true translation from Italian into English to the best of my ability.

Sgd [illegible]

The accused soldiers decline to cross examine the witness.

FOURTH WITNESS For the Prosecution.

Dr Mentore Gennaro, Physicism and Surgeon, Arienzo Prov di Napoli, 235 Piazza Vanvitelli, having been duly sworn states:
I am the owner of a 1500 Fiat car. I hav a driver by the name of D'Angelo Giovanni, who has worked for me four months. Up to the 15 of July 44 I had my car since that date I never saw it until two canadian soldiers brought it to me the day on the 7 aug 44. On the 15 July I lent my car to my driver for the week end. About three or four days after my driver came back without the car telling me that three soldiers had taken the car from him.

Sgd Dr Gennaro Mentore

I certify that this statement is a true translation from Italian to English to the best of my ability. Sgd [illegible]

SUMMARY OF EVIDENCE (Cont) In the case of F 40993 Pte THIBEAULT B.J., F 54931 Pte HAYWARD C.B. and A 11605 Pte. WATSON F.M.

The ccused decline to cross examine the witness.

FIFTH WITNESS For the Prosecution.

Brigadiere Moretella Giovanni, C.C.R.R., Musco, (Prov. of Avellino). A written statement of this witness's evidence, purporting to be signed by him, has been read to the accused persons and is included in the summary of evidence as exhibit "A".
In my opinion the attendance of this witness cannot be readily procured owing to the fact that he is seriously sick in hospital in Naples.

Sgd D Dion Capt.

The accused does not demand the attendance of this witness for cross examination.

SIXTH WITNESS For the Prosecution.

C 30912 L/Cpl Droeske C.H., 1 Cdn L of C Provo Coy.
A written statement of this witness's evidence purporting to be signed by him, has been read to the accused persons and is included in the summary of evidence as exhibit "B".

In my opinion the attendance of this witness cannot be readily procured owing to the exigencies of the service.

Sgd D Dion Capt.

We do not require the attendance of this witness for cross examination.

[redacted] For the Prosecution.

[redacted] Provost Coy.
This witness corraborates the statement of L/Cpl Droeske C.H. for the same reasons his attendance is not readily procurable.

Sgd D. Dion Capt.

We do not require the attendance of this witness for cross examination.

Sgd B.J. Thibeault
C.B. Hayward
F.M. Watson.

SUMMARY OF EVIDENCE (Cont) In the case of F 40943 Pte THIBEAULT L.J.
F 54931 Pte HAYWARD C.B. and A 11605 Pte.
WATSON F.M.

EIGHTH WITNESS
For the
Prosecution

~~Cpl. E.E. Robinson, No. 1 L of C. (Cdn) Provost Coy.~~
A written statement of this witness's evidence purporting to be signed by him has been read to the three accused and is included in this Summary of Evidence as exhibit "C".
In my opinion the attendance of this witness is not readily procurable owing to the exigencies of the service.

Sgd D. Dion Capt.

We do not require the attendance of this witness for cross examination.

Sgd B.J. Thibeault
C.B. Hayward
F.M. Watson.

NINTH WITNESS
For the
Prosecution

~~L/Cpl. J.O.L. Beaulieu, No. 1 Cdn L. of C. Provost Coy.~~
This witness corroborates the statement of L/Cpl Robinson. In my opinion the attendance of this witness is not readily procurable owing to the exigencies of the service.

Sgd D. Dion Capt.

We do not require the attendance of this witness for cross examination.

Sgd B.J. Thibeault
C.B. Hayward
F.M. Watson.

The three accused having been duly cautioned in accordance with R.P. 4(e) elect to reserve their defence.
The accused do not demand the attendance of any witness for their defence.
Summary of Evidence, composed of four pages and three exhibits marked "A" "B" and "C", this day 30th of August 1944, taken by me before the accused.
R.P. 4 (c)(d)(e)(f) and(G) having been complied with.

Sgd D. Dion Capt.
Offr taking Summary.

In the Field,
30 August 1944.

Exhibit A1.

Brigadrere MONTELLA Giovanni, CC.RR., NUSCO, (prov. of Avellino) states as follows:

On the 20th. July at approx. 0400 hrs., I heard that German Paratroops were in a house in ~~the~~ TAVERNARSA I went there and saw a civilian car without any number. The soldiers, three of them, were inside the house with two girls.

(Continued on page 5)

PAGE 5

Re: Reg.No. F 54931, Pte. HAYWARD, C.R., - C & Y Regt.
Reg.No. F 40943, Pte. THIBAULT, B.J., - C.B.H.
Reg.No. A 11605, Pte. WATSON, F.M., - PERTH Regt.

Deserters.

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(10) The soldiers had told the owner to wake them at 1200 hrs. and at 1300 hrs. to have the dinner ready but before I came to the house someone "tipped" them off and they ran into the country. Near the house I found one soldier with three stripes, who was stopped by the civilians. The other soldiers with the two girls ran away. I saw the girls and soldiers were getting far away. So I put the soldier in the car and went to MONTELLA. The two soldiers which ran away, fired four shots against the people who were there.

On the road I met the Provost from Avellino. I turned the soldier and the car over to them. In the afternoon about 1530 hrs. I picked up the two women who were in the country. The other soldier I turned over to the Provost explained to me that the other soldiers were deserters and that they had paid 50,000 lire for the car.

Interpreter:
Wm. Weil.

Signed:
Montella Giovanni.

(illegible) The two women referred to in this report, were on

Exhibit C.1

NO 1 CDN L OF C PROVOST COY

Statement of Evidence in the Case of Ptes F-54931 Pte Hayward C.R. F-40943 Pte Thibeault B.J. and A-11605 Pte Watson F.M.

At apprex 1430 hrs 20 Jul 44 acting on information received a patrol consisting of L/cpls Isherwood, Marcelin, Craig and myself proceeded to the town of Torellas (Provn of Avellino, Italy), we had occasion to stop a civilian car being driven by A-11065 Pte Watson, who was wearing the Badge ranks of Sgt, he was accompanied by a Carabinieri from Torellas, the Carabinieri stated that he had just arrested Pte Watson. As we knew Pte Watson to be AWL we took him and the Car into Custody. A search was made for Ptes Hayward and Thibeault but as no trace of them could be found we returned to Avellino and Pte Watson was escorted to the Central Guard room where a body receipt was obtained.

(C-30912 L/cpl Droeske G.W.)
1 Cdn L of C Provost Coy

This is "Exhibit B" referred to in the Additional Original Summary of Evidence in the case of Thibeault & Hayward taken before me this 28th day of December 1944.

Signature of

Exhibit B

EXHIBIT

PRES.

H.Q. I.B. Headquarters
Salerno 6th Oct. 1944.

Statement of:- No 409443 Pte THIBEALT, BJ
C.B.H. (CAPE BRETON HIGHLANDERS)

I have been cautioned that I am not obliged to say anything unless I wish to do so and that whatever I do say will be taken down in writing and may be given in evidence. Pte Thibeault

I broke out about a month ago, in not sure of the date, out of the Avellino central guard room. Hayward also broke out the same time. From then until we stole the "Jeep" I was living with friends, I knew and was not doing a damn thing. About three days ago I was with Hayward an American and a South African, at a place somewhere near Nola. Whilst I was there a guy, an Italian civilian, came to us and said he wanted to go to Maddaloni. We all went with him in a horse and cart to Maddaloni and when we got there he took us to a place and told us that if we went to a house that he knew, dressed as American police that there was a man there who was making counterfeit money, and we would be paid a lot of dough for going there. We went, and went upstairs in the house three of us I should have said, and the other fellow and the civilian stayed downstairs. In the house we found nothing. When we came down the fellow that was at the door had two American military police or may be three held up. I asked them what was happening he told me that someone had called the cops. He caught them as they were coming in. We took them

Lt Col

guns and their Jeep and left the Police there. By the three I mean myself, Hayward and the American. The South African stayed down here. From there we drove up the back road towards San Severino. We drove anywhere to pass the night away and after daylight we did not do anything that day. On the way to San Severino I and since then I know we stopped people but I cannot remember where or at what time, but if the people who have said that we stopped them were here I could remember it. One I can remember was when we stopped a horse and cart about mid day today and got two bags of spaghetti from it. We stopped several civilians today but I do not know if anything was taken. I know I took nothing myself. Some of the money that was found in my possession must have been a share of what has been taken by us. [illegible]

I have read over the above statement and have been given the opportunity of making any alteration or addition where necessary. It is true and is made voluntarily

[illegible]

Statement taken and signature witnessed by me on 6th October 1944 at 40 Det

[illegible] Capt DAAG

This is Exhibit "B 5" referred to in the 2nd additional Confirmed summary of evidence in the case of Thirkettle and Haywood taken before me this 28th day of December 1944

Exhibit B

Lt Col JAG

Lieutenant Lunt

Signature of officer taking additional Confirmed summary.

A.F.B. Headquarters
Salerno 6th Oct 44.

Exhibit "C"

Statement of:- No 5749931 Pte HAYWARD C.R.
Carlton and York Highlanders (C.B.H.)
'A' company.

I have been cautioned that I am not obliged to say anything unless I wish to do so and that anything I do say will be taken down in writing and may be given in evidence. C.R. Hayward.

I broke out of gaol or the guard room at Avellino the same time as Thirkettle. We very seldom we ever went to hole but about two weeks ago I met an Italian named and two other soldiers, one American and an Italian. This Italian-American speaks perfect English and the three of them said they had a job to do. I asked them what the job was and they told me that it was a hold-up. Just for us to go into a house and tell the people that there was counterfeit money there. The five of us left in a horse and waggon to the town named Maddaloni. We reached the house and there were four more Italian gangsters there. They told us the same thing, it was not a hold-up. At approximately eight o'clock we reached the house where the money was supposed to be. We found nothing there and coming out one of the others, a south African had two or maybe three American police held up at the door entrance. I took the holster, the whistle, and the hat off of one policeman, and someone suggested we could take the "Jeep". We got into the Jeep and went away. We travelled all night to a town I can't remember

Sheet

the names but Kiebell knows where it is. Then we travelled all night as there was nothing else to do until the next day when we held up a few people. Today approximately, 2o'clock, we met one man on a horse and wagon that we were American police. We asked him if he had any contraband and he said, "no." We looked and found two bags of spaghetti, and the money they found on me tonight must have been some of the money we made on the road. Also I've bought one pair of civilian pants, one civilian jacket and one pair of civilian shoes which was also found in the bags. Thats about all I can say about it. C. P. Hayward

I have read over the above statement and have been given the opportunity of making and alteration or addition where necessary. It is true and is made voluntarily. C. P. Hayward

Statement taken and signature witnessed by me in the presence of Sgt Stokes S.I.B. on 6th October 1944 at S.I.B. #4.

H. Taylor Capt. DAAG

Additional Conjoint Summary of Evidence

in the case of

F-40943 Pte. Thibeault Bernard Joseph and F-54931 Pte. Hayward Clarence Russell, both 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, soldiers of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken under oath

9th Witness for Prosecution 3410515 P.F.C. Loyd G. Rowe, 205 M. P. Coy., U. S. Army, A.P.O. 512

A written statement of this witnesses evidence purporting to be signed by him has been read to the accused persons and is included in this Additional Conjoint Summary of Evidence and marked Exhibit "B1"

Having regard to the exigencies of the service, the expense and loss of time involved the attendance of this witness cannot in my opinion be readily procured.

Hawkins Lieut
Officer taking Additional Conjoint Summary.

The accused persons do not demand the attendance of this witness for cross-examination.

10th Witness for Prosecution 3409083 P.F.C. Carl A. Starr, 205 M. P. Coy, U. S. Army. A.P.O. 512.

A written statement of this witnesses evidence purporting to be signed by him has been read to the accused persons and is included in

this Additional Conjoint Summary of Evidence and Ahn
marked Exhibit "B2"

Having regard to the exigencies of the service, the expense and loss of time involved in the attendance of this witness cannot in my opinion be readily procured.

Thorarinn Lund
Officer taking Additional Conjoint Summary of Evidence.

The accused persons do not demand the attendance of this witness for cross-examination.

11th Witness for Prosecution — Captain F. W. Taylor, O.B.E., M.C., Director, Special Investigations Branch, Corps of Military Police, Central Mediterranean Forces

A written statement of this witness's evidence purporting to be signed by him has been read to the accused persons and is included in this Additional Conjoint Summary of Evidence and marked Exhibit "B 3." The statements of F-40343 Pte. Thibeault R. T. and F-547321 Pte. Raymond C. R. referred to produced, read over and shown to the accused persons and marked Exhibits "B4" and "B5" respectively and attached to the Additional Conjoint Summary of Evidence

Having regard to the exigencies of the service, the expense and loss of time involved the attendance of this witness cannot in my opinion be readily procured.

Thorarinn Lund
Officer taking Additional Conjoint Summary of Evidence

The accused persons do not demand the attendance of this witness for cross-examination.

12th Witness for Prosecution. Cpl F. Wells, C. M. Police. Sworn

A written statement of this witnesses evidence purporting to be signed by him has been read to the accused persons and is included in this Additional Conjoint Summary of Evidence and marked Exhibit "B6"

Having regard to the exigencies of the service, the expense and loss of time involved the attendance of this witness cannot in my opinion be readily procured

Wyndham Lind
Officer taking Additional Conjoint Summary of Evidence.

The accused persons do not demand the attendance of this witness for cross-examination.

13th Witness for Prosecution. 14241804 C. S. M. Procter H. W. 66 Section, S. I. B., C. M. Police, C. M. F.

A written statement of this witnesses evidence purporting to be signed by him has been read to the accused persons and is included in this Additional Conjoint Summary of Evidence and marked Exhibit "B7".

Having regard to the exigencies of the service, the expense and loss of time involved the attendance of this witness cannot in my opinion be readily procured.

Wyndham Lind
Officer taking Additional Conjoint Summary of Evidence.

The accused persons do not demand the attendance of this witness for cross-examination.

Questions to the Accused

It is your wish to make a statement as to the evidence against you? You are not obliged to do so but any evidence you give may be taken down in writing and may be given in evidence.

Answer by Pte. Thibeault

I reserve my defence.

Answer by Pte. Hayward

I reserve my defence.

I certify that the foregoing Additional Conjoint Summary of Evidence consisting of four (4) pages was taken down by me in the presence of the accused and that Rules of Procedure 4(c)(d)(e)(f) and (g) have been complied with.

[illegible]
Officer taking Additional Conjoint Summary of Evidence.

In the field
28 Dec. 1944.

(4-4 503)
20 DEC 1944
DATE
1145
BASE REINFORCEMENT DEPOT

This is Exhibit "B" referred to in the Court and Summary of Evidence in the case of [illegible] taken on this 20th day of December 1944.

66 Section S.I.B. [illegible] Signature and rank of officer taking down Court and Summary

Sect. Police. H.Q.

Statement of No. 34101515 P.F.C. LOYD G. ROWE 205 M.P. COY. U.S.A. Army. A.P.O.512.

On the 4th October 1944 at about 7.45 p.m. we were patrolling in our jeep, Maddaloni, and we checked in our station there. There was two women there who told us that four soldiers was at a certain house giving trouble. So together with an Italian interpreter and P.F.C. STARR, J and an Italian civil policeman, I went to the house. I do not know the address. I was driving the jeep and I stopped the jeep in front of the door. I got out of the jeep on one side and P.F.C. Starr and the interpreter were getting out on the other side and by the time Starr and the interpreter got round to me on the near side of the jeep, ~~by this time they left~~ a soldier put one foot out of the doorway of the house and pointed a Tommy gun at us and told us to put up our hands. He made us stand with our backs to a wall in an archway with our hands up. Just then three more soldiers in uniform ~~came~~ came into the archway. They asked the man with the tommy gun what he had got here and he replied "American Military Police" and told the three other fellows to disarm us. They took from me my lanyard and pistol, belt and cap, and from my pocket one of the fellows took the jeep keys. They then started up our jeep. They then all went out to the jeep

Dear.

and the man with the tommy gun stayed behind in the doorway until the last man was out and in the jeep. It was as they were leaving that I saw a civilian with them. The soldier who had the tommy gun then slammed the door to and I then heard the jeep move away. The two men that searched Starr and myself both wore M.P. armbands. I could not identify any of these personel as it was to dark. The pistol .45 Colt No 38858 and the lanyard which you show to me now are the ones which was stolen from me on that night the 4th of Oct.

Pfc Loyd H Rowe

I have read over the above statement it is true and correct.

- Pfc Loyd H Rowe

Statement taken down and signature witnessed by - S.I. L. Pretto, 66 Section Special Investigation Branch, Adv. Base at Salerno on the 10th of October 1944.

This is Exhibit "B2" referred to in the additional Confidential Statement of evidence in the case of Strickland & Raymond Evans. Summary of evidence in the case of Strickland & Raymond Evans. Sworn before me at Washington this 21st day of December 1944.

Signature of Officer taking Statement & Summary.

C.O. Section S.P.B.
C.M. Police H.Q.

Statement of No. 3409983 P.F.C. CARL A. STARK
205 M.P. Coy. U.S.A. Army. A.P.O. 512.

At about 7.45 p.m. on the 4th October 1944 I was patrolling in our jeep together with P.F.C Rowe ~~and an Italian Civil Policeman~~, in the village of Caddeisi. We checked in at our station there and two women complained to us that some soldiers were down at a house giving trouble. So we took with us our interpreter from the station. Rowe was driving the jeep and on arrival at the house the jeep was stopped in front of the doorway. So he got off the vehicle and was going into the house a soldier held me up with a Tommy Gun. The Italian Civil Policeman must have been behind the jeep and got away. We were made to stand with our backs to the wall with our hands up, and the soldier with the Tommy Gun stood over us. Then three more soldiers came on the scene and the fellow with the Tommy Gun, after telling them that we were American Military Police, told them to disarm us. Two of these three soldiers were wearing M.P. armbands. They took from me my revolver No. 52890 of Smith & Wesson make, my leather holster and leather equipment, and left. I then heard the jeep start up and eventually the soldiers left. They did not touch the interpreter. He man with the Tommy gun kept us covered whilst

1 Dlg iii

all the rest left. He then slammed the door to and left. I then heard the jeep move away. One of the soldiers were wearing British Army Uniform with Corporals stripes. When the soldiers were leaving I noticed that a civilian was with them also. I recognise the leather holste and leather equipment which you show to me now as being mine and which was stolen from me when I was held up on the night of the 2nd Oct. I cannot identify any of the soldiers owing to the fact that it was dark.

- Pfc Carl A. Starr

I have read over the above statement it is true and correct.

- Pfc Carl A. Starr

Statement taken down and signature witnessed by C. Lt. Poretti of Lieutenant special Investigation branch, G.H. Police at Salerno on the 10th October 1944.

17

66 Section,
Special Investigation Branch,
Corps of Military Police,
Central Mediterranean Forces.

Statement of:-
Captain F.W. Taylor, D.A.P.M.,
66 Section,
Special Investigation Branch,
Corps of Military Police,
Central Mediterranean Forces.

On 6th. October, 1944, I saw No. 40943 Pte. Thiebauld B.J. "H.Q.", 2nd. Bn. Cape Breton Highlanders, detained at this "H.Q."s I said to him " I am Captain Taylor of the Special Investigation Branch and I am making enquiries into a series of robberies that have occured in this area recently in which I have reason to believe you took part. Do you wish to make any statement as to your movements during the past few days?"

He elected to make a statement. I cautioned him and took his statement down in writing at his dictation. He read over this statement and signed it in my presence. This statement marked "A".

I later saw No.F.54931 Private Hayward C.R. of the Carlton and York Highlanders who had been detained in company with Thiebauld. I said to him," I am Captain Taylor of the Special Investigation Branch. I am making enquiries into a series of robberies that have occured in this area recently in which I have reason to believe you took part. Do you wish to make any statement as to your movements during the past few days?"

He elected to make a statement and after being cautioned he dictated this statement which I took down in writing. He read this and then signed it in my presence. This statement marked "B".

I produce these statements.

F.W. Taylor. Captain.D.A.P.M.

18th.November1944.

This is Exhibit 'B' referred to in the additional Conjoint Summary of evidence in the case of Lt. Edwards & Sapper Sandham taken before me this 18th day of December 1944.

Signature of Officer taking additional Conjoint Summary.

18

66 Section,
Special Investigation Branch,
Corps of Military Police,
Central Mediterranean Forces.

Statement of:-

No:- 142418804 C.S.M. Procter H.W.,
66 Section,
Special Investigation Branch,
Corps of Military Police,
Central Mediterranean Forces.

About 22.00hrs. on 6th. October, 1944, I saw No. F.40943 Pte. Thiebauld B.J., H.Q., 2nd. Bn. Cape Breton Highlanders, No. F.34931 Pte. Hayward C.R., "A" Company, 1st. Division, Carlton and York Regt; and DI GENNA Francesco, on the road near San Severino Rota. They had been arrested and were in the rear of a 15cwt truck. I took from Pte. Hayward one leather holster and one set of leather equipment, one .45 Colt automatic revolver No.38838 and one "M.P" armband. From Pte. Thiebauld I took one white lanyard, one rusty pistol and one "M.P" armband. From DI GENNA I took one knife and scabbard. I collected from the lorry, of the floor and from the civilian 31,000 Lire.

On 9th. October, 1944, I handed Jeep No.2045022 to Lieut; Miller, 205 M.P. Company, U.S.A. Army, against receipt.

On 10th. October, 1944, I produced to No.34090983 P.F.C. Carl A. Starr, 205 M.P. Company, U.S.A. Army, one leather holster and equipment and to No.34101515 P.F.C. Loyd G. Rowe, 205 M.P. Company, U.S.A. Army, one .45 Colt automatic pistol No. 38838 and one white lanyard. I handed the property over to them against receipt.

On 17th. October, 1944, I produced to MASCA Luigi of San Valentino, Torrio Frazione Casadov, one knife and scabbard.

~~On 25th. October, 1944, I took from No.190755 Spr.~~ Marten J.W., 24th. Road Construction Company, South African Engineers, two No.77 Hand Grenades and one explosive shell.

On 27th. October, 1944, I saw Spr. Marten at H.Q., Special Detachment, C.M.Police, Bola. I said to him, " I am C.S.M. Procter of the Special Investigation Branch, and I have reason to believe that you have been concerned in some armed robberies. I then cautioned him. He elected to make a statement which I took down in writing after which I read it over to him ~~and he signed it. Statements were cross served~~.

H.W. Procter

H.W.Procter.C.S.M.
66 Section, S.I.B.

FIELD.

This is Exhibit "B" referred to in the ~~original~~ Amended Summary of Evidence in the case of Thiebauld & Hayward taken before me this 20th day of December 1944.

Signature of Officer taking ~~original~~ Amended Summary

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L I S T O F W I T N E S S E S

In the case of,

F. 40943, Pte. THIBEAULT, Bernard Joseph, and F. 54931, Pte. HAYWARD, Clarence Russell, both 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, soldiers of the Canadian Army Overseas :-

Witnesses for the Prosecution

C. 65572, Cpl. Richards, R.E.,	1 CBRBn, 1 CBRD.
D'Angelo Geovanni, Tourist Dvr.,	Via Ferravia, San Gennaro Vesuviano, Prov. di Napoli.
Carrello Francesco,	San Gennaro Vesuviano, 46 Via Nola, Prov. di Napoli.
Dr. Montone Gennaro,	Arienzo, 235 Piazza Valletta, Prov. di Napoli.
Brigadiere Moretella Giovanni,	C.C.R.R. Nusco, Prov.di Avellino.
C. 30912, L/Cpl. Broeske, G.W.,	1 Can L of C Provost Coy.
K. 37996, L/Cpl. Craig, W.H.,	1 Can L of C Provost Coy.
3410515, Pfc. Lloyd G. Howe,	205 M.P. Coy, U.S. Army.
34090983, Pfc. Carl A. Starr,	205 M.P. Coy, U.S. Army.
Capt. F.W.Taylor, D.A.P.M.,	66 Sec, SIB, Corps of Military Police, C.M. Forces.
Cpl. F. Wills,	C.M.Police.
14241804, CSM Procter, H.W.,	66 Sec. SIB, C.M.Police, C.M.F.

Witnesses for the Defence

N I L

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DAM

STATEMENT BY THE ACCUSED

I certify having received free of charge, a copy of the Summary of Evidence, list of Witnesses, list of Exhibits and Charge Sheet, and Additional Summary of Evidence re Thibeault.

~~I desire the services of an officer to represent me at the trial.~~

Date 6/3/43

J.H. Markakley
Sol. for Pte Thibeault
& Pte Hayward.

CHARGE SHEET

STATEMENT BY THE ACCUSED.

I certify having received free of charge, a copy of the joint Summary of Evidence, list of Witnesses, list of Exhibits and Charge Sheet, and Additional joint Summary of Evidence re Thibeault & Hayward.

~~I desire the services of an officer to represent me at the trial.~~

Date 6/3/43

J.H. Markakley
Sol. for Pte Thibeault
& Pte Hayward

CHARGE SHEET

STATEMENT BY THE ACCUSED.

I certify having received free of charge, a copy of the joint Summary of Evidence, list of Witnesses, list of Exhibits and Charge Sheet, and Additional joint Summary of Evidence re Hayward.

~~I desire the services of an officer to represent me at the trial.~~

Date 6/3/43

J.H. Markakley
Sol for Pte Hayward
& Pte Thibeault

CHARGE SHEET

TAKE NOTICE PURSUANT TO R.P. 76

In the cases of,

F. 40943, Pte. THIBEAULT, B.J., and
F. 54931, Pte. HAYWARD, C.R., both
1 Canadian Base Reinforcement Battalion,
1 Canadian Base Reinforcement Depot,
that the Prosecution will call

Lieut. Miller, 205 M.P. Company, U.S. Army, who will state that -

Jeep No. 2045022 was the property of the 205 M.P. Company on or about the 4th October, 1944.

(Signed) W. Jas. Rinn, Lieut.

Officer detailed to take the Summary of Evidence.

In the Field,
3rd Jan. 1945.

5 B 98, 99, ~~100~~, ~~101~~
Pla Thibeault B J
Pla Hayward C R

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F. 5493 PTE BERNARD JOSEPH THIBEAULT
F. 5493 PTE CLARENCE RUSSELL HAYWARD

Charge. (Insert " alternative " where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
~~1st~~			
1st AA. 41.	NOT GUILTY		
~~2nd~~			
2nd AA. 41.	NOT GUILTY		
~~3rd~~			
3rd AA. 41.	NOT GUILTY		
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 713, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

(Sgd) ..... (Sgd) .....
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56. 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....
Date .....
Commanding .....
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CPA06 (To Head of AF A2)
401 P & S-1608 (40-01)

4/38B

Convened by Order of LT. COL. VINCENT MCKENNA Comd 1 CAN. BDE dated 11 JAN 45.
AHQ RPT 6 P CMP

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F. 5493.	PTE	BARNARD JOSEPH	THIBEAULT	1 CAN ICARO
F. 5493.	PTE	CLARENCE RUSSELL	HAYWARD	1 CAN ICARO

PROCEEDINGS REVIEWED JAG 6 Sept 45 BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (CANADA) 1 ITALY on (date(s)) 16.17.22 JAN 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 62-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to ..... as interpreter ? Ans~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans ..... The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans .....(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJOR	A.M. RUSSELL (CIC)	1 AH 1 CARO
Member	LIEUT.	H.E. FOLTER (CIC)	2 CAN RE ALLOC CAN TRE
Member	LIEUT.	M. PRATTE (CIC)	2 CAN RE ALLOC CAN TRE
Judge-Advocate	CAPT.	D. Jur. ROSE (CIC)	HQ 1 CAN CORPS
Prosecutor	LIEUT	F.R. LA FLECHE (CIC)	1 BN. 1 CARO
Defending ~~Offr~~ Counsel	A. 25205 SGT. MAJ. LATCHY F.H. (A MEMBER IN GOOD STANDING OF THE ONTARIO BAR)		1 CAN SIGS. EMP

Questions by President : Is the Prosecutor a lawyer ? Ans No ~~Is the Defending Offr a lawyer ? Ans~~
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See QL p 33.)

A8. The ~~accused~~ DEFENDING COUNSEL before arraignment makes(s) ~~has (h)~~ plea
(REFER EVIDENCE PP1.)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to Rul cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 78-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....Do you intend to call witnesses on your behalf? Ans.....Are they witnesses as to character only? Ans.....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 895. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 66(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans.....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(3)
(1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 122(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RD 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

NO. 1

J O I N T C H A R G E S H E E T

The accused, F. 40943, Pte. Bernard Joseph THIBEAULT, and F. 54931, Pte. Clarence Russell HAYWARD, - both 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, soldiers of the Canadian Army Overseas, are charged with:-

FIRST CHARGE

Sec. 41

Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ROBBERY WITH AGGRAVATION, CONTRARY TO SEC. 23(1)(a) OF THE LARCENY ACT 1916,

in that they,

In the Field, in Italy, together with another person unknown, on or about the 15th. of July 1944, robbed D'Angelo Giovanni of a Fiat Sedan 1500, property of Dr. Montone Gennaro.

SECOND CHARGE

Sec. 41

Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ROBBERY WITH AGGRAVATION, CONTRARY TO SEC. 23 (1)(a) OF THE LARCENY ACT 1916,

in that they,

In the Field, in Italy, together with another person unknown, on or about the 15th. of July 1944, robbed D'Angelo Giovanni of 8,400 Lire.

THIRD CHARGE

Sec. 41

Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ROBBERY WITH AGGRAVATION, CONTRARY TO SEC. 23 (1)(a) OF THE LARCENY ACT 1916,

in that they,

In the Field, in Italy, together with another person unknown, on or about the 15th. of July 1944, robbed Carrella Francisco of 8,000 Lire in money and 500 Lire in receipts.

FOURTH CHARGE

Sec. 41

Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ROBBERY WITH AGGRAVATION, CONTRARY TO SEC. 23 (1)(a) OF THE LARCENY ACT 1916,

in that they,

In the Field, in Italy, together with several other persons unknown, on or about the 4 Oct. 1944, robbed 34101515, Pfc. Lloyd G. Rowe, 305 M.P. Coy, U.S. Army, of one (1) lanyard, one (1) .45 Pistol, Colt, Automatic #38838.

NO. 1 JOINT CHARGE SHEET re:

F. 40943, Pte. THIBEAULT, Bernard Joseph, &
F. 54931, Pte. HAYWARD, Clarence Russell.(Cont'd)

FIFTH CHARGE

Sec. 41

Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ROBBERY WITH AGGRAVATION, CONTRARY TO SEC.23(1)(a) OF THE LARCENY ACT 1916,

in that they,

In the Field, in Italy, together with several other persons unknown, on or about the 4th. Oct. 1944, robbed 34090983, Pfc.Carl A. Starr, 205 M.P. Coy, U.S.Army, of one (1) leather holster and leather equipment.

SIXTH CHARGE

Sec. 41

Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ROBBERY WITH AGGRAVATION, CONTRARY TO SEC.23(1)(a) OF THE LARCENY ACT 1916,

in that they,

In the Field, in Italy, together with several other persons unknown, on or about the 4th. Oct. 1944, robbed 34101515, Pfc.Lloyd G. Rowe, and 34090983, Pfc.Carl A. Starr, both of 205 M.P. Coy, U.S. Army, of one vehicle, Jeep, #2045022, the property of 205 M.P.Coy,U.S.Army.

Vincent McKenna Lt-Col.
(VINCENT McKENNA,)
Officer Commanding,
1 Cdn Base Rft Bn, 1 C.B.R.D.

In the Field,
31 Dec. 1944.

Approved for trial under K.R. (Can) 540
[illegible] Capt
ADJ A HQ 1 CBRD

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
11 Jan 45

Vincent McKenna
(VINCENT McKENNA) Lt-col
T/Comd 1 Cdn Base Rft Group
Cdn Army-CAF

No 2

DHR

CHARGE SHEET

The accused, F. 40943, Pte. THIBEAULT, Bernard Joseph, 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE

Sec. 15 (1)

Army Act

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy, at about 0900 hrs. 29 Dec. 1943, absented himself without leave until apprehended at about 1300 hrs. 3 March 1944. (Absent, 65 days, 4 hours.)

SECOND CHARGE

Sec. 15 (1)

Army Act

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy, at about 1530 hrs. 11 Mar. 1944, absented himself without leave until apprehended at about 1520 hrs. 31 May 1944. (Absent, 80 days, 23 hrs., 50 mins.)

THIRD CHARGE

Sec. 15 (1)

Army Act

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy, at about 1015 hrs. 2 June 1944, absented himself without leave until apprehended at about 2015 hrs. 21 July 1944. (Absent, 49 days, 10 hours.)

FOURTH CHARGE

Sec. 15 (1)

Army Act

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy, at about 0200 hrs. 7 Sept. 1944, absented himself without leave until apprehended at about 2100 hrs. 29 Oct. 1944. (Absent, 52 days, 19 hours.)

CHARGE SHEET in the case of F. 40943, Pte. THIBEAULT, B.J. (Cont'd)

FIFTH CHARGE

Sec. 15 (1)

Army Act

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy, at about 0630 hrs. 13 Nov. 1944, absented himself without leave until apprehended at about 2030 hrs. 24 Nov. 1944. (Absent, 18 days, 14 hours.)

Vincent McKenna Lt-Col.
(VINCENT McKENNA,)
Officer Commanding,
1 Cdn Base Rft Bn, 1 C.B.R.D.

In the Field,

29 Dec. 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
11 Jan 45

Vincent McKenna
(VINCENT McKENNA) Lt-col
T/Comd 1 Cdn Base Rft Group
Cdn Army-CMF

MEDICAL OFFICER'S CERTIFICATE
(CR (Can) 557)

I certify that I have this morning examined No. F40943 Rank Pte.

Name Thibeault E.A. of #1 Can.

and in my opinion he is ~~fit~~/unfit to undergo trial by Court Martial.

A.med.

In the Field
Date 16 Sept 43.

A. mac Donald Capt.
(Medical Officer)
No 1 Can. Field Hospital.

MEDICAL OFFICER'S CERTIFICATE
(MCM (ORD.) 97)

I certify that I have this morning examined No. F34731 Rank Pte

Name HARWARD C.R. of C.Y.R. 14th and in my opinion he is

fit/~~unfit~~ to undergo trial by Court Martial.

In the Field
Date.
16-1-45

(MEDICAL OFFICER)

MEDICAL OFFICERS CERTIFICATE
(KR (Can) 597)

I certify that I have this morning examined No F 40743 Rank Pte

Name T'HIBEAULT B.J. of CBH 11Bn and in my opinion he is

fit/~~unfit~~ to undergo trial by Court Martial.

(MEDICAL OFFICER)

In the Field
Date 17-1-45

2

MEDICAL OFFICERS CERTIFICATE
(KR (Can) 577)

I certify that I have this morning examined No 154931 Rank Pte

Name HAYWARD C.R of C.Y.R. 1 Bn and in my opinion he is

fit/~~unfit~~ to undergo trial by Court Martial.

1 mo 7

(MEDICAL OFFICER)

In the Field
Date 7-1-43.

Lieut H. Prefontaine (C I C) 2 Cdn Reallocation Centre not being available, the waiting member, Lt M. Pratte (C I C) 2 Cdn Reallocation Centre, is sworn in; the accused had no objections.

A8

The Defence Counsel asked the Court that 4, 5 and 6 Charges on Charge Sheet No 1 be tried first on the grounds that if the first Charges were tried together it might be embarrassing to their defence on 4, 5 and 6 Charge.

The Court closed to consider the plea.

The request of accused granted and accordingly the accused are arraigned on the 4th 5th and 6th Charges on Charge sheet No 1.

D3.

First Witness for prosecution | Capt T.W. Taylor, D A P M and O.C. 63 Sec. S I B C M P duly sworn is examined by the prosecution.

On 6 Oct 44 I was O.C. 66 Sec. S I B C M P at Salerno. On that day I saw the accused whom I recognize in Court at 66 Sec S I B HQ. I interviewed each of the accused separately, telling them who I was and that I had reason to believe that they had been concerned in a series of thefts. I asked them if they would care to give a statement as to their movements on the 3 or 4 days prior to the 6 Oct 44. They each elected to make a statement whereupon I cautioned them and after they signed the written caution I wrote down their statement at their dictation. On the formal caution I said "You are not obliged to say anything unless you wish but anything you do say may be used in evidence". They signed the formal caution which I wrote on the sheet of paper and which I read over to them. They read the caution over themselves before signing it. They signed it before making any statement at all & I state, no promises or inducements were made to either of the accused before they made their statements.

Defence Counsel objects to the statements being introduced.

Cross-exam on method etc of taking Statements

The accused were in custody when I first saw them.

The accused were brought into the HQ by 3 A/Cpls of C & P who handed them over to my custody and then left the bldg.

I left one of the accused in custody of several of my sgts while the other one I took into my office along with one of my sgts - Sgt Stokes. Sgt Stokes is on his way to the U.K. at the present time.

The room in which Hayward, the accused, who was first left in custody of the Sgts was on the same floor as my office.

I believe it was Thibeault who was first interviewed by me.

I identify statements taken by me because they are in my own writing and my signature is appended as witness.

Statements are taken down in accordance with a pro forma which I have to adhere to in accordance with police regulations.

The procedure adopted by the S I B is exactly the same as adopted by the civil police in England and the statement is written down in accordance with instructions issued by the D.P.M. S I B AFHQ.

The evidence on a statement taken two weeks ago would be similar to the present evidence on these statements.

I remember taking the statements - I can remember most of the things that happened.

I think Thibeault was first in my office.

I explained who I was to him.

I told him that I had reason to believe that he knew something about some thefts which occurred in the 3 or 4 days prior to 6 Oct 44 and I asked him if he cared to give any statement of his movements over those four days.

I cautioned him because there was a possibility that a charge might be laid as the result of any statement he might make.

I made a statement in reference to the accused on 18 Nov 44.

I never said "I would like you to make a statement to either of the accused.

I never said to Hayward "that your friend has made a statment very satisfactory to me."

I never said to Hayward "There are some rackets going on and if he knew anything about them".

It was after 2300 hrs 6 Oct 44 when these statements were made.

I did not say to either accused "you have nothing to hope for, nothing to fear by reason of any threats or inducements."

The warning that each accused received was that "you need not say anything unless you wish to but that anything you say may be used in evidence".

That is the caution used that night before making the statements.

No Re-ex am

No Quest by Court

By J.A.

The statements were taken separately from each accused.

The statements of one accused were not shown or read to the other accused.

The Court adjourned at 1130 hrs. The Court reassembled at 1400 hrs the same members being present.

DM

Defence Counsel moved that the Statements obtained by Capt Taylor, the 1st Witness, from the accused be not produced in Court or allowed in evidence.

Prosecutor's reply

The statements were given voluntarily by the accused to the witness after they had been cautioned in a proper manner. Not only were they cautioned but they had the opportunity to read the caution and signed it. There is no evidence to indicate that the statements not properly given. Therefore I would ask Court to allow the witness to enter them into the evidence.

Defence Counsel's reply

It lies upon the prosecution to prove that the statements are voluntary. see Chipman P 448. Onus of proof rests on prosecution. Attention drawn to rules laid down by Judges at P. 91 of M.L. I maintain that the onus of proof has not been satisfied by the prosecution and submit that the motion be allowed and the statements be ruled inadmissable.

The court closed to consider the motion. The court disallowed the motion.
The Court reopened.

First witness recalled. examined by Prosecutor.

I produce a statement made by F40943 Pte Thibeault B.J. to me on 6 Oct 44. The statement is signed by Thibeault. Witness reads caution and starts into main body of statement.

Defence Counsel I object to this statement on the ground that it incriminates Pte Hayward.

The Court closed considered the objection and disallows it.
The court reopened.

First Witness recalled

Witness reads Thibeault's statement which is marked Exhibit A.

I produce a statement made by F54931 Pte Hayward C.R. Witness reads the statement which is marked Exhibit B.

This statement was made to me sometime after 2300 hrs on 6 Oct 44.

No Cross-exam

No Quest by Court

R.P 83(1) Complied with.

DMR

Second Witness for prosecution } 1/Lieut R.E Millar C'm P, 205 M P Coy U.S. Army duly sworn is examined by prosecutor.

Jeep no 20415022 is the property of 205 M.P. Coy U.S. Army. It belonged to that Coy on the 4 Oct 44 and still belongs to that Coy at this date. It has never been off the strength of that Coy during the period prior to 4 Oct 44 to the present date.

no Cross-exam

no Quest By Court

R.P. 83(B) Complied with.

Third Witness for prosecution } 34101515 Pfc Lloyd G Rowe 205 M.P. Coy U.S Army duly sworn. is examined by prosecutor.

On 4 Oct 44 I went to a place in Maddaloni with Pfc Stair - we stopped our Jeep no 20415022 at this place and I got out to look it. As I was going to look the jeep a fellow stepped out of the doorway pointing a T.M.C. at me. I put up my hands and went inside the door and stood with my back against the wall just inside the doorway. Three fellows came down the stairs and came to where I along with Stair and our interpreter were standing. One of the fellows who came down the stairs came up and took my gun off me. My gun is a .45" colt revolver No 38838. He also took my lanyard, cap and garrison belt. The four men, that is the 3 men who came down the stairs and the one man with the T.M.C. got into our jeep and drove off. The colt with lanyard which I now produce is the gun and lanyard taken off me that night. Marked Ex C. The belt I now produce is the one taken that night marked Ex D. They were returned to me on 9 Oct 44.

Cr-exam

I didn't see the 4 persons get into the jeep as the door was closed.

Re-exam

When I went out the jeep was gone.

No Quest by Court

By VA

This event took place at between 19-20 hrs 4 Oct 44.

There was very little light in the archway where we were standing with our backs to the wall.

I couldn't recognise any of the people.

I went right out to where the jeep had been standing as soon as I heard it leave.

It would be a minute to minute and a half after they left.

There was no one in the street.

I didn't see any one else come down the stairs except the three men.

DML

The man with the T.M.C. was dressed in B.D.
Two of the men who came down the stairs were dressed in U.S. cotton summer uniforms. the other in B.D.
The two fellows with U.S. uniforms had M.P. armbands on.
The man wearing the B.D and who came down the stairs had Cpls stripes on.
The three men who came down the stairs had pistols in their hands - the fellow at the down didn't have a hat on.
I received Ex. C and D from the S.I.B C.M.P. HQ Salerno on 9 Oct 44.

R.P. 93(B) Complied with.

Fourth Witness for prosecution } 34090983 Pvt. Carl A Stair 205 M.P. Coy U.S. Army duly sworn, is examined by the prosecutor.

Pfc. Rowe and I were in Maddaloni on patrol on 4 Oct 44 - we went to a house in that town, I could take you there but can't tell you its location, in our jeep. Rowe was driving and stopped it right in front of the doorway. While he was looking at it I got out and walked around behind the jeep. A man standing in the doorway had a gun in his hand - something like a T.M.C. I put my hands up and went inside as told by him. So Rowe and our interpreter got inside four other fellows appeared on the scene almost right away. These fellows disarmed me taking my gun, a S&W .45 Calibre revolver and the leather equipment I had on. consisting of holster, cross strap and belt, my cap, my armband and my whistle. After they did this they left in our jeep. The belt holster and cross strap produced by me are the ones taken on 4 Oct 44 - marked by E. When I refer to "they" I mean the men who took me up. Three of these men dressed as American M.P.s and had M.P. armbands on, two of the other men had civilian clothes on and the other two men had B.D on. They were armed with pistols which were in their hands. I got Ex. E back from the S.I.B at D.A.P.M.s place in Salerno about 3 or 4 days after the 4 Oct 44.

Cross-exam

I didn't see the persons who held me up get into the jeep.
The men who came down the stairs pointed their weapons at me.
I don't know who it was who took the stuff from me.

No re-exam

By J.A.

The interpreter guided us to the house.
The man who took my equipment off me was

DMR

dressed in a U.S. uniform with an M.P. armband.

The civilian stayed in the background and at first I didn't know he was with the four dressed in uniforms until he followed them out the door.

I went out right away but the jeep was out of sight and I didn't see anyone in the street.

It occurred between 1430 - 2000 hrs 4 Oct 44.

Pte. Rowe was in charge of the Jeep.

The four men in uniform spoke in English like Canadians or British but not like Americans.

R.P. 83(B) Complied with.

The Court adjourned at 1700 hrs.

The Court re-opened at 0930 hrs, 17 March 45 The same members being present.

The Court adjourned at 0935 hrs until 0930 hrs 22 Jan 45 as 142 41804 CSM Proctor H W 66 See SIB C.M.P. would not be available until that date.

Exhibit D.

May it please the Court

I wish to report that

F 40943 Pte Thibeault Bernard Joseph,
1 Cdn Base Reinf Battalion, 1 Cdn Base Reinf
Depot, a soldier of the Canadian army overseas,
in hospital in the "soldiers under sentence and
awaiting trial" ward of 1 Cdn Field Dressing Hospital,
escaped from custody at approx 0700 hrs (1 hour approx) 21 JAN 45
and as yet has not been apprehended, this
date, 22 Jan 45.

I recommend, therefore, that trial
proceed on the charges against F 54931
Pte Clarence Russell Hayward, and that
trial on joint charge sheet against Ptes.
Thibeault and Hayward be adjourned until
such time as Pte. Thibeault is apprehended

In the Field
22 Jan 45

F.B. LAFlèche - Lieut
A/Adjt
prosecuting officer.

This is Exhibit "A" referred to in the Summary of Evidence in the case of Thibeault & Hayward taken before me this 28th day of December 1944
Sgd "W Sas Reiss" Lieut
Signature of

EXA
"AMR"
Pres.

S.S.B. Headquarters,
Salerno.
6 th October 1944.

Statement of:-

No. F. 40943, Pte. THIBEAULT, B.J.
C.B.H.(Cape Breton Highlanders)

I have been cautioned that I am not obliged to say anything unless I wish to do so and that whatever I do say will be taken down in writing and may be given in evidence.

(Signed) B.J. Thibeault

I broke out about a month ago - I'm not sure of the date, out of the Avellino Central Guard Room. Hayward broke out the same time. From then until we stole the Jeep I was living with friends I knew and was not doing a darn thing. About three days ago I was with Hayward, an American, and a South African, at a place somewhere near Nola. Whilst I was there a guy, an Italian Civilian, came to us and said he wanted to go to Maddaloni. We all went with him in a horse and cart to Maddaloni, and when we got there he took us to a place and told us that if we went to a house that he knew, dressed as American Police that there was a man there who was making counterfeit money, and we would be paid a lot of dough for going there. We went, and were upstairs in the house three of us I should have said, and the other fellow and the civilian stayed downstairs. In the house we found nothing. When we came down the fellow that was at the door had two American Military Police or maybe three, held up. I asked them what was happening. He told me that someone had called the cops. He caught them as they were coming in. We took their guns and their Jeep and left the Police there. By the three I mean myself, Hayward and the American. The South African stayed downstairs. From there we drove up the back road towards San Severino. We drove anywhere to pass the night away and after daylight we did not do anything that day. On the way to San Severino and since then I know we stopped people but I cannot remember where or at what time, but if the people who have said that we stopped them were here I could remember it. One I can remember was when we stopped a horse and cart about mid-day today and got two bags of spaghetti from it. We stopped several civilian cars today but I do not know if anything was taken. I know I took nothing myself. Some of the money that was found in my possession must have been a share of what has been taken by us.

(Signed) B.J. Thibeault

I have read over the above statement and have been given the opportunity of making any alteration or additions where necessary. It is true and is made voluntarily.

(Signed) B.J. Thibeault

Statement taken and signature witnessed by me on 6th Oct 1944 at HQ S.I.B.

(Signed) F.W. Taylor, Capt., D.A.P.M.

ORIGINAL COMPARED AND THIS IS A CERTIFIED TRUE COPY

PRESIDENT.

This is "B5" referred to in the additional Summary of Evidence in the case of Thiebeault and Hayward taken before me this 28th day of December, 1944

"W Jas Rinn" Lieut. S.I.B. Headquarters,
Salerno.
Signature & Office of Officer taking additional 6th October 1944.
Corporal Summon

F x B.
"A M R"
Pres.

Statement of:-

No. F. 54931, Pte. HAYWARD, C.R.,
Carleton & York Highlanders (C.B.H.)
"A"

I have been cautioned that I am not obliged to say anything unless I wish to do so and that anything I do say will be taken down in writing and may be given in evidence.

(Signed) C.R. Hayward

I broke out of goal or the guard room at Avellino the same time as Thiebault. Very seldom we ever went to Nola but about two weeks ago I met an Italian and two other soldiers, one American and an Italian. This Italian American speaks perfect English and the three of them said they had a job to do. I asked them what the job was and they told me that it wasn't a hold-up. Just for us to go into a house and tell the people that there was counterfeit money there. The five of us left in a horse and waggon to the town named Maddaloni. We reached the house and there were four more Italian gangsters there. They told us the same thing, it was not a holdup. At approximately eight o'clock we reached the house where the money was supposed to be. We found nothing there and coming out ~~of~~ one of the others, a South African had two or may be three American Police held up at the door entrance. I took the holster, the whistle, and the hat off of one policeman, and someone suggested we would take the "Jeep". We got into the Jeep and went away. We travelled all night to a town, I can't remember the names but Thiebault knows where it is. Then we travelled all night as there was nothing else to do until the next day when we held up a few people. Today approximately 12 o'clock we told one man on a horse and wagon that we were American Police. We asked him if he had any contraband and he said, "No". We looked and found two bags of spaghetti, and the money they found on me tonight must have been some of the money we made on the road. Also I've bought one pair of civilian pants, one civilian jacket and one pair of civilian shoes which was also found in the Jeep tonight. Thats about all I can say about it.

(Signed) C.R. Hayward

I have read over the above statement and have been given the opportunity of making any alterations or additions where necessary. It is true and is made voluntarily.

(Signed) C.R. Hayward

Statement taken and signature witnessed by me in the presence of Sgt. Stoles, S.I.B. on 6th Oct. 1944 at SIB HQ.

(Signed) F.W. Taylor,
Capt., D.A.P.M.

ORIGINAL COMPARED AND THIS IS A
CERTIFIED TRUE COPY _____
PRESIDENT

CONJOINT SUMMARY OF EVIDENCE

In the case of,

F. 40943, Pte. THIBEAULT, B.J., F. 54931, Pte. HAYWARD, C.R. and A. 11665, Pte. WATSON, F.M., 1 Battalion, 1 Canadian Base Reinforcement Depot, soldiers of the Canadian Army Overseas :-

The Commanding Officer directs that the evidence be taken on oath:

B. 89757, Sgt. MARSHELLO, A.G., 8 Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is sworn in as interpreter.

FIRST WITNESS For the Prosecution.

D'Angelo Geovanni, Tourist driver, via Ferravia, San Gennaro Vesuviano, Provincia di Napoli, having been duly sworn states:-

On the 15 July 1944 at approximately 2359 hrs, while en route from Naples to Nola, three soldiers, dressed as American Military Policemen stopped me whom I recognize here. They asked for my permit. I showed them my permit of curfew. They told us "this permit is no good and you need a permit from Allied Government". We were five passengers in the car. The soldiers told to two of us to get out the car. Michele Capulto and Francesco Carrello got out and were told to wait because there were too many people in the vehicle. We had a sick man whom we took at home, at San Germaro Vesuviano. Then I was told to return and get the other two men left on the road. Then we picked up the two men above mentioned and we were told by the three soldiers that we have to proceed to their Commander. We halted at a town Brusciono. They said "we have arrived at our Commanders". They told us to get out the car and then they searched us. They told me to take off my pants, so I did. Then on their order I took the money I had in my pants and handed it to the soldiers. I did not before taking off my pants. Then they did the same with the other. They took from me 8400 Lire. The three soldiers during all that time were pointing revolvers at us. Then they took the car and drove away leaving us there. I am driving for Dr. Mortone Gennaro. The car is a 1500 Fiat the property of my boss Dr. Martone.

Sgd. D'Angelo Geovanni.

I certify that this statement is a true translation from Italian into English to the best of my ability.

Sgd. A.G. Marshello.

The accused soldiers decline to cross-examine the witness.

~~SECOND WITNESS~~ For the Prosecution

Capulto Michele di Francisco, Professor of Elementary School, Gennole Vesuviano, 78 via Napoli, having been duly sworn states:-

On the 15 July 1944 as approximately 2359 hrs I was coming from Naples in a Fiat car belonging to Dr. Montone Geranoro, driven by D'Angelo Giavanni. I was accompanying my father, who was sick, to hospital. Just before arriving to Nola those three soldiers whom I now recognize here, dressed in American Military Police stop us. This soldier here (the witness points to Thibeault) asked for our permit. I showed him a permit for curfew from the Italian Government for the purpose of taking my father to hospital.

SECOND WITNESS (Continued)

The same soldier told us that the permit was no good and that I must a permit from Allied Government. I was told that I have to go to Nola where their Commander was. I was told that there were too many persons in the car and that I had to get out along with another passenger, Fravieseo Carrello, my brother-in-law. We both got out of the car and were searched by this one (the witness points to Hayward). They searched us as policeman. They did not take anything from me. They left me and my brother-in-law there and said they were going to see their commander, and told us to wait. Thibeault was driving the car. After awhile they returned with D'Angelo Giovanni only then they told us to get in the car. We stayed there for about ten minutes then we drove towards Naples . Onthe way the three soldiers were looking right and left telling that they were not sure if it was the commanders place , then they turned around and drove in the opposite direction. When we arrived at Brusciono where we turned off on to a road that leads in the country they then turned around again and stopped the car. We were told to get out of the car. They told us to get near the wooden path of a house near them. They were pointing revolvers at us. This soldier (pointing at Hayward) took my sun glasses and my wallet. This other one (pointing at Thibeault) took my money out of my left trousers pocket. I had in my pocket a little more than 2000 lire and in the wallet was there 1000 lire in the wallet. Altogether not less than 2800 lire and(still pointing at Thibeault), he took off my wrist watch. My wrist watch is Longines. They ordered me to take off my trousers and jacket. Then they were ordered by Hayward to proceed towards the country down that road. So we did. They got in the car and drove away.

(Sgd) Michele Capuito

I certify that this statement is a true translation from Italian into English to the best of my ability.

(Sgd) A.G. Marshello

The accused soldiers decline to cross-examine the witness.

THIRD WITNESS For the Prosecution

Carrell Francesco, owner of a Bar, SanGennaro, Vesuviano, 46 Via Nola, Prov Naples, having been duly sworn states:-

On the 15 July 1944 at about 2359 hrs I was coming from the hospital towards Nola in a 1500 Fiat car belonging to a doctor. Just past Monpliano we were stopped by three soldiers wearing American Military Police Uniforms. This one make the sign to stop us (witness points to Thibeault) . I recognize these three soldiers here present as the same who stopped us. They asked us for our permit. They made me and my brother in law Capruto Michello get out of the car. The three soldiers got in and drove away telling us to wait. After awhile they came back. When the three soldiers came back they three of them with the driver of the car. They took usin the car saying that we have to go and see the Commander of the Police. We proceed towards Naples. While en route they said they missed the road and turned around going in the opposite direction. We arrived at Brusciano. We turned down a road leading in the country. They arrived at a certain point there they stop the car. They told us to get out and that we were arrived at the police Commander's place. They ordered us to get in line. He (pointing to Thibeault) was behind me. He (pointing to Watson) was searching me. He took from me 8000 lire in money and 500 lire in receipt. They ordered me to take off my trousers. Then told us to walk down the road all the time I saw those two (pointing at Hayward & Watson) pointing pistols at us. So we went away and when the three soldiers got in the car and drove away.

(Sgd) Carrell Francesco.

THIRD WITNESS For the Prosecution (Cont'd)

I certify that this statement is a true translation from Italian into English to the best of my ability.

(Sgd) A.G. Marshello

The accused soldiers decline to cross-examine the witness.

FOURTH WITNESS For the Prosecution

Dr. Montone Gennaro, Physician and Surgeon, Arienzo Prov de Napoli, 235 Piazza Valletta, having been duly sworn states:

I am the owner of a 1500 Fiat Car. I have a driver by the name of D'Angelo Giovanni, who has worked for me four months. Up to the 15 of July 44 I had my car since that date I never saw it until two Canadian soldiers brought it to me the car on the 7 Aug. 44. On the 15 July I lent my car to my driver for the week-end. About three or four days after my driver came back without the car telling me that three soldiers had taken the car from him.

(Sgd) Dr Gennaro Mortone

I certify that this statement is a true translation from Italian to English to the best of my ability.

(Sgd) A.G. Marshello

The accused soldiers decline to cross-examine the witness.

FIFTH WITNESS For the Prosecution

Brigadiere Moretella Giovanni, C.C.R.R., Rusco, (Prov. of Avellino). A written statement of this witness's evidence, purporting to be signed by him, has been read to the accused persons and is included in the Summary of Evidence as Exhibit "A1".
In my opinion the attendanceof this witness cannot, be readily procured owing to the fact that he is seriously sick in hospital in Naples.

(Sgd) D. Dion Capt.

The accused does not demand the attendance of this witness for cross-examination.

(Sgd) B.J. Thibeault
C.B. Hayward
F.M. Watson

SIXTH WITNESS For the Prosecution

C. 30912, L/Cpl. Droeske, G.W., 1 Cdn L of C. Prov. Coy.

A written statement of this witness's evidence purporting to be signed by him, has been read to the accused persons andis included in the Summary of Evidence as Exhibit "C1". In my opinion the attendance of this witness cannot be readily procured owing to the exigencies of the service.

(Sgd) D. Dion Capt.

We do not require the attendance of this witness for cross-examination.

(Sgd) B.J. Thibeault
C.B. Hayward
F.M. Watson

SEVENTH WITNESS For the Prosecution

~~K. 37996, L/Cpl. Craig, W.H., 1 Cdn L of C Prov. Coy. This witnesscorroborates the statement of L/Cpl. Droeske, G.H. for the same reasons his attendance is not readily procurable.~~

~~(Sgd) D. Dion, Capt.~~

SEVENTH WITNESS (Continued)

We do not require the attendance of this witness for cross-examination.

(Sgd) B.J. Thibeault
C.B. Hayward
F.M. Watson

EIGHTH WITNESS For the Prosecution

Cpl. E.E. Robinson, #1 L of C (Can) Prov. Coy.
A written statement of this witness's evidence, purporting to be signed by him has been read to the three accused and is included in this Summary of Evidence as Exhibit "C".
In my opinion the attendance of this witness is not readily procurable owing to the exigencies of the service.

(Sgd) D. Dion, Capt.

We do not require the attendance of this witness for cross-examination.

(Sgd) B.J. Thibeault
C.B. Hayward
F.M. Watson

NINTH WITNESS For the Prosecution

L/Cpl. J.C.L. Beaulieu, #1 Con L of C Prov. Coy.
This witness corroborates the statement of L/Cpl. Robinson. In my opinion the attendance of this witness is not readily procurable owing to the exigencies of the services.

(Sgd) D. Dion, Capt.

We do not require the attendance of this witness for cross-examination.

(Sgd) B.J. Thibeault
C.B. Hayward
F.M. Watson

The three accused having been duly cautioned in accordance with R.P. 4 (e) elect to reserve their defence.
The accused do not demand the attendance of any witness for their defence.
Summary of Evidence, composed of nine pages and three exhibits marked "A1" and "C"1" this day 30th. of Aug. 1944 taken by me before the accused.
R.P. 4 (c)(d)(e)(f) and(g) having been complied with.

(Sgd) D. Dion, Capt.
Officer taking Summary.

In the Field,
30 Aug. 1944.

ORIGINAL COMPARED AND THIS IS A

CERTIFIED TRUE COPY _____
PRESIDENT

Brigadrere MONTELLA Giovanni, CC.RR., MUSCO, (prov. of Avelline) states as follows:

"On the 20th July at apprex 0400 hrs, I heard that German Paratroops were in a house in TAVERNARESA I went there and saw a civilian car without any number. The soldiers, three of them, were inside the house with two girls

(Continued on page 5)

(10) The soldiers had told the owner to wake them at 1200 hrs and at 1300 hrs to have the dinner ready but before I came to the house someone "tipped" them off and they ran into the country. Near the houseI found one soldier with three stripes, who was stopped by the civilians. The other soldiers with the two girls ran away. I saw the girls and soldiers were getting far away. So I put the soldier in the car and went to MONTELLA. The two soldiers which ran away, fired four shots against the people who were there.

On the road I met the Provost from Avelline. I turned the soldier and the car over to them. In the afternoon about 1530 hrs, I picked up the two women who were in the country. The other soldier I turned over to the Provost explained to me that the other soldiers were deserters and that they had paid 50,000 lire for the car.

Interpreter:
Wm. Weil.

Signed:
Montella Giovanni.

"

Exhibit A1.
"Weis Diary"

ORIGINAL COMPARED AND THIS IS A

CERTIFIED TRUE COPY

PRESIDENT

EXHIBIT "C 1"
W Jas Rinn Lieut

HQ 1 CDN L OF C PROVOST COY

Statement of Evidence in the Case of Ptes F-54951 Pte Hayward C.R. F-40945 Pte Thibeault B.J. and A-11606 Pte Watson F.M.

At approx 1450 hrs 20 Jul 44 acting on information received a patrol consisting of L/Cpls Isherwood, Marcelin, Craig and myself proceeded to the town of Torellas (Prov of Avellino, Italy), we had occasion to stop a civilian car being driven by A-11606 Pte Watson, who was wearing the Badge ranks of Sgt, he was accompanied by a Carabinieri from Torellas, the Carabinieri stated that he had just arrested Pte Watson. As we knew Pte Watson to be AWL we took him and the Car into Custody. A search was made for Ptes Hayward and Thibeault but as no trace of them could be found we returned to Avellino and Pte Watson was escorted to the Central Guard room where a body receipt was obtained.

(sgd) G W Dreeske
(C-30912 L/Cpl Dreeske G.W.)
1 Cdn L of C Provost Coy

COMPARED WITH ORIGINAL AND THIS IS A

CERTIFIED TRUE COPY _____

ADDITIONAL CONJOINT SUMMARY OF EVIDENCE

In the case of,

F. 40943, Pte. THIBEAULT, Bernard Joseph, &
F. 54931, Pte. HAYWARD, Clarence Russell,
both 1 Canadian Base Reinforcement Battalion,
1 Canadian Base Reinforcement Depot, soldiers
of the CanadianArmy Overseas :-

The Commanding Officer directs that the evidence be taken under oath:-

NINTH WITNESS
For the
Prosecution

3410515, P.F.C. Loyd G. Rowe, 205 M.P. Company, U.S. Army, A.P.O. 512.

A written statement of this witness's evidence, purporting to be signed by him, has been read to the accused persons and is included in this Additional Conjoint Summary of Evidence, and marked Exhibit "B1".
Having regard to the exigencies of the service, the expense and loss of time involved, the attendance of this witnesscannot, in my opinion, be readily procured.

(Signed) W. Jas. Hinn, Lieut.
Officer taking Additional Conjoint Summary.

The accused persons do not demand the attendance of this witness for cross-examination.

TENTH WITNESS
For the
Prosecution

34090983, P.F.C. Carl A. Starr, 205 M.P. Company, U.S. Army, A.P.O. 512.

A written statement of this witness's evidence, purporting to be signed by him, has been read to the accused persons and is included in this Additional Conjoint Summary of Evidence and markedExhibit "B2". Having regard to the exigencies of the service, the expense and loss of time involved, the attendance of this witness cannot, in my opinion, be readily procured.

(Signed) W. Jas. Hinn, Lieut.
Officer taking Additional Conjoint Summary of Evidence.

The accused persons do not demand the attendance of this witness for cross-examination.

ELEVENTH WITNESS
For the
Prosecution

Capt. F.W. Taylor, D.A.P.M., 66 Sec, S.I.B., Corps of Military Police C.M. Forces,

A written statement of this witness's evidence, purporting to be signed by him, has been read to the accused persons and is included in this Additional Conjoint Summary of Evidence and marked Exhibit "B3". The statements of F. 40943, Pte. THIBEAULT, B.J., and F. 54931, Pte. HAYWARD, C.R., referred to, produced, read over and shown to the accused persons and marked Exhibits "B4" and "B5" respectively and attached to the Additional Conjoint Summary of Evidence.

ADDITIONAL CONJOINT SUMMARY OF EVIDENCE re:
F. 40943, Pte. THIBEAULT, E.J. &
F. 54931, Pte. HAYWARD, C.R. (Continued)

ELEVENTH WITNESS
For the
Prosecution
(Continued)

Having regard to the exigencies of the service, the expense and loss of time involved, the attendance of this witness cannot, in my opinion, be readily procured.

(Signed) W. Jas. Rinn, Lieut.
Officer taking Additional Conjoint
Summary of Evidence.

The accused persons do not demand the attendance of this witness for cross-examination.

TWELFTH WITNESS
For the
Prosecution

Cpl. F. Wells, C.M. Police.

A written statement of this witness's evidence, purporting to be signed by him, has been read to the accused persons and is included in this Additional Conjoint Summary of Evidence and marked Exhibit "B6". Having regard to the exigencies of the Service, the expense and loss of time involved, the attendance of this witness cannot, in my opinion, be readily procured.

(Signed) W. Jas.Rinn, Lieut.
Officer taking Additional Conjoint Summary of Evidenc

The accused persons do not demand the attendance of this witness for cross-examination.

THIRTEENTH WITNESS
For the
Prosecution

14241804, C.S.M. Procter, H.W., 66 Sec, S.I.B., C.M. Police, C.M.P.

A written statement of this witness's evidence, purporting to be signed by him, has been read to the accused persons and is included in this Additional Conjoint Summary of Evidence and marked Exhibit "B7". Having regard to the exigencies of the service, the expense and loss of time involved, the attendance of this witness cannot, in my opinion, be readily procured.

(Signed) W. Jas. Rinn, Lieut.
Officer taking Additional Conjoint Summary of Evidence.

The accused persons do not demand the attendance of this witness for cross-examination.

Question to the Accused
Do you wish to make a statement or to give evidence under oath? You are not obliged to do so but any evidence you give or any statement you may make will be taken down in writing and may be given in evidence.

Answer by Pte. THIBEAULT
I reserve my defence.

Answer by Pte. HAYWARD
I reserve my defence.

ADDITIONAL CONJOINT SUMMARY OF EVIDENCE re:
F. 40943, Pte. THIBEAULT, B.J. &
F. 54931, Pte. HAYWARD, C.R. (Continued)

I certify that the foregoing Additional Conjoint Summary of Evidence, consisting of four (4) pages, was taken down by me in the presence of the accused, and that Rules of Procedure 4 (c)(d)(e)(f) and (g) have been complied with.

(Signed) W. Jas. Rinn, Lieut.

Officer taking Additional Conjoint Summary of Evidence.

In the Field,

28 Dec. 1944.

ORIGINAL COMPARED AND THIS IS A

CERTIFIED TRUE COPY _____

PRESIDENT

(C O P Y)

This is Exhibit "B2" referred to in the additional Component Summary of Evidence in the case of Thibeault and Hayward taken before me this 8th day of December 1944 " W. Lee Rinn Lieut

Signature of Officer taking additional Component Summary

66 Section,
Spec Investigation Branch,
Corps of Military Police,
Headquarters.

Statement of:-

No. 34101515, P.F.C. Lloyd G. Rowe,
205 M.P. Coy, U.S. Army, A.P. 0512.

On the 4th October, 1944, at about 7.45 P.M., we were patrolling in our Jeep, Maddeloni, and we checked in our station there. There was two women there who told me that four soldiers was at a certain house giving trouble. So together an Italian interpreter and P.F.C. Starr and an Italian civil policeman, I went to the house. I do not know the address. I was drivin g the Jeep and I stopped the Jeep in front of the door. I got out of the Jeep on one side and P.F.C. Starr and the interpreter were getting out on the other side and by the time Starr and the interpreter got round to me on the near side of the Jeep, a soldier put one foot out of the doorway of the house and pointed a 'Tommy Gun' at us and told us to put up our hands, he made us stand with our backs to a wall in an archway with hands up. Just then three more soldiers in uniform came into the archway. They asked the man with the 'Tommy Gun' what he had got here and he replied "American Military Police" and told the three other fellows to disarm us. They took from me my lanyard and pistol, belt and cap, and from my pocket one of the fellows took the Jeep keys. They then started up our Jeep. They then all went out to the Jeep and the man with the (Tommy Gun' stayed behind in the doorway until the last man was out and in the Jeep. It was as they were leaving that I saw a civilian with them. The soldier who had the 'Tommy Gun' then slammed the door to and I then heard the Jeep move away. The two men that searched Starr and myself both wore M.P. arm bands. I could not identify any of these personnel as it was too dark. The pistol .45 Colt #38838 and the lanyard which you show to me now are the ones which was stolen from me on that night the 4th of October 1944.

(Signed) P.F.C.Lloyd G. Rowe

I have read over the above statement. I t is true and correct.

(Signed) P.F.C. Lloyd G. Rowe

Statement taken down and signature witnessed by C.S.M. Procter, 66 Section, Special Investigation Branch, C.M. Police, at Salerno on the 10th. of October, 1944.

ORIGINAL COMPARED AND THIS IS A
CERTIFIED TRUE COPY W. K. Russell Maj
PRESIDENT

(C O P Y)

This is Exhibit "B1" referred to in the Corporal Additional Summary of Evidence in case of Sergeant Hayward taken before me this 28th day of December 1944

"W Jay Rinn" Major
Signature of Officer taking add.t.c. Summary.

66 Section,
Spec Investigation Branch,
Corps of Military Police,
Headquarters.

Statement of:-

No. 3409083 P.F.C. Carl A. Starr,
205 M.P. Coy, U.S.Army, A.P.O. 512.

At about 7.45 P.M. on the 4th October, 1944, I was patrolling in our Jeep together with P.F. C. Rowe, in the village of Maddeloni. We checked in at our station there and two women complained to us that some soldiers were down at a house giving trouble. So we took with us our interpreter and an Italian civil policeman from the station. Rowe was driving the Jeep and on arrival at the house the Jeep was stopped in front of the doorway. As we got off the vehicle and was going into the house, a soldier held us up with a 'Tommy Gun'. The Italian civil Policeman must have been behind the Jeep and got away. We were made to stand with our backs to the wall with our hands up in an archway and the soldie with the 'Tommy Gun' stood over us. Then three more soldiers came on the scene and the fellow with the 'Tommy Gun', after telling them that we were American Military Police, told them to disarm us. Two of these three soldiers were wearing 'M.P.' armbands. They took from me my revolver No. 152896 of Smith & Wesson make, my leather holster and leather equipment, and hat. I then heard the Jeep start up and eventually the soldiers left. They did not touch the interpreter. The man with the Tommy Gun kept us covered whilst all the rest left. He then slammed the door to and left. I then heard the Jeep move away. One of the soldiers were wearing British Army Uniform with Corporals stipes. When the soldiers were leaving I noticed that a civilian was with them also. I recognise the leather holster and leather equipment which you show to me now as being mine and which was stolen from me when I was held up on the night of the 4th of October. I cannot identify any of the soldiers owing to the fact that it was dark.

(Signed) P.F.C. Carl A. Starr.

I have read over the above statement - it is true and correct.

(Signed) P.F. C.Carl A. Starr.

Statement taken down and signature witnessed by C.S.M. Procter, 66 Section, Special Investigation Branch, C.M. Police, at Salerno on the 10th. October, 1944.

ORIGINAL COMPARED AND THIS IS A
CERTIFIED TRUE COPY

This is Exhibit "B3" referred to in the additional Conjoint Summary of Evidence in the case Thiebauld and Hayward taken before me this 21st day of December 1944

"W Van Rinn" Lieut
Officer taking additional Conjoint Summary

66 Section,
Special Investigation Branch,
Corps of Military Police,
Central Mediterranean Forces.

Statement of:-

Captain F.W. Taylor, D.A.P.M.,
66 Section,
Special Investigation Branch,
Corps of Military Police,
Central Mediterranean Forces.

On 6th October, 1944, I saw No. 40943 Pte. Thiebauld, B.J., H.Q. 2ndBn Cape Breton Highlanders, detained at this QH.Q.". I said to him, " I am Captain Taylor of the Special Investigation Branch and I am making enquiries into a series of robberies that have occurred in this area recently in which I have reason to believe you took part. Do you wish to make any statement as to your movements during the past few days?"

He elected to make a statement. I cautioned him and took his statement down in writing at his dictation. He read over this statement and signed it in my presence.

I later saw No. F. 54931, Pte. Hayward, C.R. of the Carleton & York Highlanders who had been detained in company with Thiebauld. I said to him, "I am Captain Taylor of the Special Investigation Branch. I am making enquiries into a series of robberies that have occurred in this area recently in which I have reason to believe you took part. Do you wish to make any statement as to your movements during the past few days?"

He elected to make a statement and after being cautioned he dictated this statement which I took down in writing. He read this and then signed it in my presence.

I produce these statements.

18 Nov. 1944.

(Signed) F.W. Taylor
F.W., Taylor, Capt. D.A.P.M.

ORIGINAL COMPARED AND THIS IS A CERTIFIED TRUE COPY

PRESIDENT.

(C O P Y)

REPORT

To:- The Officer Commanding
116 Provost Company.

Sir,

I have to report that at San Severino Rota (MR.N6544) on the 6th. October, 1944, I was NCO i/c duties on a Check Post in search of unidentified personnel, believed to be soldiers responsible for several armed holdups and a stolen US Military Police Bantam No.2045022. At about 2130 hrs a Bantam approached from the direction of Avellino and the driver, when ordered to stop, swerved and continued in the direction of Salerno for about 40 yards where I stopped him with an order "Stop or I fire".

I approached the vehicle and found two Canadians dressed as Americans and wearing American MP armbands, and one civilian. When asked why he did not stop when ordered to do so, the driver said, "We are American MPs and we are out on a job".

I checked the vehicle number and found it to be the above mentioned stolen vehicle. I then ordered the three occupants out of the vehicle, and they were very argumentative until I ordered them to be quiet. I disarmed the two Canadians who were in possession of loaded .45 pistols. The civilian was in possession of a considerable amount of money. None of the three were in possession of any means of identification.

All three persons were arrested and conducted to 68 Section SIB. Salerno and handed over for the necessary investigations to be made.

Salerno.
7th. October, 1944.

F. Wells, Cpl.
C.M. Police.

ORIGINAL COMPARED AND THIS IS A
CERTIFIED TRUE COPY _____ Maj
PMG.

This is Exhibit "B6" referred to in the Additional Corporal Summary of Evidence in the case of Thibeault and Gagnon taken before me this 28th day of December 1944.

"W Lee Ross" Lieut
Officer taking additional Corporal Summary.

66 Section,
Special Investigation Branch,
Corps of Military Police,
Central Mediterranean Forces

Statement of:-
No:- I424I804 C.S.M. Procter, H.W.,
66 Section,
Special Investigation Branch,
Corps of Military Police,
Central Mediterranean Forces.

About 2200 hrs on 6th October I944, I saw No. F 40943 Pte Thiebauld, B.J., H.Q., 2nd Bn. Cape Breton Highlanders, No. F 3493I Pte Hayward, C.R., "A" Company, Ist Division, Carlton and York Regt; and DI GENNA Francesco, on the road near San Severino Rota. They had been arrested and were in the rear of a I5 cwt truck. I took from Pte Hayward one leather holster and one set of leather equip ment, one .45 Colt automatic revolver No. 38838 and one "M.P." armband. From Pte. Thiebauld I took one white lanyard, one rusty pistol and one "M.P." armband. From DI GENNA I took one knife and a cabbard. I collected from the lorry, of the floor and from the civilian 3I,000 Lire.

On 9th October, I944, I handed Jeep No.2045022 to Lieut. Miller, 205 M.P. Company, U.S.A. Army, against receipt.

On I0th October, I944, I produced to No. 34090983 P.F.C. Carl A. Starr, 205 M.P. Company, U.S.A. Army, one leather holster and equipment and to No. 34101515 P.F.C. Lloyd G. Rowe, 205 M.P. Company, U.S.A. Army, one .45 Colt automatic pistol No. 38838 and one white lanyard. I handed the property over to them against receipt.

On I7th October I944, I produced to MARCA Luigi of San Valentino, Torrio Frazione Casadov, one knife and scabbard.

Field

(Signed) H.W. Procter
H.W. Procter. C.S.M.
66 Section, S.I.B.

ORIGINAL COMPARED AND THIS IS A
CERTIFIED TRUE COPY

This is Exhibit "B 7" referred to in the Additional Conjoint Summary of Evidence in the case of Thiebauld & Hayward taken before me this 28th day of December 1944

"W Lee Rinn" Lieut.
Signature of Officer taking Additional Conjoint Summary.

TAKE NOTICE PURSUANT TO R.P. 76

In the cases of,

F. 40943, Pte. THIBEAULT, B.J., and
F. 54931, Pte. HAYWARD, C.R., both
1 Canadian Base Reinforcement Battalion,
1 Canadian Base Reinforcement Depot,
that the Prosecution will call

Lieut. Miller, 205 M.P.Company, U.S. Army,
who will state that -

Jeep No. 2045022 was the property of the
205 M.P. Company on or about the 4th Oct.
1944.

(Signed) W. Jas. Rinn, Lieut.

Officer detailed to take the Summary of Evidence.

Inthe Field,

3rd Jan. 1945.

ORIGINAL COMPARED AND THIS IS A

CERTIFIED TRUE COPY

PRESIDENT

SUMMARY OF EVIDENCE

In the case of,

F. 40943, Pte. THIBEAULT, Bernard Joseph,
1 Canadian Base Reinforcement Battalion,
1 Canadian Base Reinforcement Depot, a
soldier of the CanadianArmy Overseas :-

The Commanding Officer directs that the evidence be taken under oath:-

FIRST WITNESS
For the
Prosecution

C. 65572, Cpl. Richards, R.E., Orderly Room Clerk, 1 Battalion, 1 Cdn Base Reinf Depot, having been duly sworn, states:-

I am C. 65572, Cpl. Richards, R.E., Orderly Room Clerk, 1 Battalion, 1 Cdn Base Reinf Depot.
I produce "X"-list The Cape Breton Highlanders Part II Order No. 81 dated 14 Aug. 1944 issued by Canadian Section G.H.Q. 2nd Echelon, A.A.I., which shows that F. 40943, Pte. THIBEAULT, B.J., was A.W.L. from 0900 hrs. 29 Dec. 1943 untilapprehended by 1 L of C Provost, 3 Mar. 1944, hour unknown.
Presented as Exhibit "B".
I also produce "X"-list the Cape Breton Highlanders Part II Order No. 35 dated 29 Apr. 1944 issued by Canadian Section, G.H.Q. 2nd Echelon, A.A.I., which shows that F. 40943, Pte. THIBEAULT, B.J., was S.C.S. as a deserter 11 Apr. 1944, having been legally declared absent from 1530 hrs 11 Mar. 1944.
Presented as Exhibit "C".
I also produce "X"-list CapeBreton Highlanders Part II Order No. 82 dated 16 Aug. 1944 issued by Canadian Section G.H.Q. 2nd Echelon, A.A.I. which shows F. 40943, Pte. THIBEAULT, B.J. was T.O.S. "X"-4 List 1 Battalion on apprehension from desertion 1520 hrs. 31 May 1944. This also shows Amendment Part II Order No. 79 para 1 (d) of 8 Aug. 1944 as being cancelled. On the same order that F. 40943, Pte. THIBEAULT, B.J. wasA.W.L. from 1015 hrs, 2 June 1944 until apprehended 2015 hrs. 21 July 1944. It also shows an amendment to Part II Order No. 81 para 5 (d) of 14 Aug. 1944 by adding "1300 hrs."
Presented as Exhibit "D".
I also produce "X"-list Cape Breton Highlanders Part II Order No. 103 dated 9 Oct. 1944 issued by Canadian Section G.H.Q. 2nd Echelon, A.A.I. which shows that F. 40943, Pte. THIBEAULT, B.J. was S.O.S. "X"-4 list 1 Battalion as a deserter 5 Oct. 1944, having been declared by a Court of Inquiry to be illegally absent from 0200 hrs. 7 Sept. 1944.
Presented as Exhibit "E".
I also produce "X"-list Cape Breton Highlanders Part II Order No. 123 dated 29 Nov. 1944 which showsn that F. 40943, Pte. THIBEAULT, B.J. was T.O.S. "X"-4 List 1 Battalion on apprehension from desertion 2100 hrs. 29 Oct. 1944. This order also shows that F. 40943, Pte. THIBEAULT, B.J. was A.W.L. from 0630 hrs. 13 Nov. 1944, still absent 0630 hrs. 21 Nov. 1944.
Presented as Exhibit "F"

SUMMARY OF EVIDENCE in the case of F. 40943, Pte. THIBEAULT, B.J. (Cont'd)

FIRST WITNESS
For the
Prosecution
(Continued)

I also produce Certificate of Apprehension under Army Act Sec. 163 (1)(jj) which certifies that F. 40943, Pte. THIBEAULT, B.J. was arrested at Palma Campania at 2030 hrs. on 24 Nov. 1944. This document is signed by Capt. G.H. Wilkinson, D.A.P.M. 69 S.I.B., C.M. Police.
Presented as Exhibit "I".

These documents reached me through regularmilitary channels during my duty as Orderly Room Clerk.

(Signed) Cpl. Richards, R.E.

The accused declines to cross-examine the witness.

Question to the Accused

Do you wish to make a statement or to give evidence under oath? You are not obliged to say anything but anything you say will be taken down in writing and may be given in evidence.

Answer by the Accused

I reserve my defence.

I certify that the foregoing Summary of Evidence, consisting of five (5) pages, was taken down by me in the presence of the accused and that Rules of Procedure 4 (c)(d)(e)(f) and (g) have been complied with.

(Signed) W. Jas. Kinn, Lieut.

Signature ofOfficer taking Summary.

In theField,

28 Dec. 1944.

ORIGINAL COMPARED AND THIS IS A

CERTIFIED TRUE COPY W.M. Russell Maj.

PRESIDENT

WHEREAS by the Convening Order issued by me in the Field, Italy, on the 11th day of January 1945 in the matter of a Field General Court Martial for the joint trial of F40943 Pte Bernard Joseph Thibeault and F54931 Pte Clarence Russell Hayward both of 1 Cdn Base Rft Bn 1 Cdn Base Rft Depot at HQ 1 CBRGp on the 16th day of January 1945, the following court was appointed or detailed:-

PRESIDENT

Major	A M RUSSELL	(CIC)	1 Bn 1 CBRD

MEMBERS

Lieut	H FREFONTAINE	(CIC)	2 Cdn Reallocation Centre
Lieut	H E FOSTER	(CIC)	2 Cdn Reallocation Centre

WAITING MEMBER

Capt or Lieut to be detailed by the OC 2 Cdn Reallocation Centre

JUDGE ADVOCATE

Capt	D W ROSE	(CIC)	HQ 1 C B R Gp

AND WHEREAS by the said Convening Order the accused F40943 Pte Bernard Joseph Thibeault and F54931 Pte Clarence Russell Hayward are jointly charged on Charge Sheet No 1 and separately charged on Charge Sheets No 2 and 3 respectively;

AND WHEREAS at the said Field General Court Martial the accused F40943 Pte Bernard Joseph Thibeault and F54931 Pte Clarence Russell Hayward, were arraigned on the 4th, 5th and 6th charges on Charge Sheet No 1 on 16th day of January 1945;

AND WHEREAS the accused, F40943 Pte Bernard Joseph Thibeault escaped from custody at about 0700 hrs on the 21st day of January 1945 and has not yet been apprehended;

AND WHEREAS it is not possible to dispose of the charges which the accused, F40943 Pte Bernard Joseph Thibeault is jointly charged with the accused F54931 Pte Clarence Russell Hayward on Charge Sheet No 1 before the aforementioned Court;

NOW THEREFORE I hereby direct that the court thereby constituted be and the same is hereby dissolved in so far as Charge Sheets No 1 and 2 are concerned.

Signed this 23rd day of January 1945.

(VINCENT McKENNA) Lt-col
Convening Officer

GG-661

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 6th day of June, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 11 Cdn Inf Bde, 5 Cdn Armd Div, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned;

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [redacted] —

*(1. [redacted])

*(2. [redacted])

[redacted]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	J.H.S. Broughall	Irish Regt of Canada

Members.

Rank.	Name.	Regiment.
Capt	C.H.Swartz	Perth Regt
Lieut	T.H.White	Perth Regt
	WAITING MEMBER	
Lieut	D.M.Chisholm	C.M.Highrs
	JUDGE ADVOCATE	
Capt	G.M.Morrison	ADJA, 5 Cdn Armd Div

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (H.Sharp) Brig

Commanding 11 Cdn Inf Bde

Convening Officer.

2

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F54931 Pte Clarence Russell HAYWARD O.B.Highrs 5 Cdn Armd Div	1st CHARGE When on active service absenting himself without leave in that he (see charge sheet att) Sec 15(1) A.A.	guilty	guilty To undergo imprisonment with hard labour for a period of seven detention (7 months) and to be placed under stoppages of pay to make good the sum of £ 0-12-6 cost of apprehension. 8 June '43 [illegible] Major.	Confirmed [illegible]. Confirmed [illegible]

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) H.Sharp. (H.Sharp) Brig (Signed) [illegible] Major

Commanding 11 Cdn Inf Bde *Convening Officer (e)* [illegible] Capt. Judge Advocate *President*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

3

CHARGE SHEET

The accused F54931 Pte Clarence Russell HAYWARD, Cape Breton Highlanders, a soldier of the Canadian Army Overseas, is charged with:-

1st CHARGE
A.A.Sec.15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the field, at 0800 hrs, 21 Jan 43, absented himself without leave from his unit, the Cape Breton Highlanders, after being duly warned for duty, and remained absent until he surrendered himself to G47123 Cpl. Steeves,W.L., of No. 11 Coy, Canadian Provost Corps, at 1940 hrs, 31 May 1943.

(Absent 129 days, 11 hrs, 40 mins)

Cost of apprehension: £0/12/6.

In the Field,
4 June 43

.....(A.B.Somerville)Major,
A/Officer Commanding,
Cape Breton Highlanders

To be tried by Field General Court-Martial.

(H.Sharp) Brig.
Comd 11 Cdn Inf Bde

In the Field
6 June 43

CERTIFICATE OF FITNESS

I certify that I have examined to-day T.54931 Pte. Hayward C. R.
of the Cape Breton Highlanders
and in my opinion he is ~~unfit~~ fit to undergo Trial by Court Martial.

Place. Full
Date. 7 June 43

Medical Officer.

Trial of F54931 Pte Clarence Russell HAYWARD, C B Highrs, 5 Cdn Armd Div.

Held in the Field in England this 8th day of June 1943.

PRESIDENT
Major J.H.S. Broughall — Irish Regt of Canada

MEMBERS
Captain C.H. Swartz — Perth Regt
Lieut. T.H. White — Perth Regt

JUDGE ADVOCATE
Captain G.M. Morrison — ADJA 5 Cdn Armd Div

PROSECUTOR
Captain M.F. MacLachlan — C B Highrs

DEFENDING OFFICER
Lieut. W.S. Burke Robertson — C B Highrs

The President produced the Convening Order, Charge Sheet and Summary of Evidence.

The President, in closed court, reads the Convening Order and the Charge Sheet to the Members, and the Court satisfy themselves that it is properly convened and constituted, that the accused is amenable to Military Law, and that each charge discloses an offence.

The accused is brought before the Court, and at 1400 hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can) 557 that the accused is fit to undergo trial by Court Martial. The certificate is signed by the President and attached to the proceedings.

President to accused

Q. 1 Do you object to A57385 Cpl B.W. Henheffer, CMSC, HQ 5 Cdn Armd Div acting as shorthand writer?

A. 1 No, sir.

The shorthand writer is duly sworn.

The Convening Order is read in the hearing of the accused.

The names of the President and Members of the Court are read to the accused.

President to accused

Q. 2 Do you object to be tried by me as President or by any of the officers whose names you have heard read over?

A. 2 No, sir.

The President, Members and Judge Advocate are duly sworn.

The Charge Sheet is signed by the President.

The Charge is read to the accused and he is asked as the charge is read whether he pleads guilty or not guilty. He pleads as follows:

First Charge - Guilty

R.P. 35(B) is complied with, by the President ascertaining that accused understands the nature of the charge and his plea thereto, explaining the difference in procedure by the Plea and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

President to accused

Q. 3 Do you desire to make any statement of the circumstances, in reference to the charge?
A. 3 No, sir.

Summary of Evidence is read aloud, in the presence of the accused, signed by the President and attached to the proceedings.

President to accused

Q. 4 Do you wish to make any statement in mitigation of punishment?
A. 4 Yes, sir.

The accused makes the following statement in mitigation of punishment:

"When I was in Canada, I went before Lt-col Small and told him that if I were given a chance I would soldier. When I came to England I told him that I would try my best to soldier and a month later I was made an NCO. I was placed in charge of transport in "B" Coy.

I was sent away on a driving and maintenance course and when I came back I was sent away for a trade test. About a week later it was reported to me that I had failed my trade test when in fact I had not received one, and that I would have to leave the transport. The facts about the trade test are that the day I went up there to be trade tested, I was told that I could not be tested that day as there was someone there taking a picture of the unit.

I was put in a rifle company and turned my stripes in for I could not get along with the officers. From there I went to the hospital and then to the Holding Unit where I had my first charge in this country. This is the third charge against me since I came to England in November 1941. I am unmarried and have $20 per month assigned to my mother."

President to accused

Q. 5 Do you wish to give evidence yourself or call any witnesses as to character?
A. 5 No, sir.

Statement of Character and Service and Field Conduct Sheet, signed in the manner required by A.A. 163(1)(h) and purporting to refer to the accused by his number, rank, name and Corps, are produced to the Court, read, signed by the President and attached to the proceedings.

President to accused

Q. 6 Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment?
A. 6 No, sir.

The Court is now closed to consider sentence.

CERTIFIED A TRUE RECORD OF THIS TRIAL, this 8th day of June, 1943.

G. Morrison Captain
Judge Advocate

SUMMARY OF EVIDENCE

J.H.S. Brownfield Major

Summary of Evidence in the case of F54931 Pte Clarence Russell HAYWARD, Cape Breton Highlanders, Canadian Army Overseas, charged with an offence under Section 15(1) of the Army Act.

The Commanding Officer directs that the evidence be taken on oath.

First Witness: F88231 L/Sgt. Currie,A.,Cape Breton Highlanders, having been duly sworn, states:

On the 21 Jan 43, I was Company Orderly Sgt of "B" Coy, Cape Breton Highlanders. At 0730 hrs, 21 Jan 43, I warned the accused, F54931 Pte Clarence Russell HAYWARD, whom I know well and recognize , for duty as fatigue man at Bn Orderly Room. He did not report for duty and when I checked up at 0800 hrs, 21 Jan 43, he was absent.

A. Currie

The accused declines to cross examine the witness.

Second Witness: Capt. W.A.Standing, Adjutant, Cape Breton Highlanders, duly sworn, states:

I am Capt W.A.Standing, Adjutant,Cape Breton Highlanders. I produce here a document purporting to be a certified true copy of a Declaration of a Court of Inquiry into the illegal absent of F54931 Pte Clarence Russell HAYWARD. The said document purports to be signed by Lieut.W.F.MacLachlan and to show that the accused absented himself at 0800 hrs, 21 Jan 43. I also producea document purporting to be a signed certificate of Capt.W.Fern,Canadian Provost Corps,showing that the accused surrendered himself at 1940 hrs 31 May 43, at Croydon. I also produce documents purporting to be signed by Capt.W.Fern, showing the cost of returning Pte Clarence Russell HAYWARD, from Boxhill to London and from London to Crowborough.

W. A. Standing

The accused declines to cross examine the witness.

The documents/to by Capt.W.A.Standing in his evidence above were read to the accused marked exhibits "A","B", "C" respectively.

W.A. Standing Capt
Officer taking summary.

I certify that in my opinion owing to the exigencies of the service including the time and the expense involved,the attendance of the witnesses in this case can not readily be procured.

W.A. Standing Capt
Officer taking summary.

The accused was warned as follows:
Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so,but whatever you say or any evidence you give will be taken down in writing and may be given in evidence

The accused: I have nothing to say at this time.

A. G. Hayward

The accused declines to call witnesses in his own behalf.

I certify that R.P. 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this 4th day of June 1943.

W.A. Standing Capt.

(W.F.MacLachlan)Capt.,
Officer taking summary.

List of Exhibits in the case of F54931 Pte Hayward,C.R.

Exhibit "A"	Document purporting to be signed by Capt. W.Fern, Canadian Provost Corps, showing that accused surrendered himself to Cdn Provost Corps.
Exhibit "B"	Document purporting to be a signed statement of expenses incurred in returning accused from Boxhill to London.
Exhibit "C"	Document purporting to be a signed statement of expenses incurred in returning the accused from London to Crowborough.

Appendix A. [illegible]

RECORD of the Declaration of a Court of Inquiry assembled at IN THE FIELD on the 18th day of February 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. F54081 Pte. Hayward, C.R.

DECLARATION

The Court declare that No. F54081 Pte. Clarence Russell HAYWARD

illegally absented himself without leave IN THE FIELD

at 0800 hrs on the 13th day of Jan 1943, that he is still so absent, and that on the 22nd day of January 19 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	No.	VALUE £	s.	d.	ARTICLES	No.	VALUE £	s.	d.
Battle dress trousers, prs					Shirts, flannel, khaki,				
2 @ £1/7/11		2	15	10	2 @0/9/5			18	10
Battle dress blouses					Shoes, canvas, prs,	1		8	10
2 @ £1/7/8		2	15	4	Spoon, table	1			4½
Bonnet, tam-o-shanter,	1		4	2	Towels, hand	1			11½
Bootlaces, prs	1			7½	Outfit, anti-dim	1			2½
Braces, prs,	1		1	5½	Bags, ration	1			1½
Brasses, button	1			2½	Cover, mesatin	1			4½
Brushes, boot polishing,	1			9	Tins, mess	1		3	1
" button	2			8	Bottles, oil	1		1	
" shaving	1		1	4	Pullthrough	1			6
Comb, hair	1			2	Shirts, cyn, prs, 2 @1/6			3	
Discs, identity, sets	1			3	Shorts, cyn, prs,			3	
Drawers, woollen, prs	1		7	6	Shirts, undercotton, 2 @ 1/6			3	
Dressing, 1st Field	1		1	1	Bedres, Canada, 2prs @ 5½			1	4½
Gloves, woollen, prs	1		1	11	Boots, ankle, prs 1		1	1	6
Housewife	1		2	3	Mugs, tin, pt				5
Razor, safety,	1		1	10½	Blacking, tins, 1				3
Shirts, woollen, prs	1		7	9	Dubbin, tins 1				5

Total..... 16/17 1

M. F. Mac Lachlan Lt. President
(M.F.MacLachlan) Lieut.

[signature] Member
(J.H.Lewis) Lieut

[signature] Member
(A.J.Gin) Lieut

Signed at IN THE FIELD

this 18th day of Feb 1943

Signature of Commanding Officer [signature] Lt. Col.

Certified true copy

Signature of Officer having custody of original record

M.F.B. 175
A.F.B. 113
2500—6-42 (750)
H.Q. 1777-39-107

Certified True Copy

[signature] Capt
adjt. 8 Cape Breton Highrs.

14

Exhibit "A"

15

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1) (d)

I, ..N.Fern.Capt...D.A.P.M. Lovat.Area..... certify that

Reg. No.F-54931...Rank Pte.... Name ..Edwards,C.P.....

REGIMENT ...C.P.M.C.....R.Can.....

UNIT .....

STATIONED AT .....

Surrendered himself to No.C-47123..Rank..Cpl...Name...Stevens,W.L.....

of the ..Canadian Provost Corps..(No.11.Coy).....

on the 31 day of May.....1943 , at 1940 hrs. hours ..at Crowlan...

.....As AN ABSENTEE WITHOUT LEAVE .....

at the time of his surrender he was wearing (Military Uniform) or(Civilian Clothes)

Signature of Provost-Marshall,Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on surrender.
(Strike out part inapplicable)

.....Lieut.
Officer i/c Detention Room,
No. 6 Cdn. Provost Coy.

16

F & H 3.5 B

Hickman Tools Capt.

Offr. Taking Emissary

Expense Voucher Re—: Ref: K.R. & O. (Can) 539 17

Reg. No F.S.1931 Rank Pte. Name Hayward, C.R. Unit C.B. Det.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London from Bothell

Date	Particulars	Amount		
30 June 43	Escorts return fare from LONDON To Bothell		1	9
	Prisoners single fare to LONDON From Bothell		1	9
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		3	6

I certify that the above statement of Expenses is Correct. and that the amounts are fair and just.

N.W. FERN D.A.P.M. LONDON AREA

..... Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-55
40/P & S/463

18

No.	Rank	Name	Unit

Expenses incurred by

re escort

A.W.L.

Left

Returned

Date	Place	Particulars	Amount £	s.	d.	Received

CERTIFIED that the above expenditures were necessarily incurred in connection with these duties.

(Signature of N.C.O.)

Approved for payment

(Signature of Officer approving a/c)

CANADIAN PROVOST CORPS

Area

C.M.H.Q. 1000 - 55
W.T. & S. 8/49

19

Expense Voucher Re—: Ref; K.R. & O. (Can) 539

Reg. No. [illegible] Rank Pte Name Hayward C.R. Unit C.A.P.C. Kingston

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
4 June 43	Escorts return fare from LONDON To Crowborough		6	0
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Crowborough		3	0
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		9	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] CAPT. FERN R.A.P.C. LONDON AREA

..... Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

CMHQ 1000-55
40/P & S/483

20

No.	Rank	Name	Unit

Expenses incurred by Capt Cameron

re escort

A.W.L. from Ottawa to Toronto

Left Returned

Date	Place	Particulars	Amount £	s.	d.	Received

CERTIFIED that the above expenditures were necessarily incurred in connection with these duties.

(Signature of S.C.O.)

Approved for payment

(Signature of Officer approving a/c)

CANADIAN PROVOST CORPS

Area

C.M.H.Q. 1938-39
SEPT 2 R.65.

I desire the convening officer to detail an officer to represent me at my forthcoming trial by court martial.

I desire the services of Lieut W.D.B Robertson if he is available.

L.R.T. Hayward

23

No F54931 Name Hayward, C.R. | Sqn., Battery, or Company | Corps CBH | Date of enlistment 31-1-40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 121) 40/P & S/136 (2637)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	14/4/40	Pte		AA Sec.40.(2)Using obscene language (3) Neglect of duty.		14 days Det.			
	~~22/4/40~~	"							
	22/4-~~4~~0	"		Refusing to work in detention when told to do so		7 days det.			
	17 June 40	"		AWL from 2359 hrs 17 Jun to 0800 hrs 18 Jun 40		7 days CB			1 days pay
	13 ~~13~~ Oct 40	"		AWL from 13 Oct to 15 Oct 40		Admonished			2 days pay
	6 Nov 40	"		Failing to carry out guard duty		21 days det.			21 days pay
	19 Dec 40	"		AWL from 19 to 20 Dec 40					1 days pay
	10 Jan 41			AWL from 0900 hrs to 1545 hrs 10 Jan 41					1 days pay
	6 Mar 41			AWL from 1700 hrs to 2100 hrs 6 Mar 41					

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	18 May 41	Pte		AWL from2200 hrs 18 May to 0930 hrs 19 May 41					1 days pay
	5 Jul 41			AWL from 2100 hrs 4 Jul to 0800 hrs 5 Jul 41					1 days pay
	21 Jul 41	"		AWL from 0100 hrs 21 Jul untilapprehended by MP at North Sydney NS at 1145 hrs 2 Aug 41(Close arrest 1146 hrs 2 Aug until 2400 hrs 6 Aug 41)		21 days Det.			Cost of apprehensio 17 days pay
	30 Oct 41			AWL from 30 Oct to 8 Nov 41		168 hrs Det			10 days pay Cost of Apprehen.
	16 Nov42			AA Sec 15(1)		14 days CB 14 days pay			
	17 Nov 42			AA Sec 15(1)		3 days pay			

Certified true copy. (taken from MFM 2 at CMHQ by phone)

[illegible]

M.F.B. 385
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F54931	Pte	Clarence Russell HAYWARD	C.B.Highrs

1. The following is a fair and true summary of the entries in the [illegible] or Company Conduct sheets of the accused, [illegible]

	Within last 12 months		Since enlistment	
For AA Sec 15(1)	2	times	11	times
For AA Sec 40		times	3	times
For AA Sec 9 (1)		times	2	times
For		times		times

[illegible]

or,

There are no entries in the conduct sheets of the accused.

[illegible]

2. The accused has not been previously convicted

or,

[illegible]

3. The accused is not under sentence at the present time.

or,

[illegible]

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 8 days in military custody, making a total of 8 days in custody, of which none days were spent in hospital. 4 days in unit custody.

5. The present age of the accused according to his attestation paper is 23 yrs 4 mos

6. The date of his attestation specified in his attestation paper is 31-1-40

7. The service which the accused is allowed to reckon towards discharge is Nil

8. The accused is entitled to reckon nil service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or military reward [illegible]

[illegible]

26

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number..... Rank.....

Name..... of..... Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 5/6/43 day of 19

ADJUTANT

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked..... signed by the president, and annexed to the proceedings.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings

I certify that the above Court assembled on the 8th day of June '43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court and I.A.
2. The witnesses and short-hand writer.

*Omit if not applicable.

*~~2. The Interpreter~~ ~~J.T.S.B.~~.

*~~4. The officers under instruction~~ ~~J.T.S.B.~~.

were duly sworn.

Signed this 8 day of June 1943

H Anderson Capt Judge Advocate

J.T.S. Bousfield Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

~~J.T.S.B.~~.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further order.~~ ~~J.T.S.~~

Signed this 10th day of June 1943.

A.H. Sharp BRIG
Confirming Officer
COMD 11 CDN INF BDE

Promulgated and extracts taken in the case of F54931 Pte Clarence Russell Hayward

(a) (Dated) 11 June 43 (Signed) [illegible]
The Cape Breton Highlanders, C.A. (A.F.)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(60704) W.4753/242 25,000 2/42 A.& E.W. Ltd. Gp.698
(21785) W.13986/1359 40,000 7/42

GG-66

PTE HAYWARD C.R

1906 Lt. Hayward L.

B-76097 Pte. Hayward,G.
No.1 Cdn (M.G.) Hldg Unit

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 2nd day of August, 19 41

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS,CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[illegible] —

*(1. [illegible]

*(2. [illegible]

*(3. [illegible]

[illegible]

PROCEEDINGS REVIEWED.

President.

Rank.	Name.	Regiment.
Major	W.E. Andrewes	No.1 Cdn Eng Hldg Unit.

Members.

Rank.	Name.	Regiment.
Captain	C.M. Longbotham	No.1 RCASC Hldg Unit
Lieutenant	W.J. Fordyce	No.1 Cdn Gen Hldg Unit
Lieutenant	D.S. Stewart	No.1 Cdn Sigs Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [signature] Brigadier

Commanding Cdn Base Units,Cdn Army.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-76097 PTE. HAYWARD, G. No.1 Cdn (M.G.) Hldg Unit.	First Charge A.A. sec 15(1)	Guilty	Not Guilty of absence for 7 days, 2 hours, but guilty of absence for 6 days, 22 hours.	I confirm the findings and sentence of the Court but commute the sentence to one years detention.
	Second Charge A.A. sec 15(1)	Guilty	Not Guilty of absence for 29 days, 4 hours, but guilty of absence for 28 days, 22 hours.	
	Third Charge A.A. sec 22	Guilty	Guilty	
	Fourth Charge A.A. sec 15(1)	Guilty	Guilty	
	Fifth Charge A.A. sec 15(1)	Guilty	Not Guilty of absence for 33 days, 20 hours, 40 min. but guilty of absence for 32 days, 20 hours, 40 min.	
	Sixth Charge A.A. sec 24(2)	Not Guilty	Not guilty of losing by neglect two Anti-gas respirators etc to the value of $5-17-4 but guilty of losing by neglect two Anti-gas respirators etc to the value of $5-4-2½	
	See charge sheet attached.			

Sentence: To undergo imprisonment with hard labour for three (3) years, and to be placed under stoppages of pay to make good the value of $5-4-2½ [illegible] days.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [signature] Brigadier (Signed) [signature] Major

Commanding Cdn Base Units, Cdn Army.
Convening Officer (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 9th day of August 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
* Omit if not applicable. *(3. ~~The interpreter~~) The shorthand writer
*(4. The officers under instruction)

were duly sworn.

Signed this 9th day of August 1941.

[signature]
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (*b*) on page 762 M.M.L. 1929. ~~I certify that the terms of *A.C.I. 579 of 1918 have been complied with.~~

~~Signed this day of to~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the sentence named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 25th day of August 1941.

[signature] Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of B-76097 Pte Hayward G.

(*a*) (Dated) 29 Aug. 41 (Signed) [signature] Capt
Adjutant No. 1 M.G. Holding Unit C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B2. W/ Brothers. Major President.

CHARGE SHEET

The accused, No. B76097, Pte. Hayward, G., of the Toronto Scottish Regiment, (M.G.) on the strength of the No. 1 Canadian Machine Gun Holding Unit, an active unit of the Canadian Army (Overseas), as a reinforcement for his regiment, as a soldier of the Canadian Army (Overseas), is charged with:

FIRST CHARGE
Sec. 15(1)
A.A.

WHEN ON ACTIVE SERVICE, absenting himself without leave, in that he
at Bordon Hants, at 1300 hours 29th August 1940, absented himself without leave until apprehended at Newark-on-Trent at 1630 hours 4th September, 1940, an absence of 7 days, 2 hours and 30 minutes.

SECOND CHARGE
Sec. 15(1)
A.A.

WHEN ON ACTIVE SERVICE, absenting himself without leave, in that he
at Bordon Hants at 1530 hours, 12th September 1940, absented himself without leave until he surrendered himself at Bordon Hants at 1515 hours 11th October, 1940, an absence of 29 days, 23 hours and 45 minutes.

THIRD CHARGE
Sec. 22
A.A.

WHEN ON ACTIVE SERVICE, attempting to escape lawful custody, in that he
at Bordon Hants at 2045 hours, 14th October, 1940, when in lawful custody, attempted to escape by climbing from the window of his cell.

FOURTH CHARGE
Sec. 15(1)
A.A.

WHEN ON ACTIVE SERVICE, absenting himself without leave, in that he
at Bordon Hants on the 16th day of November 1940, when under close arrest, absented himself without leave until he surrendered himself at Bordon Hants on the 27th January, 1941, an absence of 72 days.

FIFTH CHARGE
Sec 15(1)
A.A.

WHEN ON ACTIVE SERVICE, absenting himself without leave, in that he
at Bordon Hants at 2030 hours, 1 February 41, when in close arrest, absented himself without leave until apprehended in London at 1645 hours 6th March 1941, an absence of 33 days, 20 hours and 15 minutes.

SIXTH CHARGE
Sec 24(3)
A.A.

WHEN ON ACTIVE SERVICE, losing by neglect his kit and regimental necessaries, etc., in that he
at Bordon Hants, on the 19th day of June 1941, was found to be deficient of kit, to the value of £9/17/4, the articles listed below:

		£	s.	d.
Badges cap	1	-	-	-
Bags, kit	1	-	5	3
Boots ankle, prs.	1	1	2	6
Braces	1	-	1	6
Brushes boot, blacking	1	-	-	8½
" " polishing	1	-	2	1
" Button	1	-	1	2
Caps comforter	1	-	1	8
Drawers woollen prs.	2	-	15	0
Dressings first field	1	-	1	1
Holdall	1	-	-	9
Housewife	1	-	-	7
Knife, clasp and Lanyard	1		3	5
Trousers service, prs.	1	-	4	8
Shirts angora	2	1	0	0
Shirts woollen	2	-	15	6
Shoes canvas prs	1	-	3	6

B2

Lt Col Anderson
Asst
President

PAGE II

			£	s.	d.
Socks pairs	1		-	1	11
Towels hand	1		-	1	4
Attachments brace W.E.Patt 37	2			1	11
Belts, waist small	1			3	6
Braces prs.	1			3	6
Carriers Cartridge prs.	1			8	10
" Waterbottle	1			1	11½
Covers, messtin	1				3
Frogs, bayonet	1				11
Haversack	1			8	6
Helmets, steel	1			7	9
Pack	1			8	6
Straps shoulder, prs.	1			3	10
Straps web, supporting	2			1	4
Sheets Ground Mk. VIII	1			10	0
Respirator A.G. Complete	1			16	6½
Eyeshields, set, six	1			2	3
Ointment A.G. No. 2.	2				9
Capes, A.G.	1			11	9
Bottles, water	1			2	8
		£	9	17	4

ALDERSHOT NORTH
21 JUL 41.

(F.I. Carpenter) Lieut-Col.
Commanding, 1 Cdn. M.G. Holding Unit,
C.A.(O.)

To be tried by Field General Court Martial

(F.R. Phelan) Brigadier
Commanding Cdn Base Units.

Bordon, Hants
This 2nd day of August 41.

No. B-76097, Pte. HAYWARD G., No. 1 Canadian Machine Gun Holding Unit, tried by Field General Court Martial at ALDERSHOT, Hants. on the 9th day of August, 1941.

The order convening the Court, the charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:	Lieut. C.C. Hill,	No. 1 CMGHU.
Defending Officer:	Lieut. J. McL. Prescott,	No. 1 CMGHU.

At 0900 hrs the trial commences.

The order convening the Court is read, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1. No, sir.

The President and members are duly sworn.

The officers under instruction are duly sworn.

Q2. Do you object to B66944, Sgt T. Pyburn, R.Regt.C., acting as shorthand writer?
A2. No, sir.

The shorthand writer is duly sworn.

The charge sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge sheet.

Q3. Are you guilty or not guilty of the first charge against you, which you have heard read?
A3. Guilty, sir.
Q4. Are you guilty or not guilty of the second charge against you, which you have heard read?
A4. Guilty, sir.
Q5. Are you guilty or not guilty of the third charge against you, which you have heard read?
A5. Guilty, sir.
Q6. Are you guilty or not guilty of the fourth charge against you, which you have heard read?
A6. Guilty, sir.
Q7. Are you guilty or not guilty of the fifth charge against you, which you have heard read?
A7. Guilty, sir.
Q8. Are you guilty or not guilty of the sixth charge against you, which you have heard read?
A8. Not guilty, sir.

The accused having pleaded Guilty to the first five charges, the provisions of R.P. 35(B) are here complied with.

Q9. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A9. No, sir.

The prosecutor makes no opening address.

1st witness) for prosecution) No. F-34627, C.Q.M.S. BUILDER A.G., No. 1 Canadian Machine Gun Holding Unit, being duly sworn, is examined by the prosecutor:-

Q10. You are the Q.M. of No. 1 CMGHU?
A10. Yes, sir.
Q11. Give the court you number, name, rank and unit?
A11. No. F34627, CQMS A.G. Builder, No. 1 CMGHU.
Q12. Do you recognise the accused, No. B76097, Pte G. Hayward?
A12. Yes, sir.
Q13. Can you tell us if you checked the accused's kit?
A13. Yes, sir.
Q14. Was he present when you did this?
A14. Yes, sir.
Q15. And did you find certain deficiencies in his kit?
A15. Yes, sir.
Q16. I produce to you a list. Will you identify that to the court?
A16. Yes, it is my figures and it is my signature.
Q17. Is that the list of articles of which Pte Hayward was deficient?
A17. Yes, sir.
Q18. Is there any date on that?
A18. The date is 19 Jun 41.
Q19. And it is signed by you, is it?
A19. Yes, sir.

The statement referred to is signed by the President and attached to the proceedings.

Q20. Since that date, 19 Jun 41, has Pte Hayward been issued with any kit which has been charged to him?
A20. Yes sir, he has.
Q21. Will you tell the court in detail the items of kit which have been issued to him?
A21. Yes, sir:-

	£	s.	d.
Anklets, web			
Boots, ankle	4.		4
Braces	1.	2.	6
Brushes, tooth			5½
Brushes, shaving			5
Combs, hair		1.	2
Jersies, pullover			2
Socks, 1 pr		6.	9
Towels, 1		1.	11
Brushes, button		1.	6
Towels, 2 @ 1/6		1.	2
Brushes, boot blacking		3.	0
Brushes, polishing			8½
Shirts, flannel, 2 @ 9/5		2.	1
Brushes, tooth		18.	10
Brushes, hair			5
		2.	6
	£3.	7.	11

CROSS EXAMINED BY THE DEFENDING OFFICER

Q22 The accused has a respirator and is being charged with being deficient or as not being issued with one since. Can you tell me where he got his respirator?
A22. I don't know where he got it but he was marked deficient in his presence at the time I made the statement out.
Q23. The accused says he drew it from the stores?
A23. Do you mean he paid for it in the stores?
A23. THE ACCUSED: Yes, sir.
Q24. DEFENDING OFFICER: Can you explain that?
A24. I am sorry, I must have missed some items here. May I add these to

the list I just gave you:-

Housewife	£0. 0. 7
Respirator	16. 6½
Shoes, canvas	3. 6
Holdall	9
Socks, 2 prs @ 1/11	3.10
	£ 1.5.. 2½

The prosecution is closed.

Q25. THE COURT: Do you apply to give evidence yourself as a witness? (R.P. 40 & 41 complied with).
A25. No, sir.
Q26. Do you intend to call any other witness in your defence?
A26. No, sir.
Q27. Have you anything to say in your defence?
A27. No, sir.

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE FINDING

The Court being re-opened the accused is again brought before it.

Q28. Do you wish to make any statement in mitigation of punishment?
A28. No, sir.

LIEUT. R.E. FULLERTON, No. 1 Canadian Machine Gun Holding Unit, being duly sworn, is examined by the Court:-

Q29. Have you any evidence to produce as to the character and particulars of service of the accused?
A29. Yes, sir. I produce certified true copy of MFM6 and AF B296.

The above statement is read, signed by the President, and annexed to the proceedings.

Q30. Is the accused the person named in the statement which you have heard read?
A30. Yes, sir.
Q31. Have you compared the contents of the above statement with the regimental books?
A31. Yes, sir.
Q32. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A32. Yes, sir.

The defending officer declines to cross-examine.

Q33. THE COURT: Do you wish to address the Court?
A33. DEFENDING OFFICER: No, sir.

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE.

SUMMARY OF EVIDENCE IN THE CASE OF: B76097 Pte. Hayward, G. of the T.S.R. (MG) on the strength of the No. 1 Canadian Machine Gun Holding Unit, C.A. (O.) By direction of the Commanding Officer the following evidence is taken on oath:

FIRST WITNESS FOR THE PROSECUTION:

No. G-32419 S/S. Walker, W.A. (St. J. F.) No. 1 Cdn. M.G.H.U. C.A. (O.) being sworn states:

I am Orderly Room Sergeant No. 1 C.M.G.H.U. and I here produce:

A statement of apprehension showing the accused ~~he~~ have been apprehended by the CMP, Newark-on-Trent, 4th September 1940. (Marked Exhibit "A").

~~A certified true copy of the record of the declaration of a Court~~ of Inquiry held at Bordon Hants 4th Jan 41 declaring the absence of the accused from the ~~16th~~ November 40. (Marked Exhibit "B").

A certified true copy of the ~~declaration~~ of a Court of Inquiry held at Bordon Hants, 27th February 1941, ~~declaring the absence of the accused from 1st. February 1941 (Marked Exhibit "C").~~

A statement of Evidence by Detective-Constable N. Bevan, "H" Div. Metropolitan Police declaring the apprehension of the accused in London at 1500 hours 6th March 1941. (Marked Exhibit "D").

Wm. A. Walker, S/S.
Unit Orderly Room
No. 1 Cdn. M.G. Holding Unit, C.A. (O.)

The accused declines to cross-examine this witness.

SECOND WITNESS FOR THE PROSECUTION:

No. F-34627 CQMS Builder, A.G., No. 1 C.M.G.H.U., C.A. (O.) being sworn states:

On 19th June 1941 I checked the kit of the accused in his presence and found him to be deficient of articles, charged to him on his M.F.C. 800 to the value of £9/17/4, as shown in the list which I submit. (Marked Exhibit "E").

A.G. Builder, C.Q.M.S.

The accused declines to cross-examine the above witness.

THIRD WITNESS FOR THE PROSECUTION:

B76634 Cpl. Beresford, F.C. (TSR - MG) No. 1 CMGHU, C.A. (O.) being sworn, states:

On 12th Sept. 1940 I was acting Coy. Orderly Sergeant of "A" Coy. to which the accused belonged. At 1530 hours on that day I had been told to warn the accused for guard duty and on searching the Barracks for him was unable to find him. I remember that the accused was not in close arrest.

F.C. Beresford, Cpl.
1 C.M.G.H.U.

The accused declines to cross-examine this witness.

FOURTH WITNESS FOR THE PROSECUTION:

B76742 Cpl. Lavery, W.J., (TSR - MG) No. 1 C.M.G.H.U., C.A. (O.) being sworn states:

At 1515 hours 11th October 1940 I was walking through the lines at Guadaloupe Barracks when R.S.M. Vantassel who had just found the accused in his quarters, asked me to escort the accused to the Guard Room. I did this.

W.J. Lavery, Cpl.
1 CMGHU C.A. (O.)

The accused declines to cross-examine this witness.

FIFTH WITNESS FOR THE PROSECUTION:

No. B76611 Sgt. McAuley, F.T. (TSR-MG) No. 1 CMGHU, C.A. (O.) being sworn states:

On August 29th 1940 at 1300 hours I called the roll of my platoon and the accused failed to answer to his name. He was not in his quarters

F.T. McAuley, Sgt.
1 C.M.G.H.U.

The accused declines to question this witness.

SIXTH WITNESS FOR THE PROSECUTION:

D77000 A/L/Sgt. Scott, J.W. (RMR-MG) No. 1 C.M.G.H.U., C.A. (O.) being sworn, states:

On 27th January 1941 I was commanding the quarter Guard and at 1600 hours the accused reported to me from absence without leave. I put him in close arrest.

J.H. Scott, Sgt.

The accused declines to question this witness.

SEVENTH WITNESS FOR THE PROSECUTION:

L2378 L/Cpl. Greyeyes, D. (SLI-MG) No. 1 C.M.G.H.U. C.A. (O.) being sworn, states:

I was in the Guard Room, Guadaloupe Barracks, Bordon Hants at about 2045 hours., 14th October 1940 when Cpl. Griffiths went outside to investigate a noise. In a few minutes, as I was on my way out the door to see what was happening, Cpl. Griffiths came in holding the accused by the arm. I went to the room where the accused had been detained and found that the blackout had been removed from the window and the bars twisted sufficiently to allow the prisoner to escape.

D. Greyeyes, L/Cpl.
1 C.M.G.H.U.

The accused declines to question this witness.

The accused being duly warned in accordance with R.P. 4 (e) reserves his defence.

Certified that R.P. 4 (c) (d) & (e) have been complied with.

Taken down by me in the presence and hearing of the accused this 17th day of July 1941 at Aldershot, North.

R.R. Macgillivray, Lieut.
1 Cdn. M.G. Holding Unit,
C.A. (O.)

Supplementary Evidence.

EIGHTH WITNESS FOR THE PROSECUTION Lieut. R.E. Fullerton. (SLI-MG) No.1 C.M.G.H.U. C.A.(O).

having been sworn states: I am Records Officer at No. 1 C.M.G.H.U. and I produce herewith Certified true copy of Declaration of a Court of Inquiry dated 4th Jan. 1941, declaring the absence of the accused from 16th. November, 1940, Marked Exhibit "B". I also produce a Certified true copy of a Declaration of a Court of Inquiry dated 27th Feb. 1941 declaring the absence of the accused from 1st. Feb. 1941. Marked Exhibit "C".

(Sgd) R.E. Fullerton. Lieut.

The accused declines to cross-examine this witness.

The accused being duly cautioned under R.P. 4 (e) reserves his defence.

Certified that R.P. 4 (c)(d)and (e) have been complied with.

Taken down by me in the presence and hearing of the accused this 29th day of July 1941 at Aldershot North.

(Sgd) Charles C. Hill Lieut.

Summary of Evidence
in the case of

B76097 Pte Hayward, S. (TSR-MG) No 1 Con. M.G. Holding Unit, CA(C).

By direction of the Commanding Officer, the following evidence is taken upon oath.

First Witness for the prosecution

No G.3Z419 S/Sgt. Walker, W.A., (1st S. Inv.) No 1 CMG HU, CA(C) being sworn, states:

I am Orderly Room Sgt. No 1 CMG HU and I have produced:

A statement of Apprehension showing the accused to have been apprehended by the C.M.P., Newton-on-Trent, 4th Sept 1940, (Marked Exhibit "A");

~~a certified true copy of the record of the declaration~~ of a Court of Inquiry held at Bordon, Hants, 4th Jan 1941, declaring the absence of the accused from 16th Nov. 1940 (Marked Exhibit "B");

a certified true copy of the declaration of a Court of Inquiry held at Bordon, Hants, 27th Feb. 1941, declaring the absence of the accused from 1st Feb. 1941 (Marked Exhibit "C");

a statement of Evidence by Det. Cons. H. Bowen, "H" Div. Metropolitan Police, declaring the apprehension of the accused in London at 1500 hrs 6th March 1941 (Marked Exhibit "D")

Wm. A. Walker, S/S
Unit Ord Room
1 Con. (MG) Holding Bat

the accused declines to cross-examine his witness

Second Witness for the prosecution

No F 34627, CQMS Builder, A.G., No 1 CMG HU, CA(C) being sworn, states:

On 19th June 1941 I checked the kit of the accused in his presence and found him to be deficient of articles, charged to him on his M.F.C 500, to the value of £ 9-17-4, as shown in the list which I submit (Marked Exhibit "E")

A.G. Builder
C.Q.M.S.

The accused declines to cross-examine the witness

Third Witness for the prosecution

B75634 Cpl. Beresford, F.C. (TSR-MG) No 1 CMG HU, CA(C) being sworn, states:

On 12th Sept 1940 I was acting Coy. Ord. Sgt of "A" Coy to which the accused belonged. At

1530 hrs on that day I had been told to warn the accused for guard duty and on searching the Barracks for him was unable to find him. I remember that the accused was not in bed at that time.

F. C. Beresford Cpl.
1 C M G H U.

The accused declines to cross-examine this witness.

Fourth Witness for the Prosecution

B76742 Cpl Lavery, W.J. (T.S.R-M.G.) No 1 C M G H U, C A (O)

being sworn, states.

At 1515 hrs, 11th Oct. 1940 I was was walking through the lines at Guadalupe Barracks when R.S.M Vautassel, who had just found the accused in his quarters, asked me to escort the accused to the guard room. I did this.

W J Lavery Cpl
1 C M G H U, C A (O).

The accused declines to cross-examine the witness.

Fifth Witness for the prosecution.

No B76611, Sgt. Mc Auley, J.T. (T.S.R-M.G) No 1 C M G H U, C A (O), being sworn, states:

On 29th August 1940 at 1300 hrs I called the roll of my platoon and the accused failed to ~~answer~~ answer to his name. ~~He was escorted to barracks at that time.~~ He was not in his quarters.

J.T. Mc Auley Sgt.
1 C M G H U.

The accused declines to question the witness

Sixth Witness for the Prosecution

D77000 A/L/Sgt. Scott, J.H. (R M R-M.G) No 1 C M G H U, C A (O)

being sworn, states:

On 27th Jan. 1941 I was commanding the Quarter Guard and at 1600 hrs the accused reported in to me from absence without leave. I put him in close arrest.

J.H. Scott. Sgt.

The accused declines to question this witness.

Seventh Witness for the prosecution.

L2378 1-Cpl. Greyeyes, D. (S.I.-M.G.) No 1 C.M.G.H.D., C.A.(O) being sworn, states.

I was in the Guard Room, Guadalcanal Barracks, Bordon Hants at about 2045 hrs 14 Oct. 1940 when Cpl. Griffiths went outside to investigate a noise. I in a few minutes, as I was on my way out the door to see what was happening, Cpl Griffiths came in holding the accused by the arm. I went to the room where the accused had been detained and found that the blackout had been removed from the window and the bars twisted sufficiently to allow the prisoner to escape.

D. Greyeyes L/Cpl.

1 C.M.G.H.D.

The accused declines to question the witness

The accused, being duly cautioned in accordance with R.P. 4(E) reserves his defence

Certified that R.P. 4(C)(D) and (E) have been complied with.

Taken down by me in the presence and hearing of the accused, this 17th day of July 1941 at Aldershot, Hants

R. Armstrong Lt
1 C.M.G.H.D., C.A.(O).

Supplementary Evidence

Eighth Witness for the Prosecution. } Lieut R.E. Fullerton Sask. L.I. (M.G.) 1 C.M.G. & M.G. H.D. having been sworn states.

I am Records officer at 1 C.M.G. & H.D. and I produce herewith certified true copy of Declaration of Count of Enquiry dated 4th January 1941 declaring the absence of the accused from 16th November 1940. Marked Exhibit "B".

I also produce a certified true copy of a declaration of a Court of Enquiry dated 27th February 1941 declaring the absence of the accused from 1st February 1941 marked Exhibit "C".

R.E. Fullerton Lt.

The accused declines to cross examine this witness.

The accused being duly cautioned under R.P. 4(E) reserves his defence.

Certifies that R.P. 4(C)(D) & (E) have been complied with.

Taken down by me in the presence and hearing of the accused this 17th day of July 1941 at Aldershot, Hants.

MEDICAL OFFICER'S CERTIFICATE.

I CERTIFY that No. B76097 Pte. Hayward, G. (1CMGHU) Regiment

is* FIT to undergo trial by Court-Martial.

Signature of the Medical Officer H.K. Dain Capt
R.C.A.M.C. 1 CMGHU

9 Aug 41

* Insert "fit" or "unfit."

(a) Here insert name of :—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence [R.P. 19 (B) (iii)].

(b) To be filled in if there has been a Court of Inquiry respecting any matters connected with the charges; otherwise to be struck out [R.P. 19 (B) (iii)].

(c) To be filled in by the Commanding Officer.

(d) Any items not applicable to be struck out.

(e) One copy to be sent to the President; one copy to be filed with the application for trial.

(f) Original summary of evidence to be sent to the President.

(g) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.

(h) 5 and 8 to be sent to the President.

If the accused has elected to be tried under A.A. 46 (8) the fact should be recorded at the top of this form.

(11502) W.L.23032/X16 20,000 8/50 A.& E.W.,Ltd. Gp.698 Forms/C116/16
(18420) " W.L.45756/761 150,000 1/40 " "

Exhibit "E"

DEFICIENCIES OF CLOTHING & EQUIPMENT, B76097, Pte. Hayward, G.

		Quantity	£	S	D
Badges, Cap	N/A.	1			
Bags, Kit		1			
Boots, Ankle, Prs.		1		5	3
Braces		1	1	2	6
Brushes, Boot Blacking		1		1	6
" , " Polishing		1			8½
" , Button		1		2	1
Caps, Comforter		1		1	2
Drawers, Woollen, prs.		1		1	8
Dressings, Field (1st)		2		15	0
Holdall		1		1	1
Housewife		1			9
Knife, Clasp & Lanyard		1			7
Trousers, Service, prs.		1		3	5
Shirts, Angola		2		4	8
" , Woollen		2	1	0	0
Shoes, Canvas, Prs.		1		15	6
Socks, Prs.		1		3	6
Towels, Hand		1		1	11
				1	4

Equipment.

Attachments, Brace	W.E.Patt.37.2				
Belts, Waist, Small		1		1	11
Braces, Prs.		1		3	6
Carriers, Cartridge, prs.		1		3	6
" , Waterbottle		1		8	10
Covers, Messtin		1		1	11
Frogs, Bayonet		1			3
Haversack		1			11
Helmets, Steel		1		8	6
Pack		1		7	9
Straps, Shoulder, Prs.		1		8	6
" , Web, Supporting		1		3	10
Sheets, Ground MKVIII		2		1	4
RESPIRATOR, A/G. Complete		1		10	0
Eyeshields	set 6.	1		16	6½
Ointment, A/G. No.2		1		2	3
Capes, A.G.		1			9
Bottles, Water		1		11	9
		1		2	8

£9-17-8

A/C Builder. 6 Q.M.S.
19 June 19th

Description of Court by which tried, or name of Officer disposing of the charge or disposing with Trial.	Date and place of Trial, or summary award or of Order disposing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule [illegible] convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th day of [illegible] 1941

[signature]
Officer i/c Records,
1 Cdn. M.G. Holding Unit, C.A.(O).

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B-76097 Pte. HAYWARD, G. of the TORONTO SCOTTISH REGIMENT MG
1 CDN MG HOLDING UNIT, C.A.(O).

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—The Regimental and Squadron, Battery or Company Conduct sheets are to be produced at the Court with the statement but are not to be delivered to the accused or his representative.

The Pars. 602, K.R., 1926.

	*Within last 12 months.	*Since Enlistment.
For A.A. Sec. 40.	times	One times
For A.A. Sec. 15 (1).	Two times	Six. times
For Sec. 28 & 33 Larceny Act 1916 - Stealing.	One times	One times
For	times	times

*The numbers should correspond with the matter of Entries in the Conduct sheets, precedence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and fully.

[redacted]

[redacted]

[redacted]

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

W1 42868/864 30,000 2/40 W. S. Ltd. 11—9004

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence for~~ ~~days~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges

for 97 days in Civil Custody.
and 58 days in Military Custody.
Total 155 days.
Of which [illegible] days were spent in hospital.

5. The present age of the accused according to his attestation paper is 28

6. The date of his attestation specified in his attestation paper is 13th Sept. 1939.

[redacted]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name B-76097 Pte. HAYWARD, George. of the TORONTO SCOTTISH REGT. 1 CDN MG HOLDING UNIT, C.A.(O)

NOTE.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
Civil Court.	6-3-41 - Thames.	Section 28 & 33 - Larceny Act 1916. STEALING.	4 months Hard Labour.	

(Insert NIL if no such convictions.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president and annexed to the proceedings.

(Continued overleaf.

CERTIFIED COPY.

No. B76097 Name HAYWARD, G. Sqn., Battery or Company — Corps T.S.R. (MG) Date of enlistment 13-9-39. G.C. Badges — Service or Proficiency Pay — M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
C.N.E. Brks.	21-10-39.	Pte.		A.A. Sec. 15 (1). AWL	?	3 days C.B.	21-10-39	Capt. Page.	
Tournay Brks.	23-3-40.	Pte.		A.A. Sec. 15 (1). AWL	Cpl. Smith. L/C. Brown.	14 days C.B.	26-3-40.	Capt. Page.	Aut. forf. 1 day's pay
Tournay Brks.	18-4-40.	Pte.		A.A. Sec. 15 (1). AWL	PSM Moffatt. L/C Turner.	168 hrs detn.	19-4-40.	O.C. T.S.R.	Aut. forf. 3 days pay.
Tournay Brks.	22-4-40.	Pte.		A.A. Sec. 15 (1). AWL from 2200 hrs. 27-4-40. until 2400 " 27-4-40. Time absent: 2 hours.	PSM Moffatt. L/Cpl. McEachern.	3 days C.B.	29-4-40.	O.C. T.S.R.	

P.T.O.

Place	Date of offence	Rank	Cause of disposition	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bulford. Camp.	12-5-40.	Pte.		A.A. Sec. 40. Conduct to the prejudice of good order & military discipline in that he failed to comply with an order.	Sgt. Graham. Sgt. McRae.	14 days detn.	13-5-40.	O.C. T.S.R.	
Chipstead.	19-7-40.	Pte.		A.A. Sec. 15 (1). AWL 2 days 5 hours.	Cpl. Rogers.	7 days C.B.	22-7-40.	Lieut. Wilkins.	Aut. forf. 3 days pay.
Bordon.	21-8-40.	Pte.		A.A. Sec. 15 (1). AWL from 0830 hrs 21-8-40 until 0830 " 22-8-40. Time absent: 24 hours.	Cpl. Beresford.	7 days C.B.	22-8-40	Major W.B. Davidson.	Aut. forf. 1 day's pay. FR&I 149 (1)a.
Thames.	6-3-41.	Pte.		A.A. Sec. 28 & 33 Larceny Act 1916 STEALING		4 months Hard Labour	21-3-41	Civil Power.	

Certified true Copy

Officer i/c Records,
1 Cdn. M.G. Holding Unit C.A.O.

146 K. (2nd case)

Pte. HAYWARD, C

See 191C for 1st case

O. H. M. S.

M. F. B. 270

B-76097 Pte.Hayward,G.
Tor.Scot.R.(MG)
1 C.M.G.R.U. 146K.

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this twenty-eighth day of July, 1942.

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army (Overseas), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[~~I am unable to appoint:~~

*(~~1. Three Officers to form the Court.~~)

*(~~2. A Field Officer as President.~~)

~~for the following reasons, namely:—~~]

* Omit if not applicable.

PROCEEDINGS REVIEWED.

10 Aug 42.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	V.A.Gianelli	QORofC - 3 CDIRU

Members.

Rank.	Name.	Regiment.
A Captain	from	1 C.M.G.R.U.
A Lieutenant	from	3 C.D.I.R.U.
WAITING MEMBER A Lieutenant	from	3 C.D.I.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier

Commanding "D" Group,Cdn.Reinf.Units

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
	First Charge A.A.Sec.15 (1)	Guilty	Guilty	Finding and Sentence Confirmed. K. Lefebvre Brigadier
	Second Charge A.A.Sec.18 (3)	Guilty	Guilty	
B-76097 Pte.HAYWARD,G. Tor.Scot.R.(MG) 1 C.M.G.R.U.	See Charge Sheet No.1 ++++++++++++++			
	First Charge A.A.Sec.22	Guilty	Guilty	
	Second Charge A.A.Sec.15 (1)	Guilty	Guilty	
	See Charge Sheet No.2		Awarded 2 Ho days detention 30/7/42	

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) K. Lefebvre Brigadier (Signed) H. L. Swanson Lt Col
Commanding "D" Gp., C.R.U. (G.S.O.2) 3 C.D.J.R.U.
Convening Officer (c) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 30th day of July, 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case ~~of each such person were~~ as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 30th day of July 1942.

H. L. Swanson Lt Col
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of A.G.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~

Signed this First day of August 1942.

K. Lefebvre Brigadier
Confirming Officer. Commander "D" Group (Can. Reinforcement Units) C.A.

Promulgated and extracts taken in the case of B 76097 Private Hayward G.

(a) (Dated) 4 Aug/1942 (Signed) [illegible] Lt Col
O.C. 1 Can. M.G. Rein. Unit, C.A.(O)

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

O.U. 47767/1937 35 M. 1-41 K.H./52652 Gp. 698-3

7

The Court feels that [illegible] Records Restricted should be transferred to the Prisoner for [illegible] change of environment and since its [illegible] may result be more helpful to his mental state.

Walzer

Later

President.

CHARGE SHEET #1

The accused, No. B 76097, Pte. GEORGE HAYWARD, of the Toronto Scottish Regiment (MG), on the strength of the No. 1 Canadian Machine Gun Reinforcement Unit, an active Unit of the Canadian Army Overseas, is charged with:-

FIRST CHARGE:- A.A. Sec. 16 (1)

WHILE ON ACTIVE SERVICE, Absenting himself without leave,
in that he
at Leipzic Barracks, Ewshot, Hants., absented himself without leave from 0530 hours, 22 June 1942, until he was apprehended in London at 2015 hours, 26 June 1942. (Time Absent:- 6 days, 14 hours, 45 minutes).

SECOND CHARGE:- A.A. Sec. 16 (3)

WHILE ON ACTIVE SERVICE, Wilfully disobeying orders by means of which disobedience he delayed the cure of disease,
in that he
After being duly ordered to appear at No. 3 Canadian Medical Centre, Aldershot, Hants., for treatment for syphilis, failed on 24 June 1942 to so report.

EWSHOT, HANTS.
3 JULY 42.

(J.H. Christie) Lt.-Col.
Officer Commanding,
#1 Canadian (MG) Reinf: Unit,
C.A.O.

To be tried by Field General Court Martial

(H. Lefebvre) Brigadier
Commander
"D" Group, Cdn.Reinf.Units

Ewshot, Hants
21.Jul.42

(GEN'L) SECRETARY PRESIDENT

CHARGE SHEET

The accused, NO. B 76097, Pte. GEORGE HAYWARD, of the Toronto Scottish Regiment (MG), on the strength of the No.1 Canadian Machine Gun Reinforcement Unit, an active Unit of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
A.A. Sec. 22

WHILE ON ACTIVE SERVICE, When in lawful custody, escaping, in that he at #3 C.M.C., Aldershot, on 8 July, 1942, escaped from his escort, L 1278 Pte. Turcotte, W.G.

SECOND CHARGE
A.A. Sec. 15(1)

WHILE ON ACTIVE SERVICE, Absenting himself without leave,
in that he
at #3 C.M.C., Aldershot, absented himself without leave from 1415 hours, 8 July 1942, until he was apprehended in London at 1615 hours, 15 July 42. (Time absent:- 7days, 2 hours,)

EWSHOT, HANTS.
17 JULY 42.

(J.H. Christie) Lt.-Col.,
Officer Commanding,
#1 Canadian (MG) Reinf: Unit,
C.A.O.

To be tried by Field General Court Martial

(H.Lefebvre) Brigadier
Commander
"D" Group, Cdn.Reinf.Units

Ewshot,Hants
21 Jul.42

(G.R.C.) 3C 42/RH.

1 CANADIAN (MG) REINFORCEMENT UNIT, C.A.O.

30 Jul 42.

This is to certify that B 76097, Pte. Hayward, G., is fit to undergo trial by Courts Martial.

(Capt. W.M. Wallace)
Medical Officer,
#1 CMGRU.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT Leipzic Bks, Ewshot, Hants ON THE 30 DAY OF July 42

TRIAL OF:- No B 76097 Pte. GEORGE HAYWARD Unit No.1 Cdn (MG) Rein: Unit

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Capt. C.E. Fuller (Unit) #1 C.M.G.R.U.

Defending Officer:- (Name) Lieut. T.M. Gordon (Unit) #1 C.M.G.R.U.

At 1000 hrs the trial commences.

The order convening the court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1.- No, sir.

The President, members and judge-advocate (if any) are duly sworn.

The following constitute the Court:

President Major V.A. Gianelli .....(Unit) #3 C.D.I.R.U.

Members .. Capt. H.C. Mitchell .....(Unit) #1 C.M.G.R.U.

Lieut. D.R. Forbes .....(Unit) #3 C.D.I.R.U.

The officers under instruction are duly sworn.

Q2 Do you object to B 66065 Cpl. Newton, L.C. acting as shorthand writer? A2.- No, sir.

The shorthand writer is duly sworn.

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Court is closed to consider its finding. Court is re-opened.

Name.. Capt. C.E. Fuller ...(Unit) #1 C.M.G.R.U..... sworn, produces AFB 296 and MFM 6 and upon being questioned by Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3. (To accused) - Do you wish to make any statement in mitigation of punishment? A3 - Yes (Accused hands in written statement)

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4 - No, sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

Statement in Mitigation of Punishment

B-76097. Pte George HAYWARD

Tor. Scot. R. (M.G.)

When I came out of Witley after serving nine months I was in a terribly nervous state. My nerves were "all shot". Then I had my I.Q. Test, after which I told the fellows I was sure I had failed. They then began "razzing" me all the time about it, saying that I was sure to wind up in Basingstoke. They kept this up and it really got on my nerves. It started me thinking of how my mother was in the Ontario Hospital at New Toronto for eight years this November, and finally had me so worried I couldn't stand it any longer. I knew I had to get away from it, and that is when I went absent for the six days.

Pte G. Hayward

(B.76097 Pte. Hayward, G.)

(Commanding Officer)

PRESENT.

SUMMARY OF EVIDENCE

in the case of

No. B 76097, Pte. Hayward, G., of the Toronto Scottish Regiment (MG), on the strength of the No. 1 Canadian Machine Gun Reinforcement Unit, Canadian Army Overseas.

By direction of the Commanding Officer, the evidence is taken on oath.

FIRST WITNESS:(For the Prosecution):- L 1423, C.Q.M.S. Hewlett, S.F., (SLI), of No. 1 Canadian (MG) Reinforcement Unit, having been duly sworn, states:-

On 22 June 1942, I was Company Orderly Sergeant of "HQ" Coy, 1 Cdn (MG) Rein: Unit. At Reveille Roll Call, - 0530 hours, - the accused was reported Absent Without Leave. I personally searched the men's Quarters, but could not find him or any evidence of his presence. I have not seen him from that time up until the present moment.

The accused declines to cross-examine this witness.

(S.F. Hewlett).

SECOND WITNESS:(For the Prosecution):- A 34082, Pte. (A/L/Opl). Killby, H.W., (TSR), of No. 1 Canadian (MG) Reinforcement Unit, having been duly sworn, states:-

I am a Motorcycle Instructor, and I customarily call the roll in Hut 26. At 1830 hours on Sunday, 21 June 42, I was told that the accused was to move into Hut 26 as a Hut Orderly. When I called the roll at 2230 hours, 21 June 42, he was not present. When I called the roll at about 0530 hours, 22 June 42, he was still absent, and I reported this. I never saw the accused before the taking of this Summary.

I produce xcertified copies of Part II Orders for 1 C.M.G.R.U., Nos. 86 and 89, dated 26 June 42 and 30 June 42 respectively, which show the accused to have been absent from 0530 hours, 22 June 42.

(Certified copies received, marked "Exhibits "A" and "B").

I produce a certificate purporting to have been signed by the A.P.M. at London, relating to the accused.

(Certificate received, marked "Exhibit C").

The accused declines to cross-examine this witness.

(H.W. Killby).

THIRD WITNESS:(For the Prosecution):- G 32012, C.S.M. LeBuffe, R.R.W., (S.J.F.), 1 Canadian (MG) Reinforcement Unit, having been duly sworn, states:-

I am the Company Sergeant-Major of "Headquarters" Coy.

On Friday, 19 June, 1942, I saw the accused, whom I recognize, in the Company Orderly Room. I took him down to the Transport Office, and handed him to the N.C.O. at the Transport Office, to use him as Hut Orderly in Hut 26, which is occupied by Transport personnel.

On Saturday, 20 June 42, I saw the accused and ordered him to move to Hut 26. He moved part of his kit down. I never saw him after that.

The accused declines to cross-examine this witness.

(R.R.W. LeBuffe).

FOURTH WITNESS:(For the Prosecution):- Major A.A. Overholt, R.C.A.M.C., of No. 3 Canadian Medical Centre, having been duly sworn, states:-

On the 20 May 1942, the accused, whom I recognize, was ordered

(PAGE 2 FOLLOWS)

by me in the presence of several witnesses to appear weekly for treatment until told not to do so. He was further warned that failure to appear for treatment might lead to a charge under the Army Act, Sec; 16, para 3. It was explained to him that failure to appear for treatments was delaying the cure of his disease. In brief, syphilis could be cured only by repeated treatments at regular intervals and that going A.W.L. or in other ways missing such regular treatments would delay his cure. These facts were explained to him at some length.

From his records, I am perfectly satisfied tht he is still suffering from syphilis as an original disease. He failed to appear for treatment on 24 June 1942, and it was reported to this treatment centre that he was Absent Without Leave.

A.A. Overholt, Major. R.C.A.M.C.

The accused declines to cross-examine this witness.

FIFTH WITNESS:(For the Prosecution):- M 42126, Pte. (A/Cpl) Merry, J.C., R.C.A.M.C., of No. 3 Canadian Medical Centre, having been duly sworn, states:-

On the 20 May 1942 I was present when Major Overholt spoke to the accused, whom I recognize, and said words to the effect that if the accused was A.W.L. or missed treatment, which would effect his definite cure in time, that he would be liable for a serious charge. The Major ordered the accused to appear weekly. I can personally certify that he failed to appear for his weekly treatment on 24 June, 1942.

J.C. Merry.

The accused declines to cross-examine this witness.

The accused, after being duly warned in accordance with R.P. 4(e) as follows:- "Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidenne you may give, will be taken down in writing, and may be used as evidence", declined to make a statement.

Taken down in writing in the presence of the accused at Leipzic Barracks, Ewshot, Hants., and also at Aldershot, Hants., on the 2nd and 3rd days of July, 1942.

R.P. 4(c), (d) and (e) have been complied with.

J.P. Palmer, Capt.
1 Cdn (MG) Rein: Unit.

President

Summary of Evidence

In the case of B-7609 Pte Hayward, George of The Toronto Scottish Regiment, on the strength of HQ Coy No 1 Canadian Machine Gun Reinforcement Unit, Canadian Army Overseas.

By direction of the Commanding Officer, the evidence is taken on oath.

FIRST WITNESS: Capt (Cross) Hewlett, S.F. (S.L.I.) of No 1 Canadian Machine Gun Reinforcement Unit, Canadian Army Overseas, having been duly sworn

[redacted] 22 Jan 42 I was Company Orderly Sgt of HQ Company. At reveille roll call, the accused was reported absent without leave. I personally searched the men's quarters but could not him or any evidence of his presence. I have not seen him from that time up until the present moment.

S F Hewlett

The accused declined to cross-examine the witness.

SECOND WITNESS A34082 Pte (A/L.Cpl) KILLBY H.W (TSR) 1st Cdn M.G.R.U. being duly sworn states:-

"I am a motorcycle instructor and I customarily call the roll in Hut 26. At 1030 hrs (Sunday) 25 Jan 42 I was told that the accused was to move into Hut 26 as a hut orderly. When I called the roll at 2230 hrs 25 Jan 42 he was not present. When I called the roll at about 0530 hrs 26 Jan 42 he was still absent and I reported this. I never saw the accused before the taking of this summary.

I produce a certified copy of Part III Orders for 1 CMG RU No 186 "B" dated 26 Jan 42, and 30 Jan 42 respectively which shows the accused to have been absent from 0530 hrs 26 Jan 42.

(Cert Copies) received marked Exhibits "A" and "B")

I produce a certificate purporting to have been signed by the A.P.M. at London relating to the accused.

(Certificate received and marked Exhibit "C") H.W. Killby

The accused declined to cross-examine the witness.

THIRD Witness G32012 CSM ~~Cole~~ Le Basse R. RW. (Ex. 7.)

1st Cdn M.G.R.V., being duly sworn, states.

"I am the C.S.M. of HR. Coy.

"On Friday 19 June 42. I saw the accused whom I recognize in the Coy Orderly Room. I took him down ~~transport office~~ and handed him to W.O. ~~in charge~~ at the transport office to be put under arrest in hut 26 which is occupied by transport personnel.

On Saturday 20 June 42 I saw the accused and ordered him ~~to be put~~ to move to Hut 26 he moved part of his Kit down. I never saw him after that

Mike Basse

The accused declined to cross-examine the witness.

4th WITNESS Major A A Ouvbolt RCAMC - 3 CMC

being duly sworn states:

On the 20 May 1942 the accused, whom I recognize, was ~~warned~~ ordered by me in the presence of several witnesses to appear weekly for treatment until told not to do so. He was further warned that failure to appear for treatment might lead to a charge under the Army Act Sec 18 para 3 (c). This was explained to him that failure to appear for treatments was delaying the cure of his disease. In brief, Syphilis could be cured only be repeated treatments at regular intervals and that ~~by~~ going A.W.O.L. or in other ways missing such regular treatments would delay his cure. These facts were explained to him at some length.

From his records, I am perfectly satisfied that he is still suffering from syphilis as an original disease. He failed to appear for treatment on 24 JUN 42 and it was reported to this treatment centre that he was A.W.O.L.

A A Ouvbolt - Major - RCAMC

The accused declined to cross-examine the witness.

5th WITNESS M-42126 Pte (A/Cpl) Merry J.C. RCAMC - 3 CMC

being duly sworn states:

On the 20 May 1942 I was present when Major Ouvbolt spoke to the accused, whom I recognize, and said words to the effect that if the accused was A.W.O.L. or missed treatment, which would effect his definite cure in time, that he would be liable for a serious charge. The Major ordered the accused to appear weekly. I can personally certify that he failed to appear for his weekly treatment on 24 JUN 42.

J C Merry

The accused declined to cross-examine the witness.

The accused, after being duly warned in accordance with R. P. 4(c) as follows:- "Do you wish to make a statement, or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but ~~any~~ whatever you may or any evidence you give will be taken down in writing and may be used as evidence," declined to make a statement.

Taken down in writing in the presence of the accused at Depot Barracks Enchat Hants and ~~sworn~~ at Aldershot Hants on the 2nd and 3rd days of July 1942.

R.P. 4(c) (2) and (3) have been complied with.

John R Palmer Capt

J.A.G. to the R.C.

SUMMARY OF EVIDENCE

in the case of

No. B 76097, Pte. GEORGE HAYWARD, of the Toronto Scottish Regiment (MG), on the strength of the No. 1 Canadian Machine Gun Reinforcement Unit, Canadian Army Overseas.

By direction of the Commanding Officer, the evidence is taken under oath.

FIRST WITNESS:(For the Prosecution):- D 76257, L/Cpl. Wilkinson, W.L. (RMR) of No. 1 Cdn (MG) Rein: Unit, having been duly sworn, states:-

I am attached to the Regimental Police of No. 1 Cdn (MG) Rein: Unit. I was in charge of the Guard Room on 8 July 1942. I was told about 1100 hours to have Pte. Hayward ready in battle-dress, and at the F.A.P. by 1300 hours. I was then asked by Corporal Lavery if I could furnish an escort for Pte. Hayward. I told him I could not, as I was short of men; Cpl. Lavery then detailed Pte. Turcotte as escort.

The accused declines to cross-examine this witness.

L. Wilkinson.

SECOND WITNESS:(For the Prosecution):- B 76742, Cpl. Lavery, W.J., (TSR) of No. 1 Cdn (MG) Rein: Unit, having been duly sworn, states:-

I am the Provost Corporal of No. 1 Cdn (MG) Rein: Unit. On 8 July 1942 I detailed Pte. Turcotte to escort Pte. Hayward to No. 3 C.M.C. At approximately 1440 hours, Pte. Turcotte reported to me that Pte. Hayward had escaped from him at No. 3 C.M.C. I did not see Pte. Hayward from 1300 hours, 8 July 1942 until his return from Absence Without Leave at about 1230 hours 16 July 1942, when he was brought in by the Canadian Provost Corps.

QUESTION 1:- Was Pte. Hayward turned over to you by the Canadian Provost Corps?

ANSWER 1:- Not to me, but to L/Cpl. O'Neill, who signed for Pte. Hayward's live body; I was in the Guard Room at the time.

The accused declines to cross-examine this witness.

Cpl. Lavery, W.J. B 76742.

THIRD WITNESS:(For the Prosecution):- L 1278, Pte. Turcotte, W.C. (SLI) of No. 1 Cdn (MG) Rein: Unit, having been duly sworn, states:-

I was attached to the Regimental Police of No. 1 Cdn (MG) Rein: Unit on 8 July 1942. I was detailed by Cpl. Lavery to escort Pte. Hayward to [redacted] No. 3 C.M.C. About 1300 hours, I took Hayward to the R.A.P. and left here in the truck with Hayward. We drove to No. 3 C.M.C.

When we first arrived at No. 3 C.M.C., I escorted Hayward to the waiting-room, and about 1400 hours, I went to the front door. I stayed there about 2 minutes, and when I went back in the waiting-room, Pte. Hayward was missing, so I started searching for him, and asked any of the boys around if they had seen him. I couldn't find him around the hospital. About 1400 hours, Hayward's name was called, and Pte. Lebel came out to the front door, to me, and asked me where Hayward was. I told him I had been looking for him.I telephoned our Bn Orderly Room from the hospital them Hayward had escaped from me, then I got a truck which was sitting in front of the hospital and got the driver to drive me along the main road to Aldershot, made a few enquiries on the way from two (2) D.R's. at Cross roads if they had seen anyone answering his description, they daid "No", so I drove on to Aldershot Station and gave his description to the M.P's. there and asked them to watch for him. I was then driven back to camp. I re-

(PAGE 2 FOLLOWS)

ported to the Adjutant and Cpl. Lavery.

QUESTION 1:- What orders are you given when escorting a prisoner out of any place?
ANSWER 1:- To stay with the prisoner.
QUESTION 2:- When did you next see Hayward after you missed him at the Hospital?
ANSWER 2:- Not until about 0900 hours, 17 July 1942.

The accused declines to cross-examine this witness.

W.C. Turcotte.

FOURTH WITNESS:(For the Prosecution):- D 76866 L/Cpl. O'Neill, P.X. (R.M.R) of No.1 Cdn (MG) Rein: Unit, having been duly sworn, states:-

I am on R.P. of No.1 Cdn (MG) Rein: Unit and was in charge of the shift in the guard room on 16/7/42, when the accused Pte. Hayward was turned over to me by the Provost at 1230hrs. I searched him and locked him up.

QUESTION 1:- Were you on duty when Pte. Hayward left for the hospital on 8/7/42?
ANSWER 1:- No sir.
QUESTION 2:- Who did you report his return to?
ANSWER 2:- I turned over the papers to Cpl. Lavery and he took them to the Records Office.

The accused declines to cross-examine this witness.

P.X. O'Neill, L/C.

FIFTH WITNESS:(For the Prosecution):- D 76537 Pte. Lebel, S.J. (R.M.R.) of No.1 Cdn (MG) Rein: Unit, having been duly sworn, states:-

On 8 July 42 at 1300 hours, I was on party going to 3 C.M.C. for treatment, as soon as we arrived over there, Cpl. Miller in charge of the party handed me the form to take over to the desk. I went back out for a smoke, about 10 minutes after I went in again, on my way in I met Pte. Hayward, he asked me if I knew where was his escort, I answered "Yes", and showed him, him, standing at the door. Pte. Hayward answered "that's all I want to know". I went in to the room waiting for the doctor to come, when they started calling the names, he called Pte. Hayward and no answer, I went out to notify him or R.P. I found the R.P. already outside looking for him. I went back to get my treatment.

QUESTION 1:- How long after you arrived at the hospital did you last see Pte. Hayward?
ANSWER 1:- About 15 or 20 minutes after we arrived.
QUESTION 2:- When did you last see Pte. Hayward and on what date?
ANSWER 2:- A week ago last Wednesday, between 1340 hours and 1345 hrs.

The accused declines to cross-examine this witness.

Pte. S. Lebel.

SIXTH WITNESS: (For the Prosecution):- B 76969 L/Cpl. Armstrong, A.A. (T.S.R.) of No.1 Cdn (MG) REIN: UNIT, having been duly sworn, states:-

I was on a truck along with the accused and escort proceeding to 3 C.M.C. I saw the accused and escort get off the truck at the hospital, that was the last time I saw him the accused that day.

QUESTION 1:- When you say "that day", which day are you referring to?
ANSWER 1:- Wednesday 8th July, 1942.

(PAGE 3 FOLLOWS)

QUESTION 2:- When did you next see the accused again?
ANSWER 2:- July 17/42, about 1330 hrs.

The accused declines to cross-examine this witness.

Alec Armstrong.

SEVENTH WITNESS: (For the Prosecution):- D 76652 Pte. Boyle, D.F. (RMR) of No.1 Cdn (MG) Rein: Unit, having been duly sworn, states:-

On 8 July 42, I left our M.O's. on the truck at 1300 hours, with the accused Pte. Hayward and escort, we arrived at the hospital, (3 C.M.C.) at 1315 hours and when we got there I got off the truck and lay on the grass and went to sleep. About 1400 hours I went inside waiting room and the first I knew of Pte. Hayward being absent was when the M.O. called his name and received no reply.

QUESTION 1:- When did you next see Pte. Hayward?
ANSWER 1:- When I saw him at 1330 hours today, with his escort.

The accused declines to cross-examine this witness.

Boyle D.

The accused after being duly warned in accordance with R.P. 4(e) as follows:- "Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you may give will be taken down in writing, and may be used as evidence", declined to make a statement.

Taken down in writing in the presence of the accused at Leipzic Barracks, Ewshot, Hants, on the 17th day of July 1942.

R.P. 4(c), (d) and (e) have been complied with.

E Douglas

E. Douglas, A/Capt.
1 Cdn (MG) Rein: Unit.

FOURTH WITNESS:(D 76866 L/Cpl. O'Neill, P.X.), having been recalled, states:-

I produce certificate of arrest in accordance with A.A. Sec.163 (1)(jj), purporting to be signed by Officer i/c Detention Room, No.6 Provost Company, Canadian Provost Corps.

The accused declines to cross-examine this witness.

The accused after being duly warned in accordance with R.P. 4(e) as follows:- "Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you may give will be taken down in writing, and may be used as evidence", declined to make a statement.

E Douglas

E.Douglas, A/Capt.
1 Cdn (MG) Rein: Unit.

Armstrong
Provost

1 CANADIAN MACHINE GUN REINFORCEMENT UNIT, C.A.C.

D A I L Y O R D E R S

LAST ORDER No. 85 22 Jun. 42

PART II

Issued by

THIS ORDER No. 86 26 JUN. 42

LIEUT.-COLONEL J.H. CHRISTIE, M.C., E.D., O.C.

"A" OFFICERS

1.- STRENGTH INCREASE

(a) T.O.S. on posting from C.H. of O. (M.G.) while attending CMHQ Course 303 Pn. Weapons Ser. H.W. 11 at S.A.S., Hythe Wing (5 weeks) w.e.f. 27 May 42
(Auth: 2ECH CHofO D.C. 42 d/20 Jun. 42).
Lieut. R.G. Armstrong CHofO

(b) T.O.S. on posting from C.H. of O. (M.G.) while in 1 Cdn. Gen. Hosp. (Auth: 2ECH CHofO D.C. 42 d/20 Jun. 42) w.e.f. 16 Jun. 42
Lieut. R.S. Jamieson CHofO

(c) T.O.S. on posting from Tor. Scots. R. (M.G.) while in St. Thomas' Hospital, Tydstile w.e.f. 14 Jun 42
Auth: 2ECH T.S.R. D.C. 47 d/19 Jun. 42
Lieut. J.E. Burnett TSR

2.- POSTING

Posted to S:L:I. Reinf. from P.E. w.e.f. 10 Jun. 42
Auth: CRU/6/FULLERTON R.E./1 d/18 Jun. 42
Lieut. R.E. Fullerton

3.- ATTACHED

(a) Ceases to be attached to H.Q., C.R.U. f.a.p. w.e.f. 18 Jun. 42
Attached to 3 C.A.C.R.U. f.a.p. w.e.f. 19 Jun. 42
Auth: CRU/6/FULLERTON R.E./1 d/18 Jun. 42
Lieut. R.E. Fullerton SLI

(b) Attached to R.M.R. (M.G.) f.a.p. w.e.f. 19 Jun. 42
Auth: 99/35/RMR/1 d/18 Jun. 42
Lieut. F.F. Rejall RMR

(c) D.C. 7, Sub. 3(a), d/22 Jan. 42, insofar as the u/m officer is concerned, DELETE: "H.Q., 5 Cdn. (Armd.) Div.", SUBSTITUTE: "2 Armd. Regt. (L.C.H.)"
Lieut. C.H. Hickey RMR

(d) Ceases to be attached to 2 Armd. Regt. (L.C.H.) for r.q. & discipline w.e.f. 3 Feb. 42
Lieut. C.H. Hickey RMR

(e) Attached to 4 A/T Regt., R.C.A. for rations and to 17 Field Regt., R.C.A. for quarters & discipline from 4 Feb. 42 to 13 Apr. 42
Lieut. C.H. Hickey RMR

(f) Attached to units shown for periods shown f.a.p.
Sask. L.I. (M.G.) From 15 Apr. 42 to 23 May 42
1 Cdn. Div. Inf. R.U. " 24 May 42 to 3 Jun. 42
Sask. L.I. (M.G.) " 4 Jun. 42
Lieut. C.H. Hickey RMR

(g) Attached to C.H. of O. (M.G.) f.a.p. w.e.f. 25 Jun. 42
Auth: CMHQ Circular Letter 197/1941
Lieut. G.A. Harris CHofO Lieut. H.C. Swift CHofO

Page 2 follows (over)

4. STRENGTH DECREASE

S.O.S. on posting to C.H. of O. (MG) and ceases to be attached f.a.p.
w.e.f. 25 Jun. 42

Auth: 2nd Echn. Demand No. 2660 d/21 Jun. 42
Lieut. D.M. McClymont CHofO

5. LEAVE OF ABSENCE

(a) 7 days P.L. from 22 Jun. 42 to 29 Jun. 42.
Capt. A.A. Bourne P.E. (P3)
Capt. V.H. Goad T.S.R. (P5)

(b) 7 days P.L. from 21 Jun. 42 to 28 Jun. 42
Lieut. G.N.G. Perodeau R.M.R. (P1)

(c) 7 days P.L. from 24 Jun. 42 to 1 Jul.
Lieut. S.R. Smith f.S.R. (P5)

(d) 7 days P.L. from 22 Jun. 42 to 29 Jun. 42
Lieut. R.K. Templeton T.S.R. (P3)

6. BIRTH

Daughter, Kathryne Cecil, born at Toronto, Ont., Canada, on 9 Jun. 42. Wife Hazel Elizabeth Waite
Lieut. K.C. Waite T.S.R.

"B" OTHER RANKS

7.- STRENGTH INCREASE

(a) T.O.S. on posting from R.M.R. (M.G.) while in hospital as shown
(Auth: 2ECH R.M.R. D.O. 47 d/20 Jun. 42)

D76167	Pte.	Best, D.A.	RMR - 15 Cdn. Gen. Hosp.	16 Jun. 42
D77260	"	Cooper, F.H.	RMR - 15 Cdn. Gen. Hosp.	16 Jun. 42
D76291	"	Watkins, W.C.	RMR - 15 Cdn. Gen. Hosp.	16 Jun. 42

(b) T.O.S. on posting from R.M.R. (M.G.) whilst attending CMHQ Course 719 Serial 45B Emergency Cooks at Army School of Cookery (Course 15 Jun. 42 to 8 Aug. 42) w.e.f. 14 Jun. 42
Auth: 2ECH R.M.R. D.O. 47 d/20 Jun. 42

D76747 Pte. Downey, T.J. RMR D76754 Pte. Wand, G.F. RMR

(c) T.O.S. on posting from Tor. Scot. R. (M.G.) whilst attending CMHQ Course 719 Serial 45 B Emergency Cooks at Army School of Cookery (Course 15 Jun. 42 to 10 Aug. 42) w.e.f. 16 Jun. 42
Auth: 2ECH T.S.R. D.O. 47 d/19 Jun. 42
B75677 Pte. Kerr, S.G. TSR

(d) T.O.S. on posting from Tor. Scot. R. (M.G.) whilst attending CMHQ Course 1047, Driver Mechanics, at 11 T.T.C. (15 Jun. 42 to 16 Jul. 42) w.e.f. 17 Jun. 42
Auth: 2ECH T.S.R. D.O. 47 d/19 Jun. 42
B77101 Pte. Wilson, W.J. TSR B76222 Pte. Ratcliffe, T.W. TSR

8. STRENGTH DECREASE

(a) S.O.S. on posting to 1 Cdn. Non-Effective Transit Depot (Cat. E) whilst in hospital, w.e.f. 25 Jun. 42
D82111 Pte. Hobbs, W.C. RMR

Page 3 follows

8. STRENGTH DECREASE (Cont'd.)

(b) S.O.S. on posting to 1 Cdn. Non-Effective Transit Depot (Cat. "E") w.e.f. 23 Jun. 42

D76714 Pte. Graham, H. TSR

(c) S.O.S. on posting to 1 Cdn. Signals Reinforcement Unit - w.e.f. 20 Jun. 42
(Auth: 44/Sigs Hold (AG2) d/31-7-41)

G32576	Pte.	Andrews, C.H.	CHofO	G32032	Pte.	Desjardins, R.A.	CHofO
C21206	"	Morrison, D.C.	"	G32124	"	MacCallum, A.M.	"

(d) S.O.S. on posting to 1 Cdn. Ordnance Reinforcement Unit for a probationary period pending transfer to R.C.O.C. w.e.f. 21 Jun. 42
Auth: ECH 2766 d/16 Jun. 42 and ECH 2640 d/15 Jun. 42

D77002	Pte.	Beaubier, E.J.	TSR	H19325	Pte.	Reid, C.	TSR

(e) S.O.S. on posting to C.H. of C. (M.G.) w.e.f. 25 Jun. 42
Auth: ECH 2860 d/21 Jun. 42

C21554	Pte.	Darling, W.I.	CHofO	C21156	Pte.	Donnelly, W.J.	CHofO
C21032	"	Ireland, E.D.	"	C21009	Sgt.	Love, G.	"
C21255	Sgt.	Partridge, S.V.G.	"	C21565	Pte.	Primeau, J.A.	"
C21480	Pte.	Sweeney, S.A.	"	C21238	"	Warren, S.A.	"
C20668	"	Westwood, E.F.	"				

(f) S.O.S. on posting to C.H. of C. (M.G.) and ceases to be attached f.a.p., w.e.f. 25 Jun. 42
Auth: 2ECH Demand No. 2860 d/21 Jun. 42

C21016	Pte.	Singer, A.J.	CHofO

(g) S.O.S. on posting to R.M.R. (M.G.), w.e.f. 25 Jun. 42
Auth: 2ECH Demand No. 2807 d/21 Jun. 42

D76299	Pte.	Beaudoin, E.	RMR	D77642	Pte.	Bowbrick, H.J.	RMR
D77612	"	Byrne, J.	RMR	D77531	"	Gravel, M.J.	RMR
D77284	"	Jeffrey, H.C.	RMR	D77443	"	O'Brien, H.W.	RMR
D77525	"	O'Hara, G.A.	RMR	D77776	"	Petrin, E.	RMR
D77663	"	Renault, L.R.	RMR	D76741	"	Robert, J.A.	RMR
D77496	"	Rosenswig, A.	RMR	D77697	"	Salter, W.F.	RMR
D77706	"	Secord, R.V.	RMR	D77711	"	Vaillancourt, R.	RMR

(h) S.O.S. on posting to Tor. Scot. R. (M.G.), w.e.f. 25 Jun. 42
Auth: 2ECH Demand 2722 d/21 Jun. 42

B75911	Pte.	Akers, C.C.	TSR	B75753	Pte.	Allan, J.R.	TSR
B75668	"	Banks, J.	TSR	D76736	"	Bird, W.C.	TSR
B75852	L/C.	Chisholm, W.A.	TSR	D76439	"	Davey, H.R.	TSR
B76015	Pte.	Grabell, W.L.	TSR	D76696	"	Grant, W.M.M.	TSR
B77247	"	Heaton, H.	TSR	D76512	"	Mills, E.G.	TSR
B76863	"	Ruxton, W.	TSR	D76510	"	McMahon, W.E.	TSR
B76350	"	Tunstead, J.P.	TSR	D76669	"	Wilshaw, J.P.	TSR
B76837	"	Wood, E.L.	TSR	D76041	Sgt.	Yeomans, C.H.	TSR

9. POSTINGS

(a) Posted to Reinforcement, eff. dates opposite their names

L 2181	Pte.	Baluch, A.	To S.L.I. Reinf.	w.e.f.	15 Jun. 42
B76408	"	Handyside, W.J.	" T.S.R. "	"	18 Jun. 42
D76543	"	Taylor, J.W.	" R.M.R. "	"	24 Jun. 42

(b) Posted to Perm. Est., eff. dates opposite their names

C 2746	Pte.	Clarke, T.J.	CHofO (Gen. duty - CHofO Coy.) w.e.f.		24 Jun. 42
D76662	Pte.	Foster, G.	TSR (Batman)		16 Jun. 42
D76818	"	Mayo, W.S.	TSR (Storeman - TSR Coy)		22 Jun. 42
D76356	"	Thomson, D.N.	TSR (Cook) w.e.f.		16 Jun. 42

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10.- TRANSFERS

(a) Transferred from 1 Cdn. Div. Ordnance W/S, R.C.O.C., to Tor. 18 Jun. 42
Scot. R. (M.G.) w.e.f.
D75668 Pte. Banks, J.W.
Auth: ECH 99/6/M.G./2 (A.7) d/18 Jun. 42

(b) Transferred from 8 Cdn. Recce Regt. to Sask. L.I. (MG) 22 Jun. 42
Auth: ECH 99/6/M.G./2 (A.7) d/22 Jun. 42
L53441 Pte. Folstrom, S.R.

11.- ATTACHED

(a) Attached for r.q. & pay from H.Q., C.R.U., w.e.f. 23 Jun. 42
M21144 Sgt. Davidson, D. ROASC

(b) Ceases to be att. for r.q. & pay from H.Q., C.R.U. (AWL) 15 Jun. 42
M20645 Cpl. McLean, J.D. ROASC

12.- COURSES

(a) Returned from CMHQ Course No. 701 Ser. 62W (Regtl. Inst. Anti-Gas) and cease to be attached f.a.p. to Army Gas School, wef 19 Jun. 42
A34093 Sgt. (A/CSM) Harper, H. P.E.
D77281 Cpl. O'Brien, P.J. P.E.

(b) Proceeded on CMHQ Course 722, Ser. 10C (Regtl. Sanitary Duties) and is attached f.a.p. to Army School of Hygiene w.e.f. 23 Jun. 42
L 2149 Pte. Hogan, C.J. SLI

(c) Proceeded on CRU Course 2, Ser. 5 (Regtl. Sanitary Duties) and are attached f.a.p. to 1 C.G.R.U., w.e.f. 21 Jun. 42

C58203 Pte. (A/Cpl.) Carron, F.H. CHofO
D85414 Pte. Chapman, W.J. TSR
L 7248 Pte. Read, S.W. SLI

13.- COMMAND

(a) Ceases to be detailed to No. 9 (RHLI) Wolf Bn. w.e.f. 3 Jun. 42
D76439 Pte. Davey, H.R. TSR

(b) Returned from Command to "BATTLE FOR FREEDOM" Pageant 20 Jun. 42
D77250 Pte. Dogle, S. TSR L 2576 Pte. Arno, R.T. P.E.
F35328 " Cameron, E.A. CHofO D75666 A/L/Cpl. Cochrane, R.L. P.E.
D76358 Pte. (A/S) Crad[illegible], D.C. TSR G32032 Pte. Desjardins, A.A. CHofO
C21741 " Jecko, J.P. CHofO C21724 A/L/Cpl. Kossatz, C.A.E. CHofO
L 2226 " Kostichuk, A. SLI U 1790 Pte. Leach, C.J.E. TSR
D76975 " McKeown, E.J. TSR D77398 " Pitcher, F. P.E.
L 2196 Cpl. (A/S.) Ryan, M. P.E. D77177 Pte. (A/C.) Small, D.H. TSR
D76328 Pte. Zizian, D. P.E.

14.- HOSPITALS

(a) Admitted to hospitals shown w.e.f. dates shown

L 1532	Pte.	Bleackley, A.	P.E.	3 C.M.C.	18 Jun. 42
L 2988	"	Garnot, W.F.	SLI	1 Neurological Hosp.	24 Jun. 42
L 1441	"	Harmer, J.F.	RMR	8 Cdn. Gen. Hosp.	17 Jun. 42
D76457	"	Kennedy, W.E.T.	SLI	8 Cdn. Gen. Hosp.	24 Jun. 42
L 2900	"	Nault, J.W.	P.E.	15 Cdn. Gen. Hosp.	22 Jun. 42
D77286	"	Turnbull, M.D.	P.E.	15 Cdn. Gen. Hosp.	19 Jun. 42
D77322	"	Wisdom, S.H.	P.E.	15 Cdn. Gen. Hosp.	19 Jun. 42

(b) Rem'd to hospitals shown w.e.f. dates shown

C20779	Pte.	Bullock, J.	CHofO	1 Conv. Depot	16 Jun. 42
C21449	"	Jackson, A.M.	"	1 C.M.C.	16 Jun. 42

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14.- HOSPITAL (Cont'd.)

(b)

C21458	Pte.	Lewis, P.W.	CHofO	1 Convalescent Depot	17 Jun. 42
C21614	"	Mallett, W.H.	"	1 C.M.C.	19 Jun. 42

(c) Discharged from hospitals shown w.e.f. dates shown

D76441	Pte.	Assarica, J.	RMR	15 Cdn. Gen. Hosp.	14 Jun. 42
L 1532	"	Bleackley, A.	P.E.	3 C.M.C.	23 Jun. 42
L 2020	"	Curtis, A.	SLI	1 Cdn. Gen. Hosp.	20 Jun. 42
B76015	"	Grabell, W.L.	TSR	5 Cdn. Gen. Hosp.	20 Jun. 42
B76510	"	McMahon, W.E.	TSR	1 Cdn. Gen. Hosp.	8 Jun. 42
L 2227	"	McLeod, A.M.	SLI	8 Cdn. Gen. Hosp.	23 Jun. 42
B75883	"	Romp, C.D.V.	TSR	1 Neurological Hosp.	23 Jun. 42
L 7204	A/L/Cpl.	Sinclair, W.J.	P.E.	15 Cdn. Gen. Hosp.	19 Jun. 42
L 1545	Pte.	Trefiak, R.	SLI	8 Cdn. Gen. Hosp.	23 Jun. 42
D77268	"	Turnbull, M.D.	P.E.	15 Cdn. Gen. Hosp.	22 Jun. 42
B76041	Sgt.	Yeomans, C.H.	TSR	6 C.C.S.	22 Jun. 42

15.- LEAVE OF ABSENCE

(a) Granted 7 days Privilege Leave from 23 Jun. 42 to 30 Jun. 42

C21472	Pte.	Fletcher, C.E.	CHofO	P2
L 2675	"	Brown, F.W.	P.E.	P2
B76292	"	(A/Cpl.) Hinke, C.H.	TSR	P1
B76808	"	Handyside, W.J.	TSR	P6
L 3042	"	Jarvis, H.	P.E.	P1
B77262	"	Johnston, G.H.	TSR	P2
D77493	"	Kaufman, J.	P.E.	P2
G32143	CQMS.	Keir, R.S.	P.E.	P4
L 2507	Pte.	Lees, R.J.	Mil. Help.	P2
L 1809	"	Leik, J.	P.E.	P7
L 2587	"	Lindberg, G.H.	SLI	P2
B77219	"	Macaluso, V.J.	P.E.	P2
B76658	Cpl.	Nash, G.	P.E.	P7
D77398	Pte.	Pitcher, W.	P.E.	P5
F34984	Pte.	Shupe, C.E.	QLY.	P5
L 3043	"	Skaliuky, A.L.	P.E.	P1
B76316	Sgt.	Silver, E.	RCAMC	P7
D77437	Pte.	Smeltzer, R.G.	P.E.	P6
C16565	A/Arm.Sgt.	Thompson, R.M.	P.E.	P5

(b) Granted 7 days Privilege Leave from 24 June 1942 to 1 Jul. 42

J121677	Pte.	Devine, J.C.	RMR	P2
D77297	"	Lord, D.	RMR	P2
D77439	"	(A/L/Cpl.) Morency, E.	[illegible]	P2
D77477	"	(A/Sgt.) Mort, W.	[illegible]	P2
D77600	"	O'Leary, E.J.	[illegible]	P2
D77583	"	Salson, C.A.	[illegible]	P2
D77693	"	Stewart, D.R.	[illegible]	P2

16.- ABSENT WITHOUT LEAVE

(a) A.W.L. from 1600 hrs. 16 Jun. 42 - Still absent (8 days)
B76207 Pte. Boreham, F.C. TSR

(b) A.W.L. from 2200 hrs. 4 Jun. 42 - Still absent (21 days)
C34116 Pte. Costello, J.P. CHofO

(c) Returned from A.W.L. 2110 hrs. 22 Jun. 42
C20613 Pte. Cooper, C.A. CHofO

(d) A.W.L. from 2359 hrs. 10 Jun. 42; Returned 2205 hrs. 24 Jun. 42
B77137 Pte. Chamberlain, F.J. TSR

(e) A.W.L. from 2300 hrs. 23 Jun. 42
B88236 Pte. Guerard, F.E. TSR

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16. ABSENT WITHOUT LEAVE (Cont'd.)

(f) Absent without leave from 0530 hrs. 22 Jun. 42
B76097 Pte. Hayward, G. TSR

(g) AWL from 1800 hrs. 18 Jun. 42 - Still absent (8 days)
B75737 Pte. Koske, E.E. TSR

(h) AWL from 2300 hrs. 23 Jun. 42
L 2383 Pte. Stinson, O.M. SLI

(i) AWL from 2359 hrs. 21 Jun. 42; returned 1330 hrs. 22 Jun. 42
C21238 Pte. Warren, S.A. CHofO

17.- APPOINTMENTS

(a) Appointed Acting Lance Corporal w.e.f. 22 Jun. 42
B76802 Pte. Handyside, W.J. TSR

(b) Appointed Acting Lance Corporal w.e.f. 5 Jun. 42
B66065 Pte. Newton, L.G. TSR

18.- REVERSIONS

D.O. 83, Sub. 13, d/16 Jun. 42 insofar as the u/m are concerned DELETE "unpaid".

D77413 Pte. (A/L/C unpd) Francis, W.H. RMR
D77073 Pte. (A/L/C unpd) King, J. RMR

19.- TRADESMEN'S RATES OF PAY

(a) To continue to draw Tradesmen's Rates of Pay as Cook, Group "C" whilst on course w.e.f. 16 Jun. 42
B75677 Pte. Kern, S.G. TSR

(b) To draw Tradesmen's Rates of Pay as Cook, Group "C" whilst in hosp. w.e.f. 3 Jun. 42 to 18 Jun. 42
C21032 Pte. Ireland, A.E.D. CHofO

(c) To draw Tradesmen's Rates of Pay as Cook, Group "C" w.e.f. 1 Apr. 42 to 1 May 42
L 1209 Cpl. Schreiber, A.E.F. P.E.

20.- PUNISHMENTS

(a) On 24 Jun. 42 awarded forfeiture of 3 days' pay for an offence under A.A. Sec. 40. Forfeits 3 days pay under FR&I 149 (2)
B75753 Pte. Allan, J.R. TSR

(b) On 25 Jun. 42 awarded 27 days detn. for an offence under A.A. Sec. 15 (1) - AWL from 2359 hrs. 10 Jun. 42 until 2205 hrs. 24 Jun. 42 (13 days, 22 hours and 6 mins.). Forfeits 14 days pay under FR&I 149 (1) (a), forfeits 27 days pay under FR&I 149 (1) (b). Total forfeiture 41 days pay.
B77137 Pte. Chamberlain, F.J. TSR

(c) On 23 Jun. 42 awarded 27 days detn. for an offence under A.A. Sec. 15 (1) - AWL from 2200 hrs. 4 Jun. 42 until 2110 hrs. 22 Jun. 42 (17 days, 23 hours & 10 Minutes). Forfeits 18 days pay under FR&I 149 (1) (a), forfeits 27 days pay under FR&I 149 (1) (b). Total forfeiture 45 days pay
C20613 Pte. Cooper, C.A. CHofO

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20.- PUNISHMENTS (Cont'd.)

(d) On 23 Jun. 42 awarded 3 days C.B. and forfeiture of 3 days' pay for an offence under A.A. Sec. 15 (1). AWL from 2359 hrs. 21 Jun. 42 until 1330 hrs. 22 Jun. 42 (13 hours & 31 mins.). Forfeits 1 day's pay under FR&I 149 (1) (a), Forfeits 3 days pay under FR&I 149 (2) Total forfeiture 4 days pay.
C21236 Pte. Warren, E.A. CHofO

(e) On 28 May 42 tried by a F.G.C.M. on charges as follow: 1st: A.A. Sec. 18 (4), 2nd: A.A. Sec. 40, 3rd: A.A. Sec. 18 (4), 4th: A.A. Sec. 40 - Found guilty on first, third and fourth charges and not guilty on the second. Sentenced to undergo detention for one (1) year and four months. Confirmed by Brigadier H. Lefebvre, M.C., V.D., commander of "D" Group H.Q., Can. Reinf. Units on 24 June 1942. In close arrest from 0230 hrs. 23 Apr. 42 until 2359 hrs. 27 May 1942 (34 days, 22 hours & 29 minutes.) Forfeits 35 days pay under FR&I 149 (1) (a) (i), forfeits 488 days pay under FR&I 149 (1) (b). Total forfeiture 523 days pay.
B76379 Pte. Waggins, J.M. TSR

21.- DETENTION

(a) Adm. to Cdn. Detn. Boks, w.e.f. 24 Jun. 42
C20613 Pte. Cooper, O.A. CHofO

(b) Adm. to Warmwood Scrubbs Prison w.e.f. 20 Jun. 42
C21582 Pte. O'Callaghan, C.P. CHofO

(c) Adm. to Cdn. Detn. Boks. w.e.f. 23 Jun. 42
B76835 Pte. Walke, J.F. TSR

22.- STOPPAGES OF PAY

(a) Ceases to be under stoppages of pay under FR&I 222 (1) (b) (ii) at the rate of 75¢ per diem w.e.f. 11 Jun. 42
C21255 Sgt. Partridge, S.V.G. CHofO

(b) Placed under stoppages of pay at the rate of 75¢ per diem under FR&I 222 (1) (b) (ii) w.e.f. 11 May 42 to 17 Jun. 42 (38 days)
C21236 Pte. Warren, E.A. CHofO

23.- BIRTH

Daughter, Sheila Elizabeth, born in Toronto, Ont., Canada on 6 Jun. 42
Wife, Eleanor Ruth Miller
B77097 Pte. Miller, R.J. TSR

23.- NEXT-OF-KIN

"NIL"

24.- GOOD CONDUCT BADGES

Having completed 2 years service without charges are entitled to wear one good conduct badge -

L 2442 Pte. (A/L/Opl.) Brown, N.A. P.E.
C21443 " Dellaire, J.A. P.E.
A22217 " Dillon, A.C. SLI.

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25.- CHANGE OF EMPLOYMENT - P.E.

(a) From Storeman "SLI" Coy to Storeman "Adm. Wing" w.e.f. 16 Jun. 42
F34974 Pte. Holden, H.H.

(b) From Storeman "TSR" Coy to Clerk "Inst. Wing" w.e.f. 4 Jun. 42
B77263 Pte. MacFarlane, W.A.

26.- STRENGTH RETURN

For week ending 26 Jun. 42
Attached hereto as an appendix.

"J" SPECIAL INCREMENT

OTHER RANKS

27.- STRENGTH INCREASE

T.O.S. on posting from Sask. L.I. (M.G.) whilst in 14 Can. Gen. Hosp. w.e.f. 7 Jun. 42
L 2237 Pte. Ducharme, W.J. SLI

28.- STRENGTH DECREASE

S.O.S. on posting to Sask. L.I. (M.G.) w.e.f. 25 Jun. 42
Auth: 2ECH Demand No. 2914 d/22 Jun. 42

L39140	Pte.	Arcand,	SLI	L 2896	Pte.	Barrowclough, A.H.	SLI
L A660	"	Fraser, A.	"	L 2845	"	Gordon, G.J.C.	"
L 1533	Cpl.	Holloway, G.I.	"	L 2939	"	Kilworth, E.V.	"
L 2226	Pte.	Kostichuk, A.	"	L 2885	"	Parkhurst, A.E.	"
L 2049	"	Pennycook, E.J.	"	L 2835	"	Robertson, W.C.	"
L 2272	"	Spence, W.J.	"	L 2892	"	Weikle, H.O.	"
L 2907	"	Wenman, H.J.	"				

(C.V. Watson) Capt. & A/Adjt.,
1 Cdn. Machine Gun Reinforcement Unit,
C.A.O.

certified true copy

Records Officer,
1 Cdn. M.G. Reg. Unit, C.A. (O)

This is Exhibit "A" to the Summary of Evidence in the case of B 76197 Pte Hayward G of 1st Cdn M G R U when sworn before me at the 2nd day of July 1942

John V Palmer
Capt

NO.1 CANADIAN MACHINE GUN REINFORCEMENT UNIT, C.A.(O).

B

DAILY ORDERS

PART II

LAST ORDER NO. 88 28 JUNE 42

THIS ORDER NO. 89 30 JUNE 42

Issued by

LT-COLONEL J.H. CHRISTIE, MC, ED, O.C.

"A" OFFICERS

1. COURSES

Proceeded on CMHQ Course No.714, Ser 387, Messing Officers, and is Attached for Instructions only to A.C.C. Training Centre
Lieut J.H. Douglas. "TSR" w.e.f. 29 Jun 42

2. HOSPITAL

(a) Discharged from 8 Cdn Gen Hosp w.e.f. 17 Jun 42
Lieut I.S. Blair. "CHofO"

(b) Discharged from 5 Cdn Gen Hosp w.e.f. 29 Jun 42
A/Major R.R. Rankin. "P.E"

3. LEAVE OF ABSENCE

Granted 7 days Privilege Leave from 29 Jun 42 to 6 Jul 42.
Lieut N.A. Buckingham. "RMR" (P-2)

4. NEXT OF KIN

Change of Address of Next of Kin to Mrs. J.T.S. Huyton, 10 Harp Road, Hanwell, W.7, England.
Lieut J.T.S. Huyton. "TSR"

"B" OTHER RANKS

5. ATTACHED

Attached f.a.p. to C.H.of O.(MG) w.e.f. 17 Apr 42 to 1 Jul 42.
C-21597 Pte Bellemare, A.P. "CHofO"

6. POSTINGS

(a) Posted from the Permanent Establishment to C.H.of O. Reinforcements w.e.f. dates shown

C-20961 Pte Hamelin,	J.H.	w.e.f.	3 May 42
C-31166 Pte McNaughton,	J.A.	w.e.f.	26 Jun 42

(b) Posted from Reinforcements as shown to the Permanent Establishment w.e.f. dates shown.

D-77301 Pte Adair,	F.	From	RMR	(Cook)	w.e.f. 17 Jun 42
L- 1628 Pte Anderson,	J.R.	"	SLI	(Cook)	w.e.f. 6 May 42
B-76513 Pte Burns,	J.D.	"	TSR	(Driver I/C)	wef 26 Jun 42
D-76938 Pte Corbin,	W.A.	"	RMR	(Waiter, Off Mess)	26 Jun 42
L- 1286 Pte Green,	E.W.	"	SLI	(Driver I/C)	26 Jun 42
D-76537 Pte Lebel,	S.J.	"	RMR	(Batman)	26 Jun 42
L- 2668 Pte L'Esperance,	R.A.	"	SLI	(Driver I/C)	26 Jun 42
D-77311 Pte Morgan,	D.	"	RMR	(Storeman, Q.M.)	26 Jun 42
L- 2227 Pte McLeod,	A.M.	"	SLI	(Batman)	26 Jun 42
B-76703 Pte McSherry,	F.C.	"	TSR	(Sanitary Duties)	26 Jun 42
D-77459 Pte Nelly,	W.	"	RMR	(Driver I/C)	26 Jun 42
L- 2823 Pte Nikkel,	H.J.	"	SLI	(Cook)	1 Apr 42

PAGE 2 FOLLOWS (Over)

6. POSTINGS (Cont'd)

(b) (Cont'd)

B-76369	Pte Stearn,	C.A.	From TSR (Batman)	w.e.f.	26 Jun 42
B-77039	Pte Szal,	W.	From TSR (Cook)	w.e.f.	1 Apr 42
D-77519	Pte Thibodeau,	E.	From RMR (Driver I/C)		26 Jun 42
B-76695	Pte Whitaker,	J.W.	From TSR (Clerk,Postal)		29 Jun 42

7. COURSES

Having attended CMHQ Course No.1003, Ser 13 (Ab-Initio Clerks) at Princeton Street School of Languages- Passed.
B-77288 Pte Turnbull, W.D. "P.E" D-77322 Pte Wisdom, S.H. "P.E"

8. HOSPITAL

(a) Admitted to hospitals shown w.e.f. dates shown
B-76212 Pte Brooks, E.J.H. "TSR" 8 Cdn Gen Hosp 29 Jun 42

(b) Discharged from hospitals shown w.e.f. dates shown

C-21697	Pte Bellemare,	A.P.	"CHofO"	Harrow Road	16 Apr 42
C-21548	Pte Devine,	L.C.R.	"CHofO"	14 Cdn Gen Hosp	29 Jun 42
B-76776	Pte Hurst,	H.	"TSR"	15 Cdn Gen Hosp	29 Jun 42
L- 2293	L/C Pedhorney,	S.	"SLI"	8 Cdn Gen Hosp	29 Jun 42
L- 1615	Pte Rawlings,	E.	"SLI"	8 Cdn Gen Hosp	29 Jun 42

9. ABSENT WITHOUT LEAVE

(a) A.W.L. from 1800 hrs 18 Jun 42. Ret. from A.W.L. 1955 hrs 29 Jun 42.
B-76207 Pte Boreham, P.C. "TSR"

(b) A.W.L. from 0530 hrs 22 Jun 42. Ret. from A.W.L. 2015 hrs 28 Jun 42.
B-76097 Pte Hayward, G. "TSR"

(c) A.W.L. from 1800 hrs 18 Jun 42.
B-75737 Pte Koske, E.E. "TSR"

(d) A.W.L. from 2300 hrs 23 Jun 42.
L- 2383 Pte Stinson, C.M. "SLI"

(e) A.W.L. from 2300 hrs 23 Jun 42.
B-88236 Pte Guerard, F.E. "TSR"

(f) Part II Order No.87, para 10, d/27 Jun 42 insofar as it refers to the under-named is amended to read "A.W.L. from 2230 hrs 6 Jun 42" instead of "A.W.L. from 2359 hrs 14 Jun 42" as shown.
B-75829 Pte(A/L/C)Maguire, O.R. "TSR"

10. APPOINTMENTS

(a) Appointed Acting Armourer Staff Sergeants w.e.f. 16 Jun 42
(AUTH: CRU 6-0-RCOC, d/27 Jun 42)
C-15591 Arm Sgt Mahoney, C.J. "RCOC"
C-16565 Arm Sgt Thompson, R.M. "RCOC"

(b) Appointed Acting Staff Sergeant w.e.f. 1 Jul 42
B-76559 Cpl(A/S)Caughey, C.D. "P.E"

(c) Appointed Acting Lance Corporal w.e.f. 29 Jun 42
D-76039 Pte Bigge, J. "RMR".

11. PROMOTIONS

To be Arm. Sergeant w.e.f. dates shown.

C-15591	Pte(A/Arm.Sgt.)Mahoney, C.J.	"RCOC"	w.e.f.	22 Jul 40
C-16565	Pte(A/Arm.Sgt.)Thompson, R.M.	"RCOC"	w.e.f.	19 Jun 41

12. REVERSIONS

Ceases to hold the appointment of Acting Lance Corporal (unpd)
C-21724 Pte(A/L/C)Kossatz, E.A. "CHofO" w.e.f. 30 Jun 42

PAGE 3 FOLLOWS

13. TRADESMEN'S RATES OF PAY

Having qualified are to draw Tradesmen's Rates of Pay, Cook, Group "C", w.e.f. dates shown

D-77301 Pte Adair, J. "P.E" w.e.f. 17 Jun 42
B-77039 Pte Szal, W. "P.E" w.e.f. 1 Apr 42

14. PUNISHMENTS

On 13 Jun 42, awarded a forfeiture of 5 days pay for an offence under A.A. Sec 15(1). A.W.L. from 2030 hrs 13 Jun 42 to 2300 hrs 13 Jun 42 (while a patient in No.8 Cdn Gen Hosp). (Absent 2 hours and 30 mins). Forfeits 5 days pay under F.R.& I. 149 (2).

L- 2942 Pte Stone, T. "SLI"

15. DETENTION

(a) Released from Canadian Detention Barracks w.e.f. 29 Jun 42
Granted 29 days remission of sentence and 29 days remission of pay.
B-76954 Pte Barber, A.T. "TSR"

(b) Admitted to Canadian Detention Barracks w.e.f. dates shown
B-77088 Pte Jardin, K.J. "TSR" w.e.f. 30 Jun 42
B-75989 Pte MacDowell, J. "TSR" w.e.f. 30 Jun 42
C-21335 Pte Walker, R.B. "CHofO" w.e.f. 13 Jun 42
B-76379 Pte Wiggins, J.M. "TSR" w.e.f. 30 Jun 42

16. NEXT OF KIN

Change of Next of Kin to Mrs E. Lee, (Sister), c/o Mrs J. Fruman, Box 686, Bruce Street, Goderich, Ontario, Canada.
B-77314 Pte Wilde, J. "CHofO"

17. CHANGE OF EMPLOYMENT - PERMANENT ESTABLISHMENT

Employment changed from Batman to Regimental Police
C-21443 Pte Dellaire, J.A. "P.E" w.e.f. 15 Jun 42

18. HOSPITAL STOPPAGES

(a) Placed under Stoppages of Pay of 75¢ per diem from 20 Jun 42 to 29 Jun 42 (10 days) under F.R.& I. 222 (1) (b) (ii).
C-21548 Pte Devine, L.C.R. "CHofO"

(b) Placed under Stoppages of Pay of 75¢ per diem from 29 May 42 to 8 Jun 42 (11 days) under F.R.& I. 222 (1) (b) (ii).
B-76510 Pte McMahon, W. "TSR"

"C" SPECIAL INCREMENT

"A" OFFICERS

19. STRENGTH DECREASE

(a) S.O.S. on posting to C.H.of O.(MG) and cease to be attached f.a.p. w.e.f. 30 Jun 42
(AUTH: ECH Spl Inc 2966, d/27 Jun 42)
Lieut H.J. Gillies. "CHofO" Lieut G.A. Harris. "CHofO"
Lieut L. Ritchie. "CHofO" Lieut H.C. Swift. "CHofO"

(b) S.O.S. on posting to C.H.of O.(MG) w.e.f. 30 Jun 42
(AUTH: ECH Spl Inc 2966, d/27 Jun 42)
Lieut T.E. Body. "CHofO"
Lieut J.F. Lambert. "CHofO"

PAGE 4 FOLLOWS (Over)

"B" OTHER RANKS

20. STRENGTH DECREASE

S.O.S. on posting to C.H.of C.(MG) w.e.f. 30 Jun 42
(AUTH: ECH Spl Inc 2966, d/27 Jun 42)

G-32359	Pte	Anderson,	C.E. "CHofC"	L-39153	Pte	Antoine,	J. "CHofC"
L- 2945	Pte	Bear,	A. "CHofC"	G-32525	Pte	Black,	E.G. "CHofC"
C-21722	Pte	Bond,	A.F. "CHofC"	G-32098	Pte	Bonner,	E.F. "CHofC"
D-77691	Pte	Braithwaite,	W.A. "CHofC"	C-21696	Pte	Britt,	A. "CHofC"
G-32807	Pte	Burnett,	B.C. "CHofC"	G-32757	Pte	Burnett,	D.J. "CHofC"
G-32561	Pte	Campbell,	G.F. "CHofC"	B-92097	Pte	Channing,	J.A. "CHofC"
G-32440	Pte	Cook,	R.H. "CHofC"	L- 2969	Pte	Corner,	T. "CHofC"
K-75842	Pte	Dixon,	C.J. "CHofC"	G-32819	Pte	Dubee,	F.E. "CHofC"
C-31048	Pte	Duchesneau,	G. "CHofC"	L- 1673	Pte	Dumont,	J.L. "CHofC"
				B-20570	Pte	Fitzmaurice,	H.A. "CHofC"
C-21740	Pte	Fitzmaurice,	H.B. "CHofC"	G-32589	Pte	Grant,	J. "CHofC"
C-21681	Pte	Gravelle,	A. "CHofC"	B-87848	Pte	Hay,	D.A. "CHofC"
B-77313	Pte	Hutchison,	W. "CHofC"	C-21741	Pte	Jocko,	J.P. "CHofC"
				C-21685	Pte	Kulack,	D. "CHofC"
C-30694	Pte	Ladodoeur,	R. "CHofC"	L- 2936	Pte	Lafond,	J. "CHofC"
C-21739	Pte	Latour,	A. "CHofC"	G-32822	Pte	Lord,	G.A. "CHofC"
C-21725	Pte	Martin,	D.R. "CHofC"	C-21675	Pte	Merpaw,	W.J.J. "CHofC"
C-21702	Pte	Miller,	W. "CHofC"	C-21467	Pte	Moore,	D.W. "CHofC"
D-77770	Pte	McCallum,	M. "CHofC"	G-32810	Pte	McCraken,	C.A. "CHofC"
C-31166	Pte	McNaughton,	J.A. "CHofC"	G-32442	Pte	Oliver,	R.G. "CHofC"
C-21719	Pte	Quenneville,	L. "CHofC"	G-32526	Pte	Ramsay,	C.A. "CHofC"
C-34803	Pte	Robineon,	W.J. "CHofC"	G- 2713	Pte	Sinclair,	A. "CHofC"
G-32835	Pte	Taylor,	E.A.A. "CHofC"	G-32484	Pte	Thorburn,	W.J. "CHofC"
G-32875	Pte	Tracy,	R.A. "CHofC"	G-32841	Pte	Wilcox,	B.C. "CHofC"

21. STRENGTH RETURN

Strength Return for Month Ending Tuesday, 30 June 42,
Attached hereto as an appendix.

B. Edwards Capt
(C.V. PATTERSON) Captain and Adjutant,
No.1 Cdn M.G. Reinforcement Unit. C.A.(O).

This is Exhibit B to the Summary of Evidence in the case of B76097 Pte Hayward G taken down by me this 3rd day July 42.
John R Palmer Capt

Certified true
W Whitehead
Records Officer
1 Cdn M.G. Reinf. Unit, C.A. (O)

EXHIBIT A

Certificate in accordance with the Army Act Section 163 (1) (JJ).

I certify that REG'T NO. 3-76097 ..... RANK ... Pte. ... NAME ... Hayward, G. .....

UNIT. W.A.A.F.(W.O.) R.A.F. ..... WAS ARRESTED at (PLACE. Tottenham Crt. Rd.

London ... at HOUR. 1615 ... on DATE. 18 July 42 .. and that at the time of his

arrest he was wearing military uniform.

Lieut.
O. i/c Detention Room
No. 6 Provost Company

Signature of Provost Marshal, A.P.M. or other officer into whose custody the above named person was taken in arrest .....

File No. 13/109.....

Officer Commanding,
No 1 M.C. R.U.
Crookham.

Re: B-76097 Pte. Hayward, G.

1. Forwarded for your information and necessary action, please, and disposal under C. A. Routine Orders (o) No. 388 dated 29th Oct. 1940.

2. His m/p has no complaints

London
16-July-42

.....Lieut.
for Capt. M. E. Byers,
O. C. No. 6 Coy.,
Cdn. Provost Corps.

(C)

Certificate in accordance with the Army Act Section 163 (1) (JJ).

I certify that REG'T NO. B-76097 ....RANK.. Pte. ...NAME.. Hayward. G. .....

UNIT. No.1.M.G.R.U. ..... WAS ARRESTED at(PLACE. VICTORIA. Stn..

London .....at HOUR. 2015 ...on DATE. 28-June-42.. and that at the time of his

arrest he was wearing military uniform.

Signature of Provost Marshal, A.P.M. or other officer into whose custody the above named person was taken in arrest.....

Lieut.
O. i/c Detention Room
No. 6 Provost Company.

1 CANADIAN (MG) REINFORCEMENT UNIT, C.A.O.

LIST OF EXHIBITS

in the case of

B 76097, Pte. Hayward, G., "TSR" Coy, 1 Canadian (MG) Rein: Unit.

"Exhibit A" - 1 CMGRU Daily Orders Part II No. 86, d/26 June, 1942.

"Exhibit B" - 1 CMGRU Daily Orders Part II No. 89, d/30 June, 1942.

"Exhibit C" - Certificate of Arrest.

1 CANADIAN (MG) REINFORCEMENT UNIT, C.A.O.

LIST OF EXHIBITS

in the case of B 76097, Pte. George HAYWARD, "TSR", 1 Canadian (MG) Reinforcement Unit.

EXHIBIT "A" - Certificate of Arrest.

No. B-76097 Name HAYWARD G. | Sqn., Battery or Company | Corps T.S.R.(MG) | Date of enlistment 13-9-39 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc.

MFM 6 (A.F.B. 122)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				RELEASED from the DETENTION BARRACK...Aldershot .....on 25 MAY 1940.....SENTENCE HAVING EXPIRED. Remission earned under "Rules for Detention Barracks and Military Prisons" ....1.....day. COMMANDANTS Initials.....					
				RELEASED from the DETENTION BARRACK...Headly Down... on .....MAY 9, 1942..SENTENCE HAVING EXPIRED. Remission earned under "Rules for Detention Barracks and Military Prisons" ...60....days COMMANDANTS Initials.....					

Certified True Copy — 3 July 1942

[signature] Records Officer, 1 Can. M.G. Rein. Unit, C.A. (O)

(P.T.O.)

CERTIFIED TRUE COPY

No B-76097 Name G. HAYWARD | Sqn., Battery or Company | Corps Tor.Scot.R.(MG) CASF | Date of enlistment 13-9-39 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. One | Signature O.C. Company, etc.

MFM 6 (A.F.B. 122)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
CNE Barracks	21-10-39	Pte.		AWL		3 dys CB	21-10-39	Capt.Page	
Tournay Brks	23-3-40	"		AWL Sec 15 AA	L/Cpl.Brown Cpl.Smith	14 dys C.B. 1 dys pay	26-3-40	Capt.Page	
Tournay Barracks	18-4-40	"		AWL Sec 15 AA	L/Cpl E Turner PSM Moffatt	168 hrs Detention(3day pay) Total 13.00	19-4-40	C.O.Tor.Scot.	
Tournay Barracks	27-4-40	Pte		AWL 2200 - 27/4/40 - 2400 27/4/40 2 Hrs Conduct in prejudice of good order & military discipline Sec. 40 AA in that he failed to comply with an order	PSM Moffatt L/Cpl.McEachern Sgt.T.Graham Sgt.A.M.	3 dys CB 14 Days Detention	29/4/40 13/5/40	OC B CO OC TORO SCOTS	
Bulford Camp	12/5 40								

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishments awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Chipstead	19-7-40	Pte.		AWL - AA Sec 15 - 2 dys & 5 hrs	Cpl.R.M. Rogers	7 dys C.B. & Forfeits 3 days pay	22/7/40	Lt.Q.D. Wilkins	
Bowdon	21-8-40	Pte		Sec.15(1)A.A. AWL from 0830 hrs 21-8-40 to 0830 hrs 22-8-40.		7 days C.B.	22-8-40	Major R.W. Davidson	Forfeits 1 days pay FR&I 149
Thames	6-3-41	Pte		Sec.28 & 33 Larceny Act 1916 Stealing	Cpl. Beresford	4 months Hard labour	21-3-41	Civil Power	
Bowdon Hants	12-9-40	Pte		Sec. 15(1) A.A. (2) Sec. 25(1) A.A. (3) Sec. 22 A.A. (4) Sec. 15(1) A.A. (5) Sec. 15(1) A.A. (6) Sec. 24(2) A.A.		1 years Detn. Stoppages £5.4/2d	9-8-41	F.G.C.M.	Total Forf of 612 days pay
Ewshot	28-5-42	Pte.		A.A.SEC. 15(1) AWL from 2200 hrs 28-5-42 to 1505 hrs 31-5-42 Total time 2 dys 17 hrs 5 min	A/L/C.Rinehart, A.S. Cpl.Hayes,S.G. Cdn. P.C.	14 dys Detn.	2-6-42	Major C.S. Bolsby	Aut. Forf. 3 dys pay FR&I 149(1)(a)

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-76097	Pte.	Hayward, Geo.	Toronto Scottish Regt. (MG)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 617, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, premium being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A.SEC. 15(1)	1 times	7 times.
For A.A.SEC. 40	times	1 times.
For	times	times.
For	times	times.
For	times	times.

[redacted]

or

There are no entries in the conduct sheets of the accused.

[redacted]

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 78 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for N I L days in civil custody, and THIRTY-ONE days in military custody, making a total of FORTY-ONE days, of which N I L days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 23 yrs 56 dys

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 13 Sept. 1939

7. [redacted]

8. [redacted]

9. [redacted]

10. The accused is in possession of, or entitled to, no military decoration or military award [redacted]

11. (*If the accused is a warrant officer.*) [redacted]

12. (*In the case of an officer.*) [redacted]

(*180-140) 75,000 12/40 A.A.R.W.Ltd. Op.650

(Sgd.) [illegible]
PRESIDENT.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-76097 Rank Pte. Name Hayward, George of T.S.R.(MG) Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charge upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
Civil Power F.G.G.M.	Thames 21-3-41 Ewshot, Hants. 9 Aug. 1941	A.A.SEC. 28 & 33 Larceny Act, 1916 Stealing 1.A.A.SEC.15(1) 2.A.A.SEC.15(1) 3.A.A.SEC.22 4.A.A.SEC.15(1) 5.A.A.SEC.15(1) 6.A.A.SEC.24(2) FINDINGS: 1st Charge: Not Guilty of absence for 7 dys 2 hrs & 30 min but Guilty of absence for 6 dys 3 hrs & 30 min. 2nd Charge: Not Guilty of absence for 29 dys 23 hrs & 45 min but Guilty of absence for 28 dys 23 hrs 45 min. 3rd Charge: Guilty 4th Charge: Guilty 5th Charge: Not Guilty of absence for 33 dys 20 hrs & 15 min but Guilty of absence for 32 dys 20 hrs & 15 min. 6th Charge: Not Guilty of losing by neglect his kit & Regt'l necessaries to the value of £8-17-4 but is Guilty of losing by neglect his kit & Regt'l necessaries to the value of £5-4-2½. CONFIRMATION: By Brigadier F.T.Phelan, D.S.O. M.C. V.D. commanding Canadian Base Units who commuted the sentence to one of one year's detention.	4 months Hard Labour To undergo imprisonment with hard labour for two (2) years and to be placed under stoppages of pay to the amount of £5-4-2½	89 dys

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 3rd day of July 1942

Records Officer,
1 Cdn. M.G. Rein. Unit, C.A. (O)

30th inst.

In the rank of _____ years. Date of Promotion. _____

In the rank of _____ years _____

In the rank of _____ years. _____

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court martial the information may be collected from such sources as are available and the paragraph inserted accordingly.)

I, B 76097 Pte. Hayward, G. ..., desire the services of an officer to represent me in my forthcoming trial by Court Martial.

I desire the services of. Lieut. Evans. Inf. 1st Cdn. Army R.D. if he is available.

Pte G. Hayward.

(B 76097 Pte. Hayward, G.)
"TSR" Coy., 1 Cdn. (MG) Reins. Unit.

EWSHOT, HANTS.
2 July 42.

II-138 (Case #3)

Pte HAYWARD G.

See C-191 for 1st case

See K-146 for 2nd case

B-76097 Pte. HAYWARD, George,
Toronto Scottish Regiment,
4 Cdn. Infantry Reinforcement Unit.

II-138

Correspondence to be PINNED here.

19 Dec 43

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this twenty-eighth day of June, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army Overseas, - - , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~] E.W.H.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

~~* I am unable to appoint :—~~

~~*(1.- Three Officers to form the Court.)~~

~~*(2.- A Field Officer as President)~~ E.W.H.

~~for the following reasons, namely :—)~~

PROCEEDINGS REVIEWED
(SGD) R.K. Lainley, Capt.
Reviewing Officer, (JAG) CMHQ
22 July 43.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lt.-Col.	D. L. Redman	Calg. Highrs.

Members.

Rank.	Name.	Regiment.
A Captain	from to be detailed by Comd. C.R.U.	
A Lieutenant	from to be detailed by Comd. C.R.U.	

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed E. W. HALDENBY, Brigadier
Commanding "D" Group, Cdn Rft Units.
Convening Officer.

(SGD) D. L. Redman, Lt.Col.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
	First Charge - - - - - - - - A.A. Sec.8 (2)	Not Guilty	Not Guilty	
	Second Charge - - - - - - - A.A.Sec.15(1)	Guilty	Guilty	
	Third Charge - - - - - - - A.A.Sec.11	Guilty	Guilty	
	Fourth Charge - - - - - - - A.A.Sec.15(1)	Guilty	Guilty	
B-76097 Pte. Hayward, George. Tor. Scot.R. 4 C.I.R.U.	SENTENCE To undergo detention for a period of One (1) year and to ne put under stoppages of pay until he has made good (1) £1.12.2 and (2) £1.17.11, the expenses of his arrests and returns. 29th June 1943. (SGD) D.L.R.			CONFIRMED 30 June 43 (SGD)E.W.HALDENBY, Brig.

See Charge Sheet Attached.

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— Answer - NO.

(*Signed*) E. W. Haldenby, Brigadier (*Signed*) D. L. Redman, Lt.-Col.

Commanding "D" Group, C.R.U. *President.*
Convening Officer (e)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 29th day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. ~~The witnesses~~ D.L.R.
3. ~~The Interpreter~~)
4. ~~The officers under instruction~~)

*Omit if not applicable.

were duly sworn.

Signed this 29th day of JUNE 1943.

(SIGNED) D. L. Redman, Lt.-Col.
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1920.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

D.L.R.

Signed this - - - - - day of - - - - - 19 - -

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~ E.W.H.

Signed this 30th day of June 19 43.

(SIGNED) E. W. HALDENBY, Brig.
Confirming Officer.

Promulgated and extracts taken in the case of B.76097, Pte. Hayward, George

(*a*) (Dated) 1 July 1943 (Signed) J. W. CHRISTIE, A/Col.
Officer Commanding

Promulgated and extracts taken in the case of 4 Cdn Inf Rein Unit.

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23679) W.1.41179-850 50,000 2-43 A.& E.W.Ltd. Gp.698
(24256) W.1.11182-271 100,000 2-43 " "

CHARGE SHEET

The accused, No. B76097 Pte GEORGE HAYWARD, of the Toronto Scottish Regiment, on the strength of No. 4 Canadian Infantry Reinforcement Unit a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
A.A.Sec. 8(2)

WHILE ON ACTIVE SERVICE, Striking his superior officer being in the execution of his office,
in that he
at Manchester, at about 0530 hours, 12 June, 1943, when asked by L/Cpl. W. Kendall, C.M.P. for his pass ran away and when caught did struggle violently and several times kick L/Cpl. Kendall on the leg, he continued to struggle violently until placed on board the police truck and again kicked out at L/Cpl Kendall.

SECOND CHARGE
A.A.Sec. 15(1)

WHILE ON ACTIVE SERVICE, Absenting himself without leave,
in that he
at Aldershot, Hants, absented himself without leave from 2100 hours, 27 February, 1943, until apprehended by the Corps of Military Police in Manchester at about 0530 hours, 12 June, 1943; (time absent:- 89 days, 8 hours, 30 minutes); thereby incurring expenses for himself and escort to the value of One Pound, Twelve shillings and two pence (£1/12/2).

THIRD CHARGE
A.A.Sec 11

WHILE ON ACTIVE SERVICE, Neglecting to obey General Orders,
in that he
at Manchester, at about 0530 hours, 12 June, 1943, when apprehended by the Corps of Military Police did not have his M.B.M.1, Soldier's Service and Pay Book, in his possession.

FOURTH CHARGE
A.A.Sec. 15(1)

WHILE ON ACTIVE SERVICE, Absenting himself without leave, when in close arrest,
in that he
at Aldershot, Hants., when in close arrest absented himself without leave from 1030 hours, 19 June, 1943, until apprehended by the Corps of Military Police at Manchester at 0045 hours, 23 June, 1943; (time absent:- 3 days, 14 hours, 15 minutes); thereby incurring expenses for himself and escort to the value of One Pound, Seventeen shillings, and Eleven Pence (£1/17/11).

(SIGNED) J. M. CHRISTIE, A/Col.
Officer Commanding,
4 Cdn Inf Rft Unit, C.A.O.

IN THE FIELD
26 June 1943.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(SIGNED) E. W. HALDENBY., Brigadier.
Commander.
"D" Group, Cdn Rft Units.

IN THE FIELD
28 June 43.

(SIGNED) D. L. REDMAN, Lt.-Col.

Medical Officer's Certificate 40/25
K.R.(Can), para. 557.

I certify that I have this morning examined No. B 76097 Pte HAYWARD, G. of T.S. Regt. and in my opinion he is fit to undergo trial by Court Martial.

Station....FIELD

Date.....29 June 1943. (SIGNED) W. R. LITTLE,
Medical Officer.

(Canadian Reinforcement Units Routine Order No. 3, para.27, d/8 Jan 42.)

(SIGNED) D. L. REDMAN, Lt.-Col.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD AT OUDENARDE BKS. FARNBORO. ON THE 29TH DAY OF JUNE 1943.

The accused B 76097 Pte Hayward, G. Unit....4 CIRU

The order convening the Coyrt and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court;-

President.....Lt.-Col. D.L.Redman, H.Q., CIRU

Members.....Capt. J.H.Townsend RCCS, CIRU
Lt. B.H.Garfunkel, H.Q., CIRU

The officers under instruction are duly sworn;-

. . . . . .Unit. . . . .

. . . . . .Unit. . . . .

Prosecutor..Lt. W.D.Parker 4 CIRU

Defending Officer..Capt. D.W.Grant 4 CIRU

The charge sheet is signed by the President and the accused is arraigned.----------
The accused pleads guilty to the 2nd, 3rd and 4th charges and R.P. 38(B) is complied with, and pleads Not Guilty to the first charge
Pres. asked the question under R.P.39A. Answer;- No.
The Prosecutor stated he had no evidence to tender respecting the 1st charge.
The Court announced that it found accused Not Guilty of the 1st charge.
The accused does not desire to make a statement in reference to the charges. R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 the Accused;-

Addressed the Court by his Defending Officer.

The Court proceeded to take evidence to cure deficiency in summary respecting 3rd charge.

1ST WITNESS FOR THE PROSECUTION. B 73737 L/Cpl. Caton, W.H., 4 CIRU being duly sworn states;

"I was in charge of the Guard Room on 19th June. At app. 1330 hrs. the accused when going to the showers escaped. I had a search made and accused could not be found. He was being held in close arrest for trial when he escaped.

Plea in mitigation is attached.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

DEFENDING OFFICER'S PLEA . - Pte. HAYWARD, C.

This man is a complete misfit in the army. He has never soldiered, and has been a constant source of trouble ever since his first few months in this country.

To punish him in the usual way appears to be useless and a waste of time for all concerned.

A few days ago (26 June) he was sent to #1 Neurological Hospital for an examination. I quote from the report of Lt.Col J.C. Richardson, the examining officer:-

"Opinion - Psychopathic Personality with Mental dullness.

1. Would consider him unfit for military service and recommend him for reboarding.

2. Consider him fit to stand trial and serve detention.

3. Would not expect him to improve by punishment or example."

The examiner also states:-" On Ex'n he is intellectually below average. - definitely dull but not in a certifiable defective grade. Judgement shallow. Irresponsible attitude. Anti-social trends. His mother is insane and has been in the Ontario Hospital, New Toronto for the past 10 years. The man blames his behaviour on worry about his mother, fear of insanity and worry and anger about his grandmother whose dependant's allowance has been cut off.".

In civilian life, while he was employed, he was never in trouble and one firm is holding a job open on his return. In view of the man's background and the report of the neurological specialist I feel that the normal punishments which would be meted out in this case is a waste of time and money for all concerned.

A reboard is the only solution that will have satisfactory results - a reboard that will let him get back to a civilian enterprise when the man can do something for the National War effort and look after his dependants.

- - - - - - - - - - - -

TO CONFIRMING OFFICER:-

TRIAL OF B 76097, Pte HAYWARD, G.

Please note that Lt. Col. Richardson in his report dated 26th June states that this man is unfit for military service and should be reboarded.

(SIGNED) D. L. REDMAN, Lt. Col.

TO O.C., No. 4 C.I.R.U.

Please ask Lt. Col. Richardson's statement re this man.

(SIGNED) E. W. HALDENBY.

EXHIBIT "A".

RECORD of the Declaration of a Court of Inquiry assembled at WATERLOO BRKS. ALDERSHOT, HANTS, on the twenty-fourth day of March, 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms. Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No. B 76097 Pte. G. Hayward, (Tor Scot. (M.G.) R.) 4 Canadian Infantry Reinforcement Unit, C.A.(O).

D E C L A R A T I O N

The Court declare that B 76097 Pte. G. Hayward, 4 C.I.R.U, illegally absented himself without leave at Aldershot from 2100 hours on the 27 February 43; that he is still so absent, and that on the 24th day of March 1943 he was deficient, and that he is still deficient the articles set out in exhibit "A"(below).

DEFICIENCIES OF KIT

ARTICLES	VOCABULARY PRICE	APPRAISED VALUE
blouse, serve	£ 1. 7. 8	£ 1. 0. 0
trousers, serve	1. 7.11	1. 0.11½
Balmoral	4. 2	3. 3½
boots, ankle	1. 1. 6	16. 1½
brasses, button	2	2
brushes, button,	8	6
brushes, cloth	1. 1	10
greatcoat	8. 11. ½	2.17. 9½
dressing, first-field	1. 1	10
forks, table	5	5
knife, table	9½	9½
knife, clasp	5. 2½	3.11
shirts, angola	9. 2	3. ½
razor	1.10½	1. 6
socks, wool	2. 4	2. 6
spoons, table	4½	4½
vests, gym	3.	2. 3
shorts, cellon	4. 4	3. 1
braces, H	3. 3	2. 2½
respiratio, haversack	6. 6	4.10½
haversack	10. 5	7.10
towels, hand	11½	8½
tins, mess	3. 1	2. 4
	£ 10. 7. 0	£ 7.16. 0

Names of President and Members:-
PRESIDENT: Capt. J.W.K. Shortreed,
MEMBERS: Lieut. D.R. Baillie,
Lieut. C.F.S. Tidy.

Signature of Commanding Officer J. H. Christie, A/Col., commanding 4 Cdn.Inf.Reinf.Unit,C.A.(O)

CERTIFIED TRUE COPY...SIGNED) D. J. FUSEDALE, Capt. & Adjt. 4 Cdn. Inf. Reinf. Unit, C.A.(O).

EXHIBIT "B"

J. H. MORGAN, Capt.

STATEMENT OF EVIDENCE IN THE CASE OF:-

B-76097, Pte. HAYWARD, G.
4th Canadian Infantry Re-inforcement Unit
TORONTO SCOTTISH
ALDERSHOT

SIR,

At MANCHESTER on 12/6/43 at about 0530 hrs. I was on duty accompanied by L/C KENDALL in PICCADILLY where I saw the above named soldier. I asked him if he was on leave and he stated; "Yes". I then asked to see his pass for which he pretended to search. Suddenly he started to run and crossed the road. I gave chase and closed with him in AUBURN STREET. When L/C Kendall attempted to take his left arm on the opposite side of him to myself he started to struggle violently and several times kicked L/C Kendall on the front & back of the leg below the knee. He struggled violently the whole distance to the truck and as he was being put in the back of the vehicle he again kicked out at L/C Kendall.

I conveyed him to the DRILL HALL ARDWICK GREEN where I cautioned him and stated "I am Absent since FEBRUARY". I asked him to produce his MBMl in order to verify his particulars but he was unable to produce same. I then informed him of the offences with which he would be charged and handed him over to the M.C.O. i/c guard to be detained.

He was sober and wearing military uniform.

MANCHESTER
12. 6. 43

(SIGNED) H. MASON-JONES, L/Cpl.
C.M.POLICE

REMARKS

Sir,

I have read over and corroborate the above statement.

(SIGNED) W. KENDALL, L/C
C.M.POLICE

MANCHESTER
12. 6. 43.

EXHIBIT "C"

J.R.H. MORGAN, Capt.

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT
SECTION 163 (1) (ii)

I certify that No. B. 76097, Pte. Hayward, G., of Toronto Scottish was arrested at Manchester, Auburn Street, at 0530 hours on the 12th day of June 1943.

(SIGNED) E.C.C. GARFIT, Staff Lieut.
Corps of Military Police,
164 H.Q. Provost Company,
Lancashire and Border District.

12th June 1943.

(SIGNED) D. L. HEIMAN, Lt.-Col.

J.H.R. MORGAN, Capt.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539 EXHIBIT "D"

Reg. No. B.76097 Rank Pte Name HAYWARD, G. Unit 4 CIRU

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit from~~ LONDON FROM MANCHESTER

Date	Particulars (½ portion)	Amount		
24 June 43	Escorts return fare from LONDON To Manchester		14	1
	Prisoners single fare to LONDON From Manchester		14	1
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares		4	0
	Total £	1	12	2

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

(SIGNED) W. PERU, Capt. D.A.P.M. London Area. Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
40/P & S/483

"D.L.R."

EXHIBIT "E"
"J.H.R.MORGAN, Capt."

4 CANADIAN INFANTRY REINFORCEMENT UNIT, C.A.(O)

25 Jun 43.

The following is an extract from the Orderly Officer's Report dated 19 Jun - 20 Jun 43.

L/Cpl Caton reported to me that a prisoner had just escaped from detention via shower room window. I made enquiries and learned that the prisoner escaped from North window of shower room while the escort had left his post but took no action as L/Cpl Caton had reported the escape with particulars to the Adjutant. I checked the shower room and found the window could be opened easily and that the only thing which previously had secured same was one nail. If an escort is present at all times there is no excuse for this escape and the sentry should be investigated.

Certified true copy.

(SIGNED) D. J. FUSEDALE, Captain, Adjutant.
4 Cdn Inf Rein Unit.

("D.L.R.")

EXHIBIT "F"

"J.H.R.MORGAN" Capt.

19/6/43.

SIR:-

While on duty this morning at 1045 hrs I was the escort for Pte Hayward, B-76097 while he was taking a shower. The shower room was very stuffy so as I thought it would do no harm I stepped outside of the shower room door for a breath of fresh air. I stood outside for close to five minutes, then, went back to find the prisoner had left by means of an open window. All windows were checked the last time we had a bath parade here and all were secure. I reported this to L/Cpl Caton who is senior N.C.O. of this shift. Sir.

I remain

Your most obedient servant,

(SIGNED) B 38333- L/Cpl. Boomer, C.L.

"D.L.R."

EXHIBIT "G"

"J.R.H.MORGAN" Capt.

STATEMENT OF EVIDENCE IN THE CASE OF

B,76097 Pte HAYWARD, G.,

TORONTO SCOTTISH REGT.,

No. 4 C.I.R.U.,ALDERSHOT.

SIR:-

At MANCHESTER on 23.6.43 about 0045 hours, accompanied by L/Cpl SMITH, C.M.POLICE I was on duty in QUEEN STREET CAFE where I saw the above-named soldier. He could not produce his M.B.M.1 and admitted being absent. I arrested and conveyed him to THE DRILL HALL ARDWICK GREEN where he was handed over to the N.C.O. i/c GUARD to be detained. He was sober and dressed in military uniform.

MANCHESTER (SIGNED) W. S. TAYLOR, L/Cpl.

23. 6. 43 C. M. POLICE

SIR:-

I have read over and corroborate the above statement.

(SIGNED) G. H. SMITH, L/Cpl.

MANCHESTER C. M. POLICE

23. 6. 43.

"D.L.R."

Certificate in accordance with the Army Act Section 363 (1) (ii)

I certify that No. B.76097 Private Hayward, G. of Toronto Scottish Regiment, was arrested at Queen St. Cafe, Manchester, at 0045 hours on the twenty-third day of June 1943.

(SIGNED) G. C. C. GARFIT. Staff Lieut.

Corps of Military Police,
164 H.Q. Provost Company,
Lancashire and Border District.

23rd June 1943.

"D.L.B."

EXHIBIT "I"

Expense Voucher Re—: Ref: K.R. & O. (Can) 539 "J.R.H.Morgan Capt"

Reg. No. B76097 Rank Pte Name HAYWARD, G. Unit 4 C.I.R.U. T.S.R.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~the~~ ~~Unit From~~ LONDON FROM MANCHESTER

Date	Particulars	Amount		
24 June 43	Escorts return fare from LONDON To Manchester		18	10
	Prisoners single fare to LONDON From Manchester		14	1
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		5	0
	Total £	1	17	11

I certify that the above statement of Expenses is Correct and that the amounts are fair and just.

W. PERM, Lieut.
Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-55
40/P & S/463

"D.L.R."

EXHIBIT "J"-J.R.H.Morgan,Capt

CERTIFICATE IN ACCORDANCE WITH P.C.2797 of 10 Apr 42.

I certify that No. B-76097, Pte Hayward, G., No. 4 C.I.R.U., was arrested at Manchester at 0045 hours on 23 June 43 and that at the time of his arrest he was wearing Military Uniform.

(SIGNED) W. FERN, Capt.,

D. A. P. M.
London Area.

London
24 June 43.

".D.L.R."

4 CANADIAN INFANTRY REINFORCEMENT UNIT C.A.(O). 4C/24

16 June 1943.

I, No. B.76097, Pte. Hayward, G., wish to have an Officer defend me at my forthcoming trial by Court-Martial.

I desire the services of Lieut. Wishart, Q.O.R., if he is available.

(SIGNED) Pte. G. Hayward.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No. B,76097 Private Hayward, G., of the Toronto Scottish Regiment, on strength of No. 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the summary of evidence is taken on oath.

FIRST WITNESS

For the Prosecution.

Capt. D.J. Fusedale, Saskatchewan Light Infantry, on strength of No. 4 Canadian Infantry Reinforcement Unit, an officer in the Canadian Army Overseas, having been duly sworn, states as follows:

I produce M.F.B.375 Declaration of a Court of Inquiry which relates to the accused, whom I now recognize. Attached as Exhibit "A".

(SIGNED) D. J. FUSEDALE, Capt.

SECOND WITNESS

The accused declines to cross-examine this witness.

For the Prosecution.

B66662 C.S.M. Howard, K.L. Royal Regiment of Canada, on strength of No. 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn states as follows:
As C.S.M. of "A" Company, 4 Canadian Infantry Reinforcement Unit I have called all rool calls of "A" Coy since 24 March 1943 and the accused has not answered any roll call nor has he been around the Company lines, if he had been I would have known. I did not see the accused until Company Office at 0900 hours 15 June, 1943.

(SIGNED) K. L. HOWARD,
B.66662, C.S.M.

The Accused declines to cross-examine this witness.

THIRD WITNESS

For the Prosecution.

7689659 L/Cpl Mason-Jones, Corps of Military Police. A written statement of this witness' evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence and marked Exhibit "B". Having regard to the exigencies of the service and the loss of time involved attendance of this witness, cannot, in my opinion, be readily procured.

(SIGNED) J.R.H.MORGAN, Capt.

The accused does not demand the attendance of this witness for cross-examination.

Certificate in accordance with the Army Act 163 (1) (ii) is attached marked Exhibit "C".
C.M.F.C.1000/55 Cost of Apprehension in the amount of One Pound Twelve shillings and Two pence (£1/12/2) is attached marked exhibit "D".
The above two statements have been read over to the accused.

The accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

FIRST WITNESS

For the Defence

The accused, No. B76097 Private Hayward, G., Toronto Scottish Regiment, on strength of No. 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army overseas, having been duly sworn, states as follows:

"D.L.R."

On second charge I plead guilty. Some few days before going A.W.L. I reported the loss of Brown part of pay-book to C.S.M. of "B" Coy., 4 C.I.R.U. The white section was at the Paymaster's. The C.S.M. told me that he would report the loss and that I would have to wait. The book had not been returned at the time I went A.W.L. I joined the army on Sep. 13, 1939. I was anxious to get into the army and did not disclose the fact that my mother had been for five years in the Ontario hospital at New Toronto, Ontario. Before going A.W.L. I had news from home that my mother was not as well as usual. This worried me because my mother had periods of violence. I have always been worried because I have always had a bad temper myself. I was worried during my absence about being sent to Hedley and so continued to remain absent because of the fear of confinement which might affect me mentally. As to the details of striking the C.M.P. my mind is not clear. All I can remember about my arrest is that I was forcibly hauled from a truck. I do not remember when or under what circumstances I was arrested. The last thing I remember was going to the Y.M.C.A. for a cup of tea. They told me it would not be ready for sometime and I dropped off to sleep in a chair. I was sober at the time.

(SIGNED) F. G. HAYWARD, . B.76097.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

(SIGNED) J.B.H.MORGAN, Capt.,
Officer detailed to take the Summary.

IN THE FIELD
15 June 1943.

(SIGNED) D. L. REDMAN, Lt.-Col.

ADDITIONAL SUMMARY OF EVIDENCE

Additional Summary of Evidence in the case of No. B76097 Private Hayward, G., of the Toronto Scottish Regiment, on strength of No. 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the summary of evidence is taken on oath.

First Witness

For the Prosecution

Capt. D. J. Fusedale, Saskatchewan Light Infantry, on strength of No. 4 Canadian Infantry Reinforcement Unit, an officer in the Canadian Army Overseas, having been duly sworn, states as follows:
I produce M.F.E. 375, Declaration of a Court of Inquiry which relates to the accused, whom I now recognize. Attached as Exhibit "A".

(SIGNED) D. J. FUSEDALE, Capt.

The accused declines to cross-examine this witness.

Second Witness

For the Prosecution

B66662 C.S.M. Howard, K.L., Royal Regiment of Canada, on strength of No. 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn states as follows:
As C.S.M. of "A" Company, 4 Canadian Infantry Reinforcement Unit, I have called all roll calls of "A" Coy. since 24 March, 1943 and the accused has not answered any roll call nor has he been around the Company lines, if he had been I would have known. I did not see the accused until Company Office at 0900 hours 15 June, 1943.

B66662 C.S.M. Howard, K.L.

The accused declines to cross-examine this witness.

Third Witness

For the Prosecution.

7689659 L/Cpl. Mason-Jones, Corps of Military Police.
A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence and marked Exhibit "B". Having regard to the exigencies of the service and the loss of time involved attendance of this witness, cannot, in my opinion, be readily procured.

(SIGNED) J.R.H.MORGAN, Capt.

The accused does not demand the attendance of this witness for cross-examination.

Fourth Witness

For the Prosecution

B73737 L/Cpl Caton, W.H., of the 48th Highlanders of Canada, on strength of No. 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:
I am B73737 L/Cpl. Caton, W.H., (48th Highrs) posted to "A" Wing, Regimental Police, No. 4 C.I.R.U., C.A.O., I was on duty in charge of the 0800 hours to 1600 hours shift of the regimental police on 15 June, 1943. At approximately 1030 hours this date, I detailed L/Cpl. Boomer to escort the accused to the showers. He was the only prisoner on this parade. At approximately 1045 hours, L/Cpl. Boomer returned and reported that the accused had escaped. I immediately sent L/Cpl. Boomer to report the escape to the Adjutant in order to notify the military police. At about 1080 hours on the same date the orderly officer visited the detention room on his round and I informed him of the escape and we visited the scene of the escape together.

The orderly officer said that the escape was due to neglect on the part of the escort.

(SIGNED B.73737 L/Cpl. Caton, W.

The accused declines to cross-examine this witness.

Fifth Witness For the Prosecution

The Orderly Officer, Lieut. L.H. Doering, Royal Hamilton Light Infantry has proceeded to the field. B 36333 L/Cpl. Boomer, C.L. has been transferred to No. 1 C.B.C.D. Due to the exigencies of the service it was not considered necessary to have them summoned.
A certified copy of an extract from the Orderly Officer's report dated 19 - 20 June, 1943, is attached. (Marked Appendix "E").

The original statement made to the Adjutant of No. 4 Canadian Infantry Reinforcement Unit, C.A.O., is attached. (Marked Appendix "F").

(SIGNED) J.R.H.Morgan) Capt.

The accused does not demand the presence of these witnesses for cross-examination.

Sixth Witness For the Prosecution.

7690398 L/Cpl. W.S.Taylor, Corps of Military Police, Lancs. & Border District.
A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence and marked appendix "G". Having regard to the exigencies of the service and the loss of time involved attendance of this witness, cannot, in my opinion be readily procured.

(SIGNED) J.R.H.MORGAN, Capt.

The accused does not demand the attendance of this witness for cross-examination.

Two certificates in accordance with the Army Act Section 163 (1)(ii) are attached and marked as Exhibits "C" and "H". Two certificates C.M.H.Q. 1000/55 Cost of Apprehension are attached and marked as Exhibits "D" and "I" in the amounts of One Pound Twelve Shillings and Two pence and One Pound Seventeen Shillings and Eleven Pence respectively, have been read to the accused and are included in this summary. Certificate in accordance with P.C. 2797 of 10 Apr 42 purporting to be signed by Capt. W.Ferb, D.A.P.M., London Area has been read to the accused and is included as evidence and marked Exhibit "J".

(SIGNED) J.R.H.MORGAN, Capt.,

The accused does not demand the attendance of these witnesses for cross-examination.

The accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

First Witness For the Defence

The accused, No. B76097 Private Hayward, G., Toronto Scottish Regiment, on strength of No. 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

On second charge I plead guilty. Some few days before I went A.W.L. I reported the loss of Brown Part of paybook to C.S.M. of "P" Coy., 4th C.I.R.U. The white part was at the Paymaster's. The C.S.M. told me that he would report the loss and that I would have to wait. The book had not been returned at the time I went A.W.L. I joined the army on Sep. 13, 1939. I was anxious to get into the army and did not disclose the fact that my mother had been for five years in the Ontario hospital at New Toronto, Ontario. Before going A.W.L. I had news from home that my mother was not as well as usual. This worried me because my mother had periods of violence. I have always been worried because I have always had a bad temper myself. I was worried during my absence about being sent to Hedley and so continued to remain absent because of the fear of confinement which might affect me mentally. As to the details of striking the C.M.P. my mind is not clear. All I remember about my arrest is that I was forcibly hauled from a truck. I do not remember when or under what circumstances I was arrested. The last thing I remember was going to the Y.M.C.A. for a cup of tea. They told me it would not be ready for some time and I dropped off to sleep in a chair. I was sober at the time.

(SIGNED) G. HAYWARD.-
B.76097.

I certify that the foregoing Summary of Evidence, consisting of three pages was teken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

(SIGNED) J.R.H.MORGAN, Capt.
Officer detailed to take the Summary.

IN THE FIELD
28 June 1943.

"D. L. REDMAN, Lt.-Col."

List of Witnesses

In the case of No. B76097 Pte. Hayward, G., 4 C.I.R.U.

For the Prosecution

1. Capt. D.J.Fusedale, Sask. Light Infantry, 4 C.I.R.U.
2. B66662 C.S.M. Howard, K.L., Royal Regiment of Canada, C.A.C.
3. 7688659 L/Cpl Mason-Jones, C.M.P., Lancs. & Border District
4. B73737 L/Cpl. Caton, W.H., 48th Hights., 4 C.I.R.U.
5. Lieut. L. H. Doering, R.H.L.I., C.A.C.,
6. 7690398 L/Cpl. W. S. Taylor, C.M.P., Lancs. & Border District.
7. Capt. W. Fern, D.A.P.M., London Area.

For the Defence

1. B76097 Pte. Hayward, G., Toronto Scottish Regt., 4 C.I.R.U.

List of Exhibits

In the case of No. B76097 Pte. Hayward, G., 4 C.I.R.U.

"A" - M.P.B. 375 Declaration of Court of Inquiry.

"B" - Statement of Evidence of 7688659 L/Cpl. Mason-Jones, C.M.P.

"C" - Certificate in accordance with Army Act Section 163 (1) (ii) d/12 June 43.

"D" - CMHQ 1000;55 Cost of Apprehension d/14 Jun. 43.

"E" - Extract of Orderly Officer's Report d/ 19-20 Jun. 43.

"F" - Evidence of B38333 L/Cpl. Boomer, C.L., Regt'l Police, 4 CIRU.

"G" - Evidence of 7690398 L)Cpl. W.S.Taylor, C.M.P.

"H" - Certificate in accordance with Army Act Section 163 (1) (ii) d/23 June 43.

"I" - CMHQ 1000;55 Cost of Apprehension d/24 Jun.43.

"J" - Certificate in accordance with P.C.2797 of 10 Apr. 42 d/24 June 43.

In accordance with Overseas R.O.2084 the original sheet was destroyed after six months.

M.F.M. 6
(A.F.B. 122)
40/P & S/136 (2037)

No. B76097 Name Hayward, G. Sqn., Battery, or Company — Corps Tor.Scot.R. (M.G.) — Date of enlistment 13.9.39 — G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 2 — Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24.1.43	Pte		A.W.L. 24 days. A.A.15(1)	Cpl.Duff. Documentary	28 days F.P. 28 daus Pay	19 Feb 43	Lt.-Col. J.H.Christie	Forf. 24 dys Pay F.R.& I.149(1)(a)

Certified true copy from the Regimental Books in my Custody.

(SIGNED) J.R.H.Morgan, Capt.,
A/Admin. Officer
#4 C.I.R.U.

In accordance with Overseas R.O. 2084 the original sheet was destroyed after six months.

M.F.M. 6
(A.F.B. 122)

No. B76097 Name Hatward, G. Sqn., Battery, or Company — Corps Tor.Scot.R. (MG) — Date of enlistment 13.9.39 — G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet 21.10.39 — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 1 — Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Tournai Bks	23.3	40 Pte		A.W.L. 1 Day A.A.15(1)	L/Cpl.Brown Cpl. Smith	14 days C.B.	26.3.40	Capt.Page	Forf. 1 day pay
" "	18.4.40	Pte		A.W.L. A.A.15(1)	L-Cpl.Turner C.S.M.Moffatt	168 hrs det.	19.4.40	Lt.-Col.Thompson	forf.10 days pay
" "	27.4.40	"		A.W.O. 2 hrs? A.A.15(1)	C.S.M.Moffatt L/Cpl.McEachern	3 days C.B.	29.4.40	Capt.Page	
Bulford	12.5.40	"		Failed to comply with an order A.A.40	Sgt.Gosham Sgt.McRae	14 days det.	13.5.40	Lt.-Col.Thompson	
Released from the Detention Barracks Aldershot on 25 May 40 SENTENCE HAVING EXPIRED. Remission earned under rules for Detention Barracks and Military Prisons" 1 May. Commandant's Initials. F.P.									
Chipstead	18.7.40	Pte		A.W.L. 3 days A.A.15(1)	Cpl.Rogers	7 Days C.B.	22.7.40	Lt.Wilkins	For.3 dys pay
Bordon	21.8.40			A.W.L. 1 day A.A.15(1)	Cpl.Beresford	7 Days C.B.	22.8.40	Maj.Davidson.	For 1 dys pay

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Thames	6.3.41	Pte		Stealing Larceny Act 1916 28&33		4 mos. hard	21.3.41	Civil Power	
Bordon	12.9.40	"		(1) A.A.15(1)		Labor			
				(2) A.A.15(1)		1 yrs. Det	9.8.41	F.G.C.M.	
				(3) A.A.22		Stoppages of £5.13.3½d.			
				(4) A.A.15(1)					
				(5) A.A.15(1)					
				(6) A.A.24(2)					
Released from DETENTION BARRACK Headley Down on 9 May 43 SENTENCE HAVING EXPIRED. Remission earned under "Rules for Detention Barracks & Military Prisons" 89 days. Commandant's Initials. D.J.									
Ewshot	28.5.42	Pte		A.W.L. 3 days A.A.15(1)	A/L/Cpl.Lindhard	14 days	2.6.42	Maj.Bolsby	Forf.3 dys
					Cpl.Hayes	Det.			Forf.8 dys
Ewshot	8.7.42	"		(1) Aggravating a disease A.A.18(3)	C.Q.M.S.Hewlett	240 days	30.7.42	F.G.C.M.	
				(2) Escaping from custody A.A.22	L/Cpl.Kilby	Det.			
				(3) A.W.L. 6 Days A.A.15(1)		D.J.			
Released from the DETENTION BARRACK Headley Down on 9 Jan 43 SENTENCE HAVING EXPIRED. Remission earned under "Rules for Detention Barracks & Military Prisons" 75 days. Commandant's Initials.									

M.F.P. 385
(HM—5-41 (372-3)
H.Q. 1772-99-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B76097	Pte	Hayward, G.	# 4 C.I.R.U.

1. The following is a fair and true summary of the entries in the Service and General- Regimental and Squadron Battery- JRHM Conduct sheets JRHM or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act JRHM of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For A.A. 15 Sec. 1	One	times	A.A.15 (1)	7 times
For A.A. 40	Nil	times	A.A.40	1 times
For JRHM		times	JRHM	times JRHM
For JRHM		times	JRHM	times JRHM

Number of instances of gallantry or distinguished conduct JRHM

or, JRHM

There are no entries in the conduct sheets of the accused. JRHM

Note.—If the charge is for drunkenness, the entries for drunkenness must be stated separately. JRHM

2. The accused has not been previously convicted JRHM

—or.

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act JRHM Section 47 of the Army Act and dispensations with trial under A.F.A. 73 JRHM A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or.

The accused at the present time is under sentence for - - - - - beginning on the - - - - - JRHM day of

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 17 days in Air Force military custody, making a total of 17 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 24 JRHM

6. The date of his ~~commission~~ JRHM attestation specified in his ~~record of service~~ JRHM attestation paper is 13.9.39

7. The service which the accused is allowed to reckon towards discharge is JRHM

8. The accused is entitled to reckon - - - - service for the purpose of determining his pension, etc. JRHM

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military military JRHM possession of or entitled to). State any air force decoration or reward. JRHM

10. [If the accused is a warrant officer.] The accused before he was made a warrant officer last held Air Force JRHM the regimental rank of - - - - - - - -

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force not JRHM

dated JRHM, and in this regiment (or corps), the rank of JRHM

dated JRHM.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present time:— JRHM

Date of promotion JRHM

In the rank of years JRHM

In the rank of years JRHM

In the rank of years JRHM

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Attached JRHM

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number 776097 Rank Pte. Unit

Name Hayward, G. of # 4 C.I.R.U. Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
Civil Power	Thames 6 Mar 41	Stealing	4 months Hard Labour	
F.G.C.M.	Field 9 Aug 41	A.A.Sec.15(1) A.A.Sec 15(1) A.A.Sec 22 A.A.Sec.15(1) A.A.Sec.15(1) A.A.Sec.24(2)	1 year's Detn. Stoppages of £5/4/2½	89 days earned remission.
F.G.C.M.	Field 30 Jul 42	A.A.Sec.18(3) A.A.Sec.22 A.A.Sec.15(1)	240 days Detention	75 days earned remission.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 29th day of June 43.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

(SIGNED) J.R.N.MORGAN, Captain,
Admin. Officer, Holding Wing,
4 Cdn Inf. Reinf. Unit.

(SGD) D. L. REDMAN, Lt.-Col.

ZZZ-132

Rte. Hayward W.A.

49

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: 4 3187 Pte William Ansel Haywood Hy R.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 41	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

Admissible written evidence for the prosecution was read. (Delete)(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which 6 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for one year.

(Sgd) H Dawson Capt — 27 Sep 44 — (Sgd) H G Dawson Maj
Judge-Advocate, if any — Date awarded. — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

I direct that the accused be not committed to prison or detention barracks until further order. (Delete if not used.) AA 57A

Date 28 Sep 44 — (Sgd) J C Jefferson Brig
Date 28 Sep 44 — Commanding 10 Cdn Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A3187 PTE. HAYWARD, W.A.	29 Sep 44	J A Roulston Lt Col OC Algonquin R.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

No illegalities or irregularities such as would warrant withholding confirmation.

RECEIVED 25 OCT 1944 JAG BRANCH C.M.H.Q.

RECORDED AT C.M.H.Q. IN AP 60 222-732

FIELD GENERAL COURT-MARTIAL

CPA96 (1st Issue of AFA21) 40 P M S/18608 12-6-44

4/388

Convened by Order of Brig J C Jefferson Comd 10 Cdn Inf Bde dated 26 Sep 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/oppmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
4 3187	Pte	William Ansel	Haywood	Hy R.

PROCEEDINGS REVIEWED
K. Livingstone Lt
25 Oct 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 27 Sep 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. (1/54)

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 49S, for words and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 76, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2) JA.

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~the Interpreter~~ Mr Interpreter? Ans ~~No~~

The Interpreter is sworn.(1) Do you object to ~~the shorthand writer~~ as shorthand writer? Ans ~~No~~ Yes

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	H G Dawson	2 Sup R (M)
Member	Capt	D M Dunbar	93 Can Fd R.
Member	Lt	R B Madden	Linc Hussars R.
Judge-Advocate	Capt	J A Couture	10 Cdn Inf Bde
Prosecutor	Capt	P A Mayer	Alg R.
Defending Offr	Capt	F B Butcher	Alg R

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Div p 3.)

A8. The accused before arraignment make(s) (no) ~~no~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form A + E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge or call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No.(5)

(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para* E3 *of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change (his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the pleas of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (his) (no) opening address.(1)

(*1. RP* 39(*B*), 40(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 92 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges use second alternative in para* D5.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans .....

Do you intend to call witnesses on your behalf ? Ans .....

Are they witnesses as to character only ? Ans .....

(*1. RP* 115. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fn* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 495. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP* 42, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed by him.

(*1. AA* 54(3) (*b*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans Witness as to character.

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement as to Character and Particulars of Service(1), ~~and (a) copy (copies) of Conduct Sheet(s)~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and ~~have been read~~(3). Conduct sheet not available.

(*1. MFB* 355 *or AFB* 296. *2. MFM* 6. *3. RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment 1(1) Ans I leave it to my Def Offr

(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1*B*), 68(1), *KR Can* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No. A 3187. Pte. HAYWARD, William Ansel of the Algonquin Regt. the Canadian Army Overseas is charged with

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, STEALING

in that he

in the field at approx 1800 hrs on the 20 Sept. 44 stole an unascertained sum of money the property of Mr. Cyrile COOMAN 25 Statiestraat, HECLOO, Belgium.

Approves for trial
Dep/amen Capt
Adjt 4 Can Armd Div.

(R A Bradburn) Lt Col
O C - Alq R.

To be tried by Field General Court Martial.

(J J Jefferson) Brig
Comd 10 Can Inf Bde

In the Field
26 Sep 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A3187	Pte		William Ansel	Hayward	Alq R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Sep 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified authy.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	H G Dawson	L Sup R (I)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	D K Dunber	23 Cdn Fd R
Lt	P B Maddox	Linc & Welld R

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	J G Brady	HQ R2E

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	H A Hanson	HQ 4 CAD

On Active Service in the Fd

in Belgium (Country.) — (Signed personally. RP 105 fn 2.) — Brig (Rank.)

Date 26 Sep 44. Commanding 10 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAAS (In lieu of AFA) AG/P & S/1867 (4-43).

(See overleaf for oaths and notes for use on trial.)

6 Cdn. F.D.S. 5-2

27 Sep 44

Field.

MEDICAL CERTIFICATE

A.31187 Pte. Hayward, W.A.

Certified that the marginally noted has been medically examined this date and found fit to undergo trial by COURT MARTIAL.

J.A. Corson Capt

(J.A. Corson) Capt.,
Medical Officer,
6 Cdn. F.D.S.

Glen in Affidavit

Glen enlisted Oct 89.
Age 17 yrs. Made good showing
at the front. His mind
was unbalanced. He
relieved by drinking. Had
he been sober he would
not have committed the
crime.

He has given no
trouble since.

SUMMARY OF EVIDENCE

in the case of

"A"

A.3187 - PTE. William Ansel HAYWARD, The Algonquin Regt C.A., a soldier of the Canadian Army placed on active service.

CHARGED -:

1.

2.

The Commanding Officer directs that the evidence be taken on oath.

First Witness

Mr Cyrlle Cooman proprietor of the St'Christopher Eecloo having been duly sworn states

At about 1600 hrs 20 Sept. 44 I came home from work. There was a procession going by on the street. My wife asked me to look after the business while she watched the Procession. There were 3 soldiers in the Cafe, 2 went out to look at the procession, 1 remained,. The soldier that remained is the one sitting in this room with us now. I was standing at the door of the Cafe and heard glass breaking. I turned around and saw the soldier coming from behind the counter. When I came near him he asked for another glass of beer. I went behind the counter and saw that a bottle of Gin had fallen to the floor and had broken also that my cash drawer had been forced open. I opened the cash drawer and saw that money had dissapeared. As I looked up the soldier rushed out of the door and I followed him. He stopped behind a car standing in fronte of the Cafe. I went up to him and asked him to come back to the Cafe but the soldier rushed across the street into the building used by the Canadian Medical Corp and passed through it into the courtyard behidd. A Canadian soldier stopped him and brought him back to me and immediately the soldier returned the Belgian money to me. In the mean time my wife also came over. I handed her the Belgian money. She took it back to the Cafe and returned to me saying that the French money was not with it. The Canadian M.P's came and took the soldier into a room searched him and found the French money along with the Electric Light bill. The Canadian M.P's took the French money and the Electric Light bill

The accused declined to cross-examine.

Cyrlle Cooman

Second Witness

Mrs Cyrlle Cooman wife of the proprietor of the St'Christopher Cafe, Eekloo having been duly swonn states -:

About 1600 hrs 20 Sept. 44 this soldier was sitting at a table in the Cafe. My husband came home. I asked him to look after the business while I watched the parade. I was standing on the sidewalk when the soldier ran out the door and tried to hide behind a car. My husband and I ran after the soldier and asked him to return to the Cafe. He then ran across the street and into a doorway. My husband caught him and he gave the Belgian money back to my husband. The Canadian Police came along searched the soldier and took the French money from him.

The accused declined to cross-examine. Van Acker Germana

Third Witness

D.81454 CSM. Burtch, J. RCASC Attached to No.12 Cdn Light Field Amb having been duly sworn states -:

Cont'

About 1800 hrs 20 Sept. 44 while watching a parade the accused came running around an ambulance. I asked him what he was doing. He said it's O.K. Sjt Major. He then ran across the street and entered the A.D.S.. A civilan rushed up to me andsaid "That man he rob me". He then ran after the soldier and I followed. The civilian caught him in the garden and the accused gave him some Belgian notes. As he was giving the money to the civilian the soldier said "Here is your money back". I asked the accused for his Pay Book he gave it to me. I asked him his unit and he said Algonquin. I put him under arrest and sent for the Provost Corp

The accused declined to cross-examine.

John Black Capt
D-81454

Question to the Accused-

Do you wish to make a statement or give evidence upon Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by Accused -

I have nothing to say.

I certify that Rules of Procedure 47(1)(2)(3)(4)(5) have been complied with. CBR

Taken down by me in the presence of theaccused at Eecloo, Belgium this 21st Day of September, 1944.

C Bot Provost Capt

Additional Evidence

First Witness (Cont'd) There was about 2000 francs in the cash drawer. The soldier took both. About 1000 Belgian francs was returned by the soldier. The remainder was taken by the Cdn police from the soldier and kept by them

CBR

Cpl Coomer

Fourth Witness L 103414 L/Cpl Block LL. Cdn Provost Corps having been duly sworn states-

CBR

about 1845 hrs 20 Sept 44 I was called by the A.D.S. & the H.Q in Eecloo to hold a soldier in close arrest. I was A 3187 Pt Haywood W.P. I searched him. He had 140 Belgian francs and 770 French francs and an electric torch all belonging to Mr Cyrille Coomans. I took the money and escorted the Soldier to the P.O.W. Cage. the accused during [illegible] examine L L Block L.103414

Observations -

Capt F B Butcher obtg R
Surrey.

The accused had been
in liquor & under the
continuous observation. To
best of my knowledge he was
a good soldier in action.
He had to go to the R&P.
and was escorted to A
Coy. which was in Corbie.
He was then sent to the ADS.
There he was attended to.
From the time he left the
lines he had been drinking.

No Q Exam.

RP & B31 complied with.

ARMY FORM B.296 (W.O.)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A3187	Pte	HAYWARD, William Basil	Algonquin Regt

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For .... times.

For .... times.

For .... times.

For .... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for 6 days in military custody, i.e., NIL days in open arrest, 6 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 37 years

6. The date of his attestation ~~calling up for military service~~ is 3 Oct 1939

7. The ~~service which the accused is allowed to reckon~~ is ..... NIL

†State the military Decorations (if any) held by accused.

8. The accused is in possession of† CVSM & C

9. ~~(If the accused is a warrant officer or N.C.O.)~~ The accused has served continuously, without reduction, to the present date .....

Date of Promotion.

~~In the substantive rank~~ of .....

~~In the war substantive rank~~ of ACL

~~In the acting rank~~ of .....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be from the regimental books the paragraph must be struck ou*

(21114) W.L.8570/466 100,000 4/41 A.& E.W.Ltd. Gp.698
(27459) W.L.20558/1873 60,000 9/42 Forms B.296(W.O.)/2

Received from capt Sorensen
the following sums.

770 fr (Grund)
140 fr (Belg).

and an electric light bill.

27 Sep 1914. Von Adler Germania

Gooman Cyprian

Thus [illegible] wrapped in an electric light bill
[illegible] found on
the arrested men directed
to be returned to the
owners by the President

Hellmann capt
fa.

RRR-65

PTE HAYWARD WA

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A.3187 Pte William Ansel HAYWARD - 1 CASCRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 18(4)	Not Guilty	Not Guilty	
2nd AA Sec 40	Not Guilty	Not Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~As present under sentence for~~ ~~beginning on (date)~~ (1) KP

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 2 days, of which ~~days~~ were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

~~Sentence awarded by the Court~~: KP

~~Night~~ ~~Judge-Advocate of the~~ KP 27 JUNE 1944 (Sgd) [signature] President (RP 45, 50.)

Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd)

Date Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

REC 7 JUL 1944 JAG BRANCH ENRO

RECORDED AT CMHQ IN AB 160, 444-68

CPA86 (In lieu of AF A3) 40-P & S 1809 (3864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig J.R. Stewart Lough DSO, MC, VD Comd "D" Gp, CRU dated 24 Jun 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A.3187	Pte	William Ansel	HAYWARD	1 CASCRU

PROCEEDINGS REVIEWED
1 Jul 44
REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 26th AND 27th JUNE, 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet~~s~~ attached thereto.(1) The Court is satisfied that it is properly convened and ~~constituted~~(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3) KP KP

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1400 hours trial commences. KP

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ KP KP

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to an interpreter?~~ KP

~~The Interpreter is sworn.(1)~~ Do you object to B/6714 Pte MURRAY, L.A. as shorthand writer? Ans NO KP

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	A/LT. COLONEL	K.K. THOMSON	1 CA.S.C. R.D
Member	A/CAPTAIN	D.A. GOURLEY	1 C.A.S.C. R.D.
Member	LIEUTENANT	J.R.L.P. CHARRETTE	1 C.A.S.C. R.D
Judge-Advocate			
Prosecutor	LIEUTENANT	W.S. DRINKWATER	1 C.A.S.C. R.D
Defending Offr	LIEUTENANT	M.D. CASTONGUAY	1 C.A.S.C. R.D.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused A.3187 Pte. HAYWARD, W.A. before arraignment make(s) (no) ~~a~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. KP KP

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(D), 91, 92; securing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(D), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; uses of Summary of Evidence at Trial see RP 17(F) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3.* 4. *MML p 54 para 47.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paragraph to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes [redacted] (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the FIRST & ALTERNATIVE charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, ~~and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character. Whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP [redacted] 173.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. ~~Counsel on the accused proceeded in para D5 the appropriate procedure for the defence is followed.(1)~~
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. ~~The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.~~
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on each charge is (are) subject to confirmation, will be promulgated later, and the proceedings in open court are accordingly terminated.~~

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(1. *AA 54(7) (a), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MF-M 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) PF(C)
(1. *When several accused tried separately see RP [redacted]. One sentence only, comprised of the punishment or punishments laid down in AA 71, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 129, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Convening Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A.3187 Pte William Ansel HAYWARD - 1 CASCRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 18(4)	Not Guilty	Not Guilty	
2nd	AA Sec 40	Not Guilty	Not Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1) KF

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which ~~days~~ were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

~~Sentence Awarded by the Court~~: KF

~~Sigd~~ ~~Judge-Advocate, if any~~ KF 27 JUNE 1944 (Sgd) [signature] President. (RP 45, 50.) Lt-Col.
Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 31(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....

Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

REC'D 7 JUL 1944 JAG BRANCH EMHQ

RECORDED AT CMHQ IN AB 160, 444-68

(Page 1 in lieu of AFA3) 40. P. 50 8/1600m (2664)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig J.R. Stewart Lough DSO, MC, VD Comd "D" Gp, CRU dated 24 Jun 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A.3187	Pte		William Ansel	HAYWARD	1 CASCRU

PROCEEDINGS REVIEWED
7 Jul 44
[signature]
REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 26th AND 27th JUNE, 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

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A2. The President initials and lays before the Court the Convening Order and Charge Sheet(~~s~~) attached thereto.(1) KF
The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and KF
each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1400 hours trial commences. KF

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) KF
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ KF

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to an interpreter? Ans~~ KF
~~The Interpreter is sworn.(1)~~ Do you object to B46714 Pte. MURRAY, L.A. as shorthand writer? Ans NO
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	A/Lt. Colonel	K.K. THOMSON	1 CA S.C. R.U.
Member	A/Captain	D.A. GOURLEY	1 C.A.S.C. R.U.
Member	Lieutenant	J.R.L.P. CHARRETTE	1 C.A.S.C. R.U.
Judge-Advocate			
Prosecutor	Lieutenant	W.S. DRINKWATER	1 C.A.S.C. R.U.
Defending Offr	Lieutenant	M.D. CASTONGUAY	1 C.A.S.C. R.U.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused A 3187 Pte. HAYWARD, W.A. before arraignment make(s) (no) ~~no~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

KF A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. KF

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, A 3187 pte William Ansel HAYWARD, on strength of 1 Cdn A.S.C. Rft Unit, a soldier of the Cdn Army Overseas, is charged with,

FIRST CHARGE
AA SEC 18(4)

WHEN ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

IN THAT HE

in the field on the 11 Jun 44 did steal a pair of boots ankle, the property of K37856 pte WHITEHEAD, C.J., a person subject to Military Law.

ALTERNATIVE CHARGE
AA SEC 40

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

IN THAT HE

in the field on 11 Jun 44 was improperly in possession of a pair of boots ankle, belonging to a person subject to Military Law, namely K 37856 pte WHITEHEAD, C.J.

(H.P. BONNICK) COLONEL
Comd,
1 Cdn A.S.C. Rft Unit.

BEVERLEY, YORKSHIRE.
26 Jun 44

Approved under KR Can 540
J. Ruffignelle. Capt.
A/A.D.J.A. ASC.R.U.
23 June 44.

To be tried by Field General Court Martial.

(J.R. Stewart Lough) Brigadier
Commander
"D" Group, Cdn Rft Units
Convening Officer

In the Field
24 Jun 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAR/1697 (2nd/B)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A.3187	Pte		William Ansel	HAYWARD	1 CASCRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on 24 Jun 44 (date) endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
A/LT.COL ~~Maj/Lieut~~	K K THOMSON ~~(Init., Surname)~~	1 CASCRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Captain	to be detailed by Commanding Officer	1 CASCRU
A Lieutenant	to be detailed by Commanding Officer	1 CASCRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country)

Date 24 Jun 44

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding "D" Group, Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

K.R. (Can) para 557

I certify that I have this morning examined No. A.318.2.....

Pte. Hayward W.A. and in my opinion he is fit to undergo
(rank) (name)

trial by Court Martial.

Station: Victoria Barracks

Capt
(Medical Officer)
1 Cdn A.G.C. Rft Unit

K.R. (Can) para 557

I certify that I have this morning examined No. A.318.2.....

Pte. HAY.WARD.W.A. and in my opinion he is fit to undergo
(rank) (name)

trial by Court Martial.

Station: Victoria B.C.

Date: 16 June 1944

Capt
(Medical Officer)
1 Cdn A.G.C. Rft Unit

FIRST WITNESS for the prosecution

B-42216 Pte. Gourlay, J., R.C.A.S.C. on strength of No. 1 C.A.S.C., R.U. being duly sworn states:

I am, B-42216 Pte. Gourlay, J., No. 1 C.A.S.C., R.U. On Sunday night, 11 JUN 44 at approximately 2215 hours, I was awakened by Pte. Hayward who asked me if I was missing a pair of boots. I did not know what to think of it at the time. I only had one pair but there was one missing. He told me he admitted taking the boots and sold them but not to worry as he had another pair to replace them. He walked over to his bed and returned them.

Prosecuting Officer interrupts and produces a pair of boots which the Court admits and marks as Exhibit "A."

Witness continues: He said I could turn them in and get another pair for them. In the morning I investigated the boots and turned them into the Orderly Room and told them they were not mine.

Prosecuting Officer questions witness.

1. You said this was at 2215 hours?

   Yes Sir, 2215 hours at night.

Witness cross examined by the Defending Officer.

1. Is this the man you saw that came up and spoke to you at 2215 hours?

   Yes, Sir.

2. At 2215 hours?

   Yes, Sir it was quite light at that time.

3. What type of hut were you in?

   In a neisen hut.

4. Were the lights on?

   No, it wasn't necessary.

5. You say that Pte. Hayward went up to you and said he had taken a pair of boots from you and sold them.

   Yes, Sir, he had had a few drinks.

6. You swear that this is the man?

   Yes, Sir.

R.P. 83 (b) completed with KP

SECOND WITNESS for the Prosecution

K-75135 Cpl. McGill, H.C., R.C.A.S.C. on strength of No. 1 C.A.S.C., R.U. being duly sworn states:

I am, K-75135 Cpl. McGill, H.C., No. 1 C.A.S.C., R.U., C & B Wing.

KP

Prosecuting Officer Questions witness:

1. Corporal, are you in the same hut as Pte. Hayward and Pte. Gourlay?

   I was, Sir.

2. You were in that hut on 11 JUN 44?

   Yes, Sir.

3. Tell the Court what happened on Sunday night, 11 JUN 44 at 2215 hrs?

The accused came into the hut and went over to Pte. Gourlay's bed and asked Pte. Gourlay if he had missed a pair of boots. Pte. Gourlay said he hadn't checked up and immediately did so and found one pair of boots missing. The accused told Pte. Gourlay he had taken the boots and sold them mentioning that he was short of cash. Pte. Gourlay didn't say anything, he just listened to the accused who was in a talkative mood. At the end of the conversation, the accused told Pte. Gourlay not to worry that he had a pair of boots to replace the ones he took.

4. Was it possible for you to overhear this conversation?

   Yes, Sir.

5. Your bed was quite close to that of Pte. Gourlay?

   Yes, Sir.

6. You now recognize the accused?

   Yes, Sir.

No cross-examination by the Defending Officer.

Questions by the Court to the Witness.

1. What time did you hear this conversation between Pte. Gourlay and Pte. Hayward?

   At approximately 2215 hours.

2. You were the Corporal in charge of the hut?

   Yes, Sir.

3. Where do you sleep in the hut Corporal?

   On the opposite side from Pte. Gourlay.

4. Is Pte. Gourlay's bed close?

   Yes, he is in the opposite corner.

R.P. 83 (B) complied with KP

THIRD WITNESS
for the Prosecution

K-37856 Pte. Whitehead, C.J., R.C.A.S.C. on strength of No. 1 C.A.S.C., R.U. being duly sworn states:

I am, K-37856 Pte. Whitehead, C.J., No. 1 C.A.S.C., R.U. KP

Prosecuting Officer questions witness.

1. On the night of 11 JUN, this year, were you sleeping in the same hut as Pte. Gourlay and Pte. Hayward?

   No, Sir.

2. What is your connection in this case?

On the night of Sunday, June - not sure of the date there was a disturbance in the hut which woke me up, and as I got up out of bed I noticed my boots were missing. I tried to find out what happened to them. I tried to get some information from the corporal, and acting on this information I inquired in "H" Orderly Room on the whereabouts of Pte. Hayward. Acting on this information I had found out that a pair of boots were turned in by Pte. Gourlay, and I was also asked if these boots had anything to do with me. I replied, Yes, and I was told that Pte. Hayward had been placed under arrest for taking these boots. I was then told that if I could identify these boots that they would be given back to me.

3. When was it that you went to the Orderly Room?

   It was the next day, Sir, Monday.

4. There is some way in which you can recognize your boots?

   Yes, Sir.

5. Explain it to the Court?

About three weeks ago my hob nails were wearing down. I put new hob nails in, these were entirely different to the hob nails that were already on the boots. They were also scattered all over the boots and very uneven. I identified the boots by the nails.

Witness cross-examined by the Defending Officer.

1. You say you went outside and a corporal gave you some information about your boots or something. You do not say what, you just say some information. What information was given you by the corporal?

   The Corporal told me that a Pte. Hayward was seen in the lines and that he did not belong to these lines. It was that information that I acted on.

Court questions witness.

1. Do you recognize these boots?

   Yes, Sir.

2. Will you come forward and examine these boots and tell us if you recognize them.

   Yes, Sir. I do.

3. Are they your boots?

   Yes, Sir.

R.P. 8-3 (B) complied with KP KP

FOURTH WITNESS
for the Prosecution

F-97994 A/Sgt. David, J., R.C.A.S.C. on strength of No. 1 C.A.S.C., R.U. being duly sworn states:

I am, F-97994 A/Sgt. David, J., No. 1 C.A.S.C., R.U.

Prosecuting Officer questions witness.

1. How are you employed in this Unit?

I am Sgt. Clerk in "H" Company Orderly Room, Sir.

2. You were in the Orderly Room on Monday morning, 12 JUN 44?

I was, Sir.

3. Tell the Court what happened at that time?

At approximately 0830 hours on Monday, 12 JUN, I was on duty in "H" Company Orderly Room. Pte. Gourlay entered carrying a pair of boots. He told me that his boots had been taken during the night and that another pair had been substituted. I asked him if he suspected who had taken his boots. He told me that during the night Pte. Hayward had awakened him and had asked if hed had missed a pair of boots. Pte. Gourlay then left the boots with me and reported to his classed. Later on in the day Pte. Whitehead came to me and asked if somebody had left a pair of boots in the Orderly Room. I referred him to Pte. Gourlay and he went to see him. Later on during the day Pte. Whitehead again came back with a chit from "G" Company. The chit stated that Pte. Whitehead could identify the boots. He took them.

4. Did Pte. Whitehead identify the boots in your presence?

Yes, Sir.

5. Do you now recognize the boots before the Court as being the same boots - will you take a look at them?

Yes, Sir.

6. They are the same?

Yes, Sir.

7. Are you sure?

Positive, Sir.

Witness cross-examined by the Defending Officer.

1. Sgt. David, could you tell us how you identified those boots as being the same as those in the Orderly Room?

By the hob nails, Sir.

2. The hob nails on those boots look the same?

They are different hob nails, Sir. The shoemakers are not accustomed to putting those one.

3. If you had seen these boots here and mine, could you tell the difference?

No, Sir. If your boots had those hob nails on them I

couldn't tell the difference.

4. They have the same hob nails?

They are the same.

Questions by the Court to the witness.

1. Did you know the accused?

Yes, I did.

2. These boots were given by you to Pte. Whitehead and he took them away?

Yes, Sir.

R.P. 83(B) complied with KF

Defending Officer requests through the Court the recall of the third witness for the Prosecution, K-37856 Pte. Whitehead, C.J.

The Court agrees and recalls K-37856 Pte. Whitehead, C.J.

Defending Officer questions the witness through the Court.

1. Will you explain to the Court how you recognize these boots as being your own?

I recognize the boots by the two different types of hob nails on the soles of the boots and by the way they are placed in. Also the heel plates are nearly worn to the level at the back. I have seen these boots day after day and I could recognize them anywhere by the way the hob nails are scattered around.

2. Was the hob nailing of these boots done by a shoemaker, or was some of it done by you.

One set was put in by the shoemaker and I put the other in myself, Sir.

Court questions the Defending Officer.

1. Have you any further evidence?

I have no further evidence.

R.P. 83(B) complied with KF

Submission of no case on both charges by the Defending Officer.

The first charge against Pte. Hayward is that when on Active Service stealing property belonging to a person subject to Military Law, in that he in the Field on 11 JUN 44 did steal a pair of boots ankle, the property of K-37856 Pte. Whitehead, C.J., a person subject to Military Law.

KF

I would like to point out to the Court, if I may, of the four witnesses called by the Prosecution there was no evidence given by any of those witnesses that Pte. Hayward had stolen a pair of boots from Pte. Whitehead. There was absolutely no proof whatsoever that those boots were stolen from Pte. Whitehead. All that was proven was the fact that Pte. Gourlay had lost a pair of boots, or a pair of boots were missing from his bed, and also that Pte. Whitehead had lost a pair of boots. That is the first charge.

Second charge: That he was improperly in possesion of a pair of boots. None of the witnesses stated that they had seen Pte. Hayward with those boots. One of them was not certain that he could recognize the boots that had been brought to the Orderly Room, and the boots that are on display there as Exhibit "A." The owner said that he recognized those boots by the hob nails in them which I can assure the Court would be a very difficult thing to do. The main point centres around these boots as I take them and show the Court where these boots which Pte. Whitehead claim were his and which he identified as his could belong to anybody. I have a pair on that are very very similar.

The testimony of the four witnesses is practically the same, and all it shows is that Pte. Gourlay and Pte. Whitehead were both missing a pair of boots, and the testimony does not prove the charges against Pte. Hayward in any manner. This charge was stealing in one case and improperly in possesion of a pair of boots on the second charge, and the Prosecution has not brought forward any complaints that back those charges up. Therefore, I ask the Court that both charges against Pte. Hayward be dismissed.

The Court adjourns at 1800 hours, 26 JUN 44.

The Court is reopened at 1000 hours, 27 JUN 44.

The Court is closed.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of A 3187 Pte HAYWARD W.A., on strength of 1 Cdn. A.S.C. Rft. Unit, a soldier of the Cdn. Army overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS for the prosecution

B 42216 Pte GOURLAY J., on strength of 1 Cdn. A.S.C. Rft Unit, a soldier of the Canadian Army Overseas having been duly sworn, states as follows:

I am B 42216 Pte GOURLAY J. at Leven Camp, on Sunday 11 June 44, at approximately 2215 hrs Pte Hayward, whom I recognized as the accused, awakened me and asked me if my boots were missing. I then noticed that one pair were missing. Pte Hayward then told me that he had taken my boots and had sold them, but he told me not to worry as he had a pair to replace them. The boots that he gave me were too small for me , so in the morning I took the boots to "H" Coy. Orderly Room and reported what had happened. I left the boots at "H" Coy. Orderly Room, which I now identify as "Exhibit "A".

Cross-examined by the accused.

Question 1.What time did you make your bed down ?
Answer 1. I made my bed at about 1415 hrs.
Question 2. Were your boots there then?
Answer 2. I did not notice.
Question 3. Where there no lights on at 2215 hrs.
Answer 3. There were no lights on.

J Gourlay
B 42216 Pte GOURLAY J.

SECOND WITNESS for the prosecution

K 75135 Cpl McGill H.C. of the 1 Cdn. A.S.C. Rft. Unit, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows :

I am K 75135 Cpl McGILL H.C. At Leven Camp, 11 June 44 Pte Hayward , whom I recognize now, as the accused , came in to the hut between 2200 and 2230 hours and went over to Pte. Gourlay's bed. Pte. Hayward woke Gourlay up and had a talk with him. I overheard the entire conversation.

Cross-examined by the accused.

Question 1 - Were you in bed when I came in?
Answer 1 - I was.
Question 2 - Did you recognize me when I came in?
Answer 2 - I did.
Question 3 - What end of the hut did I come in?
Answer 3 - Through the east door of the hut.
Question 4 - Was I carrying any boots when I came in?
Answer 4 - I did not notice.

Cpl McGill HC
(K 75135 Cpl. McGill, H.C.)

THIRD WITNESS for the prosecution

K 37856 Pte. Whitehead, C.J. of the 1 Cdn. A.S.C. Rft. Unit, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

I am, K 37856 Pte. Whitehead, C.J. At Leven Camp on Sunday, 11 Jun 44 I noticed my boots were missing at about 2330 hours. A disturbance woke me up at about this time. I decided to get up and go to the lavatory but found that my boots were not where I left them. I enquired if anyone

had seen my boots but none of those who were awake had seen them. I went outside to see if anyone had been around our hut and a Corporal gave me some information. Acting on this information I went to "H" Coy. Orderly Room the following morning and enquired as to what hut Tpr. Hayward slept in. I was asked if my enquiry was in regards to a pair of boots and I answered yes. Then I was told that a pair of boots had been turned in to "H" Coy. and if I could get authority from "C" Coy. to state that I had a pair of boots missing and also if I could identify the boots I could get them back. I did this and now identify the boots which are marked Exhibit "A" as being mine.

Cross-examined by the accused.

Question 1 - What time did you go to bed Sunday night?
Answer 1 - At about 2150 hours.
Question 2 - Did you wake up about 5 minutes after the disturbance in the hut and find your boots missing?
Answer 2 - I woke up during the disturbance but it was about five minutes after I woke up that I found my boots missing.

(K 37856 Pte. Whitehead, C.J.)

FOURTH WITNESS for the prosecution — F 97994 Sgt. David, I. of the 1 Cdn. A.S.C. Rft. Unit, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

I am, F 97994 Sgt. David, I. At Leven Camp at about 0830 hours, Monday 12 Jun 44 Pte. Gourlay came to "H" Coy. Orderly Room with a pair of boots. He told me that his had been stolen and this pair had been substituted. He left the boots in the office. Later Pte. Whitehead came in the office and asked if a pair of boots had been left there that had been stolen from his bed. I did not show him the boots but sent him to Pte. Gourlay. Later he came back with a chit signed by Lt. W.D. Drinkwater stating that he could identify the boots by the different size hobnails.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

(F 97994 Sgt. David, I.)

The accused was cautioned pursuant to R.P. 4(e) as follows: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused, A 3187 Pte. Hayward, W.A., on the strength of 1 Cdn. A.S.C. Rft. Unit, a soldier of the Canadian Army Overseas having been duly sworn states as follows:

I am, A 3187 Pte. Hayward, W.A. At Leven Camp about 1330 hours, Saturday, 10 Jun 44 I went to the Guard Room and received a week-end pass. I went to Long Riston and stayed there until 1400 hours. Then I met Pte. Bouillian at Long Riston and he and I went to Beverley. We stayed there until 1700 hours. We then came back to Long Riston and stayed at the pub until 2200 hours. Then I left him and stayed for the night at Long Riston. I came back to camp at about 1100 hours Sunday morning. I got my towel and holdall from my hut and went to the washroom for a clean up. I then went to the George Tea Room at Leven and came back through the camp area and went back to Long Risten. I came back to camp between 2200 hours and 2230 hours

PAGE 3

Sunday evening. Pte. Bouillian accompanied me. I went to the lavatory and then entered the west door of my hut and went directly to bed. I spoke to no person and did not give anyone anything nor did I have anything with me.

W A Hayward

(A 3187 Pte. Hayward, W.A.)

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c),(d),(e),(f) and (g) have been complied with.

J Maylor/45

(J. Maylor) Lt., RCASC
1 Cdn. A.H.C. Rft. Unit.
Officer detailed to take Summary of Evidence.

In the Field
15 Jun 44.

KF

LIST OF WITNESSES

for the prosecution
in the case of

A-3187 pte HAYWARD W.A., 1 Cdn A.S.C. Rft Unit.

First Witness	B-42216	pte Gourlay J., 1 Cdn A.S.C. Rft Unit
Second Witness	K-75135	pte McGill H.C.,1 Cdn A.S.C. Rft Unit
Third Witness	K-37856	pte Whitehead C.J.,1 Cdn A.S.C. Rft Unit
Fourth Witness	F-97994	A/Sgt David I. , 1 Cdn A.S.C. Rft Unit

EXHIBIT

for the prosecution
in the case of

A-3187 pte HAYWARD W.A. ,1 Cdn A.S.C. Rft Unit.

1 pair Boots, W.E.,ankle marked Exhibit " A "

I desire that an officer be appointed to defend me at my forthcoming Court-Martial.

(A-3187 pte HAYWARD W.A.)

W A Hayward

SE-39.

Mt. Hayward, W.A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-3187 Pte William Ansel HAYWARD Alq R

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 41	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 36, RP 44: Findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lists of kit see RP 44 fn 6.)

~~And it is ordered that the accused be~~ ~~dismissed the service~~ ~~undergo imprisonment for~~ ~~be detained at~~ ~~be detained at~~ ~~be detained at

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*D*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO. (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 25(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character, or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 54(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(a).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Witness as to character.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), ~~and ~~ ~~using (copies) of Conduct Sheet(s)~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex ~~respectively~~. Conduct sheet not available.
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Through my Def. Offr. (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its purview, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 1323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(1), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No.A 3187 Pte HAYWARD, William Ansel of the Algonquin Regt. the Canadian Army Overseas is charged with:

FIRST CHARGE AA Sec 41

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, STEALING

in that he

in the field at approx 1800 hrs on the 20 Sep 44, stole an unascertained sum of money the property of Mr Cyrlle COOMAN 25 Statiestraat, MECLOO, Belgium.

Approved for Trial
"H.A.Hanson" Capt
ADJA 4 Cdn Armd Div.

"R.A. Bradburn" Lt-col
(R.A. Bradburn) Lt-col
O C - Alq R.

To be tried by Field General Court Martial.

"J.C. Jefferson" Brig
Comd 10 Cdn Inf Bde

In the Field
26 Sep 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A 3187	Pte		William Ansel	HAYWARD	Alq R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence set forth in the Charge Sheet attached and on (date) 26 Sep 44 endorsed by me, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4.

(AA 49, RP 104(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 104(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	H.G. Dawson	L Sup R (M)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	D.M. Dunbar	23 Cdn Fd R
Lt	P.B. Waddox	Linc & Welld R

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	J.C. Brady	HQ RCE

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	H.A. Hanson	HQ 4 CAD

On Active Service in the Fd

in (Country.)	"J.C. Jefferson" (Signed personally. RP 105 fn 2.)	Brig (Rank.)

Date 26 Sep 44 Commanding 10 Cdn Inf Bde.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAAS (In lieu of AFA3) (See overleaf for oaths and notes for use at trial.)

6 Cdn F.D.S. 5-2

27 Sep 44

FIELD

MEDICAL CERTIFICATE

A.3187 Pte Hayward, W.A.

Certified that the marhinally noted has been medically examined this daye and found fit to undergo trial by COURT-MARTIAL.

"J.A. Corson" Capt
(J.A. Corson) Capt
Medical Officer,
6 Cdn F.D.S.

SUMMARY OF EVIDENCE

"A"

in the case of

A.3187 - Pte William Ansel HAYWARD, The Algonquin Regt C.A. a soldier of the Canadian Army placed on active service.

CHARGED-:
1.
2.

The Commanding Officer directs that the evidence be taken on oath.

First Witness - Mr Cyrlle Cooman proprietor of the St'Christopher Eecloo having been duly sworn states:

At about 1800 hrs 20 Sep 44 I came home from work. There was a procession going by on the street. My wife asked me to look after the business while she watched the Procession. There were 3 soldiers in the Cafe, 2 went out to look at the procession, 1 remained. The soldier that remained is the one sitting in this room with us now. I was standing at the door of the Cafe and heard glass breaking. I turned around and saw the soldier coming from behind the counter. When I came near him he asked for another glass of beer. I went behind the counter and saw that a bottle of Gin had fallen to the floor and had broken also that my cash drawer had been forced open. I opened the cash drawer and saw that money had disappeared. As I looked up the soldier rushed out of the door and I followed him. He stopped behind a car standing in front of the Cafe. I went up to him and asked him to come back to the Cafe but the soldier rushed across the street into the building used by the Canadian Medical Corp and passed through it into the courtyard behind. A Canadian soldier stopped him and brought him back to me and immediately the soldier returned the Belgian money to me. In the meantime my wife also came over. I handed her the Belgian money. She took it back to the Cafe and returned to me saying that the French money was not with it. The Canadian M.P's came and took the soldier into a room searched him and found the French money along with the Electric Light bill. The Canadian M.P's took the French money and the Electric Light bill.

The accused declines to cross-examine.

"Cyrlle Cooman"

Second Witness - Mrs Cyrlle Cooman wife of the proprietor of the St'Christopher Cafe, Eekloo having been duly sworn states:

About 1800 hrs 20 Sep 44 this soldier was sitting at a table in the Cafe. My husband came home. I asked him to look after the business while I watched the parade. I was standing on the sidewalk when the soldier ran out to door and tried to hide behind a car. My husband and I ran after the soldier and asked him to return to the Cafe. He then ran across the street and into a doorway. My husband caught him and gave he gave the Belgian money back to my husband. The Canadian Police came along searched the soldier and took the French money from him.

"Won Amher Germanor" ???

The accused declines to cross-examine.

Third Witness - D-81454 CSM Burtch, J, RCASC attached to No. 12 Cdn Light Field Amb having been duly sworn states:-

About 1800 hrs 20 Sep 44 while watching a parade the accused came running around an ambulance. I asked him what he was doing. He said it's O.K. Sjt Major. He then ran across the street and entered the A.D.S. A civilian rushed up to me and said "That man he rob me". He then ran after the soldier and I followed. The civilian caught him in the garden and the accused gave him some Belgian notes. As he was giving the money to the civilian the soldier said "Here is your money back". I asked the accused for his pay book and he gave it to me. I asked him his unit and he said Algonquin. I put him under arrest and sent for the Provost Corps.

The accused declines to cross-examine.

"John Burtch" CSM
D-81454

Question to the accused -

Do you wish to make a statement or give evidence upon Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by Accused:

I have nothing to say,

I certify that Rules of Procedure 4(C)(d)(e)(f) and (g) have been complied with.

Taken down by me in the presence of the accused at Eecloo, Belgium this 21st day of September 1944.

"C.B. Robertson"????? Capt.

ADDITIONAL EVIDENCE

First Witness (Cont)

There was about 2000 francs in the cash drawer. The soldier took it all. About 1000 Belgian francs was returned by the soldier. The remainder was taken by the Canadian police from the soldier and kept by them.

"CBR"

"Cyrlle Cooman"

Fourth Witness - L-103414 L/Cpl Block, L.L., Cdn Provost Corps, having been duly sworn states:

About 1845 hrs I was called by the A.D.S. to their HQ in EEcloo to hold a soldier in close arrest. It was A.3187 Pte Hayward, W.A. I searched him. He had 140 Belgian francs and 770 French frans and an elctric light bill belonging to Mr. Cyrlle Cooman. I took the money and escorted the soldier to the P.O.W. cage

" L.L. Block" L-103414

The accused declines to cross-examine.

CHARACTER

Capt F.B. Butcher, (Dutchet????) Calg Regt. , Sworn -

The accused had been in lines 2 weeks under continuous fire. To best of my knowledge he was a good soldier in action.

He had to go to the R.A.P., and was evacuated to "A" Ech, which was in Recloo. He was then sent to the ADS. There he was attended to. From the time he left the lines he had been drinking.

No X Exam.

RP 83(B) complied with.

"B"

M.F.B. 355
22M—5-41 (572-E)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A-3187	Pte	HAYWARD, William Ansel	Alq Regt

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets / or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	..... times	..... times
For	..... times	..... times
For	..... times	..... times
For	..... times	..... times

Number of instances of gallantry or distinguished conduct .....

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act / Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for Nil beginning on the ------- day of ---------

4. The accused has been in confinement awaiting trial on the present charges, for 21 hrs ~~XXXX~~ ~~XXXXX~~ ie Nil days in open arrest, civil custody, and 6 days in military custody. ~~XXXX

PLEA IN MITIGATION

Soldier enlisted Oct 39. Age 37 yrs. Made good showing at the front. His mind was under a strain. He relaxed by drinking. Had he been sober he would not have committed the crime.

He has given no trouble since.

Received from Capt H.A. Hanson the following sum:

770 fr (French)

140 fr (Belg)

and an electric light bill.

27 Sep 44

"Von Acher Gormana" ??????

"Cooman Cyrell"

The above money wrapped in an electric light bell found on the accused was directed to be returned to the owner by the President.

"H.A. Hanson" Capt

JA.

M.F.H. 5
22M—5-41 (5).
H.Q. 1772-59-62.
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number A-3187 Rank Pte Name HAYWARD, William Ansel Regiment (or unit) Alq Regt

1. The following is a fair and true summary of the entries in the Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act / Air Force Act and of cases in which trial has been dispensed with.

Regimental and Squadron, Battery Service and General

Within last 12 months ... times
Since enlistment or appointment ... times
For ... times
For ... times
For ... times
For ... times

Number of instances of gallantry or distinguished conduct

There are no entries in the conduct sheets of the accused.

Note.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted / or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act / Air Force Act and dispensations with trial under A.A. 73 / A.F.A. 73 answered to this statement. are set out in the Schedule

3. The accused is not under sentence at the present time. / or, The accused at the present time is under sentence for Nil beginning on the ------- day of ---------

4. The accused has been in confinement awaiting trial on the present charge, for 21 hrs ~~xxxx~~ civil custody and 6 days in military custody, ~~xxxx

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

..... dated ....., and in his regiment (or corps), the rank of .....

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Unit

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22 day of Sept 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

"R.A. Mayer" Capt
for (R.A. Bradburn) Lt Col.

PLEA IN MITIGATION

Soldier enlisted Oct 39. Age 37 yrs. Made good showing at the front. His mind was under a strain. He relaxed by drinking. Had he been sober he would not have committed the crime.

He has given no trouble since.

Received from Capt H.A. Hanson the following sum:

770 fr (French)

140 fr (Belg)

and an electric light bill.

27 Sep 44

"Von Acher Gormana" ??????

"Cooman Cyrell"

The above money wrapped in an electric light bill found on the accused was directed to be returned to the owner by the President.

"H.A. Hanson" Capt

JA.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-3187 Pte William Ansel HAYWARD 13 CBR Bn

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and on lists of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if none applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 20 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo 60 days detention

(Sgd) ..... Judge-Advocate, if any. 23/Feb/45 Date awarded. (Sgd) [signature] President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding but I mitigate the sentence to read "to undergo (60) days detention" I direct that the period in custody awaiting trial be remitted and that the accused be released forthwith. I confirm the sentence as mitigated

(1. AA 57A. Delete if not used.)

(Sgd) [signature] (G S N Gostling) Brig
Commanding 2 CDN BASE RFT GP
Confirming Officer.

Date 23 FEB 45

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
A.3187 Pte Hayward, W.A.	26 Feb 45	[signature] Capt

Promulgated in Ext. No. 18 (Addl) 8.4 21ST ALGRCT (13 Bn) dated 26 FEB 45.

13 C. B. R. Bn.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB '60 52-3

FIELD GENERAL COURT-MARTIAL

CPA66 (In lieu of AFA3) 40/P & S/1698 (6144)

HQ FIVE 23 APR 1945

4/388

Convened by Order of Brigadier G.S.N. Gostling, ED. Comd 2 CBRG dated 22 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) apprmt, A/rank or A/apprmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprmt, A/R or A/Apprmt.	Full Christian Names.	Surname.	Unit.
A-3187	Pte	William Ansel	HAYWARD	13 CBR Bn

PROCEEDINGS REVIEWED 2 Apr 45 [signature] Lt

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 23 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 21/142.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 893, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 56, 65-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: Do you object to ..... as interpreter? Ans .....
The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer? Ans .....
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans Nil (2)
(1. RP 110. 2. If an objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G.G. MacKENZIE, MBE	FGH X-9 List 3 Cdn MTD
Member	CAPT	C LAGASSE	CIC 18 CBR Bn
Member	LIEUT	D.N. PERT	CPC 11 CBR Bn
Judge-Advocate			
Prosecutor	Lieut	A.T. MANN	CIC 11 CBR Bn
Defending Offr	LIEUT	C.H. MAXWELL	CIC 13 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans Nil. Is the Defending Offr a lawyer? Ans Nil (1)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conr Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused A-3187 Pte William Ansel HAYWARD before arraignment make(s) (no) [illegible] plea
(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form G. 6

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vol II P 2.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of J A see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of J A or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO .(5)
(1. *RP 27(B).* 2. *RP 27(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. "Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, PTE. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6). RP 45. 120(A).* 2. *AA 54(3), RP 45. 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES I DO .(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 45. As to sentences see AA 44, 138, 182. RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

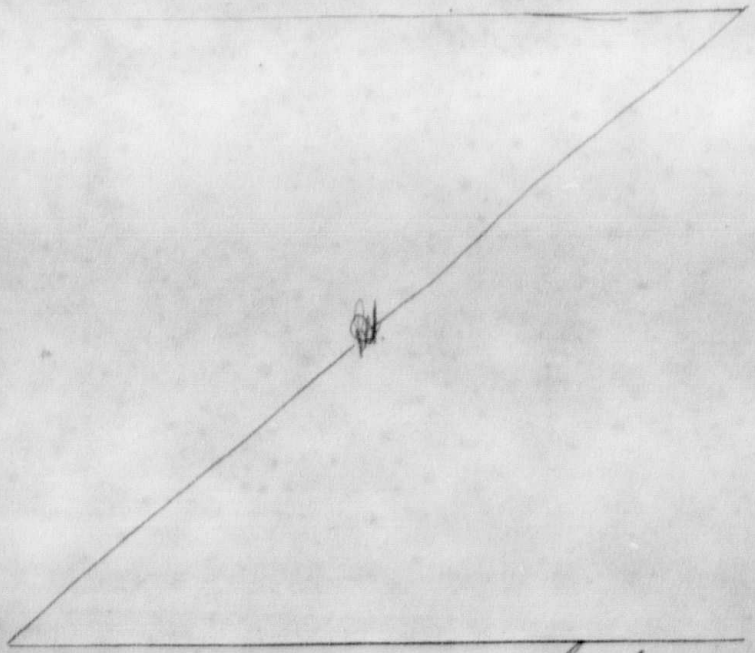
PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No.A.3187 Pte William Ansel Hayward 13 CBRBn, . 2 CBRGp, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE: AA Sec 15 (1)

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE
in that he
In the field, absented himself without leave from 1330 hrs. 3 Feb 45 until he waw found in bed at 2255 hrs. 3 Feb 45,
(Absent 9 Hrs 25 Mins).



In the Field
16 Feb 45

(V.W. HUGMAN E.D.) Lt.Col.
Commanding
13 CBR Bn. 2 CBR Gp.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(G.S.N. Goetling), Brigadier,
Commander
2 Canadian Base Reinforcement Group.

In the Field
22 Feb 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A-3187	Pte		William Ansel	HAYWARD	13 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 Feb 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G.G. MacKENZIE, MBE	FUH X-9 List 3 Cdn NETD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	C. LAGASSE	CIC 10 CBR Bn
Lieut	D.N. PEAT	1 Cdn Para Bn 11 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

(Signed personally. RP 105 fn 2.)

(G.S.N. Gostling) Brigadier (Rank.)

Dat 22 Feb 45

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 90 (In lieu of AFA 3) 40/F&S/1697 (6148)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined A-3187 (No.)

Pte (Rank) HAYWARD, W.A. (Name) and in my opinion he is

~~fit~~ unfit to undergo trial by Court-Martial.

Station Field

Date 23 FEB 43

S. M. Wasserman, Capt.
Medical Officer

(Unit) 13 CFRC
2 CDR G

Statement by accused in Mitigation
of punishment

I did go AWL Sat afternoon
I did not think I was committing
an offence for Court Martial
I just wanted to walk around and
have a few beers & come back
in. I was not warned for draft
or any other duties and I came
back in between 2200 & 2230 hrs
and I went straight to my room
and went to bed.

D W Reid

Exh A

SUMMARY OF EVIDENCE

10 Feb 45

SUMMARY OF EVIDENCE in the case of A 3187 Pte Hayward W A, 13 CBR Bn 2 CBR Gp Cdn Army Overseas.
First Charge A W L AA Sec (15) 1
~~Second Charge Losing by neglect AA Sec (24) 2~~

By direction of the Commanding Officer, the evidence is taken on oath.

FIRST WITNESS:- B 84361 CSM Birmingham L H 13 CBR Bn 2 CBR Gp, sworn states:-

I am B 84361 CSM Birmingham L H of 13 CBR Bn 2 CBR Gp, at approx 1330 hrs 3 Feb 45 I called the roll of 58 Coy. In calling the roll I found that A 3187 Pte Hayward W A was absent from this parade. When a soldier does not answer his name I repeat the number to make sure if he is absent or not. On doing this and checking the quarters of 58 Coy and also the area of the Bn within the bounds, A 3187 Pte Hayward W A could not be found.

The accused declines to cross examine the witness.

(Signature).....

~~SECOND WITNESS:- C 20789 CQMS Elliott G of 13 CBR Bn 2 CBR Gp, sworn states:-~~

I am C 20789 CQMS Elliott G of 13 CBR Bn 2 CBR Gp, On the 4 Feb 45 at approx 0900 hrs I checked A 3187 Pte Hayward W A kit and found it to be deficient of the following articles

		FULL PRICE	⅓ PRICE
Boots Ankle Prs	1	5.46	4.09
Jersey Pullover	1	1.79	1.34
Shirts Angola Drab	1	2.03	1.52
Trousers Battle Dress	1	5.39	4.04
Vests Woolen	1	1.20	.90
Brushes Hair	1	.34	.25
Brushes Shoe	1	.28	.21
Eyeshields Antigas	1	.45	.34
Socks Prs	2	.74	.56
		17.68	13.24

On the 2 Feb 45 A 3187 Pte Hayward W A went through Bn stores and was issued with all deficient kit signing a statement to the effect.

~~The accused declines to cross examine the witness.~~

(Signature).....

~~The statement referred to above by the Second Witness is attached hereto as Exhibit "A"~~

THIRD WITNESS: B 60616 Sgt Brown H of 13 CBR Bn 2 CBR Gp, sworn states:-

I am B 60616 Sgt Brown H of 13 CBR Bn 2 CBR Gp, at appros 2255 hrs 3 Feb 45 in making my bed check at tattoo roll call I found A 3187 Pte Hayward W A to be in bed. I informed the CSM that he had returned.

The accused declines to cross examine the witness.

(Signature).....

Ex A-
45

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement.

The accused declines to call any witnesses.

I certify that the foregoing Summary of Evidence consisting of 2 pages was taken down by me in the presence of the accused and that R P 4 (c),(d),(e), (f) and (g)(13) have been complied with.

(Signature).....

In the Field
10 Feb 45

E/C

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
A3187	PTE	HAYWARD, W.A.	13 C.B.R. BN 2 C.A.R. Gp

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.
† See para. 677, K.R., 1940.
* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.
INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For AA 15(1) AWL	2 times	2 times
For AA 40	times	1 times
For AA 41	1 times	1 times
For LARCENY	1 times	1 times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~ NIL

or

~~There are no entries in the conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted~~, or

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or ~~The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 20 days in military custody, making a total of 20 days, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service ~~attestation paper~~ is 38 YRS.

6. The date of his ~~commission~~ attestation specified in his record of service ~~attestation paper~~ is 3 OCT 39.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 5 YRS. 4 MON 15 Days.

8. The accused is entitled to deferred pay or gratuity in respect of 5 YRS. 4 MON 15 Days. service.

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, ~~or entitled to, no military decoration or military reward, or he is in possession of, or entitled to~~ (*state any military decoration or reward*). 1939-41 STAR - CVSM AND CLASP.

11. (~~If the accused is a warrant officer.~~) ~~The accused before he was made a warrant officer last held the regimental rank of~~

12. (~~In the case of an officer.~~) ~~The accused holds in the army the rank of~~ dated ~~and in his regiment (or corps or department) the rank of~~ dated

W.S.57637/1519 20M. 5/40. P. Ltd. 751-3.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. A-3187 Rank PTE. Name HAYWARD WA of 13 CBR BN Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
FGCM	IN THE FIELD	ON AUG 18TH 43. SENTENCED TO TWO YEARS H.L. AT LEWIS PRISON. CLOSE ARREST 88 DAYS.		RELEASED FROM CIVIL PRISON [illegible]
F.G.C.M.	IN THE FIELD	AA41 STEALING FROM A CIVILIAN	1 YEAR DETENTION	RELEASED FROM DETN 27 JAN 45

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 23rd day of FEBRUARY 45 M.A. Frankcatt Adjt.

13 C. B. R. Bn.

13 The accused has been tried by a court martial [illegible]

In the case of

In the case of

In the case of

Date of Promulgation

(INSTRUCTION—If any entry in any of the above paragraphs cannot be inserted from the regimental books, the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such source as is available and the fact recorded, and the paragraph completed accordingly.)

No A-3187 Name HAYWARD W.A. | Sqn. Battery or Company | Corps R.C.A.S.C. | Date of enlistment 30Oct39 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Company Conduct Sheet Date of last entry in: N/A | No and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if order dispensing with trial	By whom awarded	Remarks
				Released from Winchester Prison thereby earning a remission of 61 dys. forfeiture of Pay.					
Field	16 Feb42	Pte		For an offence under AA.Sec.40		28 dys.F.P. 28dys.Pay	16Feb42		Forf.28dys pay FR&I.149(1)(b)
"	18A	"		On Aug 18th 42 sentenced to two years H.L. at Lewis Prison Close Arrest 33 dys.		2 years H.L.	18Aug42		Forf.33dys.pay FR&I.149(1)c ii)Forf.731dys pay FR&I.149 (1)b).
						Released from Civil Prison 19 Dec 43.			
"	19Mar44	Pte		AWL. from 2200hrs.19Mar44 to 0725 hrs.27Mar44(TTA.7dys.9hrs.25mins).		28dys.Pay	28Mar44		Forf.28dy.Pay FR&I.149(2) Forf.8dys.Pay FR&I.149(1)a)

(PTO

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field				Sentenced to 3 months hard labour at Lewis Prison for larceny. Forf. 92 dys. Pay twenty five days concurrent with award of 28 Mar44. Net forf. 67 dys. Pay. Released from H.M. Prison, Lewis Remission 30 days. 1 Jun 44.					FR&I.149(1)b)
				CERTIFIED TRUE COPY COMPILED FROM ORIGINAL M.F.M. 4 IN MY POSSESSION. R. McGillavrie Lt for Officer i/c Records, 1 Cdn. A.S.C. Rft. Unit, Canadian Army, Overseas.					
"Field" BELGIUM	20-9-44	Pte		AA 41 - "Stealing from a civilian" FGCM CERTIFIED TRUE COPY 17 Feb 45 M.A. Frank CAPT.ADJT. (M.A. FRANK) 13 CFR Bn.		1 year detention	27Sep44	FGCM	RN Shervill.Capt.

Hayward, Ed. A. (Private) A.3187 10-H-36
10-N-36.

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on No. A.3187, Pte. Hayward, W.A., R.C.R.

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H.D. Graham

(H.D.Graham) Major,
President,
The Hastings & Prince Edward Regiment, C.A.S.F.

A

Army Form A9

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

Form of Proceedings for General and District Courts-Martial.

Court Martial Room No 8 1 Cdn Inf Bde Aldershot Hants

Proceedings of a District Court-Martial held at Aldershot

on the Tenth day of April 19 40 by order of

Lieut General A G L McNaughton C.B., C.M.G., D.S.O.

Commanding 1 Cdn Div.

dated the 8th day of April 19 40

President.

Major H.D. Graham. Hast. q. R.E.R. C.A.S.F.

Members.

Capt. C. J.R. Bylandt Parker R.C.R. C.A.S.F

Capt. L.M. Crawford-Brown 48th Highrs (of Can) C.A.S.F

Lt-Col. W.G. Kerr, Barrister-at-Law of the office of the Deputy Judge Advocate General.

Judge Advocate.

Trial of* A.3187 Pte William Ansell, Hayward, R.C.R. C.A.S.F

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to serve owing to~~

~~, writing member take his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. D.C. Spry. R.C.R., C.A.S.F

~~Counsel~~‡ ~~or~~ defending officer† Major T.E. Snow. R.C.R. C.A.S.F

At 1012 hours o'clock the Trial commences.

The order convening the Court is read, and is marked "G" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

1-16227. W.O.W.(2)778/1437. 10,000. 12/39. H. & H., Ltd. G627/11. Forms A9/32

2

B

The President, members and judge-advocate and Short hand Writer are duly sworn.
In the opinion of the Court and the Judge Advocate it is unnecessary to comply with R.P.83 (B)
The following officers under instruction are duly sworn.
No officers under instruction were present.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (B) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.
The accused did not elect to be tried under A.A. 46 (B)

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? Not Guilty. *Question to the accused.*

Answer.

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ *Question.*

N. A

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

N. A

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

N. A

Answer.

~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 83 (B) are here complied with.~~

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

3

B 2

CHARGE SHEET

The accused, No.3187, Private William Ansel Hayward, The Royal Canadian Regiment, a soldier of the Canadian Active Service Force

is charged with

1st Charge A.A.Sec.41(5) When on Active Service, Committing a Civil Offence, that is to say, sodomy, contrary to Section 202 of the Canadian Criminal Code

in that he, at Barrosa Barracks, Aldershot, Hants, on the night of 15/16 Mar 40, committed sodomy with No.A3325, Private G.J.Trudeau, The Royal Canadian Regiment, C.A.S.F.

(V.Hodson) Lieut.-Colonel,
Commanding, The Royal Canadian Regiment.

Barrosa Barracks,
Aldershot, Hants,
29th March, 1940.

To be tried by District Court Martial

Aldershot, Hants,
8th April 1940

4

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? No.

Answer.

The prosecutor ~~makes an opening address~~ [hands in a written address which is read, marked "K", signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution.

Each Witness being duly sworn, is examined by the prosecutor.

Evidence attached hereto marked "4".

6

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes.

Question. Do you intend to call any other witness in your defence?

Answer. Yes

Question. Is he a witness as to character only? *Answer.* Yes.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*). See 'L' attached page 28 et seq.

~~*(Where the accused does not give evidence upon oath.)*~~

Question to the accused. ~~Have you anything to say in your defence?~~

Answer. ~~The accused in his defence says†~~

~~(hands in a written address which is read, marked signed by the President and attached to the proceedings.)~~

Addresses of prosecution and defence are marked 'M' and 'N' and are included in Schedule 'L' hereto annexed.

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused
is found guilty of

†The summary (or abstract) of evidence is read, marked signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:—

[*or* hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

10.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

(15 Apr 40
The Court re-assembled in closed Session at 0900 hrs
The Court is closed for the consideration of the finding. William Amst v. Hay ward.

The Court find that the accused No. A.3167. Pte A Hay ward. The Royal Canadian Regiment C.A.S.F. is NOT GUILTY of sodomy but is "Guilty of an attempt to commit Sodomy"

Maj. President

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction before Sentence.

*The Court being re-opened, the accused is again brought before it.

Capt. D.G. Spry. R.C.R.I.C.A.S.F. is duly sworn.

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes Sir

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked "M", signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes. Sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* I have. Sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. They are, Sir.

[Illustration.—If by reason of the nature of the offence of the accused or a determinate sentence, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Cross-examined by the accused.

The accused declines to cross examine.

Question to the accused.

Do you wish to address the Court? *Answer.* No Sir

The Court is closed for the consideration of the sentence.

4A

D. Court M. A3187 Hayward W. N. Pte.
RCR C.A.S.F.

Sec 41.(5).-

Members. Major. M.D. Graham
Members. (2) Lt. Campbell Bruce

Order convening Court. Read.
List of witnesses read.
Summary of Evidence. produced and laid before the Court.
Order read in presence of accused
No objection to members of Court. Members
Joined Sworn.-

Prosecuting Officer then addresses the Court-
Reads charges files same-

Private Menzies R.W.
On the evening of [illegible] or 15. Hayward came in intoxicated had bottle of wine - asked me to drink I didn't. Left a while & he was moving around in the room. Anderson came in right drunk when he went out Broadpark must attend to Pte Hayward & men bed. I went to bed. Heard Hayward & Anderson talking - had drunken row but what could

10.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

(10 Apr. 40

The Court re-assembled in closed Session at 0900 hrs.
The Court is closed for the consideration of the finding.

The Court find that the accused No. A-3187. Pte. William Ansel Hayward, The Royal Canadian Regiment. C.A.S.F. is NOT GUILTY of sodomy but is "Guilty of an attempt to commit Sodomy"

J.D. Jackson Maj.
President

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction before Sentence.

*The Court being re-opened, the accused is again brought before it.

Capt. D.G. Spry. R.C.R. C.A.S.F. is duly sworn.

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes Sir

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "M", signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes. Sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* I have. Sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. They are, Sir.

(Observation.—If by reason of the nature of the offence of the accused or a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of the additional punishment.)

Cross-examined by the accused.

The accused declines to cross examine.

Question to the accused.

Do you wish to address the Court? *Answer.* No Sir.

The Court is closed for the consideration of the sentence.

11

F

Sentence.

The Court sentence the accused No. A 3187 Pte. Hayward. W.A. R.C.R., C.A.S.F.

Sentence.

To be imprisoned without hard labour for six (6) months.

Signed at Aldershot this 15 Apr. 40

A.D. Graham Major
President.

Signed at Canadian Militair Headquarters London this 17 April 1940.

[illegible] Lt-Col
Judge Advocate

CONFIRMED.

(A.G.L. McNAUGHTON) Maj.-Gen., CB, CMG, DSO,
Commanding 1 Cdn. Div., C.A.S.F.

Aldershot, Hants.
24-Apr-40.

Promulgated and extracts taken at ALDERSHOT, Hants. this 29th day of April, 1940.

(V. Hodson) Lt.-Colonel,
Commanding, The Royal Canadian Regiment.

4A

D. Court. M. A3187 Hayward W. D. - Pte.
RCR C A.S.F.

Sec 41. (5). -

Members. Major. H.D. Graham
Members. (D.A.P. Asst. Provost Marshal
Order convening Court. read.
List of witnesses read.
Summary of Evidence produced and laid before the Court.
Order read in presence of accused
No Objection to members of Court. Members
Duly Sworn. - -

Prosecuting Officer then addresses the Court - reads address files same -

Private Menzies R.W.
On the evening in question accused
& Pte. Hayward came in intoxicated had
bottle of wine - asked me to drink I did not
Later on others in had he was noisy would in
the mess. Prisoner came in later drunk when
he was told Orderly must attend to Pte. H
Hayward to mess hut. I went to bed. heard
Hayward & Prisoner quarrel - had drunken row
but what occurred

I went to bed. didnt go to sleep. ½ hour or so heard murmuring and tossing + not long after I started snore + gasps + heavy breathing. paid little attention to it + turned.

Threw lights on. Turned about + Pte Haywood punching up pillow at foot of bed. buttoning up flies of underwear. bed clothes on floor. I walked over to bed told Trudeau to get to his own bed. He met them Pte Trudeau semi conscious. Then started to cry. I was just in time Trudeau + rectum very red. Cpl Hopgood informed. Discussed with Hopgood. Hopgood talked to Trudeau by self + Trudeau naked lying on bed face down. belly down. X + Amen.

Buttoning up underwear. + men sleep in underwear. boden can easily slip down. saw him buttoning the fly of underwear. buttoning wires held it up. blankets on floor some at foot + on each side. ½ on ½ bed. on a men could have his straw by supplies. Have had trouble with stealing. heard whispering + that it in connection with stealing. Saw that I was suspicious. + Money stolen every pay day. I thought might be in connection with stealing

Q 1.

A 1

Q 2

A 2

C

Q 3

A 3

Heard sobs + moans - Heard no scuffling.
Accused was drunk - when told him to
go to bed went willingly. Steps in pass
Barrack room. walked to room - No blood
seen on just red.
Whispering was not sound like 8 or 900.

Cpl. Hopgood -
Acting Coy orderly sergeant this day.
Slept in adjoining room.
0055 hrs waked by Morgan - went to
Hayward's bed he was wobbly. Took to
Guard detention room did not examine
Pinder. He in his bed. Pinder has one
blanket over him. Pinder crying has
fist clenched hysterical - mumbling he kill
him. Did not think moaning caused by drink
Action claimed against him. He did
x Examined - thought he was crying
by drink & sadness. Have seen men sick
crying joy might be same. After Corporal
Pinder went to accom + orders dismiss.
took him to guard room - Took Hayward
some time.

P. A. C. Hayes - Night this thing took place I in bed. heard moans groans from Trudeaus bed. Negro let light. Hayward got out of bed. Morgan with Gov. Hayward returned to our room. I in bed along side Trudeau's. next bed to it. Trudeau in bed when lights came on. Trudeau in his underwear. Hayward along side Trudeau bed. he in underwear. Trudeau in his own bed. Could not say true if it was along. Heard moans. No reaction. When lights on I remained in bed. more or less vague. Saw Trudeau in his bed & blanket over him. I'm not sure of blanket been strewn don't remember any. Before lights came on. It's hard to tell if two in bed or 1 - can't say that two were in the bed. Heard moans. dont think anything of it. If that old woman been in would have done some thing. Previous Trudeau saw Gov to get dressed. I can't remember anyone looking Trudeau over. Saw Hayward along side Trudeau bed pulling up his drawers.

A338 GJ Sudeau -

Pay day night came on 10 20 or 10 30 counted my money. Bill Hayward a workmen head drug. I were in wash room waited for a while pd. when I was told you stokers have come on help make bed. I told him had more work. We waited pd he was cold lay down beside me. There was dopper off. The cam in 10 30 had number I said hold on that creates disturbance. Hay was lay down beside me I dropped off. I came to he on top of me felt a pain the lights turned on don't know what happened after that. Conversation - telling him what I did at the club. Repeated several times I'll tell you if you tell anyone. Then next time he called me George or not. He must have repeated it more than once. On top of me when I came to. Felt something felt pain. Thinks that bit me to. Pain was sharp pain in my rectum.

X examined. Saw Haywards 1st barrack room Bill drunk head spinning. Put down a Bill's bed beside mine. Started enjoy myself then help to make bed - Started to feel ill I pass out.

Hayward lying beside me at time. Of conversation. helped me undress. He sat talked. When he was beside me in bed. he spoke about killing him. Or said I had talked about what he had done etc. - has several drinks while in bed. Sometimes sleeps in underwear sometimes my shirt Pants & underwear held up by suspenders. at last time. Remember Hay. Hay good things vague in my mind. Felt his breathing hard underneath on. seems to me he was holding on to my shoulders. Pull underwear.

Accused. Gives evidence

went to bath room had drink saw Mudeau by his bed. Asked me what I had. Told him has bottle Jamie - asked me for a drink - I told him to come to wash room and I would give him one. went to bath room and gave him drink. Came back to bedroom room. Asks me to light. went to Bed to make it and fell over on it. Took hold Jam. helped him up asked him I'd make bed for him - after has made bed I took off his shoes he had on pants & opened pants about waist. Took the pants off & threw them on a peg over the

bed. Asked me for pants to get his money
I gave them to him then Lang then up
asked me to sat down. I sat down & sap
his bed. Telling me about his trips up
town & about gun & whiskey. Tells him I
going to bed too cold to sit there Asked
me to stay a little longer. Tells him I were
getting cold. Then sat up & called me a S.O.B
Mengers then turned on light & asked me
what was going on, told him nothing
Told me to go to bed. I did - He stepped -
came over where me up. told me to dress
I under arrest. Examined - no moans
he appearing bloody -

X Examined - had spunk were before but
not drinking. I was not completely sober when
light on. Clear mind - could remember
details. Not on bed until 7. - he his on
standing up ready to go to our bed - Heard no
moans.

1435 Lvo.

Sgt Walter Davis Hawkes.

Sgt Hawkes. Known accused since 3 Oct 1939. day he enlisted. was orderly Sgt. had him in my platoon. now in my subsection neat clean. good all round soldier.
Habits normal - clean in all ways habits and everything. No talk about man or Barrack room - good soldier in every way.

Prosecutors address.

Strong mind of Drunken man.

Army Form A 47

COURTS-MARTIAL

Form of Order for the assembly of a General or District Court Martial.

Divisional Orders By Major-General A.G.L. McNaughton, CB. CMG. DSO.
Commanding the 1st Canadian Division
(Place and Date) ALDERSHOT, Hants. 8th April 40

Court Martial Room, HQ. 1 Cdn. Inf. Bde. Knollys Road at 1000 hrs, on the 10th day of April 40 The detail of officers as mentioned below will assemble at for the purpose of trying by a District court-martial the accused person [persons] named in the margin [and such other person or persons as may be brought before them].*

No.3187 Pte. HAYWARD, W.A. R.C.R. (CASF).

President.

Major H.D. Graham, Hastings & Prince Edward Regiment, CASF. is appointed president.†

Members.

A Captain - Royal Canadian Regiment, C.A.S.F.

A Captain - 48th Highlanders of Canada, C.A.S.F.

Note.—The president must be named. The members and the waiting members may be mentioned by name, or the number and ranks and the units to which they belong may alone be named.

Waiting Members.

A Captain - Royal Canadian Regiment, C. .S.F.

Judge-Advocate.

Lt.-Col. W.G. Kerr, Barrister-at-law of the office of the Deputy Judge Advocate General has been appointed Judge Advocate. has been [*or where the convening officer has the appointment of a judge-advocate,* is hereby] appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to HQ. 1 Cdn. Div.

Signed this 8th day of April 19 40

(A.G.L. McNaughton), Maj.-Gen.
G.O.C., 1 Cdn. Div.

---

* *Any opinion of the convening officer with respect to the composition of the Court (see Army Act, s. 48 (10) and Rules of Procedure 20 and 21) should be added here: thus, where a Court-Martial is ordered to assemble, composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry, the following should be added:—*

" In the opinion of the convening officer, other officers are not, having due regard to the public service, available," *(or as the case may be).*

† *Add here, in the case of either a General or District Court-Martial where a captain is appointed president and the officer convening the court is not under the rank of field officer,* " In the opinion of the convening officer a field officer is not, having due regard to the public service, available." *Where it is necessary for an officer under the rank of captain to be appointed president of a District Court-Martial, add,* " In the opinion of the convening officer a field officer or captain is not, having due regard to the public service, available." *(See Army Act, s. 48 (9).)*

‡ *The " unit," in the case of Royal Artillery, is a Brigade, where such organisation exists.*

(12202) Wt.25661/1501 10,000 11/39 A.& E.W.Ltd. Gp.686 Forms A47/11

12

List of Witnesses.

TRIAL OF No. 3187 Pte. William Ansel Hayward,
The Royal Canadian Regiment, C.A.S.F.

FOR THE PROSECUTION:

No. A.3120 Pte. Menzies,	R.W.,	Royal	Canadian	Regiment,	C.A.S.F.
No. A.3003 Cpl. Hopgood,	F.H.,	"	"	"	"
No. A.3147 Pte. Hayes,	A.C.,	"	"	"	"
No. A.3325 Pte. Trudeau,	G.J.,	"	"	"	"
No. P16379 Sjt. Forrest,	C.W.S.,				

FOR THE DEFENCE:

- N I L -

H 13

J. D. Graham-Maj
Pres.

MEDICAL OFFICER'S REPORT

I certify that No. A.3187 Pte Hayward W A
of the Royal Canadian Regiment is in a fair state of health,
and able to undergo trial by Court Martial.

F. H. Ball Lieut RCAMC
Medical Officer.

Station Aldershot
Date 19/4/40

W.D.A. 245.

14 K

OPENING ADDRESS

It is intended to prove that the accused, No.A3187, Private W.A.Hayward, The Royal Canadian Regiment, committed sodomy with No.A3325, Private G.J.Trudeau, The Royal Canadian Regiment, during the night of 15/16 Mar 40.

The following is an outline of events relevant to the act:

Pte.Trudeau came into No.13 Pl.Barrack Room about 2220 hours, 15 Mar 40 and went to the washroom where he met the accused, Pte. Hayward. Later, both men went back to No.13 Pl.Barrack Room and sat down on Pte.Trudeau's bed (about 2345 hours). About this time Pte.Menzies, who was in this barrack room, switched out the lights and went to bed. At about 0110 hours, 16 Mar 40, Pte.Menzies and Pte.Hayes, another occupant of this barrack room, heard sobs and moans coming from the direction of Pte. Trudeau's bed, and Pte.Menzies got up and switched on the lights. Pte.Hayward was seen standing alongside Pte. Trudeau's bed, doing up his underwear. Pte. Trudeau was lying naked on his bed. Pte.Menzies awakened Cpl.Hopgood, Company Orderly Serjeant, sleeping in that barrack room, and told him what he had seen. Pte.Hayward had by this time gone to bed and Cpl. Hopgood awakened him, told him to get dressed, and took him to the Guard Detention Room where he was handed over to the n.c.o.i/c Guard.

"L" 15

A. 3120, Pte. Menzies, R.W., The R.C.R., C.A.S.F.

Examined in chief by the Prosecution.

Q. 1 Pte. Menzies I want you to tell the President and Members of the Court what you know about the case of the accused Pte. Hayward.

A. 1 Sir, I am not sure about the time but on that evening I was pressing my clothes and working on my kit when Pte. Hayward came in quite intoxicated. He had a bottle of wine on his person. He asked me to drink some but I didn't, Sir. Later on the different men in the Barrack Room came in and went to bed. He was moving around the room. I had just one light on, Sir. Pte. Trudeau came in, about the last man to come in, and he too was quite intoxicated but at this time I did not notice it.

Pte. Trudeau's bed wasn't made and Pte. Hayward, who was in the room at the time, offered to help him make it - I did not pay any attention to this. After I was through with my work I put out the light and went to bed. In the meantime, Pte. Hayward and Pte. Trudeau were sitting on Pte. Trudeau's bed drinking wine. They were both quite intoxicated by this time.

I went to bed but I did not fall asleep as I usually do until about half an hour later. During that half an hour I couldn't hear anything but imagined at the time that they were still drinking the wine. I would say it was not long after I started hearing moans and gasps and heavy breathing. I paid little attention to it at first until it increased. The light switch in the room is right close to my bed and I leaped out of bed and threw the lights on. When I turned about, Pte. Hayward was finishing getting up from the bed, he was buttoning up the lower part of his underwear. The bed clothes were disarranged, strewed about the floor. I immediately walked over to the bed and told Pte. Hayward to go to his own bed - he did so. Pte. Trudeau was in a semi-conscious state and in a few minutes he started to cry. By this time I was quite sure what had happened and examined Pte. Trudeau and although not being a Doctor I noticed that his rectum was quite red.

Cpl. Hopgood, being the Orderly Sergeant and sleeping in the room, I informed him just what had happened. After talking it over with Cpl. Hopgood we decided that the best thing for him was to talk to Pte. Trudeau by himself.

That is all, Sir, up until the time Cpl. Hopgood took over.

Q. 2 When you turned on the lights how was Pte. Trudeau dressed?

A. 2 Pte. Trudeau was naked, Sir.

Q. 3 Where was he?

A. 3 He was lying with his face down. As you might say - "belly" down, Sir.

Cross-examined by the Defence

Q. 4 You stated a minute ago that the Accused was doing up his underwear - you mean, in fact, he was pulling up his underwear.

A. 4 He was actually buttoning it up, Sir. I couldn't say that I had seen him pull up his underwear, Sir.

Q.5 A man often sleeps in his underwear?

A.5 Very often, Sir.

Q.6 The underwear consists of two pieces. When undressed your belt or trousers are not worn and the bottom part of the underwear could easily slip down?

A.6 Yes, Sir.

Q.7 If either sitting or lying on the bed it is possible that the Accused's underwear had slipped down and what you in fact saw was him pulling it up.

A.7 I saw him buttoning the fly. This in itself would pull the underwear up.

Q.8 You mentioned that the blankets were strewn about. Will you go into more detail.

A.8 They were on the floor - disarranged, by that I mean to say, some at the foot of the bed and on each side of the bed - just a "mess".

Q.9 Supposing two men had been scuffling on a bed - the blankets could have been strewn about?

A.9 Yes, Sir.

Q.10 Have you had any trouble with stealing in the Barrack Room?

A.10 Yes, Sir.

Q.11 Did you not say in the first time you gave evidence when the Summary of Evidence was taken that you had heard whispering from the direction of Pte. Trudeau's bed?

A.11 Yes, Sir.

Q.12 When you heard that whispering you thought it was in connection with stealing that had been taking place.

A.12 I didn't say that, Sir.

Q.13 Is it not likely that you thought that?

A.13 I have suspicion of everything in that regard as money has been stolen practically every pay day.

Q.14 When you heard this whispering?

A.14 Yes.

Q.15 When you heard sobs and moans what you really heard was whispering and you immediately put on the light.

A.15 No, Sir.

Examined by the Court.

Q.16 It has been suggested that the blankets might have been disarranged by reason of a scuffle. Did you hear any scuffle?

A.16 No, Sir.

Q.17 What was the condition of the Accused when you saw him buttoning up his underwear?

A.17 The condition of the Accused was that of being very drunk. When I told him to go to his bed he put on an air of a drunken person and he said, "Sure Bob, sure Bob" and went to bed.

Q.18 Does he sleep in the same Barrack Room?

A.18 In the same Barrack Room but in an adjacent room.

Q.19 Was he able to walk to his room?

A.19 Yes, Sir.

Q.20 You have stated in your evidence that Pte. Trudeau's rectum was red. Was there any blood or anything of that kind?

A.20 No, Sir.

Q.21 You stated Pte. Trudeau was intoxicated but you did not notice it at the time he came in. What do you mean by that?

A.21 When Pte. Trudeau came in I took no notice of him and did not pay much attention.

Re-examined by Prosecution.

Q.22 It has been suggested to you that these two men, Pte. Hayward and Pte. Trudeau might have been scuffling on their bed. In your experience of Barrack Room scrapping do you think it would cause a man's rectum to be red as you say it was?

A.22 No, Sir.

Re-examined by Defence.

Q.23 When men are whispering in a Barrack Room and there is some slight muttering, that whispering will sound like a groan is that not true?

A.23 No, Sir.

Q.24 You say, No, Sir.

A.24 I was positive of the different sounds.

Q.25 It is known that when people are whispering and there is muttering that that whispering will sound like a groan or sob.

A.25 Whispering does not sound like gasps.

(R.W. Menzies)

A. 3003, Cpl. Hopwood, F.H., The R.C.R., C.A.S.F.

Examined in chief by the Prosecution.

Q.26 You were acting as Company Orderly Sergeant on this date.

A.26 Yes, Sir.

Q.27 Do you sleep in the same Barrack Room as the Accused?

A.27 In the same Barrack Room but in an Adjoining room - I was in one room, he was in another.

Q.28 Will you tell the President and Members of the Court what you know of the case against the Accused?

A.28 At 0055 hrs I was wakened by Pte. Menzies. He told me about Pte. Trudeau and Pte. Hayward. I went down and Pte. Trudeau

was crying and acting hysterical and he told me his story. I then went to Pte. Hayward's bed and got him to get up and he was wobbling on his feet. Then I told him that I would have to take him to the Guard Detention Room - I found a bottle of wine behind his bed.

Q.29 Did you examine Pte. Trudeau?

A.29 I did not, Sir.

Q.30 Where was Pte. Trudeau when you were aroused from your bed?

A.30 He was lying in his bed.

Q.31 Could you see from conditions then existing how he was dressed?

A.31 Not exactly, Sir. He had, I believe, one blanket over him.

Q.32 Could you see how he was dressed?

A.32 No.

Q.33 Was Pte. Trudeau doing anything else besides crying?

A.33 That is all, grasping the head of the bed with both hands, he had his fists clenched and he was hysterical and mumbling something about, "I'll kill him, I'll kill him".

Q.34 Did you at the time think this man or the Accused to be drunk?

A.34 I wasn't sure, Sir but I was under the impression that he had been drinking. He had been out that night.

Examined by the Court.

Q.35 In your opinion what was the cause of his crying?

A.35 The action that he had claimed had been done against him - he claimed that Pte. Hayward had committed the offence.

Q.36 Could Pte. Hayward hear what was being said in the conversation between you and Pte. Trudeau?

A.36 No, Sir.

Examined by the Defence.

Q.37 You thought that the reason he was crying was because of the offence of sodomy - you only thought that?

A.37 Yes, Sir.

Q.38 Have you ever seen a man who was drunk and had a "crying jag" on - could they be the same?

A.38 They could be the same, Sir.

Q.39 You say that Pte. Menzies woke you at 0055 hrs and then after looking at Pte. Trudeau you then went to the Accused and ordered him to the Guard Room and yet he wasn't admitted to the Guard Room until 0130 hrs.

A.39 It took Pte. Hayward a little while to get ready and he went out to the Washroom.

(F.H. Hopgood)

A. 3147, Pte. Hayes, A.C., The R.C.R., C.A.S.F.

Examined in chief by the Prosecution.

Q.40 I want you to tell the President and Members of this Court what you know about the case against the Accused.

A.40 The night that this thing took place I was in bed at the time when I heard moans and groans coming from Pte. Trudeau's bed. Then Pte. Menzies got up and turned on the lights while Pte. Hayward got out of Pte. Trudeau's bed and Pte. Menzies then woke Cpl. Hopgood and Pte. Hayward returned to his own room.

Q.41 Where is your bed in relation to Pte. Trudeau's?

A.41 Right alongside, Sir.

Q.42 The next bed to it?

A.42 Yes, Sir.

Q.43 Where was Pte. Trudeau when the lights were turned on?

A.43 In his own bed.

Q.44 How was he dressed?

A.44 In his underwear.

Q.45 You are sure he was dressed in his underwear?

A.45 I am, Sir.

Q.46 Where was Pte. Hayward when the lights were turned on?

A.46 Alongside his bed, Sir.

Q.47 How was he dressed?

A.47 In his underwear.

Q.48 As you were apparently lying in the bed next to Pte. Trudeau's bed would you be able to know whether there was anybody in that bed? Did you know that Pte. Trudeau was in his own bed?

A.48 Yes, Sir.

Q.49 Did you know that he was alone?

A.49 I couldn't say that I did.

Q.50 You say that you heard moans coming from Pte. Trudeau's bed?

A.50 Yes, Sir.

Q.51 What was your reaction?

A.51 None whatever.

Q.52 When the lights went on what did you do?

A.52 Remained in bed, Sir.

20

Examined by the Defence.

Q.53 The first time you gave evidence which was in the Summary of Evidence you stated when the light was turned on you simply turned over and went to sleep again?

A.53 Yes, Sir.

Q.54 Now you say that you saw several things when the light was turned on. Which is correct?

A.54 It is quite natural there would be some time I would observe something before turning over and going to sleep.

Q.55 You saw some of those things happen but not very clearly? Everything is rather vague?

A.55 Yes, more or less.

Q.56 You did say a moment ago that you saw the accused in his bed with a blanket or something over him.

A.56 No, I didn't.

Q.57 You saw Pte. Trudeau in his bed with something over him?

A.57 Yes, Sir.

Q.58 Were the blankets strewn all around, some at the head and some at the foot or were the blankets over him?

A.58 There was a blanket at least over him.

Q.59 And you didn't see any strewn around?

A.59 No, Sir.

Q.60 You were asked a minute ago if you knew he was alone. You were certain in your own mind that there was no one with him in the bed. Are you certain that there was someone with him before the lights came on?

A.60 It is very hard to tell in a dark room whether there are two in one bed or only one.

Q.61 You can't say there were two?

A.61 No, Sir.

Q.62 You stated a minute ago you heard these moans and were asked what your reaction was and you said no reaction?

A.62 Yes, Sir.

Q.63 If you had suspicions of the offence of Sodomy?

A.63 I would have, Sir.

Q.64 But in your own mind you did not then?

A.64 No, Sir.

Q.65 Have you ever seen a man with a "crying jag"?

A.65 Previously that evening he had mentioned the fact of going out and getting drunk and I took it for granted that he was drunk.

Examined by the Court.

Q.66 I understand that on the first investigation of this charge you gave evidence that you did not see anything.

A.66 No, Sir.

Q.67 Had you been asleep before this commotion took place?

A.67 Yes, Sir.

Q.68 Was it this commotion that woke you up?

A.68 Yes, the moans and groans were more or less the cause of it.

Q.69 When you woke up did you turn over and try to forget about these moans and groans and go to sleep again?

A.69 I more or less tried to get to sleep.

Q.70 You said in your examination that you saw Pte. Trudeau in his bed and he had his underwear on.

A.70 Yes, Sir.

Q.71 Was Pte. Trudeau in his bed with a blanket over him?

A.71 Yes but when Cpl. Hopgood and Pte. Menzies got up they removed the blanket and then he had his underwear on at that time.

Q.72 At this time were you wide awake or were you in a half stupified sleep?

A.72 More or less half stupid sleep.

Q.73 Did you see anyone, perhaps not examining Trudeau but looking at him?

A.73 No, Sir, I can't remember.

Q.74 Can you answer this? Did you or did you not see Pte. Hayward getting out of Trudeau's bed?

A.74 No, Sir. I saw him after he was out.

Q.75 Where was he when you saw him?

A.75 Right alongside Trudeau's bed.

Q.76 What was he doing?

A.76 Pulling up his drawers.

Re-examined by Defence.

Q.77 You are quite sure in your own mind that Pte. Trudeau had his underwear on when Pte. Menzies pulled back the blanket?

A.77 I am pretty sure he did, Sir.

(A.C. Hayes)

A. 3325, Pte. Trudeau, G.J., The R.C.R., C.A.S.F.

Examined in chief by the Prosecution.

Q.78 Pte. Trudeau I want you to tell the President and Members of this Court exactly what you know about the case against Pte. Hayward.

A.78 It was pay day night and I came in about 1020 or 1030 and came up to the table and counted my money. Then I went to the washroom. I met Pte. Hayward there. Pte. Hayward produced a bottle of wine and offered me a drink. I had a drink of wine and then we talked for awhile. He stated that I was a bit intoxicated. He stated, "you should have someone help you make your bed". He helped me make my bed.

I got into bed and he gave me more wine. We talked. Then he said he was cold and laid down beside me and after having some more wine I dropped off. When I came in previously at 1030 I had about as much as I could hold without causing disturbance for being drunk.

Pte. Hayward laid down beside me and then I dropped off and when I came to I found him on top of me and felt pain. Then the lights were turned on and I don't know what happened after that.

Q.79 Do you remember any parts of the conversation between you and Pte. Hayward?

A.79 Yes, Sir. Just before I passed out it was impressed on my mind that he said, "if you tell anyone of this George I'll kill you", I am not sure if he called me George by my first name or not but it impressed itself on my mind. He must have repeated it more than once.

Q.80 Was Pte. Hayward on top of you at any time in the bed?

A.80 Only when I came to, Sir.

Q.81 You recovered consciousness and found him lying on top of you?

A.81 Yes, Sir.

Q.82 Did you feel anything?

A.82 Yes, Sir.

Q.83 What?

A.83 I felt pain and think it was that what brought me to.

Q.84 Could you tell the Court what kind of pain?

A.84 A sharp pain.

Q.85 Where?

A.85 In my rectum, Sir.

Examined by the Defence.

Q.86 You say that you went to the washroom where you met Pte. Hayward?

A.86 Yes, Sir.

Q.87 The first time you saw Pte. Hayward was in the Barrack Room?

A.87 Yes, Sir.

Q.88 You asked him for a drink?

A.88 Yes, Sir.

Q.89 You then went into the washroom and had a drink in the washroom?

A.89 Yes, Sir.

Q.90 You state you went into the washroom and had a drink in the washroom?

A.90 Yes, Sir.

Q.91 After you had drunk one or two in the washroom you came back?

A.91 Yes, Sir.

Q.92 You were pretty drunk?

A.92 Yes, Sir.

Q.93 Didn't you roll against your bed?

A.93 No, Sir. I sat down on McKee's bed, the bed next to mine.

Q.94 Did you say your head was rolling?

A.94 No, Sir. I decided to go to bed and Pte. Hayward helped me make the bed.

Q.95 Because you were pretty tight? - that is why he helped you to make your bed?

A.95 Yes, Sir.

Q.96 When you came into the Barrack Room you rolled over and sat on McKee's bed?

A.96 No, Sir. I was steady on my feet.

Q.97 Was your head rolling?

A.97 Yes, Sir. but I was steady on my feet.

Q.98 Have you ever been drunk before?

A.98 Yes, Sir.

Q.99 When your head is spinning you are steady on your feet?

A.99 Yes, Sir.

Q.100 You state the Accused said he would kill you if you told anyone?

A.100 Yes, Sir.

Q.101 He repeated it - didn't it seem strange?

A.101 It did Sir, but I didn't think much of it as I was drunk.

Q.102 What was it he could have killed you for?

A.102 At the time I never thought of it, I certainly never expected that.

Q.103 There must have been some reason for saying it?

A.103 I don't know, Sir. Pte. Hayward was certainly not doing anything he was lying beside me at that time.

Q./04 He helped you into bed?

A./04 Yes, Sir - pulled my trousers off.

Q./05 You got into bed and he sat talking to you?

A./05 Yes, Sir.

Q./06 How long was he sitting there talking to you?

A./06 I don't know. While he was on the side of the bed he talked of nothing except what he did that night and discussed what I did. When he got into bed he talked of nothing but that - how long it was I don't know, Sir but it must have been quite a time after because I had quite a few drinks of wine.

Q./07 After you got back to your bed you had a few drinks?

A./07 While I was in bed.

Q./08 Your head was spinning when you came out of the washroom but you had some more wine?

A./08 Yes, Sir.

Q./09 That particular expression used by the Accused stuck in your mind and yet you can't remember anything else?

A./09 No, Sir. I remember that. I know that he said it just before I dropped off. I can't remember if there was any conversation, I was sleepy and getting dull.

Q./10 When you go to bed you usually sleep in your underwear?

A./10 Sometimes, usually I don't.

Q./11 When you don't sleep in your underwear what do you wear?

A./11 My shirt.

Q./12 Your undershirt?

A./12 Yes, Sir.

Q./13 Just in a shirt?

A./13 Yes. The pants of my underwear were held in my trousers by my suspenders and the whole lot came off.

Q./14 When you came to you rolled the accused off you?

A./14 Yes, Sir.

Q./15 Immediately before that you don't remember anything and immediately after that you don't remember anything?

A./15 I remember the light came on and after that I don't know. I believe Cpl. Hopgood was there but that is about all.

Q./16 You state you were pretty tight so really most of the things were very vague?

A./16 Yes, Sir.

<u>Examined by the Court.</u>

Q./17 You rolled Pte. Hayward off of you when you came to?

A./17 Yes, Sir.

Q.118 How were you lying on the bed?

A.118 Face downwards, Sir.

Q.119 In what position was Pte. Hayward when you had to roll him off?

A.119 Right on top of me, face downwards because I thought I felt his breath.

Q.120 Did you have your undershirt on?

A.120 Yes, Sir.

Q.121 Can you recall any more definitely as to how Pte. Hayward was lying on you before you rolled him off?

A.121 He was holding on to me in some way - I don't know - I was pretty drunk. It seems to me he was holding on to my shoulders. That is all I can say as to his position.

Q.122 Did I understand you to say that Pte. Hayward helped to undress you?

A.122 Yes, Sir.

Cross-examined by Prosecution.

Q.123 How was Pte. Hayward dressed when he was in bed with you?

A.123 He was in his underwear.

Re-examined by Defence.

Q.124 Has this sort of thing that you are giving evidence for ever happened to you before?
Objection by ~~Defence~~ Prosecution - Objection over-ruled.

A.124 It was attempted in London, Ontario but at the time I was sober.

(G.J. Trudeau)

No. 3187, Pte. Hayward, W.A., The R.C.R., C.A.S.F.
Statement by the Court to the Accused.

Pte. Hayward you may give evidence as a witness but if you do you will subject yourself to cross-examination. If you do not wish to give sworn evidence you can make a statement and you will not be cross-examined but you must understand that the statement given without oath will not be considered as good evidence as your sworn testimony.

Q.125 Do you apply to give evidence yourself as a witness?

A.125 Yes, Sir.

Examined in chief by the Defence.

Q.126 Will you tell the Court what you know about this case from the time Pte. Trudeau first met you in the Barrack Room until you were placed in the Guard Detention Room.

A.126 I went to the bathroom. I had a bottle of wine which I had taken with me. I met Pte. Trudeau standing by his bed. He asked me what I had. I told him that I had a bottle of wine. He asked me for a drink. I told him to come into the washroom and I would give him one. We went out to the washroom and I gave him a drink. We came back into the Barrack Room, he told me he was pretty tight. He went over to his bed to make it and

he fell over on it. I took hold of his arm and helped him up and told him I would make his bed for him. After I had made his bed I took off his shoes. He had taken off his jacket and loosened his pants about the waist. I took his pants and jacket and hung them on a peg over his bed. He asked me for his pants as he wanted to take his money out. I gave them to him, he took his money and I hung them back again. He asked me to sit down. I sat down on the edge of the bed. He was telling me about being up town and all the gin he had to drink that night. I told him I were going to bed as it were too cold to sit there. He asked me to stay a little longer. I told him I were getting cold. Then he jumped up to a sitting position and called me a "son of a bitch". Pte. Menzies then turned on the lights. He asked me what was going on. I told him nothing. He told me I had better go to bed and I did. Cpl. Hopgood came over and woke me up and told me to get up and get dressed and that I was under arrest.

Q./27 Two witnesses have stated that they heard moans coming from the bed. Can you account for these in any way?

A./27 There were no moans. Once Pte. Trudeau was speaking a little loud and I told him not to speak too loud as he would be waking everybody up.

Examined by the Prosecution.

Q./28 Had you been drinking before you started on the bottle of wine in the Barrack Room?

A./28 No, Sir. I had opened the bottle of wine before we got to the Barrack Room.

Q./29 You were under the influence of liquor at the time the lights went on?

A./29 Not completely, Sir.

Q./30 Were you completely sober, clear minded?

A./30 I wasn't sober, Sir.

Q./31 You were clear minded and could remember details?

A./31 Yes, Sir.

Q./32 That accounts then for the exact details you give from your story?

A./32 Yes, Sir.

Q./33 Were you at any time in bed with Pte. Trudeau?

A./33 No, Sir.

Q./34 When I say in the bed I mean on it under covers?

A./34 No, Sir.

Q./35 Where exactly were you when the lights went on?

A./35 I was standing up ready to go over to my own bed.

Q./36 Your own bed being in the other part of the Barrack Room?

A./36 Yes, Sir.

Q./37 Two men who were completely sober say they heard moans. Yet you did not hear them?

A./37 No, Sir.

Q.137 You were sitting on the bed at one time?

A.138 Yes, Sir.

Q.139 Pte. Menzies got up and turned the lights on as a result of hearing the moans yet you did not hear any moans?

A.139 No, Sir.

Q.140 Later after you had gone back to your own bed who came in and woke you up?

A.140 Cpl. Hopgood.

Q.141 What did he say to you?

A.141 He told me to get up as I was under arrest.

Q.142 Did he say why?

A.142 No, Sir.

Q.143 What did you think you were being put under arrest for?

A.143 I asked Cpl. Hopgood and he said for drinking.

Examined by J.A.G. - Lieut. Col. W.G. Kerr

Q.144 Have you ever had any trouble with Pte. Menzies in any way?

A.144 No, Sir.

Q.145 Are you good friends with Pte. Hayes?

A.145 I have never had any arguments with him, Sir.

Q.146 Have you any reason to think that anyone might have something against you?

A.146 Not that I know of, Sir.

Examined by the Court

Q.147 Who took off Pte. Trudeau's pants?

A.147 I took them off, Sir.

Q.148 You didn't have your pants off?

A.148 No, Sir.

Q.149 It has been stated in evidence that you were standing beside the bed when the lights came on and you were buttoning up the lower part of your underwear. How were you buttoning up your drawers?

A.149 I wasn't buttoning up my drawers, Sir.

Q.150 Then the evidence of the other witnesses is wrong?

A.150 Yes, Sir.

Q.151 How long were you sitting on the edge of the bed altogether?

A.151 Around ten minutes.

Q.152 Did I understand you to say that you were under the blankets?

A.152 No, Sir.

Re-examined by J.A.G. - Lieut. Col. W.G. Kerr

Q./53 After Pte. Menzies turned the light on, as I understand it - you may correct me if it is wrong, he came over to the vicinity of Pte. Trudeau's bed - is that correct?

A./53 Yes, Sir.

Q./54 Pte. Menzies had to come some distance?

A./54 About the width of four or five beds.

Q./55 Did he tell you anything?

A./55 He said I'd better go to bed. I turned around to go to bed.

Q./56 You did not wait until Pte. Menzies got to Pte. Trudeau's bed?

A./56 No, Sir.

Q./57 You had to go which way from Trudeau's bed to get to yours? In the direction of Pte. Menzie's bed or did you go the other way?

A./57 The other way.

Re-examined by Defence.

Q./58 In the cross-examination when two witnesses heard moans you stated there were no moans. Can you account for it in any way?

A./58 The only way that I can account for it is that Pte. Trudeau was talking a little loud at one time and I asked him not to talk so loud as he would be wakening everybody up. This is the only thing I can account for moans.

Q./59 If you had been whispering loudly how would that whispering sound?

A./59 It could have the effects of a person moaning.

Re-examined by the Court.

Q./60 Did you do anything at all with the lower part of your underwear while you were standing beside Trudeau's bed?

A./60 No, Sir. Unless I hitched them up by force of habit which anybody will do.

(W.A. Hayward)

Court adjourned at 1150 hrs.

Court re-opened at 1435 hrs.

Sgt. W.D. Hawkes, The R.C.R., C.A.S.F.

Testimony as to character of the Accused.

Examined in chief by the Prosecution.

Q./61 Will you tell the Court how long you have known the accused.

A./61 I have known the Accused since 3rd October, 1939, the day he enlisted in the Regiment. I have been Orderly Sergeant. I helped him draw his kit, had him on Recruits Drill - right through Recruits Drill. I was Platoon Sergeant and had him in my Platoon and since we have been over here he has been in my Section. I found him a clean, all round good soldier.

Q./62 What have his habits been?

A./62 I have always found him just normal.

Q./63 You state that he was clean?

A./63 Yes, Sir - clean always in habits and everything.

Q./64 Have you heard any talk of this matter in the Barrack Room?

A./64 No, Sir - none whatever.

Q./65 Are you satisfied in every way that he is a good soldier?

A./65 I am Sir.

(W.D. Hawkes)

Final Address by the Prosecution.

1. It has been given in evidence by Pte. Menzies who was in the next bed to the scene of the reputed action, that Pte. Hayward was sitting on Pte. Trudeau's bed, talking in low tones or whispering. Gasps and moans were heard by Pte. Menzies, coming from Pte. Trudeau's bed while the lights were out.

2. Pte. Menzies turned on the lights and saw Pte. Hayward buttoning up the fly of his drawers or hitching up his drawers. The Court must decide whether it was right that he should be dressed only in underwear, some distance from his own bed. The Court must decide whether, had he helped Pte. Trudeau to bed, he should not have returned to his own bed or not. It has been stated that it was cold, then why did Pte. Hayward not return to his own bed?

3. Pte. Menzies states that Pte. Trudeau was lying on his bed naked, with the blankets strewn about. It has been given in evidence by Pte. Trudeau that he had his undershirt on. This may account for the fact that Pte. Menzies thought he was naked, seeing his legs bare.

4. Pte. Trudeau was crying hysterically. This may have been from drink or pain. This is for the Court to decide.

5. Pte. Trudeau and Pte. Hayward were both drinking - admitted in evidence. Pte. Menzies stated he had been in the Barrack Room cleaning his kit and had just gone to bed but had not gone to sleep. The Court must therefore decide whether his recollections may be more clear than that of the others who had been drinking. The Court can decide this.

6. Pte. Menzies states he felt a pain in his rectum as he woke up or came to - to find Pte. Hayward lying on top of him.

7. Pte. Menzies states that he examined Pte. Trudeau's rectum and found it very red.

8. Pte. Trudeau claims Pte. Hayward said - "George, if you tell anyone about this - I'll kill you". The Court must decide whether in their opinion Pte. Trudeau would remember this, as an unusual statement, even through the mental fog caused by drink. What made him remember this - if not said why would he make it up in his own befogged mind.

9. In conclusion - evidence shows:

(1) Hayward was in underwear getting out of or standing beside Trudeau's bed.

(2) Should he have been undressed. Should he not have been fully clothed, as he had helped Trudeau to bed. There is no evidence to show he undressed at his own bed and returned to Trudeau's bed.

(3) Pte. Trudeau claims he felt a pain in his rectum and that this pain caused him to regain consciousness, to find Hayward on top of him.

(4) Pte. Menzies states rectum was red.

It is for the Court to decide whether the act of Sodomy has been committed or not. If not, the Court must decide whether an "attempt" to commit Sodomy was made. In this regard the attention of the Court is drawn to M.M.L. Ch. VII, para 39, page 115.

Final Address by the Defence.

At no time by any witness has evidence been produced to show that the offence of Sodomy was in fact committed.

There is some circumstancial, and very vague evidence to show that the offence might have been attempted, but this evidence is completely unreliable and vague in the extreme.

Pte. Menzies states that there had been several cases of theft in the Barrack Room and that when he went to bed this was on his mind. It is quite obvious that when he turned on the light he thought that something of this nature was taking place.

Pte. Menzies states that he thought he heard moans but admits later that this may have been loud whispering.

Pte. Menzies states that Pte. Trudeau was lying naked on the bed but Pte. Hayes and Pte. Trudeau say that he was wearing the upper portion, at least, of his underwear. Pte. Menzies also states that the blankets were all strewn about but Pte. Hayes, Cpl. Hopgood and Pte. Trudeau say that Pte. Trudeau was covered by at least one blanket. The evidence therefore of Pte. Menzies is quite unreliable. He apparently became concerned in a situation and without giving it proper consideration jumped to an unfounded conclusion. The manner in which he gave his evidence points to this.

Pte. Menzies states that the Accused was buttoning up his underwear but Pte. Hayes who was in the next bed states that the Accused was pulling it up. The Accused himself in cross-examination states that he may have been pulling it up but doesn't remember doing anything to it. Under the circumstance it is not likely that he would remember.

The sobbing and crying by Pte. Trudeau after the light had been turned on could easily have been caused by the "Crying Jag" of a man under the influence of liquor as was Pte. Trudeau. Two witnesses say that it could be thus caused.

The fact that Pte. Trudeau was only wearing the shirt of his underwear is not strange because he states that he usually sleeps in the shirt only.

There are only two witnesses, Pte. Menzies and Pte. Trudeau who have given any evidence whatever to support the charge against the accused. But what of this evidence? That of Pte. Menzies has been contradicted on all relevant points by other witnesses and therefore it has been shown that he is quite unreliable and his evidence should not receive any consideration.

The other witness Pte. Trudeau was drunk at the time. He admits that everything was very vague. He even contradicts himself on several points. He states that an attempt at Sodomy has been made against him in the past. Therefore in his vague drunken state he may have thought something of this nature was happening to him. There is no real evidence from him that it was even attempted.

With reference to the evidence given by Pte. Menzies regarding the red condition of Pte. Trudeau's rectum. Pte. Menzies is not qualified in anyway to give evidence on this medical point. When Pte. Trudeau was examined by the Medical Officer the same day the latter stated that there was no evidence to show that Sodomy had been committed. That is why the Medical Officer has not been required by the Prosecution to give evidence before this Court.

The accused has given his evidence in a very clear straightforward way. He has answered all the questions put to him in cross-examination and by the Court in a satisfactory way.

The N.C.O. who has been the Section Commander of the accused since he enlisted has given evidence to show that he is a good soldier is clean and straightforward and that there has been absolutely nothing during his service to show any tendency whatever to homosexuality.

The charge is a very serious one and proof of the accused being guilty must be absolutely irrefutable. It is maintained that there is no proof whatever. The Prosecution has not been able to produce one single trustworthy witness to say that the offence was even attempted.

Actually the facts show without any serious question of doubt that the accused is innocent of the offence and should therefore be discharged as "Not Guilty."

The Prosecution raised the following points:

Pte. Menzies bed was next to that of Pte. Trudeau. Evidence shows that it was several beds away.

He raised the point that it is strange that the Accused should be in his underwear. Evidence has shown that nearly every man in the Barrack Room sleeps in his underwear. Therefore it is not strange that Pte. Hayward should be moving from his own bed to the bathroom and back again in his underwear.

There is no real evidence to show that the statement assumed to have been made by the Accused to Pte. Trudeau, that is, "if you tell any one this I will kill you" has any bearing in fact at all. It is merely the strange mind of a very vague, drunken man talking.

Address by J.A.G.

At this point the J.A.G. addressed the Court giving the definition of the charge and reviewing verbally the evidence.

The Court adjourned to give consideration to the evidence brought before it.

I certify that the above transcript of evidence is a true transcript of the evidence given upon oath and taken down by me to the best of my ability.

W.P. Bulger, Sgt., C.M.S.C.
Reporter.

Description of Court by which tried, and name of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charge upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
		Nil		

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this tenth day of April, 1940

(D.C.Spry) Captain,
Adjutant, The Royal Canadian Regiment.

M 32 Graham may

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

No.A.3187, Private W.A.Hayward of the Royal Canadian Regiment.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be attached to the proceedings.

(See para. 664, K.R., 1935.

*The numbers herein stated should correspond with the number of *Entries* in the Conduct sheets, punishments being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.	*Since Enlistment.
For W.O.A.S., Absent without leave.	One time	One time.
~~For~~	~~times~~	~~times.~~ NIL
~~For~~	~~times~~	~~times.~~ NIL
~~For~~	~~times~~	~~times.~~ NIL

Number of instances of gallantry or distinguished conduct. Nil.

~~or,~~

~~There are no entries in the Conduct sheets of the accused.~~ NIL

~~2. The accused has not been previously convicted.~~ NIL

~~or,~~

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 78 of the Army Act, are set out in the Schedule annexed to this statement.~~ NIL

Typ. W1.14467/3165. 10,000. 5/32. Wy.L.P. Gp.656.
Lbp. W1.22156/750. 20,000. 7/39. Wy.L.P. Gp.656. Forms/B296/44.

33

3. The accused is not under sentence at the present time,

~~or~~

NCS ~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement, awaiting trial on the present charges

for No days in Civil Custody,

and 25 days in Military Custody.

Total 25 days.

Of which No days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper NCS is 33 yrs 3½ mths.

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper NCS is 3 Oct 39

7. The service which the accused is allowed to reckon towards discharge ~~or transfer to the reserve~~ NCS is 160 days.

8. The accused is entitled to deferred pay or gratuity in respect of 160 days' ~~years~~ service.

9. The accused is entitled to reckon 160 ~~years~~ NCS service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or NCS military reward [~~or is in possession of or entitled to~~

NCS ~~11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of .....~~

NCS ~~12. (*In the case of an officer.*) The accused holds in the army the rank of ....., dated ....., and in his regiment [or corps or department] the rank of ..... dated .....~~

NCS ~~13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,~~

~~Date of Promotion.~~

NCS ~~In the rank of ....., years,~~
~~In the rank of ....., years,~~
~~In the rank of ....., years,~~

[INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*]

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked M, signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of **summary awards** under Section 47 of the Army Act, and of **Cases** in which Trial **has been dispensed with.**

Army Number, Rank and Name A.31187, Private W.A.Hayward of the Royal Canadian Regiment.

Note.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

Description of Court by which tried, or status of officer dispensing with trial	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority	Punishment remitted.
		Nil		

34

(Endorsed overleaf.)

FFF-101

PTE HAZEL J.R.

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FFF.101

PTE HAZEL J.R.

CERTIFIED TRUE COPY
A. MacDougall CAPT
(A.J. McDOUGALL)

A 2
FFF101

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Fifteenth day of February, 1944,

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer;] "TGG"

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

[I am unable to appoint ~~(1. Three Officers to form the Court.) "TGG" *(2. A Field Officer as President.)~~ for the following reasons, namely:—]

Note.—The President must be named. The members and reserve members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the rank, names &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	T. Trudeau	R 22e R

Members.

Rank.	Name.	Regiment.
Captain	C.E. Petepiece	Carlt & York R
Captain	J.M. Bursey	Carlt & York R
Captain	W.H.P. David	West NSR

Waiting

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed "T.G. Gibson" Brigadier
Commanding 3 Cdn Inf Bde
Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
F95710 Pte Joseph Roy HAZEL, West NSR	First Charge Sec 15(1) AA	Guilty	Guilty 2 years imprisonment with hard labour	"T.G." "~~T.G.~~" Confirmed "T.G. Gibson" Brig.

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— No.

(*Signed*) "T.G. Gibson." Brigadier (*Signed*) "Feinand Trudeau" Major

Commanding 3 Cdn Inf Bde *Convening Officer* (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 17 day of February 44, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

*Omit if not applicable.

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

Signed this 17th day of February 1944.

"Feinand Trudeau" Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page T62 M.M.L. 1929.

I certify that the terms of *A.C.I. ~~570 of 1918~~ have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.) "TGG"

Signed this 22 day of Feb 1944.

"T.G. Gibson Brig"
Confirming Officer.

Promulgated and extracts taken in the case of F95710 Pte Joseph Roy, Hazel West N.S.R.

(*a*) (Dated) 22 Feb 44 (Signed) "A.J.W. Dyer, Capt, Adjt" West N.S.R.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[20756] W1-47548-7/44 (D.000 7/42 A.S.E.W.Ltd. Gp.698
[21762] W1-19408-1/44 $5,000

B 2

"F.T."

C H A R G E S H E E T

The accused, F95710 Pte Joseph Roy HAZEL, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, C.M.F., When on Active Service, is charged with:

1st Charge
Sec 15 (1)
Army Act.

When on Active Service, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the Field, at approx 1400 hrs, 11 Dec 43, absented himself without leave and remained absent until apprehended in Naples at approx 1640 hrs 16 Jan 44. Total time absent 36 days 2 hrs 40 mins.

In the Field
10 Feb 44

"R. Waterman"
(R.S.E. Waterman) Lt Col
Comd West N.S.R.

To be tried by Field General Court-Martial

In the Fied

"T.G. Gibson."
Commanding 3 Cdn Inf Bde.

"Feinand Tudeau"

MEDICAL OFFICER'S CERTIFICATE B 3.

KR (Can) PARA 557

I certify that I have this morning examined

No. F-95710 Pte Hazel, J.R.

of West N.S.R. and in my opinion he

IS ~~unfit~~ fit to undergo Trial by Court Martial.

Station In the Field

Date 17 Feb 44

"G.W. Wood, Maj."
Medical Officer

"Fernand Tudeau" Maj,

A Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Fd Gen Court-Martial held at In the Fd
on the 17 day of Feb 1944 by order of
Brig T.G. Gibson
Commanding 3 Cdn Inf Bde
dated the day of 19

President.
Major F. Trudeau R 22e R

Members.
Capt. C.E. Petepiece Carlt & York R
Capt. J.E. Bursey Carlt & York R

, Judge Advocate.

Trial of* F97710 Pte Hazel, Joseph Roy
West N.S.R.

~~The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.~~

~~The Court satisfy themselves that ... "A" ... is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lt R.L. Dennison

Counsel‡ or defending officer† Lt E.H. Holloway

At 1030 o'clock the Trial commences.

The order convening the Court is read, and is marked A 2, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

*Peinand Trudeau Major

B

The President, members and ~~judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

"77"

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (3) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The medical certificate is signed by the President, marked B3 and annexed to the proceedings

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read ? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read ? *Question.*

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read ? *Question.*

"77" *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read ? *Question.*

Answer.

The accused having pleaded Guilty to First charge , the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty.

"4"

* To be struck out in case no plea of "Not Guilty" has been recorded with

~~*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]~~

The accused P95710 Pte Hazel, J.H.
is found guilty of Absence without leave AA Sec 15(1)

†The summary (~~or abstract~~) of evidence is read, marked C 3 signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment ?

Answer. The accused in mitigation of punishment says :— No

[*or* hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

"J.J"

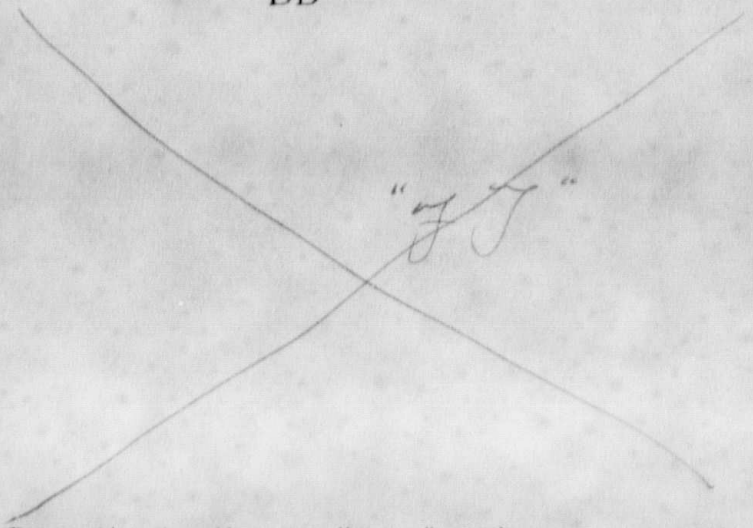
Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

"Feinand Trudeau Major"

DD



Do you wish to give evidence yourself or to call any witnesses as to character ?

Question to the accused.

He

Answer.

Evidence as to character.

"Feinand
Trudeau
Major"

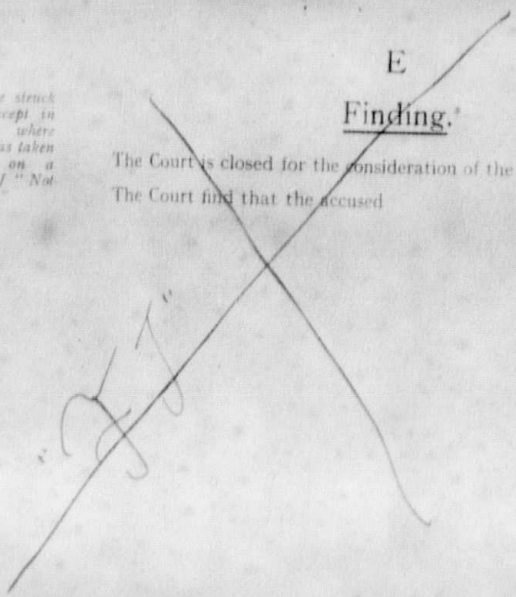
E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused



Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

*~~The Court being re-opened, the accused is again brought before it.~~

Evidence of character, &c.

Lt R.L. Dennison is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the President, and annexed to the proceedings. [E2+E3]

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

[Footnote.—If the matter of the charge to the service of the accused on a departmental charge is otherwise, the Judge of the Court cannot take cable to any exceptional punishment as will allow to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must separate from the subject and sentence of that additional punishment.]

Cross-examined by the accused.

No

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

"Feinand
Trudeau
Major"

F

Sentence.

Sentence.

The Court sentence the accused F-9 5710 Pte Hazel, J.R.

2 years imprisonment with hard labour

"Feinand Trudeau, Maj"

" J.M. Cursey Capt."

" C.E. Petepiece, Capt."

MFM 6
(AFB 122)
40/P&S/126 (3438)

No F95710 Name Hazel J.R. | Sqn, Battery, or Company | Corps CIC | Date of enlistment 22 Mar 42 | GC Badges | Service or Proficiency Pay |

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc W. Rogerson Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified true copy from the Regimental Books in my custody 10 Feb 44.		"A.J.W. Dyer, Capt" Officer I/c Regtl Records			
				E 3					
"Feinand Trudeau Maj."									

(PTO)

E 2

M.F.H. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.H. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F95710	Pte	Hazel J.R.	West Nova Scotia Regt

1. The following is a fair and true summary of the entries in the Service and General Regimental and ~~Squadron, Battery~~ Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	times	times
For	times	times
For	times	times
For No entries on C.B. 6	times	times

Number of instances of gallantry or distinguished conduct Nil

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement awaiting trial on the present charges, for 26 days in civil custody, and ..... days in ~~Air Force~~ military custody, making a total of ..... days in custody, of which ..... days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 19

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held ~~Air Force~~ the regimental rank of .....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated, and in his regiment (or corps), the rank of dated.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date;—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		N/A		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10 th day of February 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "A.J.W. Dyer, Capt." signed by the president, and annexed to the proceedings.

"Feinand Trudeau Major"

SUMMARY OF EVIDENCE in the case of F95710 Pte Joseph Roy HAZEL, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, C.M.F. on ACTIVE Service.

By Order of Lt Col R.S.B. Waterman, officer Commanding West Nova Scotia Regiment.

Evidence taken on Oath.

First Witness for Prosecution

F42595 CSM Freeman E.W. of the West Nova Scotia Regiment having been duly sworn states:

On the 11 Dec 43 "B" Company of the West N.S.R. was occupying a defensive position, dug in on the outskirts of San Leonardo with the idea of making a company attack in conjunction with a squadron of tanks which was at that time in our area. At that time we were undergoing quite heavy intermittent shelling and were approximately one thousand yards from the enemy lines at approximately 1400 hrs. 11 Dec 43 I visited the platoon and found that F95710 Pte Hazel, J.R. was absent from his trench, his equipment was at his trench, and after visiting the trench I went through the rest of the company area but failed to find him, I had him reported to Battalion as missing.

Questioned by the officer taking the summary.

Q. was "B" Coy in contact with the enemy at the time?
A. Not within small arms range, only shelling.

Q. Was the company informed that they would be attacking? in conjuntion with a squadron of tanks?
A. The company had all been warned.

Signed "E.W. Freeman CSM"

The accused declines to cross examine the witness.

Second Witness for Prosecution

Capt A.J.W. Dyer, West Nova Scotia Regiment, having been duly sworn states:

At approximately 1130 hrs on 4 Feb 44, F95710 Pte Hazel J.R. was turned over to me along with a draft from Advanced personnel Depot, I present a certificate of apprehension, in accordance with sec 163 (1) (ii) Army Act marked exhibit "A" and annexed to the summary, showing that F95710 Pte Hazel J.R. was arrested at Naples, 16 Jan 44 at approximately 1640 hrs, signed by Lieut M.O. Powell, OC 111 Provost Coy.

Signed "A.J.W. Dyer Capt."

The accused declines to cross examine the witness.

...../2

The accused having been duly cautioned as follows:

"Do you wish to make any statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but what ever you say or any evidence you give will be taken down in writing and may be given in evidence"

declines to make a statement or to give evidence upon oath.

Certified that Rule of Procedure 4 (c) (d) (e) & (f) has been complied with.

Taken down by me, in the presence and hearing of the accused this 8th day of February 1944.

In the Field,
8 Feb 44

"R.J. Dennison Lieut."
Officer taking Summary.

"Feinand Trudeau Maj"

"A"

Certificate under Section 163 (1) (ii) Army Act

I certify that No. F.95710 Pte HAZEL, J.R.
of the West Nova Scotia Regt, was arrested at NAPLES
on the 16 Jan 44 at about 1640 hrs.

Signature of Provost Marshall
APM, or other officer into
whose custody the above named
was taken on arrest.

"E.O. Powell." Lieut.
O.C. 111 Provost Coy.

Feinand Trudeau Maj."

LIST OF WITNESSES in the case of: F95710 Pte Hazel J.R.
West Nova Scotia Regiment.

PROSECUTION: 1. F42595 CSM Freeman H.W. West N.S.R.
2. Capt A.W.J. Dyer, West N.S.R.

DEFENCE: Nil

LIST OF EXHIBITS: 1. Exhibit "A" - Certificate of Apprehension in accordance with Sec 163 (1) (jj) Army Act

Statement by the accused as to a defending officer:

If I am to be tried by Court Martial on charges now pending against me, I wish to have Lt E.N. Holloway to act in my behalf.

In the Field
8 Feb 44

"Hazel J.R."
(Signature of Accused)

"Feinand Trudeau Maj"

This is to certify that I, F95710 Pte Hazel J.R. West N.S.R. have been given free of charge, a copy of the summary of evidence, charge sheet, documents, etc., relative to my trial by Court Martial

In the Field
8 Feb 44

"Hazel J.R."
(Signature of Accused)

"Fei"

Photo.

Pte. Hazelton, C.R.

A-23274 Pte. Clarence Robert HAZELTON
Perth Regt. (M) - 5 C.I.R.U.(Arm'd.Div.).

Correspondence to be PINNED here.

40a

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 9th day of Dec, 1942.

Whereas it appears to me, the undersigned, an officer in Command of "A" Group Cdn. Reinf. Units, C.A.(O), , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer;]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint:—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

for the following reasons, namely:—]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	L. Brosseau (R. de Mais.)	2 C.D.I.R.U.

Members.

Rank.	Name.	Regiment.
Capt.	A.C. Bannatyne (S. Sask. R.)	2 C.D.I.R.U.
Lieut.	J.P. Cox (R. Regt. C.)	2 C.D.I.R.U.
Waiting Member Lieut.	R.W. Johnston (Seaforth of C.)	1 C.D.I.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Colonel

Commanding "A" Group Cdn.Reinf.Units, C.A.(O)

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A-23274 Pte. Clarence Robert HAZELTON Perth Regt. (M). 5 C.I.R.U.(Arm'd.Div.)	FIRST CHARGE A.A. Sec. 15(1)	Guilty	Guilty To undergo detention for a period of 10 days	I confirm the findings & sentence of the Court but remit fifty five days detention
	SECOND CHARGE A.A. Sec. 9(1)	Guilty	Guilty To undergo detention for a period of 90 days	
	THIRD CHARGE A.A. Sec. 9(1)	Guilty	Guilty To undergo detention for a period of one hundred days (10+) 10 Dec 1942	J.R. Stewart Lt Col Colonel 11 December 1942

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) J.R. Stewart Lt Col (A/Colonel) (Signed)

Commanding 7A[illegible] Group Cdn.Reinf.Units, Ceon Brennan Lt Col
Convening Officer (*c*) C.A.(O). R.C.A.M.C.

(*a*) Appointment, acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10th day of December 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) JB
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 10th day of December 1942.

Ceon Brennan
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

JB
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

Signed this 11th day of December 1942.

J.R. Stewart Lt Col
Confirming Officer.

Promulgated and extracts taken in the case of A23274 Pte. Clarence Robert HAZELTON, Perth R. (M) 5 CIRU (Arm'd Div.)

(*a*) (Dated) 11 Dec. 42 (Signed) N.B. Noble, Lt.-Col.,
Part II Order #142. Officer Commanding, 5 C.I.R.U. (Arm'd Div.)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W.O. 67/30 (1937) 20 M. 5/41 K.L./2552 Gp. 698/3

10 Dec 1942.

Convening Officer,
"A" Group Coy H.Q.,
Meiar. Unit.

F.G.C.M.

1. The Court noticed that there was definitely slackness in complying with K.R. Con. 617.

Leon Brosseau, Major,
(Leon Brosseau) President
R. de Main. Coy
2-C.M.L.I.R.C.

Clarence Hazelton

CHARGE SHEET

The accused No. A-23274 Pte. Clarence Robert Hazelton, Perth Regt. (M), on strength of 5 C.I.R.U. (Arm'd Div.) a soldier in the Canadian Army Overseas is charged with:-

FIRST CHARGE
ARMY ACT.
SEC. 15 (1)

Whilst on Active Service, Absenting himself without leave.

In that He,

At Jasper Camp, 5 C.I.R.U. (Arm'd Div.) absented himself without leave from defaulters duty at the Officers' Mess from approximately 2010 hrs. 5 Dec. 42 to 2050 hrs. 5 Dec. 42

SECOND CHARGE
ARMY ACT
SEC. 9 (1)

Whilst on Active Service, disobeying in such a manner as to show wilful defiance of authority, a lawful command given personally by his superior officer in the execution of his office.

In that He,

Whilst a defaulter at Jasper Camp, 5 C.I.R.U. (Arm'd Div.) when personally ordered by Cpl. Talbot R. of the Regimental Police to scrub the floor of the Guard Room, did not do so, saying, "You can put me in the Digger but I will not scrub the floor," or words to that effect.

THIRD CHARGE
ARMY ACT
SEC. 9 (1)

Whilst on Active Service, disobeying in such a manner as to show wilful defiance of authority, a lawful command given personally by his superior officer in the execution of his office.

In that He,

Whilst under close arrest at Jasper Camp 5 C.I.R.U. (Arm'd Div.) on 7 Dec. 42 when personally ordered by L/Cpl. Starret R.D. of the Regimental Police to clean his cell did not do so, saying, "I do not give a damn if you give me all day to do it. I will not clean that damn cell out for you or anyone else," and "You will have to clean out this fucking cell yourself," or words to that effect.

A.B. Noble,
(A.B. Noble) Lt.-col.,
Officer Commanding,
5 C.I.R.U. (Arm'd Div.)

JASPER CAMP,
Witley, Surrey,
8 Dec. 42

To be tried by Field General Court Martial.

(J.R. Stewart Lough) Colonel,
Commanding,
"A" Group Cdn. Reinf. Units,
C.A.(O).

Convening Officer.

Witley, Surrey,
9 Dec. 42.

MEDICAL CERTIFICATE (K.R. CAN. 557)

I certify that I have this morning examined No. A-23274 Pte. Hazelton C.R.
of Perth R. (M). and in my opinion he is fit to undergo trial by
~~unfit~~
Court Martial.

Station Witley, Surrey. Medical Officer [signature] Capt.
R.C.A.M.C.

Date 9 Dec. 42

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT [illegible] ON THE 10th DAY OF Dec 42

TRIAL OF:-No. A-2327486 Hargalton C R Unit [illegible]

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) [illegible] (Unit) [illegible]

Defending Officer:- (Name) [illegible] (Unit) [illegible]

At 0930 hrs the trial commences.

The order convening the Court read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 - No

The President, members and judge advocate (if any) are duly sworn.

The following constitute the Court:

President [illegible] (Unit) [illegible]

Members [illegible] (Unit) [illegible]

[illegible] (Unit) [illegible]

The officers under instruction are duly sworn.

Q2 Do you object to [illegible] acting as shorthand writer? A2 - No

The shorthand writer is duly sworn.

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Court is closed to consider its finding. Court is re-opened.

Name [illegible] (Unit) [illegible] sworn, produces AFB 296 and MFM 6 and upon being questioned by the Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3 (To accused) - Do you wish to make any statement in mitigation of punishment? A3 - Yes

Q4 Do you wish to give evidence yourself or to call any witnesses as to character? A4 - No

---

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

Statement in mitigation of punishment.

My past record of Canada seems to be that I was a very bad soldier and I see that I've been doing wrong and my whole sole opinion is to finish my training so that I can go back to my Unit in the field.

On Monday, the out-burst was caused by the conditions I had to sleep under. It made me sick. The Officer in my defence will speak on that.

The Defending Officer asks the Court permission to call witnesses under R.I. 39 F.

1st Witness for the Defence

Lieut. G.R. Blackadar, C.B.Highrs., on the strength of 5 C.I.R.U.(A.D.)., an Officer in the Canadian Army Overseas, having been duly sworn states:

I am Lieut. G.R. Blackadar, C.B.Highrs., on the strength of 5 C.I.R.U.(A.D.).

Q.4- Mr. Blackadar, on Monday, December 7, you were Orderly Officer, in the course of you duties.
A.4- That is right.
Q.5- You were in the cell of the Accused, A.23274 Pte. Hazelton. Would you tell the Court the condition inwhich you found his cell.
A.5- The condition I found his cell on the morning of Dec. 7th, at approximately 1000 hours, I found it full of dog dung, and I would not consider it fit for human habitation.
Q.6- Mr. Blackadar did you have A.23274 Pte. Hazelton changed to another cell.
A.6- I did not.
Q.7- Had A.23274 Pte. Hazelton,C.R., been changed to another cell before you came.
A.7- To my knowledge he was not.
Q.8- But he was changed to another cell.
A.8- At that time I spoke to Cpl. Starratt and told him to have A.23274 Pte. Hazelton, C.R., clean it out. He replied that he had already spoken to Pte. Hazelton, who had refused. At that time Sgt. H.R. Wade, the Provost Sergeant, came along and said that he would see that the cell was cleaned out.
Q.9- Did you order the Accused to clean out his cell.
A.9- I did not order him to clean out his cell.

2nd Witness for the Defence

D.123043 Sgt. Wade, H.R., 5 C.I.R.U.(A.D.)., a soldier in the Canadian Army Overseas, having been duly sworn states:

I am D.123043 Sgt. Wade, H.R., 5 C.I.R.U.(A.D.).

Q.10 Sgt. Wade you are the Sergeant in charge of the Provost 5 C.I.R.U.(A.D.).
A.10 Yes Sir.
Q.11 On Monday, December 7, did you go to the cell of A.23274 Pte. Hazelton, C.R. in company with the Orderly Officer, Mr. Blackadar.
A.11 Yes Sir.
Q.12 What were the conditions of that cell.
A.12 Dirty, Sir.
Q.13 Dirty... was there dog dung there.
A.13 Dog dung... yes Sir.
Q.14 Did the stench in the cell make you gag.
A.14 No Sir.
Q.15 Sgt. Wade, are you responsible for the general condition on the Guard House.
A.15 Yes Sir.

The Prosecution declines to examine the witness.

3rd Witness for the Defence

K.67375 Pte Quickfall, C.F., Westm'r Regt. (M), on the strength of 5 C.I.R.U.(A.D.)., a soldier in the Canadian Army Overseas, having been duly sworn states:

I am K.67375 Pte. Quickfall, C.F., Westm'r Regt. (M), on the strength of 5 C.I.R.U.(A.D.).,

Q.16 While you were confined in the Guard Room of 5 C.I.R.U. (A.D.). did you have a dog in your cell with you.
A.16 Yes Sir.
Q.17 Did the dog belong to you.
A.17 No Sir.
Q.18 How many days was it in your cell.
A.18 Two days.
Q.19 Two days.
A.19 Yes Sir.
Q.20 During these two days did you have to clean up after the dog.
A.20 Yes Sir.
Q.21 Did you try to have the dog removed from your cell.
A.21 Yes Sir. I spoke to several of the Guards about having the dog taken out for a run and there was none of them took him out.
Q.22 Then you were forced to sleep in your cell in company with a dog.
A.22 Yes Sir.

Cross-examined by the Prosecution.

Q.23 Do you know if it was on Sunday night that the Accused was put in the cell with the dog.
A.23 I do not know for sure, Sir.
Q.24 You do not know.
A.24 No Sir.

The Prosecution makes the following final address.

Mr. President and Gentlemen:

I would like to point out to you that the Accused was absent from defaulters duties on Saturday night. On that Saturday night was ordered to scrub the Guard room floor and refused. There were no mitig ting circumstances around these charges. The Defending Officer brought out certain facts which the Court will consider, that might have incensed the Accused on Monday morning.

Finally the previous record of the Accused is such that he has been under a charge for practically every month for the past twelve months, and shown a perversity in this charge which the Court will very well see mirrored in his previous conduct. That the Accused is now contrite and has recognized his past wrongs, the Prosecution is glad to hear, and that the Accused is contrite and realises that, the Court will give that such merit as it may demand.

The Defending Officer makes the following final address.

A.23274 Pte. Hazelton, C.F., admits his guilt on all three charges. On the morning of December 7, he arose feeling sick after having all night in this terrible stench and surrounded by the refuse from this dog which was still his companion in the cell.

I feel sure that it was this condition that prompted A.23274 Pte. Hazelton to make his out-burst. A.23274 Pte. Hazelton's past record has not been that of a good soldier,

He has only been in England approximately six weeks. All his past bad record is from Canada. I have had a long personal talk with the Accused and I am now firmly convinced that his sole ambition is to become a good soldier, which I know he can do.

The court is closed for consideration fo the sentence.

Major.
(Leon Brousseau) President.
R. de Mais. Coy
2-C.D.I.R.U.

SUMMARY OF EVIDENCE

In the case of A.23274 Pte. Hazelton, C.R., Perth Regt., (M.)., on the strength of 5 C.I.R.U.(Arm'd Div.)., a soldier in the Canadian Army Overseas.

FIRST WITNESS
FOR THE PROSECUTION

F.55311, Cpl. Talbot, R.C., R.P. on the Regimental Police, 5 C.I.R.U.(A.D.)., a soldier in the Canadian Army Overseas, having been duly sworn states:

I was on duty as Cpl. of Regimental Police 5 Dec. 42 at Jasper Camp, Witley at 2000 hrs. I was inspecting work done by the defaulters and went to the Officers Mess where the Accused was supposed to be working and he was not there. He was on that day on the defaulters book. I learned that he had left and immediately went to his quarters in the Perth lines and found the Accused in a hut. I told him to come to the Guard Room with me. Upon arrival there I told him to sweep and scrub the Guard Room floor. He refused to do so. I then gave him five minutes to do it or said I would put him in the cell under close arrest. He said "That doesn't worry me any", whereupon I put him into a cell after five minutes.

At 0630 hrs. 7 Dec. 42 I instructed L/Cpl. Starratt to clean up the Guard Room. In my presence Starratt told the prisoners to scrub their cells out. The Accused refused to do so, saying, "You can scrub the cell out yourself I won't do it." He was in the cell alone. I talked to him saying that he had better do it or he would only get in trouble. He said he wasn't cleaning up any dog shit. I came out followed out shortly after by Pte. Hazelton, the Accused. In my presence he said to L/Cpl. Starratt, "You can clean the fucking pen out yourself, I'm not going to do it." He said he would not do it because a dog had been in the cell.

Cross-examined by the Accused.

Q. "You caught me off work at 2000 hrs. 5 Dec. 42."
A. "You were not at work 2005 hrs."

Q. "Am I supposed to be off my work at 2000 hrs."
A. "No, you are supposed to be still there."

Q. "Have you proof you were there at 2000 hrs."
A. "I was in the Officers' Mess kitchen at 2005 hrs."

Q. "Who gave you orders to put the dog in my cell."
A. "The dog had been there before you went there."

Robert Geo. Talbot

SECOND WITNESS
FOR THE PROSECUTION

F.87618, L/Cpl. Starratt, R.D., C.B.H.ghrs., on the R.P., 5 C.I.R.U.(Arm'd Div.)., a soldier in the Canadian Army Overseas, having been duly sworn states:

At 1955 hrs. 5 Dec. 42 I reported at the Officers' Mess to check on one field punishment man and the Accused who was a C.B. man. I told the Accused that he was to work in the Officers' Mess until 2130 hrs. that night. I then told him to report to the Guard Room when he was finished work. I distingtly stated he was to stay there until 2130 hrs. At about 2040 hrs. that night we, Cpl. Talbot, and I went to this man's hut and found him there. His hut is in the Perth lines. We then took him to the Guard Room. XX He arrived at the Guard Room at 2050 hrs.

SUMMARY OF EVIDENCE

In the case of A.23274 Pte. Hazelton, C.R., Perth Regt.(M)., on the strength of 5 C.I.R.U.(Arm'd Div.). Continued:-

SECOND WITNESS
FOR THE PROSECUTION Cont'd

In my presence Cpl. Talbot ordered him to take a pail and scrub the floor. He said "Go ahead and put me in the digger but I will not scrub the floor." In my presence Cpl. Talbot gave the Accused five minutes to start to scrub the floor. At the end of that time he made no move to scrub the floor. He was then put under close arrest.

At 0630 hrs. 7 Dec. 42 I ordered the Accused to scrub out his cell. He refused to do so. He said he would not scrub it out. I then gave him ten minutes in which to start to scrub the floor, and he said that he didn't give a damn if I gave him all day to scrub the floor that he would not scrub the damn cell out. Approximately five minutes later he told me that if I wanted the fucking cell cleaned out I had better clean it out myself. I went off duty at 0800 hrs. that day and by that time the cell had not been cleaned out. Two nights previously in the preceding week, he had worked with defaulters and worked till 2120 hrs. one night and the other night 2130 hrs.

Cross-examined by the Accused:

Q. "Did you or did you not tell me to report at the Guard Room at 8 o'clock that night."
A. "I told you that I would mark you in at 8 o'clock, but you were still to remain working until half past nine."

Q. "Didn't you tell me to work to 8 o'clock and check in at the Guard Room at 9.30."
A. "I did not tell you that."

Q. "Why did you refuse to change my cell this morning."
A. "I wasn't asked."

Ronald Dymock Starratt.

THIRD WITNESS
FOR THE PROSECUTION

K.67050 Pte. Davies, R.J., Westm'r Regt., on the strength of 5 C.I.R.U.(Arm'd Div.)., a soldier in the Canadian Army Overseas, having been duly sworn states:

At 1900 hrs. 5 Dec. 42 I and Pte. Hazelton were sent to Officers' Mess to do duties there. I am presently undergoing field punishment. We worked till there till 1950 hrs. when L/Cpl. Starratt made his rounds. In my presence the Accused was told to carry on his duties till half past nine that night and I was told to work to ten o'clock that night.

At about 2000 hrs. L/Cpl. Starratt left. In a few minutes later the Accused told me he was going down to the hut and he then left.

The Accused declines to cross-examine the Witness.

Pte. R.J. Davies

The Accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

SUMMARY OF EVIDENCE

In the case of A.23274 Pte. Hazelton, C.R., Perth Regt. (M)., on the strength of 5 C.I.R.U. (Arm'd Div.). Continued:-

After the above caution the Accused elected to give evidence as follows:-

The Accused, A.23274 Pte. Hazelton, C.R., Perth Regt. (M)., on the strength of 5 C.I.R.U.(Arm'd Div.), Asoldier in the Canadian Army Overseas, having been duly sworn states:

On 6 Dec. 42 at 2130 I was placed in the Bull Pen in which they had a drunken man and a dog.a- At about 2200 hrs. they came and got the man. At that time the dog had shit on the floor. Had to sleep in it all night. In the morning at 0630 hrs. the Cpl. gave me a command to clean it up which I refused because it made me sick. Thenafter, they made me lay in it till the Orderly Officer came around. When he came he saw it and made them give me another cell. I asked the L/Cpl. to give me another cell to which he laughed and told me to clean it up in ten minutes. At the time the Orderly Officer came around the Sgt. of the Provost was there, A Cpl. and the R.S.M. and the Sgt. told me ~~IX~~ I should have reported to him and he would have looked into the matter. It would have made any man sick, piss and shit from the door to the bed which I had to sleep in.

C.R. Hazelton.

The Accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence of the Accused and that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with.

L.A. Kitz Lieut.

(L.A. Kitz) Lieut.,
Officer Taking Summary
[illegible] Div.)

Jasper Camp
Witley Surrey,
8 Dec. 42

COPY

No. A-23274 Name Hazelton Clarence Robert | Corps No.1a District Depot (AF) | Date of enlistment 9/10/41 | Sheet No. 1

Place	Date of offence	Rank	Class of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	1941								
Chatham Ontario	2 Nov	Pte.		AWL, from 2359hrs. 2-11-41 to 1900hrs. 5-11-41	Sgt.Morrison	3 days C.B. Extra Fatigues	5 Nov.41	Maj.Doyle	
Chatham Ont.	2 Nov	Pte.		AWL, from 2359hrs. 2-11-41 to 1900hrs. 5-11-41	Sgt.Morrison	3 days C.B.	6 Nov.41	Maj.Doyle	
Chatham	Dec.1	Pte.		AWL, from 0200hrs. 1-12-41 to 1750hrs. 1-12-41	"	5 days C.B.	2 Dec. 41	Maj.Bingle	FOP 1 Day
Chatham	23 Dec	Pte.		AWL from 2359hrs. 28-12-41 to 2230hrs.31-12-41	"	7 days C.B.	2 Jan.42	Maj.Bingle	FOP 3 Days
Camp Borden	5 Feb	Pte.		Neglect to the prejudice of good order and Military Discipline in that he at Camp Borden Ont. Neglected to comply with an Order given by an N.C.O. A.A.S. 40	Cpl.LaBonty	7 days C.B.	5 Feb.42	Capt.J.Page	

This is a Certified True Copy:-

(P.T.O.)

COPY

No. A23274 Name Hazelton Clarence Robert | Corps A 10 I(A)TC | Date of enlistment 9/10/41 | Sheet No. 2

Place	Date of offence	Rank	Class of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	21/7/42	Pte.		Without leave going from the place of parade appointed by his commanding officer, in that he at Camp Borden at 1115 hrs.21 Jul.42 was absent from parade. A.A. 15 (2)	CSM.Shore	7 days C.B.	22 Jul.42	Maj.Bevis	
Camp Borden	1 Aug42	Pte.		Failing to appear at the place of parade appointed by his C.O. i.e. absent from parade at 0745hrs 1 Aug 42	Sgt.Henry	7 days C.B.	1 Aug.42	Capt.Freeman	
Camp Borden	17-8-42	Pte.		AWL, from 0600hrs 17 Aug.42 to 1400hrs 18 Aug.42 AA 15 (1)	L/C.Clarke, R.	168hr.Detention	19 Aug42	Lt.Col. H.P.A.Hare	Forfeits 2 day pay (F.R.I.)
Camp Borden	27-8-42	Pte.		Conduct to the prejudice of good order and Military discipline Inatentive on parade(AA.Sec.40)	Sgt.Moss,L. L/C.Cooks	7 days C.B.	28-9-42	Capt. Y. Collier	

This is a Certified True Copy:-

COPY

No. A-23274 Name Hazelton Clarence Robert | Corps No. 1 A D.D. (AF) | Date of enlistment 9-10-41 | Sheet No.

Place	Date of offence	Rank	Class of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	22 Oct42	Pte.		Failing to appear at a place of parade in that he failed to answer defaulters at 0620hrs. 22 Oct.42 A.A.15 (2)	Documentary	72hrs.Detention	23 Oct42	Lt.Col. Hare,MPA	
In the Field:-	27/11/42	"		WOAS Conduct to Prej.etc. in that he at Jasper Camp 28 Nov. 42 Talked back to an N.C.O. A.A. Sec.40	Sgt.Blohm Cpl. Fulcher	7 days C.B.	30 Nov.42	Capt.N. Bullock	

This is a Certified True Copy:-

O.C. PERTH

for S.C.R.U. (ARMD. DIV.)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	20Feb42			AA 15-2Failing to Appear at Place of Parade	CSM Gabriel	7 Days C.B.	21 Feb.42	Capt.Page	
Camp Borden	14Mar42	Pte.		AWL,from 0630hrs 14 Mar 42 until he surrendered toMilitary Police Toronto at 0030hrs. 19mar42 (4 days 18 hrs.)	Sgt.Shuttleworth Sgt.Baker) Sgt.Slade) Sgt.Jones)	5 days pay AA 46 Documentary		Lt. Col. M.P.A.Hare (C.O.)	Forfeits 5 days pay (FRI)
Camp Borden	22Mar42	Pte.		AWL,Whilst a defaulter AWL from 2200hrs 22 Mar42 until 1240hrs 23 Mar42-14hrs,40min. AA 15 (1)	Sgt.Baker L/C.Gibson L/C.Maron(Doc)	168hrs. Detention	24 Mar42	Lt.Col. Hare,MPA	Forfeits one days pay (FRI)
Camp Borden	2-5-42	Pte.		Reported H.Q. Coy. 9-4-42 DO" 83					
Camp Borden	2-5-42	Pte.	Nil.	Conduct to the prejudice etc. using improper language to a Superior Officer	Cpl.Sayers	21 days Det.	4-5-42	Lt.Col.Hare	
Camp Borden	22-6-42	Pte.		AWL, From 0200hrs 22-6-42 to 0825hrs. 24-6-42(2days 6hrs.25min) AA 15 (1)	Sgt.Petrie Cpl.Gibson	15 days Pay AA 46	24-6-42	Lt.Col.Hare	3 dayspayFRI

This is a Certified True Copy:-

for O.C. PERTH COY.

C.I.B.U. (ARM'D. DIV.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	21-9-42	Pte.		Conduct to the prejudice of good order and Military Discipline 16-9-42 using improper language to a N.C.O.	Sgt.Selker L/C.Pettie	7days C.B.	19-9-42	Lt.Col.Hare	
Camp.Borden	28-9-42	Pte.		AWL from 0600hrs. 28 Sept.42 to 0600hrs. 1 Oct.42 (3days)A.A.15(1)	Cpl.Whyte,W. L/C.Moran,J.	7 days C.B. (Doc.)	1 Oct.42	Maj.L.L. Shields	2.2.S.
Camp Borden	26-9-42	Pte.		Failing to appear at the place of Parade appointed by his Command-ing Officer AA 15(2)		Documentary 7 days C.B.	28-9-42	Capt. G. Collier	
Camp Borden	9-10-42	Pte.		An act to the prejudice in that he gave his week-end pass to another soldier.	Cpl.Whyte Cpl.Holmes	14 days C.B.	12 Oct. 42	Maj.Ellins	O & E.

This is a Certified True Copy:-

for O.C. PERTH COY.

C.I.B.U. (ARM'D. DIV.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

A.F.B.296

STATEMENT as to CHARACTER & PARTICULARS of SERVICE of ACCUSED.

A-23274 Pte. HAZELTON, Clarence Robert. Perth R. (M) 5 C.I.R.U. (Arm'd Div.)

1. The following is a fair and true summary of the entries in the regimental conduct sheet of the accused, exclusive of convictions by a court-martial or a civil court, and of cases in which trial has been dispensed with:

	Within last 12 months	Since Enlistment
	9	9

Number of instances of gallantry or distinguished conduct. Nil

2. The accused is not under sentence at the present time.
3. The accused has not been previously convicted by a Court-Martial or a civil Court.
4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 4 days in military custody, making a total of 4 days in custody, of which 0 days were spent in hospital.
5. The present age of the accused according to his attestation paper is 19 years. 302 Days
6. The date of his attestation specified in his attestation paper is 9 Oct. 41
7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 year 60 Days
8. The accused is entitled to deferred pay or gratuity in respect of 1 year 60 Days service.
9. The accused is entitled to reckon 1 yr. 60 Days service for the purpose of determining his pension, etc.
10. The accused is in possession of or entitled to no military decoration or military reward.

SCHEDULE

of convictions by a court-martial or a civil court and of cases in which trial has been dispensed with of the accused.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Jasper Camp,
Witley, Surrey,
8 Dec. 42.

(M. Deblois) Lieut.,
A/Records Officer,
5 C.I.R.U. (Arm'd Div.)

(1) I hereby acknowledge that I have been served with a true copy of the summary of evidence taken at Jasper Camp, Witley, Surrey, preliminary to my Court-martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

Dated at Witley, Surrey,
this 8th day of
Dec., 1942

C.R. Hazelton

(2) I hereby acknowledge that I have been served with a true copy of an additional summary of evidence taken at Jasper Camp, Witley, Surrey, preliminary to my Court-martial.

(3) I hereby request that the Convening Officer to represent me at my trial.

I desire the services of H. J. Feller Lieut.
if he is available.

Dated at Witley, Surrey,
this 8th day of
Dec., 1942.

C.R. Hazelton

VVV-12L

TPR HAZLEWOOD R.E.

RECORDED AT CMHQ IN AB 160

VVV-126

RECEIVED 18 SEP 1944 FIELD BRANCH

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA3) 40-P-M-8/1808 (2604)

Convened by Order of Brig T J Rutherford Comd "E" Gp, CRU dated 1 Sep 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-19616	Tpr	Roy Edward	HAZLEWOOD	2 CACRU

PROCEEDINGS REVIEWED

J C Campbell Major 19 Sep 44

REVIEWING OFFICER, TAG BRANCH, FIELD Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 4 SEP 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnss ROs. The guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to no interpreter I Ans~~

~~The Interpreter is sworn.~~(1) Do you object to C-16324 Sgt Gnr. DUNFIELD as shorthand writer ? Ans NO-SIR

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO-SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-Col	D.L. REDMAN VD	HQ CRU
Member	CAPT	H.R. HAINES	ICCOD
Member	LT	A.D. MacQUARRIE	ZCGPC
~~Judge-Advocate~~			
Prosecutor	LT	E.L. MARRES	2 CACRU
Defending Offr	MAJOR	J.W. GRAHAM	2 CACRU

Questions by President: Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans Yes

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the witnesses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-19616 Tpr Roy Edward HAZLEWOOD, 2 CACRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15 (1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo 2 Admonitions per a period of One Hundred and Fifty (150) years and to be put under stoppages of pay until he has made good £1-6-4 & costs of return 4 Sep 44

(Sgd) Judge-Advocate (Sgd) President

Date awarded (RP 45, 90.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 56, 57, RP 31(D) fn 6, 66(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally, RP 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence confirmed

I direct that the accused be ~~released from arrest or detention forthwith and further ordered~~ (1)

(1. AA 57A. Delete if not used.)

Date 6 Sep 44 (Sgd) J.T. Rutherford Brig

Commanding E Sqn RCE

Confirming Offr.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. B-19616 Tpr, Hazelwood, R.E. Date. 13 Sep 44 Signature of Offr.

CERTIFIED THAT PROMULGATION HAS BEEN EFFECTED IN DAILY ORDER #217 AND EXTRACTS TAKEN

J.K. Blundell Captain

Adjutant, 2 CACRU

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*); *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s),(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 7.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO - SIR (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans .....Do you intend to call witnesses on your behalf?

Ans .....Are they witnesses as to character only? Ans .....

(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (c), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans NO - SIR

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(i) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans BY DEFENCE - NOTE - ATT (2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)

(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

NO. 2 CANADIAN ARMOURED CO. [illegible] REINFORCEMENT UNIT
CANADIAN ARMY ENGLAND

CHARGE SHEET

In the case of

B19816, Trooper Roy Edward HAZLEWOOD, of No [illegible] Canadian Armoured Corps Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec. 15 (1)
Army Act

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

at Blackdown, Hants., absented himself without leave from 2230 hours, 21 May 1944, until 2130 hours, 23 August 1944, when he surrendered himself to the Civil Police at Ashley, New Milton, Hants. Cost of apprehension and return to his unit being £1.0.6
Total absence - 93 days, 23 hours.

(J.A. Perry) Colonel
Officer Commanding
No. 2 C.A.C.R.U.

Warburg Barracks,
Aldershot, Hants.
31 August, 1944.

To be tried by Field General Court Martial.

(W.H. RUTHERFORD) Brig
Comd
"E" Gp, CRU

In the Field,
1 Sep 44.

NO. 2 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT
CANADIAN ARMY ENGLAND

CHARGE SHEET

In the case of

B19616, Trooper Roy Edward HALLEWOOD, of No. 2 Canadian Armoured Corps Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec. 15 (1) Army Act

WHILE ON ACTIVE SERVICE, DESERTING HIMSELF WITHOUT LEAVE

In that he

at Blackdown, Hants., absented himself without leave from 2230 hours, 21 May 1944, until 2130 hours, 23 August 1944, when he surrendered himself to the Civil Police at Ashley, New Milton, Hants. Cost of apprehension and return to his unit being £1.6.4
Total absence - 93 days, 23 hours.

(J.E. Perry) Colonel
Officer Commanding
No. 2 C.A.C.R.U.

Warburg Barracks,
Aldershot, Hants.
31 August, 1944.

To be tried by Field General Court Martial.

(T.) RUTHERFORD, Brig
Comd
"E" Gp, CRU

In the Field,
1 Sep 44.

FIELD GENERAL COURT-MARTIAL

CFA 22 (In lieu of AFA 3)
40/FA(3)/1697 (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-19616	Tpr		Roy Edward	HAZLEWOOD	2 CACRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, ~~has (have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 1 Sep 44 endorsed by me, ~~for my own self-protection~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the sitting for reasons other than military ones~~.

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) (any) Offr to form the (court) (a) I.O. as President, for the reasons I have attached hereto~~.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint an Judge-Advocate but the duty of attending will be discharged~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt.-col	D L Redman, VD	HQ, CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 1 CCOD	1 CCOD
Lt	to be detailed by OC 2 Cdn Pioneer Coy	2 Cdn Pioneer Coy

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 1 Sep 44

(Signature of Officer, RP 105 (a).) Brig (Rank.)

(T J RUTHERFORD) Brig

Commanding "E" Gp, CRU

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4 Sep 44.

MEDICAL OFFICER'S CERTIFICATE

I certify that No.B19616.Tpr..Hazlewood.R.E...#2.C4CEURegiment

is ~~unfit~~ fit..... to undergo trial by Court-Martial.

x Insert "fit" or "unfit"

.....
Signature of the Medical Officer

F.C.C.M. IN THE CASE OF

B-19616 Tpr HAZLEWOOD, R.E. No 2 CACRU

4 Sep 44

PLEA IN MITIGATION BY DEFENDING OFFICER NOTE E-3

Mr. President:

I propose to speak only in mitigation of sentence on the accused. Tpr Hazlewood, twenty-nine years of age, married with three children, was a hard rock miner in Northern Ontario. He joined the Army in June of 41, which I may say from my own knowledge was when recruiting was first opened in that particular part of the North country. Upon attestation he commenced his service with the 6th Hussars and served with that Regiment until the 10th of May this year, a period just short of three years. Tpr Hazlewood has a clean civilian record. His Army record as you can see is to all intents and purposes also clean. You will notice he is wearing a good conduct stripe. On the 10th of May of this year he was admitted to hospital where he was held until the 20th, on which date he was discharged to No 2 Canadian Armoured Corps Reinforcement Unit, having been medically boarded Category S-3. After reporting to No 2 CACRU he stayed one night there only. The following morning he made enquiries and was told, I submit inaccurately but it is not of any particular import, that his category would remain S-3 thereby rendering him unfit for service with his Unit for a period of six months. He applied for and received a pass to Milford. Mr. President, this absence is of rather a new type. It is the absence of a man who has no desire to avoid service, but rather of a man who has only a desire to seek service. Hazlewood's Unit was among those which crossed to France before H-Hour on D-Day. He had been with the Unit for three years, all his friends in the Army were with that Unit. You will recall that the day of the invasion was the 6th of June. When Hazlewood went to the unit area about ten days before D-Day his intention was to get himself smuggled to France where he could rejoin the unit. Security regulations were very strict. He was unable to effect entry into the regimental area. He stayed with friends and finally immediately after D-Day, knowing that the Echelon vehicles would be going at a later time, he went to New Milton where the unit had previously been stationed and encountered a number of his friends who were also, as he himself was, drivers of wheeled vehicles. He endeavoured to persuade them to take him back with them inside the enclosure. They refused to do so, saying that not only would he be caught, but they would also be in trouble. Two days later he returned to Gosport which was where the unit had last been and effected an entry inside the enclosure by concealing himself in the under part of a military lorry. Seeing an LCT standing just off shore he swam out to it and endeavoured to get aboard. He was unable to do so. He then swam back, was wet and cold, and extricated himself from the enclosure by wriggling through the wire. He then went back to his friends who gave him a hot drink and put him to bed, where he stayed for a couple of days. Hazlewood then again returned to New Milton where the friends with whom he had been staying there endeavoured to persuade him to return to the Reinforcement Unit. However he was still determined that he would rejoin his Regiment. I could not submit it as evidence but I have seen correspondence showing the effort he made to rejoin. Tpr Hazlewood went next to Poole where he understood a number of ships were loading. He stayed there for three or four days during which time he could have had and was promised transportation aboard ships to Canada, the United States and many other parts of the world but not to France. He could not get a ship at that point which would take him over to the Normandy coast,

NO. 2 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT

SUMMARY OF EVIDENCE

IN THE CASE OF

B-19616 Tpr. HAZLEWOOD, Roy, Edward
No. 2 Canadian Armoured Corps Reinforcement Unit
A Soldier of the Canadian Army Overseas

The Commanding Officer directs that all evidence be taken on Oath.

First Witness for the Prosecution

No. B-60978 Acting Corporal, HAYMAN, A., No. 2 C.A.C.R.U., having been duly swonn states:-

"On the night of 21 May 44 at 2230 hours, when I called the roll, Trooper Hazlewood, R.E. was absent from his quarters. He has not been with the Unit for duties since. I have not seen Trooper Hazlewood, R.E. since before 21 May 44 until this morning."

Questioned by Officer taking down the Summary of Evidence.

Q.1. On 21 May 44 should Trooper Hazlewood have been in your Barrack Room, and was he on your roll?

A.1. Yes Sir.

Q.2. Is Trooper Hazlewood, who was absent on 21 May 44, in this room?

A.2. Yes Sir. (Witness recognizes the accused.)

Q.3. What action did you take on discovering that Trooper Hazlewood was absent?

A.3. I reported his absence to the Squadron Orderly Sergeant, Sgt. Gillies, at tattoo.

Q.4. What Squadron?

A.4. Admin. Wing Sir.

Q.5. Did you ascertain if Trooper Hazlewood was present at any further roll calls?

A.5. I called the accused's name at each roll call, and reported him absent every day until he was struck off strength.

The accused declines to cross-examine this witness.

A Hayman
B-60978 A/Cpl.
No. 2 C.A.C.R.U.

The witness withdraws.

Second Witness for the Prosecution

B-52143 Sgt. Gillies, D.A., No. 2 C.A.C.R.U., having been duly sworn states:-

"I am Orderly Sergeant on permanent duty for Administration Wing, No. 2 C.A.C.R.U. At 2230 hours 21 May 44, Cpl. Hayman, Orderly Corporal on duty in the accused's quarters, reported the accused's absence. He was reported absent every day until he was struck off strength."

Q.6. Did you make any search for the accused?

F.C.C.M. IN THE CASE OF

B-19616 Tpr HAZLEWOOD, R.E. No 2 CACRU

4 Sep 44

PLEA IN MITIGATION BY DEFENDING OFFICER NOTE E-3

Mr. President:

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Realizing by now the impossibility of effecting a successful crossing of the channel and rejoining his unit he returned to New Milton to his friends. He appreciated that now the only sensible thing to do was to give himself up. However, I am sure, Mr. President, as you have encountered in many other cases he was afraid of the consequences, hesitated, and was unable to screw up sufficient courage. About a fortnight after that time he was sitting in a public house on the evening of the 23rd of August when he looked up and saw two civilian police talking among themselves outside the pub. A sudden force of resolution came to him. He got up, went out, and said I am a deserter, will you please take me away. Now that, Mr. President, is a story of his absence. I submit it is a very different type of absence than that which has undoubtedly been encountered in the Canadian Army for the last five years. I am not suggesting for one minute that Tpr Hazlewood should not be punished. He has committed an offence against the Army Act and did not behave as a soldier should behave. On the other hand I submit very strongly in mitigation of sentence that this man showed most exemplary spirit, a desire and ambition which undoubtedly is not as unsatisfactory as it might be. I would suggest, Mr. President, having taken into account this man's medical category, his military history, his personal circumstances, and the story which I can assure the Court is entirely correct, I have checked it very closely myself, that a punishment of a relatively minor nature would well suit the ends of justice in this case.

THE COURT IS CLOSED TO CONSIDER THE SENTENCE

NO. 2 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT

SUMMARY OF EVIDENCE

IN THE CASE OF

B-19616 Tpr. HAZLEWOOD, Roy, Edward
No. 2 Canadian Armoured Corps Reinforcement Unit
A Soldier of the Canadian Army Overseas

The Commanding Officer directs that all evidence be taken on Oath.

First Witness for the Prosecution

No. B-60978 Acting Corporal, HAYMAN, A., No. 2 C.A.C.R.U., having been duly sworn states:-

"On the night of 21 May 44 at 2230 hours, when I called the roll, Trooper Hazlewood, R.E. was absent from his quarters. He has not been with the Unit for duties since. I have not seen Trooper Hazlewood, R.E. since before 21 May 44 until this morning."

Questioned by Officer taking down the Summary of Evidence.

Q.1. On 21 May 44 should Trooper Hazlewood have been in your Barrack Room, and was he on your roll?

A.1. Yes Sir.

Q.2. Is Trooper Hazlewood, who was absent on 21 May 44, in this room?

A.2. Yes Sir. (Witness recognizes the accused.)

Q.3. What action did you take on discovering that Trooper Hazlewood was absent?

A.3. I reported his absence to the Squadron Orderly Sergeant, Sgt. Gillies, at tattoo.

Q.4. What Squadron?

A.4. Admin. Wing Sir.

Q.5. Did you ascertain if Trooper Hazlewood was present at any further roll calls?

A.5. I called the accused's name at each roll call, and reported him absent every day until he was struck off strength.

The accused declines to cross-examine this witness.

A Hayman
B-60978 A/Cpl.
No. 2 C.A.C.R.U.

The witness withdraws.

Second Witness for the Prosecution

B-52148 Sgt. Gillies, D.A., No. 2 C.A.C.R.U., having been duly sworn states:-

"I am Orderly Sergeant on permanent duty for Administration Wing, No. 2 C.A.C.R.U. At 2230 hours 21 May 44, Cpl. Hayman, Orderly Corporal on duty in the accused's quarters, reported the accused's absence. He was reported absent every day until he was struck off strength."

Q.6. Did you make any search for the accused?

A.6. I made a search of the camp area for the accused, but couldn't locate him.

The accused declines to cross-examine this witness.

B-52148, Sgt.
No. 2 C.A.C.R.U.

The witness withdraws.

Third Witness For the Prosecution — Captain J.B. Hamilton, No. 2 C.A.C.R.U. having been duly sworn states:-

"I am Capt. J.B. Hamilton, Acting as Assistant Adjutant of No. 2 Canadian Armoured Corps Reinforcement Unit. I produce certified true copy of extract from Part II Daily Order No. 129, para 8(a) dated 27 May 44, as amended by Part II Daily Order No. 130 para 10(a) dated 29 May 44, marked "A" and "B" respectively, and attached, which shows that the accused, whom I now recognize, was absent from 2230 hours 21 May 44.

"I also produce M.F.R. 575 marked "C" and attached which shows the accused was absent on 12 Jun 44.

"I also submit Army Form O1617 marked "D" and attached, which shows that the accused surrendered himself to P.C. 136, R.B. Stevens at Ashley, New Milton, Hants at 9.30 P.M. on the 23rd of August 1944.

"I also produce C.M.H.Q. Form 1000:55 marked "E" and attached, being Particulars of Expenses incurred in returning the accused to this Unit, amounting to £1 - 6 - 4.

The accused declines to cross-examine this witness.

(J.B. Hamilton) Capt.
No. 2 C.A.C.R.U.

The witness withdraws.

Question to the accused by Officer taking down the Summary of Evidence.

Q.7. Do you wish to make any statement or to give evidence upon Oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

Answer by accused.

A.7. No Sir.

Certified that Rule of Procedure 4 (C), (D), (E) and (F) complied with.
Taken down by me at Warburg Barracks, Aldershot, Hants, in the presence and hearing of the accused, this 31st day of August 1944.

(F.W.K. Bingham) Major,
No. 2 C.A.C.R.U.

Ex A

NO. 2 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT

Extract from Part II Orders No. 129 d/27 May 44.

"8. ABSENT WITHOUT LEAVE

(a) Absent without leave from 2230 hrs 20 MAY 44. Still AWL at 2230 hours 21 MAY 44 (24 hours).

B-19616 Tpr Hazlewood, R.E. Admin Rfts."

Certified True Copy

J.B. Hamilton

(J.B. Hamilton) Capt.
A/Asst. Adjutant,
No. 2 C.A.C.R.U.

NO. 2 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT

Extract from Part II Order No. 130 d/29 MAY 44.

"10. ABSENT WITHOUT LEAVE

(a) Part II Order NO. 129 para 8 (a), d/27 MAY 44 insofar as it concerns the u/m is amended to read "AWL from 2230 hrs 21 MAY 44. Still AWL at 2230 hrs 22 MAY 44. (24 hours)"

B-19616 Tpr. Hazlewood, R.E. Admin Hfts"

Certified True Copy

J. B. Hamilton Capt

(J.B. Hamilton) Capt.
A/Asst. Adjutant.
No. 2 C.A.C.R.U.

RECORD of the Declaration of a Court of Inquiry assembled at West Frith Barracks Blackdown, Hants. on the 12th day of June 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B19616 Tpr. Hazlewood, R.E. No. 2 C.A.C.R.U.

DECLARATION

The Court declare that No. B19616 Tpr. Hazlewood, R.E. No. 2 Canadian Armoured Corps Reinforcement Unit illegally absented himself without leave from the Field at West Frith Bks, Blackdown on the 31st day of May 1944, that he is still so absent, and that on the 12th June, 1944 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	Quantity	100 %			33⅓ % VALUE			ARTICLES				VALUE		
BLOUSE B.D.	2	2	7	0	1	13	9	SCABBARD SUPPORT WEBB	2	0	1	2	0	0	10
TROUSERS	2	2	3	9	1	16	3	KNIFE BAYONET	1	0	0	10	0	0	3
GREATCOAT	1	2	10	7	1	5	0	SCABBARD METAL	1	0	0	11	0	0	3
JACKET FIELDING	1	0	5	0	0	2	0	SCABBARD BAYONET	1	0	2	9	0	0	11
OVERALL BRUSH	1	0	11	4	0	3	6	SLINGS REAR SIGHT RIFLE	1	0	0	2	0	0	1
SHIRTS KHAKI	2	0	18	2	0	6	0	BOOTEES PR	1	0	0	5	0	0	2
" WOOLLEN	2	0	10	8	0	3	4	CAPES G.S.	1	0	0	5	0	0	2
BRACES WEB	1	0	1	7	0	0	6	OINTMENT ANTI GAS	1	0	12	4	0	4	2
BRACES BRN	2	0	2	10	0	1	0	METAL CAP, HELMET	1	0	0	5	0	0	2
CAPS COMFORTER	1	0	1	2	0	0	5	BADGE METAL SET	2	0	3	4	0	1	2
DRAWERS WOOLLEN	1	0	4	11	0	1	6								
" WOOLLEN	2	0	10	8	0	3	4								
GLOVES KNITTED	1	0	2	1	0	0	7								
BAG, KIT CAN	1	1	4	7	0	5	6								
CAPS FA GD	1	0	4	5½	0	1	6								
BRACES GROUND	1	0	13	2	0	4	4								
HOLDALL WIRE	1	0	0	9	0	0	3								
CLEANING KIT FIELD	1	0	1	1	0	0	4								
SHOES CANVAS PRS	1	0	2	11	0	1	0								
SOCKS WOOL PRS	1	1	4	0	0	4	8								
LAUNDER BAG	1	0	1	6	0	0	6								
CAPS MUFF WOOL	1	0	3	4	0	1	2								
BRACES RIGHT	1	0	3	4	0	1	2								
BOTTLES WATER	1	0	1	4	0	0	5								
CANNES M. BOTTLE	1	0	3	5	0	1	2								
SHOES A.G. PR	1	0	2	4	0	0	9								
		15	5	5	5	4	5	TOTAL	5	16	1	11	14	2	5

Capt. J.M. Nolan, No. 2 C.A.C.R.U. — President

Lieut J.D. Kilcoyne, No. 2 C.A.C.R.U. — Member

Lieut C.T. Cuthbertson, No. 2 C.A.C.R.U. — Member

Signed at In the Field

this 14th day of June 1944

Signature of Commanding Officer: Colonel J.H. Perry, C.O. No. 2 C.A.C.R.U.

Certified true copy: (W.C. Thomson), Capt & Adjt, No. 2 C.A.C.R.U. — Signature of Officer having custody of original record

M.F.B. 275
A.F.B. 118
(Signature of Officer having custody of original record)

114

I CERTIFY that the man whose personal description is given below surrendered himself to* P.C.136.R.B.Stevens.

at Ashley, New Milton. at (hour) 9.30.pm. on the 23rd. day of August, 1944 as being No. B.19016.

(Rank and Name) Trpr.Roy Edward HAZLEWOOD.

a deserter (or absentee without leave) from No.2.C.A.C.R.U.

and it appears to me from his confession that he is a deserter or absentee without leave.

*After the word "to" to be inserted the name and rank of the police officer concerned.

Age 29yrs Height 5 Feet 8 Inches

Complexion Fresh. Hair Dark Brown.

Eyes Brown.

Marks Appendix scar.

In uniform or plain clothes Uniform.

Probable Date and Place of Attestation	11th.June,1941. Toronto.Canada.
Probable Date of Desertion or beginning of absence, and from what place	21st.May,1944. Blackdown.

CONSTABULARY 24 AUG 44 NEW MILTON

R.B. Joyce Sergt 51

Signature of Officer of Police in charge } New Milton. Station.

24/8/44. Date of Signature.

Army Form O.1687
R.A.F. Form 1917

PART 2

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies only in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds incurred by the _____ Police in the case of No. _____ who surrendered to the Police at _____ on _____

Payable to _____

CERTIFIED that this statement of expenses is correct.

_____ Superintendent or Officer in charge of Police Station at _____

_____ Date of Signature.

IMMEDIATE.

Army Form O.1697
R.A.F. Form 1067

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depots are shown in the Monthly Army List.

† Note.—Special instructions apply in war for the disposal of absentees and deserters from the Army, who surrender to the civil police : e.g., such personnel will be taken over military station. (A.C.I. 488/1940).

(22742) Wt.32008/121 25,000 10/42 A.& E.W. Ltd. Gp.698 Forms/O.1617/28
(33980) Wt.66/26.1099 40,000 2/43 " "

Exhibit 6

Expense Voucher Re—: Ref. KR & O (Can) 539

Reg No. B 19616 Rank Tpr. Name Hazelwood, RE Unit 2 C A C R U

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from New Milton

Date	Particulars	Amount
25 Aug 44	Escorts return fare from LONDON To New Milton	15 0
	Prisoners single fare to LONDON From New Milton	7 6
	Prisoners fare from To	
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares	3 10
	Total £	1 6 4

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

W Birch

LIEUT.

R. E. BIRCH, Capt

ADMIN. OFFICER - D.P.M's BR.

Officer Issuing Railway Warrant and Ex[illegible]

No. 6 Area Provost Company, Canadian Provost Corps, L[illegible] C.M.H.Q.

CMHQ 1000/50
40/P&S/44/3659

MM

M.F.B. 355
10M—11-41 (2374)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B19616	Trooper	Roy Edward HAZLEWOOD	No. 2 C.A.C.A.S.F.

1. The following is a fair and true summary of the entries in the Service and Regimental and Squadron, Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	NIL A.A.Sec 15(1) 1 time	NIL A.A.Sec 15(1) 1 times
For	NIL times	A.A. Sec 40 2 times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or by civil court, of summary awards under Section 47 of the Army Act, and dispensations with trial under A.A.73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

The accused at the present time is undergoing sentence for

day of

4. The accused has been in confinement awaiting trial on the present charges, for 2 days in civil custody, and 9 days in military custody, making a total of 11 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 29 yrs. 6 mons 29 days

6. The date of his enlistment specified in his present service is attestation paper 11 Jun 47

7. The service which the accused is required to render towards discharge is

8. The accused is entitled to reckon for the purpose of determining his pension, &c.

9. The accused is in possession of, or entitled to, an Imperial decoration, or Air Force, or Imperial military (naval, military or air force) decoration (naval, military or air force). State any decoration or reward. Canadian Volunteer Service Medal and Clasp

10. (If the accused is under warrant of attachment, state when the accused before whom he was tried issued the warrant of attachment.)

EXD
MM

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Pilot Officer (Permanent Force) dated [illegible] unit [illegible] (Militia regiment (or corps)), the rank of [illegible] dated [illegible].

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

[illegible] Date of promotion.

In the rank of [illegible] years.

In the rank of [illegible] years.

In the rank of [illegible] years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number [illegible] Rank [illegible] Unit [illegible] Name [illegible] of [illegible] Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22 day of August 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked [illegible] signed by the president, and annexed to the proceedings.

J.B. Hamilton Capt.
(J.B. Hamilton) Capt.
A/A/Adjutant.
No. 2 C.A.C.R.U.

Certified TRUE COPY J. B. Harrell Capt & A/Adjutant

B19616 No. Name Hazlewood, A.E. Sqn, Battery, or Company Corps C.A.C. Date of enlistment 11-6-41 GC Badges Service or Proficiency Pay NIL

MFM 6 (AFB 122) (5412)

Date of last entry in Company Conduct Sheet 6-12-42 No. and date of last drunk Nil Period not reckoning towards freedom from extra fine NIL Sheet No 2 Signature OC Company, etc FWK Bingham Major

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed 11 Dec 41 (Sgd) FWK Bingham Major					
Field	13.4 42	Tpr	C	A.A. 40 "Conduct to the prejudice etc. "Did not get up at Reveille	P-1709 Cpl MacDonald C.B.	3 days C.B.	8.12.41	Major FWK Bingham	In proper Entry Lib 42 (Sgd) Maj FWK Bingham
Field	1.6 42	Tpr	C	A.A. 40 "Conduct to the prejudice etc" Arranged unauthorized relief from his tour of duty	A.415 Sgt	4 days CB	2.6.42	Captain O.M.Fuller	
Field	1944 7.5	Tpr	C	A.A. 15 (1) AWL from 0830 hrs. 7 May 44 until 2359 hrs 7 May 44 Total time absent 15 hrs,29 mins	A.209 Sgt. Branton B61600 Cpl Newton,P.E.	3 days Pay	9.5.44	Major J.P.Duncan	1 days pay 149(1) (a) 3 days pay 149 (1) (a)

(PTO)

NO. 2 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT
CANADIAN ARMY ENGLAND.

LIST OF EXHIBITS

in the case of

B-19616 Tpr. Roy Edward HAZLEWOOD

(a) Certified true copy of extract from Part II Daily Order No. 129, para 8(a) d/27 MAY 44.

(b) Certified true copy of extract from Part II Daily Order No. 130, para 10(a) d/29 MAY 44.

(c) M.F.B. 375

(d) Certificate of Apprehension by Civil Police.

(e) C.M.H.Q. 1000:55

(J.H. Perry) Colonel
Officer Commanding,
No. 2 C.A.C.R.U.

LIST OF WITNESSES

For the Prosecution

B-60978 Acting Corporal HAYMAN, A.	No. 2 C.A.C.R.U. Canadian Army Overseas.
B-52148 Sergeant GILLIES, D.A.	No. 2 C.A.C.R.U. Canadian Army Overseas.
Captain J.B. HAMILTON	No. 2 C.A.C.R.U. Canadian Army Overseas.

For the Defence

Nil.

4K18.
Pté. Hazuda. H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M.36464 Pte Mike HAZUDA LER

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 36C 9(2) A.A	NOT GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ N/A beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of N.I.L. days, of which N/L. days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

6 months Detention

(Sgd) ..... 20th Nov 1944 (Sgd) [signature]
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 780.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the court.

~~I direct that the accused be duly committed to prison or detention barracks, and further ordain that~~ N.P.B.
(1. AA 57A. Delete if not used.)

Date 28 Nov 44 (Sgd) N.P. Boyd Lt-Col
Commanding 2 Cdn Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
M36464 Pte Hazuda M	29 Nov 44	Lt Boyd Capt. Adjt The Royal Edmn R

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4R-18.

RECEIVED 9 JAN 1945 CMHQ

FIELD GENERAL COURT-MARTIAL

(CFA86 (In lieu of AFA3) 40/P & R/1608 (2864))

Convened by Lt-col M.F. Bogert A/Comd 2 Cdn Inf Bde dated 17 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-36464	Private	Mike	HAZUDA	LER

PROCEEDINGS REVIEWED [illegible]

[illegible] Major

REVIEWING OFFICER, [illegible] BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 20th Nov 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2F-21

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 69S, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 123.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO~~(2).

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~Adv. President to accused: Do you object to~~ N/A ~~an interpreter?~~ Ans

~~The interpreter is sworn.(1) Do you object to~~ N/A ~~a shorthand writer?~~ Ans

~~The shorthand writer is sworn.~~(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	P.D. CROFTON	P.P.L.I.
Member	CAPT	E.D. MACPHAIL	P.P.L.I.
Member	LIEUT	S.T. CAMPBELL	RWAF of C.
Judge-Advocate			
Prosecutor	LIEUT	J.H. PROUSE	L.E.R.
Defending Offr	LIEUT	J.J. LAUDIUM	L.E.R.

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI 3.)

A8. The accused M-36464 Pte MIKE HAZUDA before arraignment make(s) (no) (~~a~~) plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. ~~The accused is (are) arraigned (separately) on all charges in the charge sheet.~~(1) The accused does (~~does~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 69A to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

F93 RH/1143

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 27(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... ~~charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ~~DEFENDING OFFICER SAYS NOT~~ NEITHER. Do you intend to call witnesses on your behalf ? Ans NO ..... Are they witnesses as to character only ? [illegible]
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding[s].(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the FIRST charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO .....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement[s] as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier of having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "C" and Ex "D" respectively.(3)
(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans NO .....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2203, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

THE ACCUSED M36464 Private Mike HAZUDA, of The Loyal Edmonton Regiment, a soldier of the Canadian Army Overseas, On Active Service, is Charged With:

WHEN ON ACTIVE SERVICE

First Charge
Sec 9 (2)
Army Act

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

in the field, on 21st day of October 1944, did not go across the SAVIO RIVER with his section, when ordered to do so by M16966 Sgt Duncan, G.C.

In the Field
Date 14 Nov 44

(J.R.Stone) Lt-Col
Comd The L Edmn R.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
Date 17 Nov 44

(M.P.Bogert) Lt-Col
T/Comd 2 Cdn Inf Bde.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 103(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
M-36464	Private		Mike	HAZUDA	L E R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 17 Nov 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial; ~~and that it is undesirable that the trial should take place at a distance from the place where the offence was committed~~ N/A.
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~I appoint (a) the Offr to be the Court, (b) a Fd Offr as President, to be the senior Offr present~~ N/A.
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

~~I also appoint as Judge Advocate the Offr detailed hereunder~~ N/A.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

Major (Rank.)	P.D. Crofton (*Must be named. RP 106.*)	P P C L I (Unit.)

MEMBERS.

Capt	E.D. McPhail	P P C L I
Lt (Rank.)	S.T. Campbell (*Named or detailed. RP 106.*)	SEAF OF C (Unit.)

WAITING MEMBER.

Lt (Rank.)	G.D.M. Nicholson (*Named or detailed, if any. RP 106.*)	SEAF OF C (Unit.)

~~JUDGE ADVOCATE~~ N/A.

(Rank.)	(*Must be named, if any. RP 106.*)	(Unit.)

On Active Service in the Fd

in ITALY (*Country.*)

Date 17 Nov 44

M.P. Bogert (*Signed personally. RP 105 fn 2.*)
(M.P. Bogert)
Commanding 2 Canadian Infantry Brigade
Convening Officer.

Lt-col (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CF AAG (To item of AFA) 40-P & 67/1891 (1601)

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL CERTIFICATE
(KR (can) para 557)

This is to certify that I have today examined:

No M36464 Rank Private Name HAZUDA, M

of The Loyal Edmonton Regiment and in my opinion he is fit/~~unfit~~ to undergo trial be Field General Court Martial.

In the Field

Date 20/11/44

R.M.Levine

(R.M.Levine) Capt & M.O.
The L Edmn R.

X

M36464 Pte. Hayuta M L.E.R.

Plead not Guilty in answer to charge

~~Prosecution~~

M16946 A/Sgt. Duncan C.C.

Having been duly sworn states:-

On the 21 Oct 44 at approx 2100 hrs during the attack on the Savio river Pte Hayuta was in my sec.

I did & ordered him to carry on he refused saying he was scared and would go no further

Quest: Did you give a clear order?

Ans. Yes

Quest: What were your exact words?

Ans. I ordered him to cross the river.

Quest: Did he cross the river?

Ans. No.

Quest. When did you see him again?

Ans. At approx 0900 hrs 23

Quest. What was the tactical situation at the time the order was given?

Ans. Shells from 2 to 4000 yds M.G. in between

Quest. From defence

Quest:- What opportunity did you give to comply with order?

Ans: I told him his no / needed bombs and he must come if he could

Quest How much time did you give him

Ans. Approx 2 mins

Quest. What was tactical situation at time the order was given?

Ans:- Shells falling from 2 to 4000 yds and an M.G. could be heard in the distance

OK

Pros. Guest was this MG fire close.
ans 400 yds I expect.
Guest was the gun 400 yds away?
ans across the river
Guest the fire was in your gen direction?
ans yes
Guest The next time you saw the accused where was he?
ans At Bn Tactical HQ.
Guest Was Tactical HQ on the other side or home side of river?
ans Home side
Guest & how did your platoon cross the river?
ans Part crossed the night of the attack and part never
Guest How many crossed?
ans Four men
Guest And when did remainder cross?
ans Some were casualties and the rest crossed on the 23rd
Guest Did the accused cross the river?
ans Yes on the 23rd
Guest Therefor the accused crossed in the bulk of the platoon?
ans Yes
Guest Did he complain about crossing this time?
ans I dont know I was not with him
Guest We have established the fact that the accused did comply with the orders
Guest did the accused comply with your orders?
ans No not to mine he cross the next day on another ofs orders

Pte

Q. Guest What was your order to accused?
ans. I ordered him to cross and he refused. I ordered him again and he still refused.
Guest. Did the time element enter into the order at all?
ans. no.
Guest. Did you take Thomas rifle and turn away from him?
ans. Yes sir
Guest. from Pros.
Why did you take the mans rifle and ammo?
ans. Because he did not have no weapon other than a fist and I believed the man who was crossing the river needed a rifle more than a man who wasn't crossing
Guest. Did you take it before or after he refused to obey your order?
ans. After

Guest by President of Court. How far was it from the place you gave this order to the place you wanted him to go?
ans. Approx. 500 yds to river
Guest. Was he to follow you or go by himself?
ans. I ordered him to follow my self.
Guest. Was the accused physically fit
ans as far as I could tell

(R.R. 83 (h) complete with)

47-0584 Cpl. Warren A.C.

Having been duly sworn states

On the afternoon of Oct 22 I returned to the mouth of the Savia river with prisoners On the morning of Oct 23 at approx 0830 hrs I got the Kayuela and started back across the river. The Kayuela was in a house on the south side of the Savia river. Prosecution has no questions

Questions by defense

Quest- Did the Kayuela give any trouble in this crossing

ans No

Quest Did the accused go into the line on crossing the river?

ans. Yes

Quest: Have you ever heard a man refuse to obey an order yet go ahead and do it

ans Yes it is possible

Quest ~~If your rifle and ammo were taken away from you would you consider this same~~

ans ~~My rifle and ammo would not be taken from me I would go~~

Quest Were you ordered to go bring accused back with you when you crossed

ans Yes

Quest Did you ~~hear~~ get Duncan give the order to the accused the day before

ans No

Quest. When you got the accused output kind of phase was he in

GDC

~~Accd. He was in fairly good condition~~

and. He was in good physical shape.

R.P.83(b) complied with

~~Precautions taken up.~~

Address by Defending officer re

~~Evidence for the Defence~~

re witness

1 Man did cross river after ~~he~~ pulling himself together.

2 Man is a driver and not a trained infantry man.

3 He did cross and casualties on low side of River.

8C

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Ex "C" 18

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M36464	Pte	HAZUDA, M.	The Loyal Edmonton Regt.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :— (ACCORDING TO HIS MEMORY)

For AWL AA Sec 15 (1) 3 times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 2 Feb 42 (M.P.M14)

Date of last entry in Field Conduct Sheet 18 Oct 43 (M.P.M14)

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N/A beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for ~~[illegible]~~ Nil days in military custody, *i.e.*, N/A days in open arrest, N/A days in close arrest; of which N/A days were spent in hospital.

5. The present age of the accused is 22 yrs

6. The date of his attestation is 29 Sep 41

~~WHEN UNDER SENTENCE EXECUTED~~

7. The service which the accused is allowed to reckon is 3 yrs 1 month.

†State the military decorations (if any) held by accused.

8. The accused is in possession of† CVSM & Clasp

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion
In the substantive rank of N/A	
In the war substantive rank of N/A	
In the acting rank of N/A	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(E1114) W1.8670/888 100,000 6/42 A. & E.W. Ltd. Gp.698
(S1424) W1.25856/1573 60,000 9/42 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this Fifteenth day of November 1944

E.L. Boyd Capt & Adjt

(E.L. Boyd)
The L Edmn R

No M36464 Name HAZUDA, M. | Sqn, Battery or Company | Corps CIC | Date of enlistment 29 Sep 41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFH 122) 40/PAS/136 (3438)

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				"CERTIFIED NO M.F.M6 AVAILABLE"					
				E.H. Boyd Capt & Adjt The Loyal Edmonton Regiment					

Ex D. PAC.

(PTO

The following summary of evidence is in the case of M36464 Pte. Hazuda, M., of the Royal Edmonton Regiment, a Soldier of the Canadian Army Overseas, C.M.F.

By order of the Commanding Officer evidence is taken on oath.

First Witness for Prosecution.

M16966 Sgt. Duncan, G.C., of the Royal Edmonton Regt., having been duly sworn states:

I am M16966 Sgt Duncan, G.C. of the anti-tank platoon of the Royal Edmonton Regt.

On the 22 Oct 44 at approximately 2100 hrs during the attack over the Savio River I ordered Pte Hazuda to cross with my section. He refused to do so saying "I am afraid and I will go no further", or words to that effect.

Q1 Did he cross the river.

A1 No sir, not until some time the next day.

Q2 How long did you wait to see if he was going to obey your order.

A2 Possibly two minutes. I could see he was not going to come and I felt that I must continue the advance myself.

Q3 At the time you gave the order what was the tactical situation.

A3 We had just left the starting point to go into the attack. There was some shelling.

M16966 Sgt G.C. Duncan.

The accused declines to cross-examine this witness.

2nd Witness for Prosecution.

M10584 Cpl. Warren, W.D. of the Royal Edmonton Regt., having been duly sworn states:

I am M10584 Cpl. Warren, W.D. of the anti-Tank platoon of the Royal Edmonton Regt.

On the night of 21 Oct 44 I crossed the Savio River with other members of the Anti-Tank Platoon. On the afternoon of the 22 Oct 44 I returned across the river with prisoners. The following morning, 23 Oct 44, at approximately 08 30 hours I picked up the accused, M36464 Pte Hazuda, M. whom I was ordered to bring forward with me across the river and took him into custody as a prisoner of war.

M10584 W.D. Warren

The accused declines to cross-examine this witness.

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused declines to make a statement.

I certify that the foregoing summary of evidence consisting of one folio was taken down by me in the presence of the accused on 14 Nov 44, and that Rules of Procedure 4 (C) (D) (E) (F) + (h) have been complied with.

Date 14 Nov 44

G.H. Stanford Brevet Lt.
Asst Judge Advocate

This is fold

81-V

O. H. M. S.

Pte. HEAD, C.E.

REVIEW SHEET

F.G.C.M. - Trial of No.: M12002 Pte Head C E H Q 5 Cdn Inf Bde

Date of Trial: 14 Jan 43

President of Court: Major F J Gilmour R C A attd H Q 2 Cdn Div

1. For the informat on of the Officers asked to sign below the following irregularities are noted:

(i) The accused's Christian names should precede his surname in col 1 of page 2 of A/A 3;

(ii) The Medical Certificate is not in proper form (See K R (Can) 887);

(iii) It is unnecessary to use the words "When on Active Service" in a charge under Section 40, Army Act

(iv) Delay in tracing A T S witnesses is understandable but Court of Inquiry and Summary of Evidence should have been taken when all witnesses were present at one time. Delay is considered excessive, even under the circumstances

2. May these remarks and the authorities quoted be read by the following Officers, signed and returne d to this H.Q., please

O.C._____

Adjutant_____

President_____

Staff Officer for Convening Officer_____

Staff Officer for Confirming Officer_____

W.M.W. Shaw

(W.M.W. Shaw), Capt.,
A.D.J.A. 2 Cdn Div

~~DDAT~~/DRLS
Encls.
✓ Rear H Q 1 Cdn Corps (Legal)
5 Cdn Inf Bde
18 Jan 43

81-V

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

"A."
Order convening the Court.

On Active Service, this TWELVTH day of ~~JANUARY~~ 43.

Whereas it appears to me, the undersigned, an officer in Command of 5 Cdn Inf Bde 5 CANADIAN INFANTRY BRIGADE, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

~~*I am unable to appoint~~
~~*(a. Three Officers to form the Court.)~~
~~*(a. A Field Officer as President.)~~
~~*(a. Three Officers having more than one year's service.)~~
~~(in the following respects namely:—)~~

In my opinion, military exigencies, namely, the dispersion of units, and difficulties of communication and other difficulties render it inexpedient to observe the provisions of those rules inconsistent with Appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

110

President.

Rank.	Name.	Regiment.
Major	F.J.Gilmour	H.Q. 2 Cdn Div

Members.

Rank.	Name.	Regiment.
~~Major~~	To be appointed by O.C. Calg.Highrs.	Calg.Highrs.
Capt.	To be appointed by O.C. R.H.C.	R.H.C.
	WAITING MEMBER	
Lieut.	To be appointed by O.C. 5 Cdn Inf Bde	H.Q.5 Cdn Inf Bde.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed R Robertson Lt-Col
COMD. 5 CDN. INF BDE.

Commanding *Convening Officer.*

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
M/12002 Private HEAD, Cecil Emerson, H.Q. 5 Cdn Inf Bde a soldier of the Canadian Army Overseas	FIRST CHARGE A.A. Sec 40 (see charge sheet attached)	Guilty	Guilty	
	SECOND CHARGE A.A. Sec 40 (see charge sheet attached)	Guilty	Guilty	
			30 days detention & stoppages of £24/0/0 in respect of Cost of Petrol & damage to vehicle	
			14 January 1943 J Fishmour Major	COMD. 5 CDN. INF. BDE. Confirmed. J.C.L.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) G Wotherspoon Brig (Signed) J Fishmour Major
COMD. 5 CDN. INF. BDE.
Commanding *Convening Officer* (*c*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14th day of January 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
~~3. The interpreter~~
~~*4. The officer under instruction~~ N/A

* Omit if not applicable.

were duly sworn.

Signed this 14th day of January 1943.
J Fishmour Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this ____ day of ____ 19 .
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ J.C.L.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 16th day of Jan 1943.
J C Roberts Lieut-Gen
~~Comdg 3 Corps~~
~~Confirming Officer~~

Promulgated and extracts taken in the case of M12002 Pte Head CE HQ 5 Cdn Inf Bde.

(*a*) (Dated) 15 Jan 43 (Signed) E M Rooke Capt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

MEDICAL CERTIFICATE

I certify that I examined No. W.42002 Pte. Head. L E.....

of 5th L.A.B. and found him free of diseases

and fit to undergo Court Martial.

DATE: Jan. 14th 1944. P.R. Lawson Capt.

Medical Officer

"C" J Fishmour Maj'r Pro

18th FIELD AMBULANCE R.C.A.M.C. (C.A.S.F.)

CHARGE SHEET Pros of Court

The accused M/12002 Private Cecil Emerson HEAD, H.Q. 5 Cdn Inf Bde, a soldier of the Canadian Army in the Field is charged with:-

FIRST CHARGE
A.A. Sec 40

When on active Service, Conduct to the Prejudice of Good Order and Military Discipline,

in that he,

at approximately 2215 hrs, 12 Dec 42, did use for his own personal use, Station Wagon CM-4202190, without authority.

SECOND CHARGE
A.A. Sec 40

When on Active Service, Conduct to the prejudice of Good Order and Military Discipline,

in that he,

at approximately 2215 hrs 12 Dec 42 at Fontwell, MR 386266 did drive Ford Station Wagon CM4202190 in such a manner as to cause damage of £48-0-0 to said vehicle.

Dated this 11 day of Jan 1943

(C.T. Sharpe) Major
H.Q. 5 Cdn Inf Bde

To be tried by FGCM

B.J. Fahmer Maj a Pros

JAN 12 1943

COMD 5 CDN INF BDE

"I wish a defending Officer."
"I desire the services of Lieut. A.F.Bell if he is available."

In the Field
This 11 day of Jan 1943

L E Read NX12002

SUMMARY OF EVIDENCE

Summary of Evidence in the Case of M/12002 Private Cecil Emerson HEAD, H.Q. 5 Cdn Inf Bde, a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

the C.O. directs that the evidence be taken on oath.

First Witness for the prosecution. M/191 Bdr. Clarke, D.L. having been duly sworn states:-

"Sir, I am No. M/191 Bdr Clarke, D.L. of the 20th Cdn A.Tk Bty R.C.A. I was riding with Pte. Head in a 5 Cdn Inf Bde Station Wagon at approx 2215 hrs on the night of 12 Dec 42. We were taking two A.T.S. girls back to Chichester as they had missed their last bus from Bognor Regis. The night was very dark and it was raining slightly and Pte. Head on approaching a rd junc apparently did not see the turn and overshot the road and ran into the ditch on the north side of the road. Pte. Head was badly gashed around the mouth. With the assistance of Two WAAF Cpls, who had just got off a bus about three minutes after the accident happened, we managed to get Pte. Head to an RAF dressing station located some 300 yds up the road. I was not injured in any way."

Examined by officer taking Summary.

Q1. Do you know the names of the A.T.S. girls?
A1. Only one of them: Janet MacDonald.
Q2. Do you know her unit or station?
A2. Nor Sir.
Q3. Where did the A.T.S. girls go after the accident?
A3. A civilian car picked them up and took them into Chichester.
Q4. Were either of the girls injured?
A4. One of them had a nose bleed.
Q5. How many drinks did Head have?
A5. I would say he had one drink, he was not under the influence of liquor.
Q6. How did you get Home?
A6. Bde was phoned, and sent a veh to investigate the matter. The driver drove me home and took a statement from me.

The accused declines to cross-examine the witness.

Second Witness for the Prosecution. W/163623 Pte. MacDonald, Janet of the A.T.S. having been duly sworn states:-

"I am W/163623 Pte. MacDonald, Janet of the A.T.S. On the night of 12 Dec 42 at about 2150 hrs I went into the Bedford Hotel with Bde Clarke and Pte. McConnell and there met Pte. Head, who offered to drive us back to Chichester. We proceeded on our way to Chichester, Pte. Head was not driving very fast, but at a road junc missed the turn and crashed into the ditch. I got out of the car and there was a Cpl who had got off the bus, who stopped a civilian car, which drove Pte. McConnell and myself into Chichester. We reported to our HQ who sent us to the hospital. I had a fractured cheek bone and spent about ten days in a sick bay."

Examined by Officer taking Summary.

Q1. Had the driver been drinking?
A1. No, Sir.
Q2. Where were you sitting?
A2. In the back seat with Bdr. Clarke.
Q3. What speed were you travelling?
A3. Not very fast, Sir.

The accused declines to cross-examine the witness.

Third Witness for the Prosecution. W/163660 Pte. McConnell, I., A.T.S. having been duly sworn states:-

" Sir, I am W/163660 Pte. McConnell of the A.T.S. On the night of 12 Dec 42 I was in company with Bde Clarke and Pte. MacDonald, A.T.S. We had been to a dance and stopped in the Bedford Hotel for a drink where we met Pte. Mead who said he would drive us home. On the way home Pte. Mead missed a road junc and drove off the road. When I got out of the car, a civilian car had stopped and picked up Pte. MacDonald and myself and drove us to Chichester. We reported to our H.Q., who on seeing we had been injured called an ambulance and sent us to the Hospital. I had a fractured nose."

Examined by Officer taking Summary.

Q1. Was the driver, driving properly, that is, with both hands on the wheel?
A1. Yes, certainly.
Q2. How many drinks did the driver have?
A2. He had none with us.

The accused declines to cross-examine the witness.

Fourth Witness for the Prosecution. 2043106 Cpl. Purvis, E., WAAF, RAF Tangmere, having been duly sworn states:-

" Sir, I am 2043106 Cpl. Purvis, E., driver of WAAF. On the night of 12 Dec 42 I left Bognor Regis with Cpl. Hazeltine, J., WAAF., at 2205 hrs at about 2220 hrs the bus stopped at the scene of an accident. I ran over to the car and helped get the driver out of the car; he was cut about the face and mouth. We assisted him to the dressing station, which was located a few hundred yards up the road, where first aid was administered."

Examined by Officer taking Summary.

Q1. Was the driver under the influence of liquor?
A1. He mad the statement to me "It wouldn't have happened Had I not been drinking.
Q2. Did he seem under the influence of liquor?
A2. No, Sir.
Q3. Did you see any A.T.S. girls in the car?
A3. No, Sir.

The accused declines to cross-examine the witness.

Fifth Witness for the Prosecution. 2024052 Cpl. Hazeltine, J. WAAF, RAF Tangmere, having been duly sworn states:-

" I am 2024052 Cpl. Hazeltine, J. driver, WAAF. On the night of 12 Dec 42 I attended a dance at Bognor and was returning home on the 2205 bus in company with Cpl. Purvis, WAAF, when I noticed a car which had been travelling in front of us overrun the road. I got off the bus ran over to the car and helped extract the driver and assist him to the dressing station."

Examined by Officer taking Summary.

Q1. Was the driver under the influence of liquor?
A1. He smelt only very faint of liquor.
Q2. Did you see two ATS in the Car?
A2. No, Sir.

The accused declines to cross-examine the witness.

The accused makes a voluntary statement in his own behalf. M/12002 Pte. Head, C.E., H.Q. 5 Cdn Inf Bde, having been duly sworn state:-

" I am M/12002 Pte. Head, C.E. driver at H.Q. 5 Cdn Inf Bde. I drove Capt. Careless and Capt. Fuson to an official function in Bognor Regis and dropped them at approx 2130 hrs in the parking lot beside the Royal Hotel on the night of 12 Dec 42. I left the parking lot, leaving the car there and went to the Bedford Hotel. In the Bedford Hotel I met Bdr Clarke who had with him two ATS girls and I offered to drive them home. I had two small beers while in the hotel. We then proceeded to the car park and started to drive to Chichester. I didn't know the road well, and Bdr Clarke was attempting to direct me. It was a dark night and raining and I did not see the warning signs. I went to apply the brakes but it was too slippery, so I passed over the rd junc into the hedge on the North side. I got out of the car. Two WAAF cpls got off a bus and assisted me to the RAF dressing station, which is loacted very near the scene of the accident."

Examined by the Officer taking Summary.

Q1. Why did the ATS girls get out of the car so fast?
A1. I don't know, Sir.
Q2. Did you make the statement "that it wouldn't have happened had I not been drinking"?
A2. No, Sir.
Q3. Had you ever driven over that road before at night?
A3. No, Sir, only once in the daytime.
Q4. What speed were you travelling at?
A4. I would guess at 25 to 30 m.p.h.
Q5. Were you headlights on full?
A5. Yes, Sir.
Q6. What kind of shape were your brakes in?
A6. The brakes seemed alright, but it was the first time I'd driven the car.

CERTIFIED THAT RULES OF PROCEDURE 4 HAVE BEEN COMPLIED WITH.

In the Field
This 11 day of January 1943

E A Rooke Capt.

(E.A.Rooke) Captain
Officer taking Summary.

13 Jan 43

In accordance with R.P. 76 notice is hereby given of intention to call LIEUT. H. LITTLE, O.M.E. 5 Cdn Inf Bde as a witness for the prosecution to give evidence in the case of M/12002 Pte. Head, C.E, as set out below.

"That the damage caused to vehicle CM4202190 plus the cost of repairs would amount to (£48.0.0) forty-eight pounds sterling.

E A Rooke

(E.A.Rooke) Captain
Officer for the Prosecution

WITNESSES IN THE CASE OF
M/12002 PTE. HEADY C.E.

1.	M/191	Bdr.	Clarke, D.L.	20 Cdn A.Tk Bty
2.	W/163623	Pte.	MacDonald, J.	A.T.S.
3.	W/163660	Pte.	McConnell, I.	A.T.S.
4.	2043106	Cpl.	Purvis, E.	W.A.A.F., R.A.F. Tangmere
5.	2024058	Cpl.	Hazeltine, J.	W.A.A.F., R.A.F. Tangmere

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field-Gen'l Court-Martial held at In the Field on the 14th day of January 1943 by order of Brigadier G.V. Whitehead Commanding 5th Canadian Infantry Brigade dated the 12 day of January 1943.

President.

Major F.J. Gilmour R.C.A. attd HQ 2nd Can. Div.

Members.

Major B. McKenzie Calg. Highrs.

Lt. F.H. Cundill R.H.C.

Trial of* M-12002 Private Cecil Emerson HEAD-HQ. 5 Can. Inf. Bde

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that is not available to serve owing to

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. E.A. Rooke - HQ 5 Can Inf Bde.

Counsel‡ or defending officer† Lt. A.F. Bell - HQ 5 Can Inf Bde

At 1430 o'clock the Trial commences.

The order convening the Court is read, and is marked "A" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

F.J. Gilmour Maj i/c pros

B

The President, members and ~~judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 16 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty. *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

✓ *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

✓ *Answer.*

The accused having pleaded Guilty to 1st & 2nd charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer.

The prosecutor makes an opening address, hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witness Lieut H Little O.M.E. 5 Cdn. Inf. Bde to supplement the evidence contained in the summons.

First witness for prosecution.

being duly sworn, is examined by the prosecutor.

I am Alderman Mechanical Engineer i/c of 5th Bde L.A.D. I made an estimate of £48/0/0 to repair Vehicle CM 420 2190. I estimate this @ 200 man hours at 3 shillings per hour a total £30/0/0 & materials @ £18/0/0

Total of £48/0/0

No Cross Examination.

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer.

Question. Do you intend to call any other witness in your defence?

Answer.

Question. Is he a witness as to character only? *Answer.*

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (v) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked , signed by the President and attached to the proceedings.]

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

CC

Proceedings on Plea of Guilty.

* To be struck out in case any plea of "Not Guilty" has been recorded in this case.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused M. 12002 Pte C. E. Hoad is found guilty of the charge.

†The summary (or abstract) of evidence is read, marked "D" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. No

The accused in mitigation of punishment says:—

[*or* hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

E

Finding.*

*To be struck out except in cases where trial has taken place on plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Capt E A. Rooke is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes. A F B 246 4 Certd copies of Regs. 7 M. 6

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked 67, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. Yes

~~Cross-examined by the accused.~~

[Instruction.—If by reason of the nature of the service of the accused in a regimental corps, or elsewhere, the finding of the Court renders him liable to any disciplinary punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of the additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No Sir

The Court is closed for the consideration of the sentence.

(5)

J. Johnson Major Brs

M12002

CALGARY HIGHLANDERS, C.A.S.F.

No. Name HEAD Cecil Emerson

Sqn., Battery, or Company

Corps

Date of enlistment 20-6-40 G.C. Badges

Service or Proficiency Pay

M.F.M. 6 (A.F.D. 122)

Date of last entry in Company Conduct Sheet -nil

No. and date of last drunk -nil

Sheet no. 2 destroyed Period (not to) 22/12/40 forwards freed from crime line

Sheet No. 71

Signature O.C. Company, etc. R.D. BRYAN MAJOR

Character Fair

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Folkington Manor Polegate	4 Aug 41	Pte		A.A. Sec. 40 in that he at Wooton Manor on 4 Aug 41 did do damage to W.D. vehicle no. CZ 4206372 which he was driving.	D81432 Cpl Boisvert J.	2 C.B. + and stoppage of pay to cover damage up to 10£	9 Aug 41	S.C. CANTLIE MAJOR	
In the Field	4 3/42	Pte		WOAS neglect to the prejudice of good order and military discipline in that he failed to clean his rifle A.A. Sec. 40	D81282 Sgt. Seullion J.E.	4 days C.B.	16 Mar 42	R.G. Slater LIEUT.	
In the Field	29 4/42	Pte		WOAS neglect to obey standing orders driving W.D. vehicle excessive speed (35 M.P.H.)	K53324 L/Cpl Baddeley K. C17740 H/Cpl Cook L.A.	Forfeiture 7 days pay	7 May 42	W.A. WOOD CAPT.	

(P.T.O.)

CC

Proceedings on Plea of Guilty.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused M 12002 Pte C. E. Head is found guilty of the charge.

†The summary (or abstract) of evidence is read, marked "D" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:—

[*or* hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character? No sir

Question to the accused.

Answer.

Evidence as to character

Lt. Bell the defending Officer addresses the Court. points out that accused drove two officers to a dance & had nothing to do while dance was over. Left to sit there for 4 hours. 2 ATS passed their bus - thought as he had nothing to do he might as well direction home. The wife of accused gives evidence that the reason they married & have a baby. Accused has not been boldly suggested fault to Headquarters his work officers leaving accused sitting in car with nothing to do - blame for leaving

E

Finding.*

*To be struck out except in cases where trial has taken place on plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Capt E A. Rooke is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes. A F B 276 (Certified copy of A. F. M. 6)

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked B 7, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. Yes

~~Cross-examined by the accused.~~

[Intermediately to prove if the matters of the service of the accused in a disadvantageous light, or otherwise the finding of the Court requires from time to time any exceptional punishment, or in order to find to be awarded by the Court the prosecutor must take the direction of the Court in the last, and the Court must receive into the matters and answers of the additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No Sir

The Court is closed for the consideration of the sentence.

(5)

J. Robinson Major Pres

F

Sentence.

The Court sentence the accused M12002 Pte Cecil Emmanuel Head to undergo detention for 30 days + be put under stoppages £ £24/0/0 - part of the damage to vehicle

Sentence.

W. Jackson
Maj
Pres

M12002

CALGARY HIGHLANDERS, C.A.S.F.

No. Name HEAD Cecil Emerson Sqn., Battery, or Company Corps Date of enlistment 20-6-40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet -nil No. and date of last drunk -nil Period not to be taken towards freedom from drunk line Sheet no. 1 destroyed 20/11/42 Sheet No. II Signature O.C. Company, etc. R.D. BRYAN MAJOR Character Fair

M.F.M. 6 A.F.B. 122 175M—7-41 (3279-20) H.Q. 1772-20-3802

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Folkington Manor Polegate	4 Aug 41	Pte		A.A. Sec. 40 in that he at Wooton Manor on 4 Aug 41 did do damage to W.D. vehicle no. CZ 4206382 which he was driving.	D81432 Cpl Boisvert A.	2 C.B.s and stoppage of pay to cover damage up to £6	9 Aug 41	S.C. CANTHE MAJOR	
In the Field	4 3/42	Pte		WOAS - neglect to the prejudice of good order and military discipline in that he failed to clean his rifle A.A. Sec 40	D81282 Sgt. Seullion J.E.	4 days C.B.	16 Mar 42	R.G. Slater LIEUT.	
In the Field	29 4/42	Pte		WOAS - neglect to obey standing orders driving W.D. vehicle excessive speed (35 M.P.H.)	K53324 L/Cpl Goddeley K. G11760 H/Cpl Cook R.A.	Forfeiture 7 days pay	7 May 42	W.A. WOOD CAPT.	

(2703)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In The Field	11 Dec 42	Pte		WOAS neglect to the prejudice of good order and military discipline in that he, on 11 Dec 42, neglected to clean his rifle before inspection	C.S.M. Scott	7 days C.B.	12 Dec 42	O.C. FUSON CAPT.	

CERTIFIED TRUE COPY

(Substitute for A.F.B. 296)
or M.F.B. 355.

STATEMENT OF CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED

No. M.12002 Name Head, Cecil Emerson Unit H.Q.5 Cdn. Inf. Bde.

Age 21 Married or Single Married No of Dependents 1

Date of Attestation 2 0 June 194 0

No of Days spent in close arrest (To date of trial)

Civil ---------- Military ---------- Hospital ---------- Total ----------

Dates of Promotions, Appointments and confirmations of rank, if any

Nil

A certified copy of M.F.M. 6 must accompany this form

(Officer i/c Records)

Capt UNIT

HQ, 5 Cdn. Inf. Bde.

Dated at In-The-Field

This 14 Day of January 1943

(To be dated and signed as of date of trial

Major

YYV-143 Case #2.

Pte Head CE.

Case #1-V-81

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M-12002 Pte Cecil Emerson MEAD LER

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. Sec 12(1)(a) Desertion	Not Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present undergoing sentence for "FDC" beginning on 1944 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 2 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: 1 years detention.

(Sgd) _____ Judge-Advocate, if any. Sept 10 - 1944 Date awarded. (Sgd) "F.D. Crofton Major" President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the Court.

I direct that the accused be not arraigned on [illegible] further order. "TGG"

(1. AA 57A. Delete if not used.)

Date 12 Sep 44 (Sgd) "TGGibson" (T G Gibson) Brig. Commanding Second Canadian Infantry Brigade. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
M12002 Pte Head, C.E.	15 Sep 44	"G Armstrong Major"

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY (Sgd) [illegible] Capt. CMF

"FDC" 2 Images

FIELD GENERAL COURT-MARTIAL

CPA89 (Indian) (C AFA3) 40/P&S/1656 (43030) 4/38B

Convened by Order of T G Gibson Comd 2 Cdn Inf Bde dated 8 Sep 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M12002	Private		Cecil Emerson	MEAD	LER

Proceedings Reviewed.
22 Sep 44 "W.P. Taylor" Major DJA
Cdn Sec GHQ 2 Ech AAI.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) Sept 10 - 1944.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO. "FDC"

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to M/A as interpreter? Ans _____

The Interpreter is sworn.(1) Do you object to M/A as shorthand writer? Ans _____
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F.D. Crofton	PPCLI
Member	Capt	R.S. Ennis-Smith	PPCLI
Member	Lieut	J.A. Manahan	Seaf of C
Judge-Advocate			
Prosecutor	Capt	I.A. Hamer	L E Regt
Defending Offr	Lieut	H.G. Field	L E Regt

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 3.)

A8. The accused before arraignment make(s) (no) plea. "FDC" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 150), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is arraigned (separately) on all charges in the charge sheet.(1) The accused does (not) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*H*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)

(1. *RP 37(B).* 2. *RP 37(B) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) (not) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Yes, Give evidence Do you intend to call witnesses on your behalf ? Ans Yes. Are they witnesses as to character only ? Ans NO .....

(1. *RP 115.* 2. *RP 40(A), see B3(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf AR5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 66(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 100(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused's trial on all charges is not to be proceeded further, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (5), RP 45, 120(A).* 2. *AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans No

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "P" and Ex "Q" respectively.(3)

(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 158. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes .....(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-586, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 504.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Ex "A" "PDC"

C H A R G E S H E E T

THE ACCUSED, M12002 Private HEAD, Cecil Emerson, of The Loyal Edmonton Regiment, a soldier of the Canadian Army Overseas, C.M.F., is Charged With:-

WHEN ON ACTIVE SERVICE

1st Charge
Sec 12(1)(a)
Army Act

DESERTING HIS MAJESTY'S FORCES

in that he

in the field, when his unit was attacking the enemy at Monteluro, Italy, deserted his unit at 2100 Hrs 1 Sep 44 with the express purpose of avoiding action, not returning until surrendering himself to L13415 C.S.M. Murray, H.A., at 1830 hrs 5 Sep 44.

(Total absence 3 days 21 hours and 30 mins)

In the Field
9 Sep 44.

"HP Bell-Irving"
(H.P. Bell-Irving) Lt-Col
Commanding The L Edmn R.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
Date 8 Sep 44

"TG Gibson"
(T.G. Gibson) Brig.
Comd 2 Cdn Inf Bde.

"PDC"

FIELD GENERAL COURT-MARTIAL

CFA35 (To Ren of AFAB) 49/PAS/1697 (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 14, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M12002	Private	Cecil Emerson	HEAD	LER

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 6 Sep 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reasons due to active operations~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed "TGG" or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reason that~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereof the Offr mentioned hereunder.~~

(RP 106(C). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	P D Crofton	PPCLI

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	A S Ennis-Smith	PPCLI
Lieut	J A Manahan	Seaf of C

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	A H McMullen	Seaf of C

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY (Country.)

"T G Gibson" (Signed personally. RP 105 fn 2.) Brig (Rank.)

Dat 8 Sep44

Commanding Second Canadian Infantry Brigade
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Ex "B" "PLC"

M E D I C A L C E R T I F I C A T E
(KR (Can) para 557)

This is to certify that I have to-day examined No M12002 Rank Private Name Head, C.E. of The Loyal Edmonton Regiment and find him fit to stand trial by Field General Court Martial.

In the Field
10 Sep 44

"Robt M Levine"
(R.M. Levine) Capt & M.C.
Medical OfTiser i/c,
L Komn B.

1st Witness for the prosecution:

M107160 Cpl MacPherson I.A., having been duly sworn states:

Ex "C" "PDC"

On the night of the 1st, the Cpls were called together and briefed for an attach, which was to start at 1730 and which actually started at 1830. Pte Head was with the sec at this time. During the attack which was going down a long hill, I noticed that Pte Head was not with the sec. I reported this when we arrived on the objective.

Questions by the Prosecution.

Q.1 Did you point out the objective to the accused before the attack started?
A. Yes.

Q.2 During the advance could you see the objective at all times?
A. Yes.

Q.3 Approx. how far would you say it was from the start line to the objective?
A. Possibly little over a mile.

Q.4 What time did you get to your objective?
A. It would be about 2000 hrs. It was getting dark then.

Q.5 How many men were there in your sec including the accused?
A. 4 men besides myself.

Q.6 Do you consider the accused to be a trained soldier?
A. Yes, Sir.

Questions by the defense

Q.1 What was the accused's job in the sec.?
A. He was a rifleman.

Questioned by the Court

Q.1 Could you tell us approx how far Pte Head went with the sec?
A. About ½ of the way.

Q.2 Was it dark when you first missed Pte Head?
A. No Sir.

2nd Witness for the Prosecution

M53099 A/Cpl Mapp C. having been duly sworn states:

On the evening of Sept 1st 1944, we got orders to attach MONTILLERO. We moved off to attack at approx 1800 hrs. Some while after we moved off I passed Pte Head, the accused whom I now recognize, at the side of the path. I asked him what was the trouble and he said he was moving his bowels. I told him to catch up with his section or words to that effect. At 2000 hrs we had taken Hil MONTILLERO. I checked my platoon for casualties and as yet Pte Head had not returned to his sec. I told the sec leader to report to me when he returned. He did not return until Sept 5, 1944 at 1845 hrs.

Question by the Prosecution

Q.1 Could you see the objective at all times during the advance?
A. I could sir.

Q.2 Was the route to the objective what we would call a direct route?
A. Yes it was, down one side of the hill and up the other.

Q.3 Approx. how far would you say it was from the start line to the objective?
A. Approx. 1 mile.

Q.4 How far would you say Pte Head had gone when you saw him stopped?
A. Approx. 600 yds.

Q.5 What time would you estimate the attack on the objective was completed?
A. Approx 2000 hrs.

Q.6 How long did you remain on the objective after the attack?
A. Till approx 1000 hrs the next morning.

Q.7 Do you consider the accused to be a trained soldier?
A. Yes, I do.

Q.8 Can you recall the approx strength of your pl during the attack?
A. When we moved off for the attack my pl strength was approx 22.

Questions by the defence

Q.1 Was it dark when you consolidated on the objective?
A. I wouldn't say it was dark I would say it was last twilight.

Q.2 Was the accused the 2 i/c of No 2 sec?
A. If he was 2 i/c of 2 sec it was unknown to me.

3rd Witness for the Prosecution

L13415 C.S.M. Murray H.A. having been duly sworn states:

On the evening of Sept 1st 1944, B Coy formed up for the attack on MONTELIRO, we were the third Coy going in. At approx 1830 hrs we crossed the startline. I was coming up with rear Coy HQ in the rear of 10 pl. I passed Pte Head whom I recognized. He was stopped having a Bowel movement. I told him to hurry and catch up with his sec or words to that effect. When we reached our objective and consolidated Cpl Kapp whom was acting Pl Sergeant of 10 Pl. reported to me that Pte Head had not rejoined his sec. The next time I saw Pte Head was at 1830 hrs. 5 Sept 44.

Question by the Prosecution

Q.1 Could you see the object at all times during the advance?
A. From the time we left the top of the hill and went around the bottom, we could see the objective at all times.

"JM" "JM" Q.2 Could Pte Head if he looked, see the objective from the point where he was having his Bowel movement?
A. No, Sir.

Q.3 At the time you passed Pte Head were you following a defined trail or track?
A. We were following a track.

Q.4 How much further along that trail would Pte Head need to advance to see the

objective?
A. Approx 20 yds.

Q.5 What was the distance from the S.L. to the objective?
A. Slightly over a mile sir.

Q.6 How far had Pte Head advanced when he was having his bowel movement?
A. Approx 250 yds.

Q.7 What time do you estimate you arrived at your objective?
A. Approx 2100 hrs.

Q.8 How long did you remain on your objective?
A. Approx 1000 hrs 2 Sept.

Q.9 Do you remember the approx strength of the Coy at the start of the attack?
A. Approx 70 all ranks.

Q.10 Do you consider the accused to be a trained Soldier?
A. Yes, Sir.

Questioned by the Defence

Q.1 Did the Coy follow the track all the way to the objective?
A. No, we followed the track until 5 or 600 yds from the objective?

Question by the Court

Q.1 In your evidence you state that you saw Pte Head at 1830 hrs 5 Sept 44. Did he report to you?
A. Yes, sir.

The accused having been duly sworn states:

On the night of the 1st of Sept, we had orders to go into attack, on MONTELERO. Our sec leader then told us, but did not show us definitly our objective and we could not see it from where our platoon was. We advanced down the hill at approx 1830 hrs. Just before the Coy took the bend to the hill around the point I dropped out to have a bowel movement. When I was finished I put my wet equip on and continued around the point and bumped into Pte McEwan. We continued on down into the valley and could not find our Company. It was getting dark. We came up to the top of the hill and met Mr Brown at approx 2100 hrs, on the road. He told us to go over and wait behind the wall. From there we went down to fill up our water bottles at the well. We waited for over an hour before we got out bottles full and from there we went into a dugout and went to sleep and did not wake up until noon the next day. There was nobody around and we did not know where to Regt had gone to. We went back to the river to see if our Coy cook truck was still there but it had moved. We stayed with an English Regt that night and on the 3rd Sept we came on up and stayed with the RCASC. We left then about 10 o'clock the following morning and proceeded forward to an Ammo point and stayed there that night. We.

"JM" met a Hasty P. and found the direction from him to the Regt, and we came on up to the Regt on the 5th of Sept. We did not know whether to Regt was in action or in rest. On reaching the regt we reported to CSM Murray, our CSM.

Cross-Examination:

Q.1 Mead, Do you consider yourself a trained soldier?
A. Not in one respect as I was a driver for 3½ years with the Calgary Highlanders before I came to the Edmontons.

Q.2 When did you come to the Regt?
A. On 25 July 43 in Sicily.

Q.3 Have you been in action previous to MONTELERO?
A. Yes, Sir.

Q.4 Were you actually acting Sec Comd at one time?
A. Yes, Sir.

Q.5 How long did you take to move your bowels?
A. 10 to 15 mins approx.

Q.4 You are considered a trained soldier and have been a Sec. Comd, why did you not continue forward instead of coming back?
A. We did continue forward but got mixed up in our directions.

Q.5 Did you know that there were two Coys attacking ahead of your coy?
A. Yes, Sir.

Q.6 On the 2nd, 3rd or fourth day you could not possibly have been more than a few hrs. March from the Regt at any time. Why did you not make an effort to go as far forward as possible in the shortist possible time?
A. We did but we did not know which direction the Regt had gone or their line of advance.

Court:

Q.1 When did you meet Mr Brown?
A. At the starting point.

Q.2 Where was the well and how far was it from the place where you met Mr Brown?
A. Approx 150 yds, back from the start point.

Q.3 Mr Brown told you to wait by the wall, you then went to fill your water bottles, did you then go back to the wall?
A. No sir, we crawled into a dugout, and wnet to sleep.

Q.4 Why did it take an hour to fill your water bottle?
A. There was a big line up there of reinforcements for the Bn and also some men from the tanks.

Q.5 Did you make any inquirys as to where these reinforcements were staying or when they were going to proceed forward to their coys?
A. No we did not sir.

Q.6 Did you tell anybody that you going into the dugout?
A. No we did not.

Q.7 How far was the dugout from the well?
A. About 10 yds.

1st Witness for Defence

Lieut C R Brown, having been duly sworn states:

On the evening of Sept 1st shortly after dush when B Coy had begun their attack, I was with "TAC" Hq., which was then in the Cemetry overlooking the axes of advance. In between 2030 and 2100 hrs. the two accused whom I did not know but the one whom I now recognize came to me reporting that they were from B Coy and had lost their Coy, having stopped for a bowel movement. They asked me where the Coy was and how they could get to it. I told them the Coy was in the middle of the attack and being dark it would be difficult to find and ordered them to remain at "tac" Hq until success, when they would be either taken or directed to B Coy. I sent them to the wall of the Cemetry to remain and did not see them again during the attack or during the next few days.

Cross-Ex

Q.1 Were there many vehicles and trps in tac Hq area?
A. There were the normal F Ech vehicles included in which were the Command tanks.

Q.2 Did you give the accused any indication as to how long it would be before they would be sent forward?
A. Yes, I told them quite definitly they would not go forward unit the completion of the attack, as to the time in hrs. Nobody could forcast to it.

Q.3 Did you say or inform definitly to the accused that he must hold himself ready to go forward?
A. Yes.

Q.4 When tac Hq moved did all personnel vehicles and tanks move with you and was there considerable noise during the departure?
A. No., one carrier and two Jeeps were the only vehicles that went forward at this time.

Q.4 Do you know approx when the rest of the vehicles moved out?
A. Approx 2 to 3 hrs later, just before and during first light on the morning of 2nd Sept.

Q.5 Did B Coy have any time for rest previous to going forward in attach at 1830?
A. Before 1830 each Coy had approx. 2 hrs rest.

By the Court

Q.1 What is you appointment in the Bn?
A. I am the I2C. of the Loyal Edmonton Regt.

Q.2 Did you make any effort to contact accused by the wall before you moved off?
A. No.

Defence Rests

Closing Address.

The accused was trying to reach his Coy, according to Mr Brown's Evidence, The accused was given direct orders not to move forward until told to do so. The accused never did receive orders to move forward.

Closing Address (Prosecution)

Evidence established.

1. The accused was warned to rejoin his section.
2. The objective was indicated to the accused and according to his own evidence he could not have been out of sight of it as he did advance when he had finished moving his bowels.
3. Accused was less than ½ distance from D.L. when he moved his bowels.
Accused had ample time to rejoin his section during the 2 hours of the attack.
Accused took four days to return to his Regt which could not of at anytime been more than a few hrs march away.

Ex "B" "DC"

Plea of Mitigation Pte Read

1. The accused did, according to Mr Brown's evidence, make an attempt to locate his Company.
2. Although absent for several days he was trying to re-establish contact with his regt, and finally did so on Sep 5.
3. He has been in Action before and must have been fairly reliable, as he had been a section leader. This is the first offence of this nature that he has committed.
4. His failure to report back was due not to deliberately deserting, but carelessness in not letting anyone know where he was, and in falling asleep when he should have remained awake, ready to move off when he was told where to go.

Ex "G"
"PDC"

No. 12002 Name HEAD C.E. Sqn, Battery or Company B Corps CIC Date of enlistment 20 Jun 40 QC Badges Service or Proficiency Pay

MFM 6 (AFB 122) 40/PA&S/136 (3438)

Company Conduct Sheet Date of last entry in — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No 1 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4 Aug 41	Pte		AA40 Conduct to the prej etc in that he at Wooton manor on 4 Aug 41 did do damage to WD veh. No. CZ4206382 which he was driving	Cpl Boisvert A.	2 days CB Stoppages of pay to cover damage up to ten shillings	9 Aug 41	Major SC Caulter	
Field	29 May 42	Pte		AA11 Neglect to obey standing orders in that he did drive a WD veh at excessive speed (35 mph)	L/Cpl Baddeley L/Cpl Cook	Forf 7 days pay	7 May 42	Capt WA Wood	Forf 7 days pay FRMI

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	TRIED BY FIELD			GENERAL COURT MARTIAL ON 14 Jan 43 1st Charge: AA40Conduct to the prej etc in that he at approx 2215 hrs 12 Dec 42 did use Station Wagon CM4202190 without authority 2nd Charge: AA40 Conduct to the prej etc in that he at approx 2215 hrs 12 Dec 42 at Fontwell LR 386266 did drive Ford Stn Wagon CM4202190 in such a manner as to cause damage of £48-0-0 to said vehicle		30 days detention and to undergo stoppages of £24-0-0 in respect of damage caused to the WD vehicle			Released from Headley Downs Det'n Barracks 2 Feb 43 sentence having expired 10 days remission earned
				CERTIFIED TRUE COPY "L V McGurran" (L.V. McGurran) Capt & Adjt The Loyal Edmonton Regiment					

Ex "F" "DC"

ARMY FORM B 2561.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M12002	Pte	HEAD C.E.	The Loyal Edmonton Regiment

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

NOTE.—At a trial by field general court martial this summary must be compiled from the field conduct sheet.

The conduct sheet(s) mentioned hereafter should be produced in court with this statement, but not annexed to the proceedings.

† See para. 627, K.R., 1940.

* The numbers herein stated should correspond with the number of periods of confinement, punishments and awards mentioned in the answer to the next question, and every recommendation for special reward, distinguished conduct.

Insert "none" if the charge is for drunkenness or states the dates for drunkenness shown on dated separately and

	* Within last 12 months.	*Since Enlistment.
For AA 11	times	one "LVR" times.
For AA 40	times	one "LVR" times.
For	times	times.
For	times	times.
For	times	times.

Date of first entry in Field Conduct Sheet 4 Aug 41

Number of instances of gallantry or distinguished conduct, "LVR"

Date of last entry in Field Conduct Sheet 14 Jan 43

There are no entries in the conduct sheets of the accused. "LVR"

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. *or* The accused at the present time is under sentence for N/A beginning on the N/A day of N/A "LVR"

4. The accused has been in confinement awaiting trial on the present charges, for N/A days in civil custody, and 42 "LVR" days in military custody, making a total of 42 "LVR" days, of which N/A days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 23

6. The date of his commission / attestation specified in his record of service / attestation paper is 20 Jun 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). N/A.

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A, dated and in his regiment (*or* corps *or* department) the rank of N/A dated

(*18230) W1.13822/144 125,000 6/41 A.&E.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted
FOCM	14 Jan 43	1st Charge: AA 40 Conduct to the prej etc in that he at approx 2215 hrs 12 Dec 42 did use Stn Wagon CM4202190 without authority 2nd Charge: AA40 Conduct to the prej etc in that he at approx 2215 hrs 12 Dec 42 at Fontwell did drive Ford Stn Wagon CM4202190 INSURED MANUAL as to cause damage of £48-0-0 to said vehicle.	30 days detention and to undergo stoppages of £24-0-0 in respect of damage caused to the WD Vehicle.	Released from Headley Downs Detn Barracks 2 Feb 43 sentence having expired. 10 days remission earned.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th day of September 1944

"L.V. McGurran"
(L.V. McGurran) Capt & Adjt
The Loyal Edmonton Regiment.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of _____ years.

In the rank of _____ years.

In the rank of N/A years.

In the rank of _____ years.

(INSTRUCTION—If any entries in any of the above paragraphs cannot be dated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs amended accordingly.)

91.9.

REGIMENTAL DOCUMENTS

H.Q. FILE No. .....

NAME Cpl. HEAD, C.R. REGIMENTAL No. .....

UNIT OF ENLISTMENT ..... RANK .....

	CONTENTS	NON-EFFECTIVE BY
	COMBINED DECLARATION FORM OR ATTESTATION AND MEDICAL HISTORY (M.F.M.1 & 1A) OR (M.F.M.2 & 2A)	DEATH
	SERVICE AND CASUALTY FORM (M.F.M.4 & 4A) (A.F.B.103)	DATE
	PARTICULARS OF FAMILY (M.F.M.5)	CAUSE
	FIELD CONDUCT SHEET (M.F.M.6) (A.F.B.122)	AUTHORITY
	CERTIFICATE OF SERVICE (M.F.M.8) COPY OF, OR DISCHARGE CERTIFICATE (M.F.M.7) COPY OF	
	FORM OF WILL (M.F.M.10 OR M.F.M.10A)	
	DENTAL HISTORY SHEET	DISCHARGE
	MEDICAL REPORT OR CASE HISTORY SHEET	DATE
	MEDICAL EXAMINATION ON LEAVING THE SERVICE	REASON
	TRANSFER CLOTHING STATEMENT	AUTHORITY
	LAST PAY CERTIFICATE (M.F.D.930A)	
	PROCEEDINGS ON DISCHARGE	
	PROCEEDINGS COURT OF ENQUIRY	DESERTION
	DECLARATIONS COURT OF ENQUIRY	DATE
	PAY SHEETS	AUTHORITY
	CARDS	
	SUNDRY	

F/5-4-10
E-53352 Cpl. Head, Charles, R.
S.H.of C., C.T.S.

Army Form A.8.

Correspondence to be PINNED here

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this twentyninth day of October, 1942.

Whereas it appears to me, the undersigned, an officer in Command of "F" Group, Canadian Reinforcement Units, Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer];

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I consider it to appoint:
*(I name them to inform the Court.)
*(I detail other as President;)
for the following reasons, namely:-]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

PROCEEDINGS REVIEWED
Judge Advocate General's Office

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
MAJOR	F.J.GILMOUR	R.C.A., H.Q.,C.R.U.

Members.

Rank.	Name.	Regiment.
LIEUTENANT	E.EALAND	7 C.C.C., R.C.E.
LIEUTENANT	G.H.ROBERTS, MAKING MONEY	1 C.B.O.W., R.C.O.C.
LIEUTENANT	D.A.MACKAY	Gen.List., att C.T.S.

*Signed (J.P.ERCHAMBAULT) Brigadier,
Commanding "F" GROUP, CDN.REINF. UNITS.
Convening Officer.

SCHEDULE.

Number, Rank (*a*) Name and Unit o. Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
K-53352 Cpl. Head, Charles Rowland. (S.H. of C) C.T.S.	FIRST CHARGE, Sec. 40 Army Act.	Not Guilty.	Not Guilty H Tilsmore Major Pres 30/10/42	
	(See Charge Sheet attached)			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No sir

Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) (G.P.A. CHAMBEAULT) Brigadier (Signed) H Tilsmore Major
Commanding "2" Group, C.A.U. *Convening Officer* (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 30th day of October, 1942 and duly tried the persons named in the Schedule, and that the plea, finding, ~~and sentence~~ in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 30th day of Oct. 1942.

H Tilsmore Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 702 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this day of 19 .

Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

The Accused elects to be tried by Court Martial

CHARGE SHEET

The accused, No. K.53352 Corporal Head, Charles Rowland, Seaforth Highlanders of Canada, posted to No.5 (Battle) Wing, Canadian Training School, a soldier of the Canadian Army Overseas, is charged with, when on Active Service --

First charge
A.A. Sec 40

Conduct to the prejudice of good order and military discipline,

in that he

on the 14 October, 1942 at approximately 1730 hours, while transport corporal for No. 5 (Battle) Wing, Canadian Training School, permitted No.B.76302 Pte. Maguire, G. to drive W.D. Vehicle No. CM-195193 from Windlesham House to Worthing without authority, when as transport corporal it was his duty to prevent such unauthorized use of said vehicle.

J. Campbell

(J.J. Campbell) Major, Calg. Highrs.,
A.P.C., No. 5 (Battle) Wing,
Canadian Training School.

Windlesham House, Sussex,
27 October, 1942.

To be tried by Field General Court Martial.

Brigadier,
(J.P. ARCHIBALD) Commanding "F" Group,
Canadian Reinforcement Units,
Convening Officer.

Bordon, Hants.,
29 Oct 42

B. J. Fitzsimmons Major
P.O.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT Bordon Hants ON THE 30 DAY OF Oct. 42

TRIAL OF:- No. K.53352 Qtl Chas. R. Head. Unit (S.N./C/C.T.A.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Lt. J. N. Macfarlane (Unit) (H.N.A.R) C.T.A.

Defending Officer:- (Name) Lt. E. N. Houghington (Unit) 48 Highland/C. C.T.A.

At 1045 hrs the trial commences.

The order convening the court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A. - No Sir.

The President, members and judge-advocate (if any) are duly sworn.

The following constitute the Court:

President Major J. Mackinnon (Unit) RCA 7CCC

Members Lt. E. Zealand RCA (Unit) /CBOW. RCA C

Lt G. H. Roberts (Unit) /CBOW. RCA C

Two Juniors under instruction.

~~The officers under instruction are duly sworn.~~

~~Q2 Do you object to acting re shorthand writer?~~ A.-

Prosecution

The Prosecutor makes no opening address but proceeds to call witnesses

First witness for the Prosecution — Capt. Ross Larmer Davidson - Hastings & Prince Edwards Regt. (C.T.S.)

duly sworn states:

I have been acting as transport officer at No 5 (Battle Wing) C.T.S. for the past month or approximately the past month, carrying on my other duties as instructor. As the result of a report made to me I checked through the work tickets for Oct 14th for the sedan in question C.M. 195193 and found none. This car was in charge of my unit. On the 14th of Oct I had been employed at field firing & I did not know whether the car had gone out or not. I checked and found that there was no authorization given for this vehicle being on the road on October the 14th. The accused was on October 14th ~~in charge~~ transport corporal and as such he was authorizing the use of transport for the school and I was counter signing the work tickets. To my knowledge he had the right to authorize the use of transport

(over)

all requisitions for transport are supposed to be given the day previous but in all cases this has not happened - that is to say in all cases requisitions have not been made the day previous. There was no express sanction for not following this regulation. (The witness produces Pt. 1. Daily Order 106 dated 28th August 1942 by Lt Col D Fletcher O.C. No 5 Battle Wing Canadian Training School - attached as exhibit "C".

Cross examination:

When I took over the accused had been in full charge - there had not been a transport officer. There were a total of 18 vehicles plus 2 M.C.s a total of 20. He did not have any other N.C.O. to help him. That means he was looking after the administration part of it as well as the repairs because he is a mechanic. As these vehicles move practically every day while the courses are on I believe now it is a big job for one N.C.O. I took over about the 3rd week in Sept.

The previous transport officer had left the school about one month previous to the time that I assumed the position. Ever since the school started I have been a Platoon instructor in charge of an officers class. Right up until about 9 days ago. that is to say Oct 14 th I was After this incident on made full time T.O. ~~about 9 days~~ and relieved of my instructional duties. ~~Since then I have~~ Before this ~~that is about the~~ that is to say prior to 9 days ago I gave about 2 hours a day in the evenings to the duties of Transport officer. All other times Corporal Heard was in full charge. I countersigned in some cases work tickets for the day which covered trips already made + prepared a few work tickets for the previous day. All other duties regarding transport were carried on by the accused. Sometimes when we were on night exercises work tickets for a few days trips would

accumulate so that I would have a batch of slip work tickets to condemn, but there were always the tickets that had been properly authorized - I mean by this that the tickets were properly authorized by Corporal Head. There is a place on the work ticket where Cpl Head signs the authorization. For practical the accused authorized the tickets + I confirmed them when I got time to do so.

I asked the adjutant to make an order similar to exhibit C. so that I would know in advance what calls would be made for transport so that I would have some advance notice in allotting the limited number of trucks to the jobs assigned.

I found the accused very efficient

To the Court: If Sedan WD Vehicle C.M. 195193 had been driven on Oct 14th 1942 a work ticket should have been made out by Corporal Head - signed by him in the authorization space provided + later presented to me by Cpl Head for countersigning. No such work ticket for any such trip was presented to me for signature for any such by this vehicle made on Oct 14th 1942.

In answer to a question requested by the Defending Officer

Q. If the accused had presented a ticket showing a test run for say 6 miles would you have signed it?

Answer. I will put it this way If the accused had presented the ticket before the test run I would have signed it as he is a mechanic + if he had made a test run in the day time + later presented me with a ticket I would have taken his word for it + signed it.

RP 83(b) complied with.

~~At exam by Prosecutn~~

2nd Witness for Prosecution B-76302 Pte Charles Maguire Toronto Scottish Regiment (M.G.) posted to C.T.S. duly sworn.

states:-

I am a driver. On the evening of Oct 14/42 I drove the Colonels car No. CM 195143 belonging to #3 Battle Wing C.T.S. to Worthing. En route I gave the accused Cpl. Heard a ride. He had been working on the car previously that day making some minor adjustments as Colonel Fletcher was not using it. I had no authorization only that Corporal Heard said we could test the car. I am the regular driver of this car. I let the corporal out at a roundabout outside of Worthing. This roundabout is between Findon & Worthing. Worthing is about 7 miles from camp & Corporal Heard got out about 3 or 4 miles from camp. I have been punished for making this trip with the car.

Cross exam. The car had been giving trouble & asked the accused to check it. When I came back about 4 P.M. the corporal was still working on the car checking the ignition & he

worked on it until 4.30 when we went to mess. After supper some time after 1800 hours I took the car out on a testing run. We were going to test it earlier but supper was on so we decided to test it after supper. We always test any vehicle after making repairs. I did not have any written authority for this test run & that is what I meant in the summary when I said without authorization.

When corporal Head got out at Farden I was supposed to take the car right back to Camb. The Cpl Head said to me you are going to go back to Camb and I said yes I considered this question to be in the nature of an order.

The next day Cpl Head asked me if I had gone to Worthing the night of the 14th because the Provost were checking up to know if it had been to Worthing. I told Cpl Head "no" whereas the fact is I had been to Worthing.

To the Court. I cannot say that anyone suggested the test run. It is the normal thing to do and now I could not state if it had been mentioned by Cpl Heard & myself. On going out for tests we almost always go on the road going towards Wathen. The road is on an incline going up that way & it is better to test the ignition on an incline than on a decline. It is normal to take the mechanic who has been doing the work along on the test run. It would be normal for me the driver to do the driving on a test run because I knew what it felt like before & could compare its performance after. The Provost came on next day to investigate because they claimed that on the evening of Oct 14th they had waved my car down in Wathen & I had not stopped. It was raining & I did not see any provost waving me down. They say they hollered but I pay no attention

to people hollering after dark

Jo't Jo Prosecutor:

The occupants of the car
in the test run were myself, the
accused and two other drivers
and Sgt Gibbs. There of us that
is the other 2 drivers & myself
went to a dance in Worthing
The accused got out when Cpl Heard
got out. The three of us went on
but before getting to the Round
about where we would turn
around to come back to camp
Pte Lomas one of the accused's
said something about going on
to Worthing & I said alright.

(Reading the evidence back to the witness
the witness by way of correction or
explanation refers to a statement
near the beginning to the effect
that Cpl Heard said we would
test the car & explains that he
is not sure whether it was Cpl
Heard or he the witness McGuire
who said this.

R.P. 83 (b) Published
South

~~Prosecution closed~~

3rd Witness
for Prosecution

G. 49359 Pte. Gerhard Joseph
Malley RCASC posted 2 C.T.S.
duly sworn states.

I am a driver - I rood with Pte
Maguire the driver of the 60's car
when he drove the car to Worthing
on the night of Oct 14th. Cpl
Heard was there ~~+ to~~ in the car
and we left about 3 or 4 miles
from camp before coming to the
roundabout at Findon. I left
camp intending to go to the Dance
in Worthing. The driver Maguire
asked me if I was going to Worthing
and said I could go along with
him that he was going. I was
back in Camp.

Cross examination. The driver told
me before I got into the car
that he was going into Worthing.

RP. 83(b) complied with

The Prosecution is closed -

~~14~~ 15

The defending officer makes a submission referring to Note 1 on page 644 of M.C.M.
The Prosecutor rebuts.
The Court closes to consider the submission
The Court re-opens and announces that they are satisfied the submission is well founded & acquit the accused.

J. Gilmour
Major
Pres.

30.10.42

No 5 (Baalle) Wing, C.T.S.

This is to certify that KS 3352 Cpl. Head C.R. is in good health and fit to attend Court Martial.

C.A. McRae M.O.

No. 5 (Baalle) Wing, C.T.S.

Exhibit "A" The defending Officer Lt. E.N. Heighington assures the Court that this accused was examined by the M.O. this morning 30/10/42

T. Heighington Lieut.

Exhibit "A".

WING ORDERS
BY
LT.-COL. D. FLETCHER O.C.
NO.5 (BATTLE) WING
CANADIAN TRAINING SCHOOL

FRI 28 AUG 42

NO. 106

1. BLACKOUT

COMMENCES.....2027 hrs
ENDS.....0536 hrs

2. DETAIL OF DUTIES

Orderly Officer of the Day-
FRI 28 AUG 42 - 1800 hrs to 0800 hrs Lieut. K.S. Crabtree
Next for Duty-
SAT 29 AUG 42 - 1800 hrs to 0800 hrs Lieut. L.G. Elhatton
Next for Duty-
SUN 30 AUG 42 - 1800 hrs to 0800 hrs Lieut. D.O. Kearns
Next for Duty-
MON 31 AUG 42 - 1800 hrs to 0800 hrs Capt. F.A. Sparks

Orderly N.C.O. of the Day-
FRI 28 AUG 42 - 1800 hrs to 0800 hrs Cpl. Davis, J.
Next for Duty-
SAT 29 AUG 42 - 1800 hrs to 0800 hrs Bdr. Duley, H.A.
Next for Duty-
SUN 30 AUG 42 - 1800 hrs to 0800 hrs Cpl. Carey, F.W.
Next for Duty-
MON 31 AUG 42 - 1800 hrs to 0800 hrs Sjt. Paterson, W.A.

3. TRANSPORT

No transport except for training will move without a requisition.

All requisitions must be handed in for authorization by noon on the day previous to the one for which it is required. This applies to all departments and unless complied with, no authorization will be given.

In cases of emergency, requisitions will be signed by the Commanding Officer.

(J.D. Chanter) Lieut., C.Y.R.
Adjutant, No.5 (Battle) Wing,
Canadian Training School.

JDC/WCD

"C" Wing
Maj
Pres

SUMMARY OF EVIDENCE

In the case of K.53352 Corporal Head, Charles Rowland, Seaforth Highlanders of Canada, posted to No. 5 (Battle) Wing, Canadian Training School, a soldier of the Canadian Army Overseas, taken by Captain J.D. Chanter, Adjutant, No. 5 (Battle) Wing, Canadian Training School, at Windlesham House, Sussex, on

26 October 1942

Summary of Evidence taken on Oath by order of the Commandant.

1st Witness

Capt. R.L. Davidson, Hastings & Prince Edward Regiment, posted to No. 5 (Battle) Wing, Canadian Training School, having been duly sworn, states:-

"I am the transport officer at No. 5 (Battle) Wing, C.T.S., and on Thursday, the 15 October, 1942, it was reported to me that the sedan belonging to the Wing was at the Assembly Hall in Worthing the previous evening. I checked at the office to see if a work ticket had been made out for this sedan, a W.D. Vehicle, No. CM195193, under the control of No. 5 Wing, C.T.S., to proceed to Worthing, and I found that no authorization had been given the accused, who is the transport corporal in charge of transport, to allow this vehicle to be used as required by Part 1 D.O. 106, dated 28 August, 1942 (Exhibit A)."

The accused declines to question the witness.

R.L. Davidson Capt
(R.L. Davidson) Capt.

2nd Witness

B.76302 Pte. Maguire, C., Toronto Scottish Regiment (MG), posted to No.5 (Battle) Wing, Canadian Training School, having been duly sworn, states:-

"I am a driver at No. 5 Wing, C.T.S., and on Wednesday, 14 October, 1942, at approximately 1930 hours, I proceeded to Worthing in W.D. Vehicle No. CM195193, belonging to No. 5 (Battle) Wing, without authorization. I gave the accused a ride to the other side of Findon about three or four miles away, where he alighted."

The accused declines to question the witness.

C. Maguire
(C. Maguire) B.76302 Pte.

3rd Witness

G.49359 Pte. Malley, G.J., Royal Canadian Army Service Corps, posted to No. 5 (Battle) Wing, Canadian Training School, having been duly sworn, states:-

"I am a driver at No. 5 (Battle) Wing, C.T.S., and on Wednesday, 14 October, 1942, at about 1930 hours, Pte. Maguire asked me if I wanted a lift into Worthing in the sedan belonging to No. 5 (Battle) Wing, C.T.S. I accepted and saw the accused in the car. After we had travelled about four miles, the accused got out and that is the last I saw of him."

The accused declines to question the witness.

G.J. Malley.
(G.J. Malley) G.49359 Pte.

Cont'd page 2.

The accused was cautioned as follows:--

"Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to doso, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused declines to make a statement.

I certify that the foregoing Summary of Evidence, consisting of two pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

(J.D. Chanter) Capt., Carlt. & York R.,
Adjutant, No. 5 (Battle) Wing, C.T.S.

Windlesham House, Sussex,
24 October, 1942.

3256 Ste. P.N. Head.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this NINETEENTH day of SEPTEMBER, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 2nd Canadian Division, Canadian Army, Active

persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *and that it is not practicable to delay the trial for reference to a superior qualified officer.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* I am unable to appoint

*[another Officer] to form the Court as

*[another field officer] as President.

*[another Three Officers having more than one year's service.]

* Omit if not applicable.

for the following reasons, namely:- In my opinion, military exigencies, namely the dispersion of units, and difficulties of communication, and other difficulties, render it inexpedient to observe the provisions of those rules inconsistent with Appendix "A" to D.R.O. 772, on the trial of the person named in the annexed schedule.

PROCEEDINGS REVIEWED.

President.		
Rank.	Name.	Regiment.
Major	G. A. McClellan,	Sigs 2 Cdn Div.

Members.		
Rank.	Name.	Regiment.
A Captain	from	8 Cdn Fd. Amb RCAMC
A Captain	from	8 Cdn Recce Bn (14H)
A Captain	from WAITING MEMBERS	Sigs 2 Cdn Div.
A Lieut.	from	R.C.E., 2 Cdn Div.

*Signed Victor W. Odlum, Major General.

Commanding 2 Cdn Division

Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

(h)

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D105738, Pte. Thomas Humphrey Head, 2 Cdn Div. Pet. Coy., RCASC. a soldier of the Canadian Army, (Active)	FIRST CHARGE A.A.Sec. 41(5) Committing a Civil offence (See charge sheet attached)	Guilty	Guilty 14 days Field Punishment Forfeits 24 days pay	Confirmed L.W.O.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) Victor W. Odlum (Victor W., Odlum), Major General. (Signed) Ed. McClellan Major

Commanding 2 Cdn Div. *Confirming Officer (d)* *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

(21)

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 24th day of September 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)
were duly sworn. 5. The court stenographer

* Omit if not applicable.

Signed this 24th day of September 1941.

Ed. McClellan Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 26 day of Sep 1941.

Victor W. Odlum
Confirming Officer.

Promulgated and extracts taken in the case of D.105738 Pte Head T. H.

(a) (Dated) 28 Sep. 1941 (Signed) L.S. Pommet Lt adj
Major, O.C.,
2 Cdn. Div. Petrol Coy.,
A.C.A.S.C. C.A. (A.F.)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, D105738, Pte. Thomas Humphrey Head, 2 Cdn Div. Petrol Company, RCASC, a soldier of the Canadian Army, Active, is charged with:

FIRST CHARGE
A.A.Sec. 41(5) COMMITTING A CIVIL OFFENCE, that is to say, driving a motor vehicle on a road without due care, contrary to Sec. 12(1) of the Road Traffic Act (1930),

in that he

between 2300 hours and 2400 hours on 6 Aug 41, on Brighton Road, in South Croydon (a built up area) drove D.N.D. Vehicle, CM105418 at an excessive rate of speed, contrary to Sec 12(1) of the Road Traffic Act, 1930.

Signed this 19 Sep 41.

TO BE TRIED BY R. C. C. M.

(Victor W. Odlum), Major General
Comd. 2 Cdn Div.

Ed McC

(7)

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL, HELD AT FARNHAM, SURREY, ON 24 SEPTEMBER, 1941.

TRIAL OF NO.D105738, Pte. Thomas Humphrey Head, 2 Cdn Div Pet Coy RCASC

PROSECUTOR: Lieut. L. S. Pomnett, 2 Cdn Div Pet Coy., R.C.A.S.C.

DEFENDING OFFICER: Capt. W. G. Swift, 2 Cdn Div Amn Coy., R.C.A.S.C.

SHORTHAND REPORTER: D24030, S/Sgt. J.W.Spence, H.Q. 2 Cdn Div.

---

1. The Order Convening the Court is read to the accused.

2. The accused is asked the following questions:

1 Do you object to being tried by me as President or by any of the Members of the Court?
1 Answer: No, sir.

2 Do you object to having S/Sgt. Spence take down the evidence in shorthand?
2 Answer: No, sir.

3. The President, Members of the Court and shorthand writer are duly sworn.

4.(a) The accused answers to his name and number and is duly arraigned on the charge.

(b) The accused pleads "Guilty".

5. Rule of Procedure 35(b) is complied with.

6. The Abstract of Evidence is read.

7. The Prosecutor files A.F.B. 226 and certified copy of N.J.N. 6, which are formally admitted by the defence.

THE DEFENDING OFFICER: The accused desired to have Capt. Wilson of H.Q. 2 Cdn Div act as his defending officer but he was not available this morning. I think that the conditions existing at the time of the offence were such as to mitigate the gravity of the offence. He has a previous good record and is known to be a very good driver, and I wish to submit some documentary evidence to that effect.

THE DEFENDING OFFICER submitted two documents, which are attached to the proceedings.

THE COURT IS CLOSED FOR CONSIDERATION OF SENTENCE.

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE RECORD OF THE PROCEEDINGS AT THE ABOVE NOTED TRIAL.

J W Spence

(D24030. S/Sgt. J.W. Spence)

(9)

ABSTRACT OF EVIDENCE

The accused D-105738 Pte.Head,T.H. 2 Cdn Div Petrol Company,R.C.A.S.C. a soldier of the Canadian Army (Active)is charged with:

W.C.A.S. Committing a civil offence

in that he,

between 2300hrs. and 2400hrs.on 6 AUG 41 on Brighton Road in South Croydon (a built up area)drove W.D. Vehicle CM-195418 at an excessive rate of speed, contrary to Sec.12(1)of the Road Traffic Act 1930.

First Witness

Henry Stephens, P.C.773"Z" of the Metropolitan Police states:

"At 11.25 p.m. on the 6th.August 1941 I was on Traffic Patrol duty (solo)driving Police car EXW779/486T. I saw Private Thomas Humphrey Head. Reg. No.D105738,R.A.S.C., Canadian Regiment,Heathfield,Sussex,driving an Army Ford V8 saloon motor car No.C.M.195418,owned by Canadian Army Authority,along Brighton Road,South Croydon,(a built up Area),towards Purley at a very fast speed.I followed,keeping an even distance of 40 yards for 8/10ths of a mile, between Mariner's Garage,379 Brighton Road and Christchurch Road,during which time Police car speedometer registered 55 MPH minimum and 60 MPH maximum.As Head reached the junction of Riddlesdown Road there was a car,proceeding along Brighton Road towards,Purley on the nearside tramtrack and he passed this car on the extreme offside of the road.There is a right hand bend in the road at this point. He then passed 4 other cars during the check,on the offside of the road.There are a number of T roads both on the offside and nearside of Brighton Road.There was a moon at the time but a number of dark clouds partially obscured the moon.It was fairly light at the time. Head travelled along Purley High Street into Godstone Road where he stopped.I went up to him and pointed out his manner of driving and excessive speed and he replied "I was hurrying to get back so as to get an hour's extra sleep". I repeated to him the warning formulas for dangerous driving,speed dangerous and excessive speed and he said "Don't be too hard on me".There was a speedometer fitted on the Ford car but not illuminated.The road was dry, traffic light.Police car speedometer was tested at 7.15 a.m. on 7-8-41 by P.S.97"Z" Moffatt and found correct.Black-out time 10.25p.m. to 5.47a.m."

The Accused

D-105738 Pte.Head,T.H. 2 Cdn Div Petrol Company,R.C.A.S.C. having been duly warned in compliance with R.P.4(c) states:

"I was the appointed driver of W.D.Staff Car (Ford) CM195418 of No.2 Field Cashier and was actually driving it between 2300 and 2400hrs.on 6 AUG 41 in South Croydon. I confess that I drove the vehicle at a speed in excess of that set in built up areas"

Came

(11)

Second Witness

D-91669 L-Cpl.Turgeon,J.P. 2 Cdn Div Petrol Coy. R.C.A.S.C. STATES:

"I was present when the accused D-105738 Pte.Head, T.H. was duly warned in compliance with R.P.4 (e) and I heard him make the following statement."I was the appointed driver of W.D.Staff Car (Ford) CM195418 of No.2 Field Cashier and was actually driving it between 2300 and 2400hrs. on 6 AUG 41 in South Croydon.I confess that I drove the vehicle at a speed in excess of that set in built up areas"".

Certified that this abstract was taken by me in the Field this seventeenth day of September 1941

L. S. Pommet

(L.S.Pommet)Lieut.
2 Cdn Div Petrol Company,
R.C.A.S.C.

G.A.M.C.

(17)

(Substitute for A.F.B.296)
or M.F.B.355)

STATEMENT OF CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED

No. D-105738 Name HEAD,Thomas Humphrey Unit. 2 Cdn Div Petrol Coy.RCASC

Age 32 Married or Single M No. of Dependents 1

Date of attestation 21 MAY 40

No. of days spent in Close Arrest (To date of trial) NIL

Civil Nil Military Nil Hospital Nil Total Nil

Dates of promotions, appointments and confirmation of rank, if any.

N.A.

A certified true copy of M.F.M. 6 must accompany this form.

L.S. Pommet

(L.S.Pommet)Lieut.Adjt.
2 Cdn Div Petrol Company,
R.C.A.S.C.

Dated at in the field

This 24th day of Sept. 1941
(To be dated and signed as of date of trial)



(17)

D- No 105738 Name HEAD, Thomas Humphrey Sqn., Battery, or Company 2 Cdn Div Pet Coy Corps R.C.A.S.C. Date of enlistment 21MAY40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | Date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

M.F.M. 6
A.F.B. 122
20051—4-39 (1768)
H.Q. 175-6-17

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	21-9-40	Pte.		A.W.L. from 0600hrs.20-9-40 to 1800hrs.20-9-40(12hrs.)AA 15-1	S/Sgt.Blatch	Forfeits 1 days pay.	21-9-40	A.P.Ardagh Camp Comdt	Forfeits 1 day pay FR&I 149 Total forfeiture 2 days pay
Crowdall	10-9-40	Pte.		A.W.L. from 2245hrs.10SEP41 to 1045hrs.13SEP41 AA 15-1	Cpl.Wilson,J	14 days detn.	15-9-41	R.J.Dufresne Major.	Forfeits 3 days pay FR&I 149 1(a) Total Forfeiture 17 days pay.

Certified true copy

(L.S.Pommet) Lieut.Adjt.
2 Cdn Div Petrol Coy. R.C.A.S.C.

(P.T.O.)

24 Sep 41

(17)

No.2 Field Cash Office, R.C.A. P.C.

Capt. E.C. Swift.

D.105738 Pte. Head, T.H.
R.C.A.S.C.

1. The marginally named soldier was employed with this unit from October, 1940 to August 23, 1941 as driver. During this time he has had no road accidents whatever, with the exception of one minor accident which was not his fault.

2. During his employment with this office, Pte. Head was never convicted on any charge whatever. He was, in fact, never placed on any charge under any section of the Army Act.

T. Cole

(T. Cole), S.C.M.S.
No.2 Fd. Cash Office, R.C.A.P.C.

Extract from Log Book for Vehicle CM.195418

(19)

During the period 23 May 41 to 25 Aug 41, the above mentioned vehicle was operated by D.105738 Pte. Head, T.H., R.C.A.S.C.

The mileage registered when the vehicle was taken over by Pte. Head was "252"

The mileage registered when the vehicle was released from Pte. Head was "11,143".

During the above mentioned period Pte. Head was never convicted on a traffic offence.

24 Sep 41

T. Cole

(T.Cole), S.Q.M.S.
No.2 Fd. Cash Off. R.C.A.P.C.

56-43

Pha. Acad., T. N.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-105738 Pte Thomas Humphrey HEAD RCASC att ADOS Dump, HQ 2 Cdn Inf Div att 1 Cdn Disciplinary Centre

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. 15 (a)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of NG see RP 44 fn 6.)

At present under sentence for ..... beginning on ~~date~~ ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 31 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo 90 days detention

(Sgd) ..... Judge-Advocate, if any. 13 March 45 Date awarded. (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the findings & the sentence but I commute the sentence to read "to undergo field punishment for 21 days & to forfeit all ordinary pay for a period of 90 days" and I confirm the sentence as commuted.

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) (G S N Gostling) Brigadier

Date 14 Mar 45 Commanding 2 Can Base Rft Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D105738 Pte Head, T.N.	15 Mar 45	Comdg, 1 Can Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CR 413 1 Sect 19 Mar 45

RECORDED AT CMHQ IN AB 160

RECEIVED 9 APR 1945 A.G. (D.H.A.) C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA3) 40/P & S/1508 (40/10) 4/38B

Convened by direction of Brig G S N Gostling, ED Comd 2 CBRG dated 12 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, fully, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-105738		Thomas Humphrey	HEAD	RCASC att ADOS Dump, HQ 2 Cdn Inf Div att 1 Cdn Disciplinary Centre

PROCEEDINGS REVIEWED 10 Apr 45 REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS REVIEWED JAG BRANCH CMHQ 4 Apr 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 13 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 26/COY-

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for cards and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1510 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with ~~summarily~~ by the CO.(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 762.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G B H COX	CAC att 1 Cdn Disciplinary Centre
Member	Major	A.E. Lefroy	Sask Hqrs att 1 Cdn Dis Centre
Member	Lieut	T.J. Robinson	CIC att 1 Cdn Dis Centre
Judge-Advocate			
Prosecutor	Captain	J.D. Follows	Can Fus att 1 Cdn Dis Centre
Defending Offr	Captain	J.H. Labonté	R de Mais att 1 Cdn Dis Centre

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (b) and fn 2 were not followed. See DI p 2.)

A8. The accused D-105738 Pte Thomas Humphrey HEAD before arraignment make(s) (no) (~~a~~) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in All rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Unit's P5

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L* p 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 25(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ....., Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF 895. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42. 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(1) (a). RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes, in mitigation of sentence I ask that my previous [illegible] (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 64, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, D-105738 Pte Thomas Humphrey HEAD, RCASC Att ADOS Dump, HQ 2 Cdn Inf Div, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE
in that he
In the Field, absented himself without leave from 1700 hrs 3 Feb 45 until apprehended at ANTWERP, Belgium at 1130 hrs 10 Feb 45.
(Absent 6 days 18 hrs 30 minutes)

In the Field
6 Mar 45

(A O Hood) Lt col
Comd 1 Cdn Disciplinary Centre

To be tried by Field General Court-Martial

In the Field
12 Mar 45

(G S N Gostling) Brig
Comd
2 Cdn Base Rft Gp

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-105738	Pte		Thomas Humphrey	HEAD	RCASC att ADOS Dump, HQ 2 Cdn Inf Div att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 MAR 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial (for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G B H COX	CAC att 1 Cdn Disciplinary Centre

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	A E LEFROY	Seaforth Highrs att 1 Cdn Disciplinary Centre
Lt	to be detailed by OC 11 CBR Bn	11 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

(Signed personally. RP 105 fn 2.)

(G S N Gostling)

Brigadier (Rank.)

Dat: 12 Mar 45

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFAB) 40/P & S/1697 (6148)

(See overleaf for oaths and notes for use on trial.)

Appendix "C"

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined D/105735 (No.)

66 HEAD, F.H. (Rank) (Name) and in my opinion he is

fit ~~unfit~~ to undergo trial by Court-Martial.

Station 1 Cdn Disciplinary Centre

Capt. (Sgd)
(Medical Officer)

Date 13 Nov. 40

Unit 1 Cdn Disciplinary Centre

SWORN STATEMENT OF D105738 D-105738 Pte T.H. HEAD

RCASC ATT ADOS DUMP
HQ 2 Corps Sup Bn.

Exhibit D 68

Defence.

Q. Had you a pass & a lift to go to Brussels?

A. Yes Sir.

Q. With whom did you have the lift?

A. With two officers of my own unit

Q. When you went off on your own way what were your instructions for returning?

A I was instructed that the officers would be returning before 1000 or 1100 hrs 4 Feb 45 and I was to meet them at that time at 9 Rue Lois Lavisky at I.

Q. Did the officers change the pass?

A. No Sir

Q. Had you business in Antwerp?

A I had promised to purchase a radio tube for a friend

Prosecutor

Q When did your pass expire?

A 3 Feb 45 at 1700 hrs

Court

Q Did you have any authority from the officers to extend the pass?

A None other than a verbal statement to meet them at 1000-1100 hrs 4 February 45

Q Did you keep the appointment?

A. No Sir.

Q Do you wish your ~~statement~~ written in the ~~Summary~~ of evidence to be considered?

A Yes sir.

Exhibit 'E' P152

PLEA OF MITIGATION
in the Case of
D.105738 PTE THOMAS HEMPREY HEAD (RCASC)

Gentlemen of the Court

You have in front of you the case of a soldier who went AWL on special circumstances. As he declared under oath, he had a leave to Brussels and a left with one of his officer for going in and out. When he left the Jeep, this officer instructed him to be at the rendez vous on Sunday the 4th Feb between 1000 to 1100 hrs at ~~Turnabout~~ TURNOUT near Antwerp.

Pte Head had some business in Brussels so he went and there he enjoyed his life, but drank too much for returning on Saturday and he done so because he had the protection of his superior who neglect making the necessary Corrections on his Past but he had the word of his officer. He went in Antwerp because it is only a few miles from ~~Turnabout~~ Turnout and he

was going to purchase a radio tube for a civilian who he was billetted with.
Why he overstayed 6 days?
only for one reason, the C.O. has told the men that no 7 days leave will be granted to A.W.L cases.
He realized by having extended his foss, he had lost his leave so he didnt go back, but intended doing so on his own.
Pte Head enlisted 11th May 40
left Canada aug 40 and he is in France july 44
He is A° Categorie, 35 years old and well trained. His past record is not bad for a 5½ years soldiering and I recommend him to the Court.

Henri Labrie Capt
Def. Off.

Exhibit "A"

Summary of Evidence in the case of D-105738 Pte Thomas Humphrey HEAD, RCASC ATT ADOS Dump, HQ 2 Cdn Inf Div, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave.

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 16 dated 15 Feb 45.

Exhibit "B" - Certificate of apprehension dated 10 Feb 45.

Exhibit "C" - Statement of accused taken by Sjt MATTHEW A, dated 1 Mar 45.

FIRST WITNESS

M-36743 Sjt MATTHEW A, SIS 1 Cdn Disciplinary Centre sworn states:-
On the 1st day of March, I interviewed the accused D-105738 Pte HEAD, T H, attached to 1 Cdn Disciplinary Centre, whom I now recognize. After making known my identity I cautioned him as follows:-"You are not obliged to say anything unless you wish to do so but anything you do say will be taken down in writing and may be used in evidence". The accused understood the caution and signed his name to the statement which was read over to him. It is attached to these proceedings as Exhibit "C".

M-36743 Sjt MATTHEW A

The accused declines to cross-examine this witness.

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

(W D Hungerford) Capt
Officer detailed to take Summary of Evidence

Dated in the Field
3 Mar 45.

QUOTE NO

CANADIAN SECTION GENERAL HEADQUARTERS.

2ND ECHELON.

This is Exhibit "A" W.D. Hunter 2nd Capt

ABSENT WITHOUT LEAVE

(a) AWL from 1700 hrs 3 FEB 45 Still absent 1700 hrs 6 FEB 45
(3rd day)
D105738 Pte HEAD T H

CERTIFIED TO BE A TRUE AND EXACT PART II ORDER EXTRACT
of HEADQUARTERS 2nd CANADIAN INFANTRY DIVISION Part II
Order No. 16 d/15 FEB 45, NOW IN MY CUSTODY.

W A Murray
.....LIEUT
(W A MURRAY)
Officer IC Records
Sub Section (1)
CANADIAN SECTION 2nd ECHELON HEADQUARTERS
21 ARMY GROUP

/WYM

This is Exhibit "B"
to Commercial
Capt

D105738 PTE. HEAD, T.H.

R.C.A.S.C. att ADOS DUMP
2nd Cdn. Inf. Division ANTWERP

1130 10 FEB 45 XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

S.I.S. 1 Can. Div. Canada.

Statement of D. 105738 Pte HEAD
Thomas Humphrey

I have been cautioned by Sgt. Maddens of S.I.S. 1 Can. Div. Canada, that I need not say anything, but that anything I do say, will be taken down in writing, and may be used as evidence. To show that I understand this caution I sign my name here. Signed. J Thomas Hd. Head.

I am 35 years of age, married, my wife resides in Montreal, Canada. I enlisted in the Can. Army on 23rd May 1940 and came to U.K. on 11th Aug 40, and remained in England until I crossed to France on 5th July 44.

On 12th Sept 44 at 15.00 hrs I was given a daily pass from my unit, 2nd Bn. Lincs Regt. which was then stationed in Nijmegen. My pass expired on 3rd Sept 44 at 17.00 hrs and was for the purpose of proceeding to Brussels.

I was 3 officers from the H.Q.S. Lincs at Nijmegen were going to Brussels via Jeep and I was able to get a ride there with them. I arrived back the Officers in Brussels at 23.00 hrs on 2nd Sept 44 and it was all agreed that if I got back to Turnhout, that I would be able to travel from there by the same jeep as the time my leave was up.

I remained in Brussels for a day and a night in digress to the extent that I do not remember leaving that city. The next thing I do remember is being awakened in a civilian home, and asking where I was, & how I got there. The civilians told me that I had been brought in off the street, I asked what day it was & they told me Tuesday, also that the city was Antwerp. I then figured out that I must have left Brussels & got a ride to Antwerp, intending to get through to Turnhout to meet the jeep as arranged.

Now that I found I was three days over my pass, and was aware that this automatically cancelled my leave for 7 days leave to U.K. I decided to remain the balance of 7 days at Antwerp.

On 10th Feb. 45 I decided to return to my unit, I was to phone there a radio telephone message for a civilian [illegible] in Nijmegen whom I had stayed with sometimes. I had the priority telephone with me and was proceeding to a radio check when I was [illegible] by members of the Can. Provo. Corps. I figured they might check me, so I threw it off into a side

J.H.H.

Street, because I wanted to attend to my unit voluntary, however the Provost fellows one and found that I was A.W.L. I was arrested by them at 11-30 hrs on 10th Feb. 45.

When I was apprehended I had the following Belgian money in my possession:

13	500	Francs notes
4	100	Francs notes
2	50	Francs notes
2	20	Francs notes
2	10	Francs notes
14	5	Francs notes
4	5	Francs pieces.

I also had in my possession at this time the following Dutch money:

84	One	Guilders notes
47	2½	Guilders notes
8	10	Guilders notes.

I also had the following Postal notes in my possession:

16 Postal notes of 20/- each.

When I went on leave on 1st Feb. 45 I had in my possession approximately 600 guilders, 2,250 Belgian Francs, and 16 Postal notes for 20/- each.

I had the 2,250 Belgian Francs in my possession since my previous leave in Dec. 44.

The 600 guilders and the 16 Postal notes were won by me playing Poker and crap games at my unit. It will be noted that the Postal notes are all stamped with the same Field Post stamp, & all the same date. The reason being that on occasions we were able to purchase either one or two of these Postal notes from the Field P.O. & several of the boys in the Poker & crap games were there for money, this accounts for my having this amount, and issued on the same day, & by the same Field P.O.

I obtained the Belgian francs in my possession on 2 occasions by exchanging the Dutch guilders for Belgian Francs & were in a Café in Brussels & produced some of the Dutch

J.L.H.

I paid Jan 1 was told that there was a fee by them to
convert change the currency for me, because he did business
in Holland, I changed approximately 320 Dutch guilders
with the Belgian civilian for Belgian Francs, the rate of
exchange being 16 Belgian Francs to the Dutch guilder.

I have a credit balance in my pay book of ₣ 172.85,
the last entry in which is deposit of a ₣ 18.00 cheque on Jan. 15th 45
which I received from my wife for Christmas. The previous
cheque from my wife was deposited in Sept. 44. I have a
credit balance in my pay book of about ₣ 65.00, I have in France
a new book at present, since on Jan 1st 45, and I have
not seen the Paymaster in Feb 45 to receive pay of
present day, or my pay since 1st Feb.

The total period of my A.W.L. amounts to 8 days
18 hrs and 30 mins. viz. from 17.00 hrs on 3rd Feb 45
until approximately 11.30 hrs on 10th Feb. 45.

I would like to add that I was drawing pay & Dep.
Field Cashiers Office for 14 months in England, & that I have
a deposit in my favour, since the Field Cashier & myself always
proceeded alone twice per month & drew cash for the entire
Unit Div. I add these points to show that I have had
no dishonest dealings, and that the cash I have in my
possession on 10th Feb 45 was obtained by me in the
manner stated.

I have read over the statement, made voluntarily by
me this date, & it is a true account of the circumstances
surrounding my A.W.L. and arrest.

Witness:
Cpl. Mar 45.

Sgt. Thomas. Int. Staff.

LIST OF WITNESSES

PROSECUTION

M036743 Sjt **MATTHEW** A SIS 1 Cdn Disciplinary Centre

DEFENCE

N/A

LIST OF EXHIBITS

Certified true copy of Extract from Pt 11 Order No 16 dated 15 Feb 45	"A"
Certificate of apprehension dated 10 Feb 45	"B"
Statement of accused taken by Sjt **MATTHEW** A dated 1 Mar 45	"C"

I, D-105738 Pte Thomas Humphrey HEAD, RCASC attached to ADOS Dump, HQ 2 CDn Inf Div attached to 1 Cdn Disciplinary Centre, acknowledge having received 1 copy of Charge Sheet and one copy of Summary of Evidence free of charge on 3 Mar 45.

Thomas H. Head

D-105738 Pte. Thomas Humphrey Head

Ex Libris

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D:105738	Pte	Thomas Humphrey Hood.	RCASC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For aa 15 (1) 5 times.

For aa 40 1 times.

For _____ _____ times.

For _____ _____ times.

Date of first entry in Field Conduct Sheet 20 Sept/40

Date of last entry in Field Conduct Sheet 8 Jan/45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for NO

beginning on the _____ day of _____

4. The accused has been awaiting trial on the present charges for NO days in civil custody; and for 8/3 days in military custody, *i.e.*, NO days in open arrest, 8/3 days in close arrest; of which NO days were spent in hospital.

5. The present age of the accused is 25 yrs 7 months

6. The date of his ~~calling up for military service~~ attestation is 21 May/40

7. The service which the accused is allowed to reckon is _____

†State the military decorations (if any) held by accused.

8. The accused is in possession of†

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27083) W1.24869/3494 24,000 7/44 A.& E.W.Ltd. Gp.698 Forms B.296(War)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F.G.C.M.	24 Sept 41	- not stated on 6 (which is incomplete.	14 days F.P. 10 days forf. 7 pay (14 days auto for F.)	nil

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 13th day of March 1945 [illegible] Capt

1 Cdn [illegible] Centre

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23Aug 42	Pte		AWL 9 days 3 hrs 30 mins AA 15 (1)		10 days pay FR&I 149(2)	28Sep42	2DPCoy	Forf 10 days Pay FR&I 149(1)a
Field	7Apr43	Pte		Driving in such a manner so as to become envolved in an accident AA40		Stoppage of pay 7 Apr 43 £4,9,9, 14 days CB			
Field	17Jan44	Pte		AWL from 1800 hrs 17 Jan 44 to 2345 hrs 4Feb44-18 days 5 hrs 45mins-AA15(1)		28 days Det			Forf 19 days pay FR&I 149(1)a Forf 28 days pay FR&I149(1)b
Field	2Jan45	Pte		AWL 23 hrs 45 mins AA15(1)		7 Days CB			Forf 1days pay FR&I(1)a

DUPLICATE CREATED FROM MFM4 22Feb45 RECORD OF CONDUCT IN CANADA NOT AVAILABLE/ "W.A. Murray" Lt--Offr i/c Sub Sec 1 Cdn Sec 2 Ech HQ 21Army Group

CERTIFIED TO BE A TRUE COPY OF MFM6 IN MY POSSESSION

Admin Offr.

1 Cdn Disciplinary Co

No D105736 Name HEAD T H — SUPPLEMENTARY — Sqn, Battery, or Company — Corps RCASC — Date of enlistment 21May40 — GC Badges — Service or Proficiency Pay — 3/17 MFM 6 (AFB 122) 40/PAS/136 (5418)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20Sep 40	Pte		AWL from 0600 hrs 20 Sep 40 to 1800 hrs 20 Sep 40 (AWL 12 hrs) AA 15 (1)		Forf 1 days Pay FR&I 149 (1) (e)	21Sep40	HQ2CID	Forf 1 days Pay FR&I 140 (1)a
Field	10Sep 41	Pte		AWL 2 days 12 hrs AA 15 (1)		14 days Det	13Sep41	2 DP Coy	Forf 3 days pay FR&I 149 (1)a-14 days pay FR&I 149 (1)b
Field	24Sep 41	Pte		Tried by FGCM		14 days FP Forf 10 days Pay FR&I 149 (2)	24Sep41	FGCM	Forf 14 days Pay FR&I 149 (1)b

(FTO)

309 - Pte. HEAD. V. A. W/76325

No. 2 Can. (M.G.) R.U.

10 - 8 - 332

ENTERED IN RECORDS OF C.M.

ENTERED IN RECORDS OF C.M.

F.G.C.M

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 28th day of November, , 1940.

Whereas it appears to me, the undersigned, an officer in Command of Canadian Military Headquarters , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

~~*[I am unable to appoint—~~

~~*(1.—Three Officers to form the Court.)~~

~~*(2.—A Field Officer as President.)~~

~~*(3.—Three Officers having more than one year's service.)~~

~~for the following reasons, namely:—]~~

MM

MM

PROCEEDINGS CHECKED AND FOUND TO BE IN ORDER

(A. W. EMBURY) MAJOR, J.A.G.3, C.M.H.Q.

ENTERED IN RECORDS OF C.M. 309

President.

Rank.	Name.	Regiment.
Major	Lent, R.W.	Lorne Scots

Members.

Rank.	Name.	Regiment.
Captain	Saunders, A.L.	#1 Gen. Holding Unit.
Captain	Clarke, F.H.	#1 Arty. Holding Unit.
Captain	Colling, W.H.	R.C.A.S.C.Holding Unit.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed P J Montague (P. J. Montague) Lieut.-Colonel Senior Officer Canadian Military Headquarters

*Commanding Convening Officer

28 NOV 1940

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B.76325, Pte. Head, William Allan, 1 Cdn. (M.C.) Holding Unit,	FIRST CHARGE A.A. Sec. 12 (1)(a) as per charge sheet. SECOND CHARGE A.A. Sec. 24 (2) as per charge sheet.	NOT GUILTY NOT GUILTY	NOT GUILTY OF DESERTION BUT GUILTY OF ABSENCE WITHOUT LEAVE. TO UNDERGO DETENTION FOR A PERIOD OF 65 DAYS. NOT GUILTY OF THE SECOND CHARGE.	Finding and Sentence Confirmed I DIRECT THAT PROVISION OF THE ARMY ACT SECTION 31 (2) BE NOT APPLIED IN THE CASE OF THE ABOVE FINDING OF DESERTION AND THAT THE SOLDIER BE RELEASED FROM CUSTODY AS SOON AS POSSIBLE. P. J. Montague (P. J. Montague) Major-General Commanding Officer Canadian Military Headquarters.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— No

(Signed) P. J. Montague (Signed) R. W. Scott Major (Lorne Scots)
(P. J. Montague) Major-General — President
Commanding Officer — Confirming Officer (*e*)
Canadian Military Headquarters.
10 JAN 1941

(*a*) Appointment actually held to be stated. Acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Ninth day of December 1940, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*3. ~~The interpreter~~ The Stenographer - Rest
*4. ~~The officers under instruction~~ - Rest

were duly sworn.

* Omit if not applicable.

Signed this Ninth day of December 19 40

R. W. Scott Major
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* ~~I direct that the soldier named in the margin be not committed to prison until further orders.~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 11th day of January 1941

P. J. Montague
(P. J. Montague) Major-General
Confirming Officer
Senior Officer
Canadian Military Headquarters.

Promulgated and extracts taken in the case of B 76325 Pte. Head W.A. 10 JAN 1941

(*a*) (Dated) 15 Jan 1941 (Signed) E. Shillington
Captain Adjutant
No. 1 (M.C.) Holding Unit C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

No. 1 Canadian (M.G.) Holding Unit. CASF.

21st. November. 1940.

Station: Bordon Hampshire

Application for a Field General Court-Martial

Sir,

I have the honour to submit two charges against No. B-76325, Private William Allan Head, of the No. 1 Canadian (M.G.) Holding Unit, (T.S.R.) from Field Unit, Canadian Active Service Force, under my command, and request you will obtain the sanction of Canadian Military Headquarters that a Field General Court-Martial may be assembled for his trial at Guadaloupe Barracks, Bordon.

The case was investigated by Major. W.B. Davidson, Lieut-Col. F.I. Carpenter, and Lieut. E.P. Lee, No. 1 Canadian (M.G.) Holding Unit. C.A.S.F.

A Court of Inquiry was held on 9th., October, 1940 at Chipstead.

President.	Major.	F.W. Court.	The Toronto Scottish Regiment (M.G.) C.A.S.F.
Members.	Capt.	E.A. Rogerson.	
	Lieut.	C.S. Wallace.	

The accused is now at Guadaloupe Barracks, Bordon.
His general character is FAIR.

I enclose the following documents:

1. Charge sheet (in duplicate.)
2. Summary of evidence, original and one copy.
3. Original Exhibits.
4. List of witnesses for the prosecution and defence.
5. List of exhibits.
6. ~~Correspondence~~.
7. Statement as to character (A.F.B. 296) and field conduct sheet of the accused.
8. A statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at his trial. (R.F. 14 (B).).

I have the Honour to be, Sir,

Your Obedient Servant.

.....Lieut-Col.
Commanding No. 1 Cdn. (M.G.) Holding Unit. C.A.S.F.

Prosecutor. Capt. R.E. Lockhart.
No. 1 Cdn. (M.G.) Holding Unit.
C.A.S.F.

To: The Commandant.
"A" Group (Holding Units.) C.A.S.F.

MEDICAL OFFICERS CERTIFICATE.

I certify that No. B-76325, Private William Allan Head, No. 1 Cdn. (M.G.) Holding Unit. CASF, is Fit to undergo trial by Court-Martial.

.....Captain. R.C.A.M.C.
No. 1 Cdn. (M.G.) Holding Unit.
C.A.S.F.

Rwb

Field General Court-Martial Proceedings concerning B-76325, Pte. Head, William Allan, No. 1 Cdn. (M.G.) Holding Unit, held at New Martinique Barracks, Bordon, Hants., 9th December, 1940.

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

At 10:30 o'clock the trial commences.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No, sir.

The President and members of the court are duly sworn.

Q2 - Do you object to M-15577 Sgt. Fidler, S., C.M.H.C., acting as court stenographer?
A2 - No, sir.

The charge-sheet is signed by the President, marked B-2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Q3 - Are you guilty or not guilty of the first charge against you, which you have heard read?
A3 - Not guilty of desertion but guilty of absence without leave.
Q4 - Are you guilty or not guilty of the second charge against you, which you have heard read?
A4 - Not guilty, sir.

President - After having heard the evidence and the court finds there is no evidence of desertion, the court has the power to reduce the finding from desertion to absence without leave.

Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence.

Prosecutor - I haven't anything to say except to submit documentary evidence which is all we have. I call on Mr. Fullerton to submit these documents which are marked Exhibits A, B and C.

First witness for the prosecution, Lieut. R.E. Fullerton, No. 1 Cdn. (M.G.) Holding Unit, being duly sworn, is examined by the prosecutor.

Q5 - I have here a letter from Col. Christie and a certificate purporting to be the time and place and date the accused gave himself up. Do you recognize the signature of Col. Christie?
A5 - I do, sir, yes sir.
Q6 - Exhibit "B". I show you a declaration of a Court of Inquiry as to shortage of kit, signed by Col. Christie and certified a true copy by the captain and adjutant. Do you recognize that as a true copy.
A6 - Yes, sir.
Q7 - Exhibit "C". A certified true copy of an entry in the registry of deserters. Do you recognize that as a true copy?
A7 - I do, sir.
Q8 - And now an Exhibit "D". I have here a declaration of shortage of kit. Do you recognize that?
A8 - Yes, sir.

Defending officer declines to cross-exam ne this witness. Rwb

Second witness for the prosecution, C.Q.M.S. Bielder, A.G., F-34627, No. 1 M.G. Holding Unit, being duly sworn, is examined by the prosecutor.

Q9 - Did you make an inventory of the clothing he was short when he came to the M.G. Holding Unit?
A9 - Yes, sir, I checked the list sent from Coulsdon and found him short three articles.
Q10 - What were they?
A10 - Ground sheet, balmoral and jacket sweater.
Q11 - That is all you found him short in his kit?
A11 - That is all, sir.

President -
Q12 - Other than those three articles his losses were made up?
A12 - Yes, sir.

Prosecutor - That is the case for the prosecution, sir.

Q13 - Do you apply to give evidence yourself as a witness?
A13 - Yes, sir.
Q14 - Do you intend to call any other witnesses in your defence?
A14 - No, sir.

First witness for the defence, B-76325, Pte. Head, William Allan, No. 1 Cdn. (M.G.) Holding Unit, being duly sworn is examined by the defending officer.

Q15 - Will you tell the court what happened to these articles of kit?
A15 - The sweater, when I left the camp, I loaned to one of the fellows, and the ground sheet was left over an ack-ack gun post. The balmoral was stolen and I had signed for another one but I never received it.

President -
Q16 - On the 12th September we presume you left the Toronto Scottish and you say another chap had your sweater. Did you attempt to get it back?
A16 - No, sir, I have been unable to get down there.
Q17 - The ground sheet was over an ack-ack gun you say?
A17 - Yes, sir.
Q18 - And your balmoral?
A18 - It was lost or stolen and I signed for another one.
Q19 - You got another?
A19 - No, sir.
Q20 - What did you wear?
A20 - My glengarry.
Q21 - Have you a balmoral now?
A21 - No, sir.
Q22 - You are still short a balmoral?
A22 - Yes, sir.
Q23 - And you never have been charged with one on your pay book?
A23 - No, sir.

Defence Counsel -

Q24 - The accused admits absence without leave and wishes to explain. Will you tell the court?
A24 - I tried to get leave as I had been over here since December 17th, but I couldn't get it. Fellows who came over in August were getting leave and I had only five days. I had money sent from home so I took it into my head to have a leave anyhow. I went to London and got into trouble with a girl and didn't want to come back until I got fixed up or what I thought was fixed up. When I came back I went to hospital for seventeen days.
Q25 - Did you have any intention of deserting?
A25 - No sir, I never even had my tunic off, I never tried in any way to get out.
Q26 - Did you return voluntarily?
A26 - Yes, sir, no escort brought me in.

Rwh

President -

Q27 - You would leave on the 12th September, 1940?
A27 - No, sir, I would leave on the 11th, I was on guard duty until eight o'clock and then left.
Q28 - You surrendered yourself at one o'clock on the 15th October?
A28 - Yes, sir.
Q29 - You would be absent thirty-four days. You have been in close custody since then, how long?
A29 - Sixty days.
Q30 - How long in hospital?
A30 - Seventeen days.
Q31 - For what?
A31 - gonorrhoea.
Q32 - Are you cured now?
A32 - Yes, sir.
Q33 - You say you were here since last December and had only five days landing leave. When?
A33 - New Year's, last year.
Q34 - You were in Aldershot until you moved out in the field?
A34 - I went to France as a transport driver.
Q35 - Why didn't you get leave before you went to France; did you apply for leave?
A35 - Yes, sir.
Q36 - Why didn't you get it?
A36 - I don't know, sir.
Q37 - After you came back what happened?
A37 - I applied again. Two days before I went away on the 12th my leave was cancelled again.
Q38 - Why?
A38 - I don't know. They closed off all leave. I had booked a ticket to go to Birmingham and wrote the people and told them I was coming and then they turned down my leave and I am guilty of going away without leave.
Q39 - You didn't go to Birmingham?
A39 - No, sir.
Q40 - Thenhaving written you didn't go; why?
A40 - I didn't have the address with me when I left.

The court is closed for the consideration of the finding.

The Court find that the accused B-76325, Pte. Head, William Allan, No. 1 Cdn. (M.C.) Holding Unit, is NOT GUILTY OF DESERTION BUT IS GUILTY OF ABSENCE WITHOUT LEAVE;
and,
He is NOT GUILTY of the second charge against him under A.A. Sec.24(2).

President - We have found you not guilty of desertion but have considered your plea of absence without leave. On the second charge we have found you not guilty of the loss of the rubber groundsheet and the cardigan jacket which may be recovered, and you have already signed an application for a balmoral; so that if you do not get your cardigan jacket back together with the groundsheet, that can be issued to you on repayment.

President -

Have you any evidence to produce as to the character and particulars of service of the accused.

The prosecutor, with the approval of the defending officer, submits the M.F.M. 6 and A.F.B. 296 of the accused.

Is the accused the person named in the statement which you have heard read?
A - He is, sir.
Have you compared the contents of the above statement with the regimental books?
A - I have, sir.
Are they true extracts from the regimental books, and is the statement of entries in the conduct sheet a fair and true summary of those entries?
A - Yes, sir.

LIST OF EXHIBITS:

"A" - Letter from Toronto Scottish Regiment to 1 MG Holding Unit.
"B" - Declaration of Court of Inquiry.
"C" - Extract from Registry of Deserters.
"D" - Medical certificate of fitness to stand trial by Court-Martial.
"E" - Charge Sheet.
"F" - Letter from Lt-Col. W.G. Kerr, C.M.H.Q., to Major R.W. Lent re convening order.
"G" - Summary of evidence.
"H" - Letter from Toronto Scottish Regiment to 1 MG Holding Unit, covering declaration of Court of Inquiry.
"I" - MFM 6
"J" - AFB 296

R.W. Lent Major

Statement by the Accused in accordance with R.P.14 (B).

I, No. B-76325, Private William Allan Head, desire to have an Officer assigned to represent me at my trial by Court-Martial.

I desire the services of Major. A.W. Embury, Saskatoon Light Infantry (M.G.), if he is available.

30th October, 1940. Wm Head

Exhibit 'B'

D E C L A R A T I O N.

The Court declare that we, the undersigned members of this Court of Enquiry, do hereby find upon questioning all Witnesses concerned, that B.76325 Pte. W.A. Head absented himself without Leave from 0230 hours, 12 Sep 40, and is still absent. We also find shortage of kit totalling £ 8.17.9 which should be charged to B.76325 Pte. W.A. Head, The Toronto Scottish Regiment (MG) CASF.

Names of President and Members:-

President:- (F.W. Court), Major, The Toronto Scottish Regt.(MG)CASF.

Member:- (E.A. Rogerson), Captain, The Toronto Scottish Regt.(MG)CASF.

Member:- (C.S. Wallace), Lieutenant, The Toronto Scottish Regt.(MG)CASF.

.....
(Signature of Commanding Officer)

Certified True Copy.....
(Signature of Officer having custody of original record).

9 Oct 40.

CERTIFIED TRUE COPY.

REGISTRY OF DESERTERS.

Exhibit C
R.W.S.

No. and Rank.	B.76325 Pte.
Name	W.A. Head,
Age (on Desertion),	25,
Height (Feet	5
Height (Inches	10
Colour of (Complexion	Ruddy,
Colour of (Hair	Very Fair,
Colour of (Eyes	Blue
Distinctive Marks or any personal peculiarity by which his identity may be ascertained.	Tattoo rt. forearm and chest.
Date of Enlistment.	22 Nov 39.
Place of Enlistment.	Toronto, Canada.
Date of Desertion.	12 Sep 40.
From whence Deserted.	Chipstead, Surrey.
Parish where Born (post town to be given)	
County	
Former trade or occupation.	Truck Driver
Place of Residence for last 12 months before enlistment.	Toronto, Canada.
Dress at the time of Desertion. Regimentals or plain clothes.	Regimentals.
Remarks Stating any particular circumstances attending his Desertion.	
Date of Court of Inquiry and Name of President and Witnesses.	9 Oct 40. Major F. W. Court, Pres. Capt. E. A. Rogerson, Lieut. C. S. Wallace
Declaration of Court of Enquiry.	As per M.F.B. 259 attached.

Exhibit 2
R. M. Clark

Coy..... 1 CANADIAN (MG) HOLDING UNIT, C.A.S.F.
MORNING SICK REPORT .....1st Dec..... 1940.

Reg'tl No.	Rank & Names (Christian Name in full	Age	Religion	Duty Prisoner Defaulter	M. or S.	Disease	Medical Officer's Remarks
B26335	L/C	Read W.H.		Sick		Inf.	D.C.M.

C.S. Robertson Medical Officer ..... Orderly N.C.O.

Exhibit 6

CHARGE-SHEET

The accused No. B-76325, Private William Allan Head, 1 Cdn. (M.G.) Holding Unit, C.A.S.F. a soldier of the Canadian Active Service Force is charged with:-

First Charge Sec 12 (1)(a) Army Act.

When on active service deserting His Majesty's Service

in that he

at Chipstead, Surrey, on the 12th., September, 1940, absented himself from the Toronto Scottish Regiment, (M.G.), C.A.S.F., until he surrendered himself at 1300 hrs, 15th., October, 1940.

Second Charge Sec. 24 (2) Army Act

Losing by neglect his clothing, equipment, and regimental necessaries,

in that he

at Chipstead, Surrey, on or about the 9th., October, 1940, was deficient of,

one Balmoral, value three shillings, six pence; one Battle Dress, suit, value forty-three shillings; one pair Boots ankle, value twenty-two shillings, six pence; one coat sweater, value six shillings, nine pence; one comb, hair, value two pence; one pair gaiters, web, value three shillings eleven pence; one greatcoat, value forty-eight shillings six pence; one ground sheet, value ten shillings; one helmet, steel, value seven shillings; one knife, service, value three shillings, four pence; one lanyard, knife, value one shilling; two shirts, value twenty shillings; one pair suspenders, value one shilling, six pence; one tins mess, value two shillings, three pence; two pairs underwear, summer, value four shillings, four pence.

To the total value of Eight Pounds, seventeen shillings, and nine pence.

J. L. Ralston ....Lieut-Col.
Commanding No. 1 Cdn. (M.G.) Holding Unit.
C.A.S.F.

Bordon, Hants.
30 Oct. 40.

To be tried by Field General Court Martial

for D.G.

(W. G. KERR) Lieut-Colonel,
D.A.A.G. (Courts-Martial),
Canadian Military Headquarters.

Exhibit "D" 2

Summary of Evidence in the case of No. B-76325, Private William Allan Head, 1 Cdn. (M.G.) Holding Unit. C.A.S.F.

First Witness for the Prosecution.

Captain. J.E. Farncomb, 1 Cdn. (M.G.) Holding Unit. CASF. having been duly sworn states that:

I produce (1) Letter from O.C. The Toronto Scottish Regt. (M.G.) C.A.S.F., dated 17th., Oct. 40. (2) A.F.B. 115, regarding B-76325, Private William Allan Head. (3) Certified true copy of Registry of Deserters regarding B-76325, Private William Allan Head.

The said documents are attached as Exhibit "A" Exhibit "B" and Exhibit "C" respectively, to these proceedings.

(Sgd) J.E. Farncomb, Captain.

The accused declines to cross-examine this witness.

The accused having been warned in accordance with R.P. 4 (e) declines to make a statement.

Taken down in the presence and hearing of the accused this 28th., day of October, 1940.

Certified that R.P. 4 (c) (d) (e) have been complied with.

(Sgd) E.F. Lee. Lieut.
1 Cdn. (M.G.) Holding Unit.
C.A.S.F.

Exhibit "F"

THE TORONTO SCOTTISH REGIMENT, (MG) C. A. S. F.

5-4/4 Nov 40.

Officer Commanding,
No. 1, C.M.G.H.U.

"B.76325, Pte. W. A. HEAD - Record of Declaration of the Court".

1. With reference to C.M.H.Q. letter REC/B.76325, Pte. W. A. Head, dated 31 Oct 40, we are herewith enclosing One Certified True Copy of the amended Declaration of the Court, as requested by them, and in accordance with their instructions.

2. Please acknowledge receipt.

(J. H. Christie) Lt.-Col.,
Commanding,
Tor. Scot. R. (MG) CASF.

Enclosures 1.

R.W.L.

DECLARATION

THE COURT DECLARE THAT No. B.76325, Private W. A. HEAD, "C" Coy., The Toronto Scottish Regiment, (MG) C.A.S.F. ILLEGALLY ABSENTED HIMSELF WITHOUT LEAVE from Aldershot Camp, Surrey, AT 0230 hours ON THE 12th DAY OF September, 1940 That he is still so absent, and that on the 14th day of September, 1940 HE WAS DEFICIENT, AND THAT HE IS STILL DEFICIENT OF THE FOLLOWING ARTICLES,-

Articles	Value	Articles	Value
Balmoral,	3/6	Shirts,	20/-
Battle Dress, Suits,	43/-	Suspenders, Prs.,	1/6
Boots, ankle, prs.,	22/6	Tins, Mess,	2/3
Coats, Sweater,	6/9	Underwear, Simmer,	4/4
Combs, hair,	-/2		£8.17/9 pence.
Gaiters, Web, prs.,	3/11		
Greatcoat,	48/6		
Ground Sheets,	10/-		
Helmets, Steel,	7/-		
Knife, Service,	3/4		
Lanyard, Knife,	1/-		

Major F. W. Court, PRESIDENT

Capt. E. A. Rogerson, MEMBER

Lieut. C. S. Wallace, MEMBER

SIGNED AT Coulsdon, Surrey.

THIS 9th DAY OF Oct., 1940.

CERTIFIED TRUE COPY.

(J. H. Christie) Lt.-Col.,
Commanding,
Tor. Scot. R. (MG) C.A.S.F.

No. B76325 Name HEAD, W.A. Sqn., Battery or Company — Corps Tov Sect. Reg. (M.S.) C.A.S.F. — Date of enlistment 22.11.39 — G.C. Badges — Service or Proficiency Pay — M.F.M. 6 (A.F.B. 122) 58625—8.39 (1733) H.Q. (771-41-18)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 1 — Signature O.C. Company, etc. W. Rutherford (Capt.) OOT — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Ship E-5	11.12.39	Pte	1st	Drunkenness — A.A. 19	4/Cpl Buchanan " Tutt	48 hrs detn	12.12.39	Maj. Christie	
Tournay, Bel	14.1.40	"	1	A.W.L. (from parade) AA 15(c)	Cpl. Miller	3 days C.B.	15.1.40	W.S.M. Stanford	
Tournay Bel	29.2.40	"	1	Conduct to prejudice of good discipline A.A. 40	C.S.M. Clark P.S.M. Bell	14 days Detent	1 Mar/40	Col. Thompson	
Tournay "	31.3.40	"	-	AWL (10½ hrs) AA. 15(c)	Sgt. C.H. Clarke	2 days C.B (p.u.)	2/4/40	C.O. Dawson	
						RELEASED FROM THE DETENTION BARRACK ALDERSHOT ON 14 MAR. 1940 SENTENCE HAVING EXPIRED. D.A.D.			
Guilford Camp	15/5/40	"	-	AWL AA. 15(c)	Cpl Tinlock, W.	3 days C.B.	16/5/40	M. Medland, Lt.	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Old dean Camp	9.6.40	Pte		Refusing to obey an order AA (9)	Col Robinson, WEA Pte Mander, T.M.	14 days detention	10.6.40	Lt/Col Thompson	
— Do —	21.6.40	—		CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE — FAILURE TO SHEW FOR DUTY — IMPROPER EXPRESSION — CONSUMPTION OF ALCOHOLIC LIQUORS AA 40	CAPT. JOHNSTON C.S.M. EVANS	14 days detention	24.6.40	— Do —	

Certified true Copy
Pte Sydenham R4
Offr i/c Records
Leeds (No 4) Dist Employment
Coy

Description of Court by which tried, i.e., District or Garrison Court Martial, Court of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority	Punishment remitted

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this twentieth day of November, 1940

W. Fullerton Lieut.
W. Fullerton, Lieut.,
Officer i/c Records,
No. 1 Cdn. M.G. Holding Unit, CASF.

Exhibit "J"
Rowbotham

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B6325 Pte. Head, W.A. of the 1 Cdn. M.G. Holding Unit, CASF

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be accessed to the proceedings.

†See Para. 964, K.R. 1923.

*The numbers herein stated should correspond with the number of *Entries* in the Conduct sheets, punishment being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

		*Within last 12 months.		*Since Enlistment.	
For	Drunkeness	1	times	1	times.
For	A. W. L.	3	times	3	times.
For	Conduct to prejudice of good order and military discipline.	2	times	2	times.
For	Refusal to obey an order		times	1	times.

Number of instances of gallantry or distinguished conduct, NIL

[redacted]

[redacted]

[redacted]

[redacted]

W5 63869/854 50,000 2-40 W. S. Ltd. 51—6384

4. The accused has been in confinement, awaiting trial on the present charges for 220 days in Civil Custody,
and 87 days in Military Custody.
Total 307 days.
Of which 17 days were spent in hospital.

5. The present age of the accused according to his attestation paper is 25

6. The date of his attestation specified in his attestation paper is 22nd Nov., 1939

10. The accused is in possession of, or entitled to, no military decoration or

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name B76325 Pte. William Allen Head of the No. 1 Cdn. M.G. Holding Unit, C.A.S.F.

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
		- - - - N I L - - - -		

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

(Continued overleaf.

LIST OF EXHIBITS:

"A" - Letter from Toronto Scottish Regiment to 1 MG Holding Unit.
"B" - Declaration of Court of Inquiry.
"C" - Extract from Registry of Deserters.
"D" - Medical certificate of fitness to stand trial by Court-Martial.
"E" - Charge Sheet.
"F" - Letter from Lt-Col. W.G. Kerr, C.M.H.Q., to Major R.W. Lang re convening order.
"G" - Summary of evidence.
"H" - Letter from Toronto Scottish Regiment to 1 MG Holding Unit, covering declaration of Court of Inquiry.
"I" - MFM 6
"J" - AFB 296

R.W. Lang Major

B. 76225 Pt. Head W. a.
No. 1 Cdr. M.G. Holding limit

Correspondence to be PINNED here.

Army Form A.3.

3194

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 8th day of April, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

[redacted]

*(1. [redacted])

*(2. [redacted])

*(3. [redacted])

[redacted]

PROCEEDINGS REVIEWED

[redacted]

President.

Rank.	Name.	Regiment.
Major	T.E. Haynurst	No.1 Cdn Inf Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	S.S.T. Cantlie	No.2 Cdn Inf Hldg Unit
Lieutenant	R.F. Woodehouse	No.1 Cdn Inf Hldg Unit
Lieutenant	D.F. Newson	No.3 Cdn Inf Hldg Unit

* Must be signed personally by officer in command at the close and all entries in connection therewith to be initialled by him.

*Signed L. F. Page Brigadier

Commanding Cdn Base Units, Cdn Army.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-76325 PTE. HEAD, W.A. (Tor Scot reinforcement) No.1 Cdn (M.G.) Hldg Unit.	First Charge A.A. Sec 15 (1) as per charge sheet	GUILTY	GUILTY TO BE IMPRISONED WITH HARD LABOUR FOR EIGHTEEN MONTHS.	I confirm the finding & sentence of the court but commute the sentence to one of 18 months detention B

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [signature] Brigadier (Signed) [signature] Maj.
Commanding Cdn Base Units, Cdn Army. *President.*
Convening Officer (c)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

B2

CHARGE SHEET

The accused No B76325 Pte Head, W.A., Toronto Scottish Regt on the strength of 1 Cdn (MG) Holding Unit, C.A. (O) an active unit of the Canadian Army Overseas as a reinforcement for his Regt, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Army Act
Sec. 15(1)

Absenting himself without leave
in that he
at Bordon, Hants, did absent himself from
1 Cdn (MG) Holding Unit, C.A. (O) from
1800 hrs 22 Feb 41 until he surrendered
himself to the Metropolitan Police, London
at 1700 hrs 27 Mar 41.

Bordon, Hants,
1 Apr 41

.....Major
A/O.C. 1 Cdn (MG) Holding Unit,
C.A. (O)

To be tried by Field General Court Martial

.....Brigadier
Commanding Cdn Base Units.

Bordon, Hants
This 3rd day of April 41.

President Lt Col J Hayhurst
#1 C I H Coy

G76325, Pte. Head, W.A., No. 1 Cdn. (MG) Holding Unit, tried by Field General Court-Martial at Bordon, Hants., on the 10th day of April, 1941.

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

Prosecutor - Lieut. J.M. Prescott
Defending Officer - Major W.C. McQuade.

At 1000 hours the Trial commences.

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No, sir.

The President and members are duly sworn.

Q2 - Do you object to M-15577 Sgt. Stanley Fidler, The Edmonton Regiment, C.W.H.Q., acting as Court Stenographer?
A2 - No, sir.

The Court Stenographer is duly sworn.

The charge-sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge-sheet

Q3 - Are you guilty or not guilty of the charge against you, which you have heard read?
A3 - Guilty, sir.

R.P. 35(B) is complied with by the Court.

Q4 - Do you wish to make any statement in mitigation of punishment?
A4 - No, sir.
Q5 - Do you wish to give any evidence yourself or to call any witnesses as to character?
A5 - No, sir.

Lieut. J.M. Prescott, No. 1 Arty. Holding Unit, is duly sworn.

Q6 - Have you any evidence to produce as to the character and particulars of service of the accused?
A6 - Yes, sir.
Q7 - Is the accused the person named in the statement which you have heard read?
A7 - Yes, sir.
Q8 - Have you compared the contents of the above statement with the regimental books?
A8 - Yes, sir.
Q9 - Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A9 - Yes, sir.

The accused declines to cross-examine.

Q10 - Do you wish to address the Court?
A10 - (Defending Officer) Head has admitted that he is guilty of a.w.l. It seems that Head just got out of detention a couple of weeks before this happened and looked at his pay book and found he was a hundred and eighty-odd dollars in debt and I think that discouraged him. I have taken the matter up with the paymaster and it has been proved wrong and he is a matter of only forty dollars in debt. Head believed he would have no money to draw and it would take months and months to get out of the hole when actually he was only forty dollars in the hole and that fact discouraged him and he went absent.

The Court is closed for the consideration of the sentence.

"A"

Statement of Confession
by B.76325 Pte Head, W.A., #1 C.M.G.H.U., C.A.(S).

I am B 76325, Pte Head, W.A., No 1 Cdn. M.G. Holding Unit. At 1800 hours on Febr. 22nd 1941 I went absent from No.1 Cdn. M.G. Holding Unit at Bordon, Hants, and remained absent without leave from that time until I surrendered myself to the Metropolitan Police at the West End Central Police station in London at ~~the~~ 1700 hrs March 27th 1941.

Jm Head.

Certified that the above statement was made voluntarily by Pte Head after he was warned in accordance with R.P. 4(E).

B. [illegible], Lt.
#1 Cdn. M.G. Holding Unit C.A.(S)

MEDICAL OFFICER'S CERTIFICATE.

14-8-41

I CERTIFY that No. B76325 Pte Head, W.A. 1 Cdn. (MG) Holding Unit
Regiment

is fit to undergo trial by Court-Martial.

Signature of the Medical Officer H.R.L. Davis Capt RAMC

Summary of Evidence in the case of No D 76 325 Pte Head
M.A. No 1 Cdn (M.T.) Holding Unit C.A.(O) [redacted]

[redacted]

The evidence is taken on oath on instructions from the Commanding Officer.

First Witness for Prosecution — Lieut R.R. MacGillivray #1 Cdn (M.T.) Holding Unit being duly sworn states
I am Lieut R.R. MacGillivray #1 Cdn (M.T.) Holding Unit C.A.(O)
I know the accused Pte Head. I submit a confession made by the accused to me on the 31 March 1941
I duly warned the accused in accordance with R.P. 4(C) before taking this confession
(Confession admitted & marked Exhibit A)
The accused declined to cross-examine.

R.R. MacGillivray, Lt
#1 C.M.G.H.U., C.A.(O).

Second Witness for Prosecution — Capt R.T. Lockhart #1 Cdn (M.T.) Holding Unit being duly sworn states
I am Capt R.T. Lockhart #1 Cdn (M.T.) Holding Unit C.A.(O) and am adjutant of the said unit. I know the accused and who drew A.F.B.252 signed by the D.A.P.M. London Area referring to the accused - also A.F.O.1611 referring to the surrender of the accused.
(A.F.B.252 marked Exhibit B)
(A.F.O.1611 marked Exhibit C)

The accused declines to cross-examine.

R.T. Lockhart Capt
#1 Cdn M.T. Holding Unit

The accused after being duly warned in accordance with R.P. 4(C) declines to make a statement.

Taken down in the presence & hearing of the accused this 31st day of March 1941 at Borden Hants
Certified that R.P. 4C a & (C) have been complied with

J. McK. Cleveland Lieut
#1 Cdn Army H.Q.
C.A.O

Borden Hants
31 March 1941

SUMMARY of evidence in the case of B-76325, Pte. Head, W.A.
No. 1 Cdn. (M.G.) Holding Unit, C.A.(O)
The evidence is taken on oath on instructions of the Commanding Officer.

FIRST WITNESS FOR THE PROSECUTION. Lieut R.R. Macgillivray, No. 1 Cdn. (M.G.) Holding Unit, C.A.(O). being duly sworn, states:

I am Lieut. .R.R. Macgillivray, No. 1 Cdn. (M.G.) Holding Unit, C.A.(O).
I know the accused, Pte. Head. I submit a confession signed by the accused to me on the 31st Mar 41
I duly warned the accused in accorance with R.P. 4(e) before taking this confession.
(Confession admitted, and marked exhibit "A")
The accused declined to cross-examine.

R.R. Macgillivray, Lieut.
1 C.M.G.H.U. C.A.(O).

SECOND WITNESS FOR THE PROSECUTION. Capt R.E. Lockhart, No. 1 Cdn. (M.G.) Holding Unit, C.A.(O). being duly sworn, states:

I am Capt. .R.E. Lockhart, No. 1 Cdn. (M.G.) Holding Unit, C.A.(O). and am Adjutant of the said unit. I know the accused and introduce AF B 252 signed by the D.A.P.M. London Area referringto the accused. also A.F. C 1617 referring to the surrender of the accused.
(A.F. B 252 marked Exhibit "B")
(A.F. C 1617 Marked Exhibit "C")

The accused ~~was~~ declines to cross-examine.

R.E. Lockhart) Capt.
1 Cdn. (M.G.) Holding Unit,
C.A.(O).

The accused after being duly warned in accordance with R.P. 4 (e) declines to make a statement.

Taken down at Bordon Hants, in the presence and hearing of the of the accused this 31st day of Mar 41.

Certified that R.P. 4 (c) (d) & (e) have been complied with.

J. McL. Prescott, Lieut.
1 Cdn. (M.G.) Holding Unit,
C.A.(O).

/M.
BORDON HANTS
31 MAR 41

984

LIST OF WITNESSES

For Prosecution

1	Lieut	R.R. Mac Gillvray	1 Cdn (MG) Holding Unit
2	Capt	R.E. Lockhart	1 Cdn (MG) Holding Unit

For Defence

NIL

LIST OF EXHIBITS

1 Confession of Pte Head, W.A.

2 A.F.B. 252 DAPM , London Area

3 A.F.O. 1617 Certificate of surrender

Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted

Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 2nd day of April 41

R.G. Dillon Capt

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B-76325 Pte. HEAD, W.A. of the Toronto Scottish Regiment
1 Cdn. M.G. Holding Unit.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced at Court with the statement but are not to be tendered in the proceedings.

See Para. 664, K.R. 1935.

*The numbers herein stated should correspond with the number of *Entries* in the Conduct Sheets, provided that no entry given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.	*Since Enlistment.
For Drunkenness	times	One times.
For A.W.L.	Four times	Six times.
For Conduct to prejudice etc.	One times	Two times.
For Refusing to obey an order	One times	One. times.

~~Number of instances of gallantry or distinguished conduct~~

~~BY,~~

~~[illegible] entries in the Conduct sheets of the accused~~

~~accused has not been previously convicted~~

~~BY.~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

W1. 42646/864 20,000 2/40 W. E. Ltd. 51—9084

~~XXXX

COPY

No. B76325 Name Head, W.A. | Sqn., Battery, or Company | Corps: Tor. Scot. Reg. (MG) C.A.S.F. | Date of enlistment: 22-11-39 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc.

MFM 6 (A.F.B. 122)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	12-9-40	Pte.		A.A. Sec. 15 (1)	Documentary	65 days detention	9-12-40	F.G.C.M.	
"	24-3-41	"		Court of Inquiry: Deserter AWL from 1900 hrs. 22-2-41 Kit deficiencies: £ 10-8-9					Forfeits 27 days pay 149 (1)(a)

CERTIFIED TRUE COPY:

R.E. Fullerton Lt.

Officer i/c Records,
1 Cdn. M.G. Holding Unit, C.A.W.

COPY

No. B76325 Name Head, W.A. | Sqn., Battery, or Company | Corps: Torl Scht. Reg. (MG) C.A.S.F. | Date of enlistment: 22-11-39 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet: - | No. and date of last drunk: - | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.: (Sgd.) W. Rutherford, Capt.

MFM 6 (A.F.B. 122)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Ship E.5	12-12-39	Pte	1st	Drunkenness A.A. 19	L/C. Buchanan " Tutt	48 hours detention	12-12-39	Major Christie	
Tourney	14-1-40	"		A.W.L. (from parade) A.A.15(2)	Cpl.Millar	3 days C.B.	15-1-40	W.S.Rutherford Lt. Col.	
"	29-2-40	"		Conduct to the prejudice of good discipline A.A. 40.	CSM. Clark PSM. Bell	14 days detention	1-3-40	Thompson	
					RELEASED from the DETENTION BARRACK Aldershot 14 Mar. 40 SENTENCE HAVING EXPIRED.				
"	21-3-40	"		A.W.L. (10½ hours) A.A. 15 (1)	Sgt. Clarke	2 days C.B. (pay)	2-4-40	E.G. Jonnson	
Bulfind	15-5-40	"		A.W.L. A.A. 15 (1)	Cpl. Timleck	3 days C.B.	16-5-40	?	
Oldeem C.	9-6-40	"		Refusing to obey an order A.A. 9	Cpl.Robinson Pte.Mander	14 days detention	10-6-40	Lt.-Col. Thompson	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	22-8-41	Pte.		A.A. Sec. 15 (1)	Documentary	Imprisoned with hard labour for 18 months	10-4-41	F.G.C.M.	Total Forf. 395 days Pay
				Sentence reduced to one of 18 months detention by Brig. L.F. Page, D.S.O., commanding Cdn Base Units on 14 Apr. 41.					
				Released on Order of Brig. Phelan, Cmdr. C.B.O. on Suspension of Sentence		Released from Detention Brs. Witley on 9 Oct. 41.			
London	30-11-41	Pte.	2	Sec. 19 A.A. Drunkenness	Documentary C.P.C.	Fined 3.00	3-12-41	Major D. Fletcher	
Easthne	29-1-42	"		Destroying Company Orders - Sec. 40A.A.	Sgt. Dandy, W.	28 days Detn.	31-1-42	W.W. Court, Major	

A CERTIFIED TRUE COPY - G.M.C. Dale

(G.M.C. Dale), Lieut.

A/Adjt. - The Tor Scot R (MG)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Oldcean Camp	21-6-40	Pte.		Conduct to the prejudice of good order and military discipline - Failure to prepare for duty - Improper possession - Consumption of Alcoholic Stimulants A.A. 40	Capt. Johnson CSM. Clark	14 days detention	24-6-40	Lt.-Col. Thompson	
Bordon	23-11-40	"		(i) AWL from 1230 hrs. 23-11-40 to 2200 hrs. 2-12-40. A.A. 15 (1) (ii) Escaping in that he escaped legal custody while under close arrest 23-11-40. A.A. 10 (4)	CSM Farrell Sgt. Cassidy	28 days detention	6-12-40	Major W.C. McQuade	Forfeits 10 days pay. D
				RELEASED from the Detention Barrack, Aldershot on 28 Dec. 40. Sentence having expired. Remission earned under Rules for Detention Barracks and Military Prisons" 5 days. (SGD) " Commandant					
				1 day remitted under Rule 129 - Rules for Military Prisn & Military Detention Barracks.					

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10th day of April, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~ Court Stenographer
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 10th day of April 1941.

Geo F Hayhurst

President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of A.C.I. 570 of 1918 have been complied with.~~

Signed this day of 19 .

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 14th day of April 1941.

L. J. Roy. Brigadier

Confirming Officer.

Promulgated and extracts taken in the case of B 76326 Pte. Hunt W.A.

(a) (Dated) 21st April 1941 (Signed) Captain Adjutant No. 1 (M.G.) Holding Unit C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

HHH-91
PTE HEADRICK I J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L 110070 Pte Irwin James Headrick 1 CCOD

	Charge. (Insert "alternative" where applicable.)	Plea. (See instn p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A A 40	not guilty	guilty	
2nd				
3rd				
N 4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

N At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of NIL days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be put under stoppages of pay until he has made good £ 2-8-0 a portion of the loss occasioned by the omission of the offence

29 Mar 44 (Sgd) [illegible] Lt Col

(Sgd) ..... Judge-Advocate, if any. Date awarded ..... President

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

go

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.44(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirming and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.(1)~~ Jgd Pte

~~(1. AA 57A. Delete if not used.)~~

Date 1 Apr. 44 (Sgd) J.E. Sager Brigadier. Commanding 2 Group, Commanding Reinforcement Units. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
L-110070 Pte HEADRICK I.J.	1 April 44	

CC03 D.O. Pt II No 31 DATED 6 APR 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

ENTERED IN RECORDS OF C.M. [illegible]

FIELD GENERAL COURT-MARTIAL (CFA80 (To face of AF A42) 43/P.S. & T./1608 (3564))

Convened by Order of Brigadier J.E. Sager Comd "F" Group dated 27 Mar 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
L 110070	Pte	Irwin James	HEADRICK	4 V.R.D. 1 C.C.O.D.

PROCEEDINGS REVIEWED 21 Apr 44 K.S. Lundmark Lt Col REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

N Held in the Fd in (country) England on (date(1)) 29 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

N A1. The President, Members, ~~waiting Member, JA, if any,~~ and Offr under instr, ~~if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RO's. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) N The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

N A3. The Court is opened. The accused is (~~not~~) brought before the Court. At ..... hours trial commences.

N N A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

N ~~A5. President to accused: Do you object to ..... as interpreter? Ans .....~~

N ~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~

N ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No, Sir.

(1. RP 110. 2. If no objection, wasting manner recrd. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

N A7. The President, Members, ~~Judge-Advocate, if any,~~ and Offr under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt. Col	D.L. Eadmon	HQ C.R.E.
Member	Capt	[illegible]	No 1 C.R.U.
Member	Lt	[illegible]	No 1 C.R.U.
~~Judge-Advocate~~			
N Prosecutor	Capt	C.J. Barwell	1 C.C.O.D.
Defending Offr	Lt	R.J. Cote	1 C.C.O.D.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D/ p 2.)

N A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and findings are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

N A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of insert p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and see sequence copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

N A10. The Court ~~is cleared and~~ considers the Notes on Procedure after Arraignment at top of p 2. The pro- ~~ings~~ are continued on Record Form D/E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or recalling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO-SIR.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1) NOTE-ATT
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 1st charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. TO Give evidence. Do you intend to call witnesses on your behalf ? Ans. NO-SIR. Are they witnesses as to character only ? Ans. .....
(1. RP114. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)~~
~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO-SIR
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. By a Officer — NOTE-ATT.....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 80(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 120. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(2), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

THE ACCUSED ELECTS TO BE TRIED BY F.G.C.M

CHARGE SHEET

The accused, L-110070, Pte. Headrick, Irvine James, of No. 4 W.R.D., 1 Cdn C.C.D., R.C.C.C., a soldier of the Canadian Army Overseas, is charged with:

WHILE ON ACTIVE SERVICE

FIRST CHARGE
SEC 40
ARMY ACT

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE.

in that he

At apley Castle, Staging Camp, Wellington, on the 17 Sep 43, at approximately 1445 hrs., so negligently operated Canadian Military Vehicle, No. C.M.V. 52916, as to cause it to strike a tree, thereby occasioning damage to said Canadian Military Vehicle No. C.M.V. 52916 in the sum of Seven pounds and four shillings (£7-4-0)

L.W. Burton Major

(L.W. Burton) Major
O. I/C No. 4 W.R.D.,
1 CCOD, RCOC C.A.(O)

Bordon, Hants
20 March 44.

To be tried by Field General Court Martial

J.E. Hagen Brigadier

Bordon, Hants
21 Mar 44

(J.E. HAGEN) Brigadier
Commander 3rd Group, C.R.U.

FIELD GENERAL COURT-MARTIAL

CFA80 (In lieu of AFA2)
40/Pub/1607 (1942)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L 110070	Pte		Irvine James	HEADRICK	4 V.R.D. 1 C.C.O.D.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 27 Mar 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(state reasons why it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am satisfied that it is impracticable that a Court composed of officers of Canadian Forces should be assembled~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I appoint the following officers to be the Offr and Waiting Member~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt.Col.	D.L. Redman,	H.Q., C.R.U.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt.	from	1 C.I.R.U.
A Lieut.	from	1 C.I.R.U.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

J.E. Sager (Signed personally. RP 105 (n 2.)) Brigadier (Rank.)

Date 27 Mar 1944

(J.E. SAGER) Brigadier
Commanding "F" Group, C.R.U.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Medical Officer's Certificate
K.R.(Can) para 557

I certify that I have this morning examined L-110070, Pte. Headrick, I.J., and in my opinion he is fit to undergo trial by court Martial.

Station: Bordon, Hants.

Date: 29 March 44

Capt.
Medical Officer

Case of

L 1100770 Pte Irvine James HEADRICK 4 V.R.D. 1 CCOD

- PROSECUTION -

First Witness

Capt FH SELBY, 1 VRD, 1 CCOD, MCOC, having been duly sworn, states:

Q. On 17 Sep 43 were you the offr in charge of a convoy travelling from Liverpool to Bordon?
A. Yes, Sir. The accused was driving a pontoon carrier. I did not see the accident take place although I was on the convoy at the time. The accident took place at Apley Castle Staging Camp, Wellington. I saw the accused driving the truck about 5 mins before he had the accident. He was feeding in with other of the convoy to refuel at the time I saw him and the truck I would say was travelling at 2-3 miles per hour. This as far as I can remember was between 1920 and 1925 hours. I heard the crash of the accident. I went over to the scene of the accident, and I can't remember whether the accused said anything to me or not. Two of the four uprights on the pontoon carrier were bent over. I saw quite a large tree near the truck with an overhanging limb in such a position that the truck could have hit it. At this time the sun was just beginning to set and visibility was good. There was no traffic in the immediate vicinity.

Defending Offr cross-examines.

Q. The vehicle did not hit the tree itself?
A. No, just the overhanging limb.

No re-examination.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(b).
THE WITNESS WITHDRAWS

Second Witness

A.35478 Pte Rejesky CR, 1 CCOD, MCOC, having been duly sworn, states:

On 17 Sep 43 I was on duty as a spare driver with the accused in a Diamond T pontoon carrier in convoy from Liverpool to Wellington. We reached Wellington about 1900 hrs, refueled and were going to park in the parking lot. We were coming around a tree and there was a low overhanging branch. I thought there was plenty of room to go under this overhanging branch. I did not feel anything and I did not know anything had happened until some English soldiers hollered at us. I got out and noticed that two of the uprights had been bent on the right side of the vehicle and this must have been caused by the overhanging branch. I can't remember any conversation between myself and the accused at this time. The rate of speed at the time was about 4-5 miles per hour in low gear. It would have been difficult to have got through by going around the branch as an English convoy was parked there. I estimate that the diameter of this branch where it leaves the trunk of the tree would be about 9 or 10 inches. I noticed this branch when we were coming towards it and in my opinion there was room for clearance. The branch was quite high. I did not notice whether any of the other trucks in the convoy had gone under this branch or not.

Defending Offr cross-examines.

Q. You thought at that time that you could clear that branch with the vehicle?
A. Yes, Sir, I did.

Q. Did you ever drive a pontoon carrier before?
A. No, Sir, I never have.

No re-examination

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(b).

THE WITNESS WITHDRAWS.

[redacted]

Third Witness

Capt MH DARLING, 1 CCOD, having been duly sworn, states:

I examined CMD 52916 about the middle of Sep 43. At that time I was the EME at 4 SD CBOD. I was asked to make an estimate on the cost of repairs to this vehicle and I estimated it to be £7/4/0. There were two uprights bent over. The tips of these uprights are very high, approximately 10 feet, but that is only an approximation. The manner in which these uprights were bent was consistent with the tops of the uprights having met with the branch. They were bent backwards and inwards. At that time we were working under very high pressure here and these vehicles were being moved from an assembly plant down here in large numbers. Compared with the personnel we had to move them the men were working very long hours and at the assembly points where these vehicles are picked up there would be a considerable amount of confusion and an accident of this type could very easily happen. It would be a matter of judgment.

No cross-examination.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B)

THE WITNESS WITHDRAWS

THE PROSECUTION IS CLOSED

THE DEFENDING OFFICER MADE A SUBMISSION THAT THE PROSECUTION HAS FAILED TO MAKE A PRIMA FACIE CASE AND THAT THE CHARGES SHOULD BE DISMISSED BECAUSE THE ACCUSED IS CHARGED UNDER SEC 40 OF THE AA WHICH DEALS WITH NEGLIGENCE AND DUTY, AND SAID THAT IN THE EVIDENCE GIVEN SO FAR NONE OF THEM HAVE POINTED TO ESTABLISH NEGLIGENCE.

THE PROSECUTOR REPLIED THAT AS FAR AS WITNESSES ARE CONCERNED HE HAD ONLY ONE PTE REJESKY AND FROM HIS EVIDENCE THE COURT MUST DECIDE WHETHER THE ACCUSED WAS NEGLIGENT IN NOT STOPPING HIS VEHICLE AND NOT GETTING OUT TO CHECK TO SEE IF HE HAD SUFFICIENT CLEARANCE. CAPT SELBY DID NOT SEE THE ACCUSED BUT FROM HIS EVIDENCE IT WAS THE ACCUSED WHO DROVE THE VEHICLE WHEN IT WAS DAMAGED.

THE COURT IS CLOSED TO CONSIDER THE SUBMISSION BY THE DEFENDING OFFICER

THE COURT IS REOPENED

THE PRESIDENT ANNOUNCES THAT THE SUBMISSION MADE BY THE DEFENDING OFFICER IS DISSALLOWED.

-DEFENCE-

The accused, L.110070 Pte Headrick IJ, 4 VRD, 1 CCOD, having been duly sworn, states:

Q. Did you think that you could clear that branch?
A. Yes I did, Sir. There is a big windshield in this vehicle and vision is good from it. I saw the branch before I came to it and took a good look at it and I figured I had lots of room to clear it. I have never driven one of these pontoon carriers before however, and I had been driving it all day from the time we left Liverpool in the morning. When we first started out I looked the veh over including the uprights. I had not noticed whether anyone else had gone under the branch I did, but if my memory is correct this convoy was a mixed convoy. I came around the tree because there were vehs on the other side. I did not intend to park there, and I would say that the truck was moving about 4-5 miles per hour in low gear. I had no conversation with Rejesky before I hit the branch. I felt no sensation or bump whatever when the truck went under the tree. As a matter of fact I did not know anything had happened until some British soldiers hollered at me. I then got out and looked at the uprights, the back one being bent more than the front ones. I could not see any mark on the branch, but it must have been the branch which touched the uprights. I have xxxxx driven Diamond T's before, but never a pontoon carrier. There was no one shouting to us to hurry in this refuelling business.

Cross-examined.

Q. While your veh was being refuelled did you look over or walk over to the tree?
A. No, Sir, I could see it from where I was. It was not far away.

No re-examination by the Defending Offr.

Questions by the Court:

Q. This is the first time you have ever driven this type of truck?
A. Yes, Sir, and I was handling it very carefully. I had a spare driver with me. I did not send him out on the ground to see the branch because I figured there was enough room myself. I was as careful as I could be. I looked at this branch when my truck was being refuelled, and I estimated then I had enough room to clear it.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

THE PROSECUTOR IN ADDRESSING THE COURT ON THE FINDING SAID HE HAD NOTHING TO ADD TO WHAT HE HAD SAID IN REPLY TO THE DEFENDING OFFICER'S SUBMISSION.

DEFENDING OFFICER ADDRESSES THE COURT.

The accused is charged under Sec 40 of the AA. This is negligence. He had never driven a pontoon carrier before and had been driving all day long up until 1900 hrs. This is only a case of judgment concerning the branch rather than negligence as from the evidence given by his spare driver he also thought that the vehicle could clear it. This could easily have happened without neglect to duty.

THE COURT IS CLOSED FOR THE FINDING.

STATEMENT IN MITIGATION

The Court should not assess the accused at all. We have a great amount of work going on and being done by drivers, and they are the hardest worked people here as they were doing this day, and by sheer hard luck had an accident and a court-martial for it. Well then, we won't have the drivers very long, as this case was not due to Pte Headrick's fault at all, but was a pure accident.

LIST OF WITNESSES FOR PROSECUTION

A-35478 Pte. Rejesky, C.R., Convoy Section, H.Q., 1CCOD, RCOC
Capt. F.H. Selby No. 1 V.R.D., 1 Cdn C.O.D., R.C.O.C.
Capt. H.H. Darling No. 2 V.R.D., 1 Cdn C.O.D., R.C.O.C.

-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-

LIST OF WITNESSES FOR DEFENCE

N I L

-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-

LIST OF EXHIBITS

N I L

-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-

I,L-110070, Pte. Headrick, I.J., of No. 4 V.R.D., 1 Cdn C.O.D., R.C.O.C. wish to have Capt. W.A. Miles of Convoy Section, H.Q., 1 Cdn C.O.D., represent me at my trial.

Headrick I.J.
(L-110070 Pte. Headrick,I.J.)

-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-i-

Certified that I have received the following documents:-

Summary of Evidence
Copy of Charge Sheet
List of Witnesses for Prosecution
List of Witnesses for Defence (NIL)

Headrick I.J.
(L-110070 - Pte. Headrick,I.J.)

-i-i-i-i-i-i-i-i-

SUMMARY OF EVIDENCE

in the case of

L-110070 Pte. Headrick, I.J., on strength of No. 4 V.R.D., 1 Cdn C.O.D., a soldier of the Canadian Army Overseas.

By Direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS for the prosecution

A-35478, Pte. Rejesky, C.R., on strength of Convoy Section, H.Q., 1 C.C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

On the 17th September 1943, I was working for Transit Park, No. 4 Sub-Depot, 1 C.B.C.D., as a driver. I was on duty as spare driver with Pte. Headrick who was driving a Diamond T pontoon carrier in Convoy from Liverpool to Bordon. We reached Wellington about 1900 hours, refuelled and pulled into the parking lines. We swung out around the tree in front of the lines, we saw the overhanging branches and both thought there was plenty of room to clear. We didn't know our vehicle had been damaged until some English convoy drivers waved and shouted for us to stop, at the time of the accident the truck was in low gear and we were doing about 4 to 5 miles per hour.

The accused declines to cross-examine this witness

C R Rejesky

SECOND WITNESS for the prosecution

Capt. F.H. Selby, on strength of No. 1 V.R.D., 1 Cdn C.O.D., R.C.O.C., an Officer of the Canadian Army Overseas, having been duly sworn, states as follows:

On September 17th 1943, I was the Officer in charge of a mixed Convoy of vehicles proceeding from Liverpool to Bordon. In the convoy were several 40 ton tank transporters and several pontoon carriers. Our itinerary called for an over-night stop and refuelling at Apley Castle Staging Camp, Wellington, Shropshire. We arrived at the Staging Camp at approximately 1900 hours and commenced refuelling of all vehicles. During this operation, Pte. Headrick, driving one of the pontoon carriers, having refuelled, was turning around in order to return to the parking area. While making the turn, he drove too close to a large tree catching the high uprights on the offside of the vehicle on a stout branch and causing damage to both of the uprights. At the time of the accident, Pte. Headrick was driving very slowly. When the accident occurred, I was standing near the fuel pumps seeing that traffic was controlled, and would be approximately 200 yards from where the accident occurred.

SECOND WITNESS for the prosecution. (Continued)

The accused declines to cross-examine this witness.

D Hockley Capt

THIRD WITNESS for the prosecution.

Capt. H.H. Darling, on strength of No. 2 V.R.D., 1 Cdn C.O.D., R.C.O.C., an Officer of the Canadian Army Overseas, having been duly sworn, states as follows:

On September 21st 1943, I was the E.M.E. Officer in charge of Headquarters Workshops, No. 4 Sub-Depot, 1 C.B.O.D. On that day, a Diamond T pontoon carrier, C.M.D. No. 52916, was brought to the Workshop for repairs. The vehicle was inspected and the estimated cost of repairs set at 48 hours @3/- per hour or £7-4-0

The accused declines to cross-examine this witness.

H H Darling Capt

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution, the accused elects to make a statement.

The accused, L-110070, Pte. Headrick, I.J., on strength of No. 4 V.R.D., 1 Cdn C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, states as follows:

"On 17th September 1943, I was on duty with Transit Park, No. 4 Sub-Depot, 1 C.B.O.D., driving a Diamond T pontoon carrier from Liverpool to Bordon. Shortly after 1900 hours, we arrived at the Staging Camp in Wellington, where we were to spend the night. I refuelled my truck and turned around to park it for the night. There was a tree on the parking lot and after I passed under the tree, some drivers from another convoy shouted me to stop. I stopped the vehicle, got out and found the 2 uprights of the body on the right side had been damaged by branch of the tree. When turning, I judged that I had sufficient clearance unde the tree for my truck. My speed was not more than 4 to 5 m.p.h. I had driven Diamond T's before, but this was the first occasion on which I had driven a pontoon carrier.

Headrick I.J.

The accused does not call any witnesses for the Defence.

I certify that the foregoing Summary of Evidence consisting of 3 pages was taken down by me in the presence of the accused and that Rules of Procedure 4(c) (d) (e) (f) and (g) have been complied with.

C.B. Barker Capt.

Officer Detailed to take Summary of Evidence.

Bordon, Hants
4 March 1944

ADDITIONAL

SUMMARY OF EVIDENCE

in the case of

L-110070, Pte. Headrick, I.J., on strength of No. 4 V.R.D., 1 Cdn C.O.D., a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the additional Summary of Evidence is taken on oath.

SECOND WITNESS for the Prosecution being recalled

Capt. F.H. Selby, on strength of No.1 V.R.D., 1 Cdn. C.O.D., R.C.O.C., an Officer of the Canadian Army Overseas, having been recalled for further evidence and duly sworn, states as follows:

On 17 Sept 1943, at approximatley 1900 hours, L-110070 Pte. Headrick, I.J. was driving Vehicle C.M.D. 52916. I know this to be a fact, having referred to Road Accident Report dated 21 Sept 1943, which deals with the accident in which this Vehicle and driver were involved.

The accused declined to cross-examine this witness.

F.H. Selby Capt

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution, the accused declines to make a statement and reserves his defence.

I certify that the additional Summary of Evidence consisting of One(1) page was taken down by me in the presence of the accused and that Rules of Procedure 4(c)(d)(e)(f) and (g) have been complied with.

C.A. Barker Capt.
Officer detailed to take Summary of Evidence.

Bordon, Hants,
22 March 44

No. L11070 Name HEADRICK, I.J. Sqn, Battery, or Company | Corps R.C.O.C. | Date of enlistment 25 Mar 42 | Badges | Service or Proficiency Pay N/A

MFM 6 (AFB 122) 40-PAM/136 (3429)

Date of last entry in Company Conduct Sheet 22-6-42 | No and date of last drunk Nil | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc H.T. Costigan, Capt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
New sheet on completion of 6 months service 25 Sept 42 and old sheet destroyed 25 Sept 42.									
Barriefield, Ontario, Canada	19 Nov. 1942	Pte		AA Sec 15(1), WOAS-AWL from 0600 hrs. 19-11-42 till 1500 hrs. 23-11-42 (A.W.L. 4 days and 9 hours)	Documentary	7 days C.B.	24 Nov. 1942	Major W.F. Baylag	5 days Pay Art. FR&I 149(1)(a) "JAH"

CERTIFIED TRUE COPY

.....

"Officer having Custody of Original Documents"

(PTO)

M.F.R. 355
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L-110070	Pte.	Headrick, I.J.	No. 4 V.R.D., 1 Cdn C.O.D.

1. The following is a fair and true summary of the entries in the ~~Service and Conduct~~ / ~~Regimental and Squadron Defaulters~~ ~~Conduct Sheets~~ ~~Company Conduct~~ sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~not quashed~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	NIL times	A.A. Sec. 15(1) 1 times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~NIL~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted ~~by a court-martial or a civil court of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and NIL days in military custody, making a total of N/A days in custody, of which N/A days were spent in hospital. as of 20 March 44

5. The present age of the accused according to his record of service is 25 years 268 days

6. The date of his attestation specified in his record of service is 25 March 42

7. The service which the accused is allowed to reckon towards discharge is 1 year 361 days

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or military reward ~~for distinguished conduct in the field~~

~~10. If the accused is a warrant officer. The accused before he was made a warrant officer was~~

~~No Fine~~

~~Corporal Major~~

EXD

Maj

Lieut.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ~~Permanent Force~~ (A)

~~dated~~ and in his regiment (or corps) the rank of ~~dated~~

12. The accused has served as a non-commissioned officer continuously, without reduction, to the ~~present date~~ ~~Date of promotion~~ (A)

~~In the rank of years.~~

~~In the rank of years.~~

~~In the rank of years.~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number L-111070 Rank Pte. Unit

Name HEADRICK, I.J. of No. 4 W.R.D., 1 Cdn C.O.D. Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NO PREVIOUS CONVICTIONS BY COURT MARTIAL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 29TH day of MARCH 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

J.S.H. Parker Lt.

COUNTER NUMBER 16587

HOUR 2130

OPERATOR'S INITIALS

RELIEVING OPERATOR

54-25.

Gov. Healey. R. I.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B72079 Gnr. Healey, R. J.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Not Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (*)
(*. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

(Sgd) Ernest K. McDougall Capt, Judge-Advocate, if any. 31 March 45 Date awarded. (Sgd) J. H. Slater Major President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 56, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 52, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....
Date .....
Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, 5-H-25.

REC'D 15 MAY 1945 JAG (Rank and) MMG

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA81) 40/P & S/1698 (40/D) 4/38B

Convened by Order of Brig. P.A.S. Todd ~~Comd~~ CCRA 2 Cdn Corps dated 29 March 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed (b) rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

No.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit
B72079	GNR.	Robert James	Healey	2 Cdn Sup Regt

PROCEEDINGS REVIEWED
E. Chapman Capt
16/5/45
REVIEWING OFFICER, JAG BRANCH CMHQ

Held in the Fd in (country) N.W. Germany on (date(s)) 31 March 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RCs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(2)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(1)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans ~~.....~~
The Interpreter is sworn.(1) Do you object to B24193 Sjt. Adams, H.P. as shorthand writer? Ans NO
The shorthand writer is sworn.(2)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H. R. Slater	6 A/Tk Regt. RCA
Member	~~Capt.~~ Lt.	~~W. D. Simmons~~ L. S. Perry	6 A/Tk Regt. RCA
Member	Lt.	~~J. M. Lewis~~ L. M. Lewis	6 A/Tk Regt. RCA
Judge-Advocate	Capt.	E. K. McDougall	HQ, 1 Cdn Corps
Prosecutor	Capt.	L. H. Slater	2 Cdn Sup Regt
Defending Offr	Capt.	J. B. Corbet	2 Cdn Sup Regt

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans Yes (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused B72079 Gnr. Healey R. J. before arraignment make(s) (no) (~~a~~) plea(s).(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D6

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*ii*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 37(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(D). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by using paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No Sir.(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter~~ charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Evidence on oath. Do you intend to call witnesses on your behalf? Ans No. Are they witnesses as to character only? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 44(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A). See Notes to Part I of Schedule.* 2. *RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the findings~~ of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(7) (b), RP 42, 120(A).* 2. *AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using~~ Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *AFB 355 or AFB 296.* 2. *AFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(C) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 64, 128, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

THE ACCUSED B72079 GNR ROBERT JAMES HEALEY OF THE 2ND CANADIAN SURVEY REGIMENT RCA, A SOLDIER OF THE CANADIAN ARMY OVERSEAS IS CHARGED WITH:

First Charge
AA Sec 71

WHILE ON ACTIVE SERVICE WHEN IN A PLACE NOT WITHIN HIS MAJESTY'S DOMINIONS, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY MANSLAUGHTER

in that he

in the field in HOLLAND on or about 15 Feb 45 while driving a 3 tn vehicle No CMA24,211 (Willys) unlawfully killed Lieut Walter Henry Farsey, officer of the 2nd Canadian Survey Regiment RCA.

Signed in the Field
this 23rd day of Mar 45

(H C Farrow) Major RCA
Acting Commanding Officer
2nd Canadian Survey Regiment RCA

TO BE TRIED BY F.G.C.M

(PAS Todd) Brigadier
C C R A 2 Cdn Corps

FIELD GENERAL COURT-MARTIAL

CFAO5 (In lieu of AFA3)
40(PAS/1097 (2662)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(6).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.72079	Gunner		Robert James	HEALEY	2 Cdn Svy Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has [illegible] committed the offence set forth in the Charge Sheet(s) attached and on (date) 29 March 45 endorsed by me, [illegible], "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

[redacted]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	H.R. SLATER (Must be named. RP 106.)	R.C.A. (Unit.)

MEMBERS.

Captain	W.D. SHERREN	R.C.A.
Lieutenant (Rank.)	L.W. LEWIS (Named or detailed. RP 106.)	R.C.A. (Unit.)

WAITING MEMBER.

Lieutenant (Rank.)	L.G. PERRY (Named or detailed, if any. RP 106.)	R.C.A. (Unit.)

JUDGE-ADVOCATE.

Captain (Rank.)	E.K. McDougall (Must be named, if any. RP 106.)	D.J.A. 1 Cdn Corps (Unit.)

On Active Service in the Fd

in Germany (Country.)

(Signed personally. RP 105 (p 2)) (Rank.)

Date 29 March 45

Commanding (PAS Todd) Brigadier
CCRA Convening Officer
2 Cdn Corps

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 92, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a *margine* number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 118 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 80(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in *rebuttal* or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than on mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can. 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can. 537.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can. 560. As to certified copies of regimental books see AA 163 (1) (g) (A).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

30 March 1945

I certify that B72079 Gunner HEALEY R.J.,
2 Canadian Survey Regiment RCA, is# fit..... to
undergo trial by Court-Martial.

H. Thomas Capt
.....
Signature of the Medical Officer

(# insert "fit" or "unfit")

Time of Signature 0930 ....hrs

In the case of B-72079 Gnr Robert James HEALEY
2 Canadian Survey Regiment, R.C.A.

Captain W.D. Sherren, being from the same Regiment and Battery as the accused, the waiting member, Lieutenant L.C. Perry, 6 Cdn A/Tk Regt, R.C.A., takes his place as a member of the Court.

The prosecutor makes no opening address.

The prosecutor proceeds to call witnesses.

FIRST WITNESS FOR THE PROSECUTION. Captain R.C. Wyld, 2 Cdn Svy Regt, RCA, being duly sworn is examined by the prosecutor:

Q-1 Please identify yourself to the Court
A-1 I am Capt R.C. Wyld, 2 Cdn Svy Regt, RCA

Q-2 What do you know of a vehicle accident in which Gnr Healey was concerned
A-2 On the 14 FEB 45, in my capacity as battery comd I ordered Lieut Fargey to the front line area on recce. Gnr Healey drove Mr Fargey on this duty. On that date I also informed Mr Fargey that he was to report to CCRA's conference at 1900 hrs that night

Q-3 Is that all you know of this
A-3 That is all, sir

Xxd

Q-4 Gnr Healey has been a driver in your battery for some time:
A-4 To my knowledge he has been surveyor and driver in the battery since I came to it nine months ago

Q-5 Has he ever had any accidents before, to your knowledge:
A-5 To my knowledge Gnr Healey has never had an accident either before I came to the battery or since

Q-6 Would you say he was a careful driver
A-6 Having personally known Gnr Healey for over eight months I am perfectly convinced he is a good driver and a reliable driver

Questioned by the J.A.

Q-7 When you started your evidence you stated the date as the 14 FEB, was it the 14th or 15th
A-7 I am sorry, sir, it was the 15th February

Q-8 At approximately 2015 hrs on that night did Gnr Healey report to you
A-8 Yes, he reported to me at my battery orderly room that he had had an accident and that Lieut Fargey had been killed

Q-9 What did you do on the evening in question
A-9 I despatched an officer with a vehicle and had Gnr Healey return to the scene of the accident

Q-10 Did you see the body
A-10 Yes, I examined it myself

Q-11 I realize you are not a medical officer, would you say this officer was dead?
A-11 Yes, I examined him, I examined both wrists and there was no pulse

Q-12 Can you give the Court some idea of the nature of the injuries Mr Fargey had suffered
A-12 His right shoulder and right arm were badly injured and to my knowledge most of the ribs on the right hand side of the body were very badly mangled. His head was almost unrecognizable, and his face badly torn. I am firmly convinced Mr Fargey died

A-12 (cont) instantly

Q-13 Do you recognize the accused here today
A-13 Yes (indicates accused)

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

SECOND WITNESS FOR THE PROSECUTION. 2983812 Sgt R. McCulloch, 63 A/Tk Regt, R.A., being duly sworn is examined by the prosecutor:

Q-14 Please identify yourself to the Court
A-14 I am 2983812 Sgt McCulloch, R., 63 A/Tk Regt, R.A.

Q-15 Will you tell the Court what happened on a certain recent date in connection with an accident in which you were involved
A-15 We were proceeding on the road from Genappes to Mook, there was a troop block of 4 S.P. guns, approximately 50 yards between each vehicle, I was watching the near side of my vehicle as it was rather misty. Previously I noticed there was a vehicle behind me, a half track about 50 yds behind. I knew nothing about how the crash occurred until I heard it and my vehicle pulled up immediately

Q-16 You state the distance between vehicles as 50 yds, was this the usual distance or did you see this
A-16 The usual spacing is 100 yds, but owing to the weather we were given orders that the spacing would be 50 or 60 yds

Q-17 You noticed the vehicle following you, actually looked around and saw it?
A-17 A few minutes before the crash I noticed this vehicle this vehicle was about 50 yds behind us

Xxd

Q-18 Approximately what speed were you travelling
A-18 I could not say, sir

Q-19 You never saw the jeep at all until after the accident?
A-19 No sir, I only heard the crash and then the driver pulled up

Questioned by the J.A.

Q-20 What kind of a vehicle were you driving in
A-20 An S.P.gun

Q-21 You were going towards Moogk
A-21 Yes sir

Q-22 Now this vehicle you saw behind you, what was it
A-22 It was a half track, a scout car

Q-23 CMn you tell us what vehicles were involved in this accident, was your tank involved?
A-23 Yes

Q-24 What struck your tank
A-24 The jeep, sir

Q-25 In what direction was the jeep travelling
A-25 It was overtaking us

Q-26 It was passing you
A-26 Yes

Q-27 So it must have been behind the half track to your knowledge when you looked back
A-27 Yes

Q-28 Was there anything coming the other way
A-28 I do not know, I was watching the near side of my vehicle

Q-29 Was the traffic heavy
A-29 The traffic was very heavy on that road

Q-30 How was the weather
A-30 Misty

Q-31 Was the road wet
A-31 No, the road was not wet, but there was a mist

Q-32 Was it very dark at that time
A-32 No sir

Q-33 When your vehicle and the jeep collided can you tell us what happened then, did your tank run over the jeep or knock it to one side, in what position were the jeep and your vehicle when you stopped
A-33 The left track was inside the right hand side of the jeep

Q-34 Did you get out of the vehicle when the accident happened
A-34 Yes sir

Q-35 Who was in the jeep
A-35 There was an officer and a driver

Q-36 Can you recognize the driver here today
A-36 Yes sir (points to accused)

Q-37 Can you give us the approximate time of this accident
A-37 About ten minutes past six

Q-38 Did you hear any horn blown
A-38 No sir, I was wearing a heat set

Q-39 Did you see the jeep at all
A-39 No sir

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

THIRD WITNESS FOR THE PROSECUTION. 983194 L/Bdr B. Collen, 63 A/Tk Regt, R.A., being duly sworn is examined by the prosecutor:

Q-40 Please identify yourself
A-40 983149 L/Bdr Collen, B. 63 A/Tk Regt

Q-41 Certain things happened about the middle of February, a road accident in which you were concerned, will you tell the Court what happened
A-41 On the 15th February about six o'clock I was driving tank towards Moogk ------
J.A. Was Sgt McCulloch with you in that tank
A. Yes
A-41 cont. ----at approximately 12 m.p.h. keeping well to the right hand side of the road on account of heavy traffic. I saw a jeep approaching on its own side of the road, I then saw the wing of another jeep apparently overtaking me right under the wing of my tank

Q-42 What side do you drive on
A-42 The driver's side is the left hand side of the tank.

Q-43 How much can you see behind you from that position
A-43 Practically nothing at all

Q-44 Your vision forward is good
A-44 Yes, very good

Q-45 What kind of light was it
A-45 The light was beginning to fail and it was inclined to be foggy

Q-46 Could you hear any sound of horn or warning
A-46 I heard nothing

Q-47 You can hear very little in a tank
A-47 Yes sir, very little

Q-48 How far away was the jeep that was approaching you when you saw it
A-48 Roughly 20 or 25 yards, just a dim outline of it

Xxd

Q-49 When was the first time you saw the jeep that was apparently overtaking you
A-49 All I saw of the jeep was the front wing under my front wing

Q-50 You were then looking ahead
A-50 Yes sir

Q-51 And you were travelling at 12 m.p.h.
A-51 Approximately 12 m.p.h.

Q-52 Was the traffic heavy coming in the opposite direction
A-52 Yes sir, it had been heavy all the way along

Questioned by the Court

Q-53 Did you slow down when you saw the wing of this jeep appear
A-53 As soon as I saw the wing of the jeep I pulled on my brakes and and stalled the motor and stopped the vehicle almost immediately

Q-54 Did you have any chance of avoiding the accident
A-54 Absolutely no chance at all

Q-55 There was no warning that there was a jeep coming up
A-55 Absolutely none at all, sir

Questioned by the J.A.

Q-56 Did you get out of your vehicle after the accident
A-56 I was given orders to reverse, and after I had backed up I got out of the vehicle

Q-57 Who was in the jeep with which you had the collision
A-57 There was no one in it when I got out

Q-58 Who had been riding in it
A-58 The driver

Q-59 Is he here today
A-59 Yes sir (indicates accused)

Q-60 Can you give us any idea at what speed the jeep was travelling when it tried to pass you
A-60 No sir

Q-61 Did it have lights on
A-61 Not that I know of sir

Questioned by the Court

Q-62 What was the time lag between the time you saw the jeep in front of you and the crash
A-62 I just pulled on my brakes immediately

Q-63 The accident was immediate then
A-63 Yes

Q-64 Was the road straight
A-64 Yes

Q-65 What was the distance between your S.P.gun and the S.P.gun in front
A-65 About 50 yards. The other vehicle was out of sight because another vehicle was between us

Q-66 You stated the traffic was heavy, were the vehicles nose to tail or were there gaps in between them
A-66 There were gaps, but it was very heavy

Q-67 How wide was this particular road
A-67 About 20'

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

FOURTH WITNESS FOR THE PROSECUTION. T-60581 L/Cpl J.W. Smith, 174 Highland Field Ambulance, RAMC, being duly sworn is examined by the prosecutor:

Q-68 Please identify yourself to the Court
A-68 T-60581 L/Cpl Smith, J.W., 174 Highland Fd Amb

Q-69 There was a road accident somewhere about the middle of February of which you were a witness, will you explain the particulars of this to the Court
A-69 I was proceeding from Moogk with a jeep and there was a column of tanks travelling in the opposite direction. I drew level with the tanks and saw another vehicle approaching. I pulled into the side of the road to give him sufficient room to get through between our jeep and the tank and then I heard a crash and immediately stopped the jeep and ran back to see what had happened and the tank had crashed into the other jeep

Q-70 What direction were you going
A-70 On the road from Moogk to Genappes

Q-71 You were proceeding towards Genappes
A-71 Yes sir

Q-72 When you saw the tank coming in the opposite direction how far away were you
A-72 It was hard to say, visibility was very poor, there was a very heavy fog

Q-73 Could you make a rough guess
A-73 If I did sir it would just be guessing

Q-74 You pulled in to the side of the road as far as you could
A-74 Yes sir

Q-75 How far past the other vehicle were you when you heard the crash
A-75 There was a column of tanks then a three ton wagon and then more tanks. We were past the leading tank when we heard the crash.

Q-76 How far back did you have to go to the scene of the accident when you stopped
A-76 About 25 yds

Q-77 Were the victims of the crash in the jeep when you saw it
A-77 The driver was out but I was told the officer had been killed almost almost instantaneously

Q-78 Do you recognize the driver in Court
A-78 Yes sir (indicates accused)

Xxd

Q-79 Was the traffic very heavy on the road in the direction in which you were travelling
A-79 Yes sir, but it was heavier the opposite side of the road

Q-80 Were you able to pass vehicles in your column
A-80 Well at the time of the accident it was not necessary

Q-81 Were there big gaps in the traffic on your side of the road
A-81 There were gaps on our side of the road

Q-82 Were you past the leading tank when you heard the crash
A-82 Yes sir

Q-83 When you passed the jeep coming in the opposite direction was it alongside the tank
A-83 No sir, it was past the leading tank

Q-84 When you passed the leading tank where was the jeep that was involved in the accident
A-84 I was not driving but I saw the lights and the driver was pulling in to the side of the road

Q-85 Was there room on the road for all three of you, side by side
A-85 Yes

Q-86 And is that the position at the time of the accident, yourself and the jeep and the tank were in a straight line across the road
A-86 Yes sir

Q-87 What was the position when you ran back
A-87 The jeep was more or less broadside across the road and the jeep was badly damaged by the near side track of the tank

Q-88 According to you the jeep that was in the accident must have tried to pull in after you passed
A-88 I imagine that the jeep driver was trying to get in to the near side of the road after he passed us

Questioned by the Court

Q-89 Was there a vehicle going close in front of you
A-89 No sir, the traffic was well spaced out

Q-90 Can you tell me the distance between your vehicle and the jeep which was in the accident when you passed, were they close to scraping
A-90 No, there was sufficient room to get through

Q-91 Were you running on the verge of the road
A-91 Well I was sitting more or less in the middle of the road and the driver was near the verge

Q-92 You cannot tell me whether you were on the verge or not
A-92 No, I cannot tell

Q-93 Can you give us an idea of the speed of your jeep
A93 As I said before it was very foggy - you could not speed - about 15 m.p.h.

Q-94 Can you give an idea of the speed of the jeep involved in the accident
A-94 I would say about 20 m.p.h.

Q-95 You mean to say he was passing that tank at only about 20 m.p.h.
A-95 Yes, I would say that was about the speed

Q-96 How wide would you say the road was
A-96 It is wide enough for a tank and two jeeps to pass with safety

Q-97 Did you see how far away from the tank the other jeep was when it started to pass
A-97 No I could not state that, the visibility was very bad

Q-98 Can you tell if it was going down the middle of the road or pulled out from behind the tank to pass
A-98 When I saw it it was in the middle of the road

Q-99 How far were you from the tank at that time
A-99 We had passed the leading tank

Q-100 The tank involved in the accident was it the second one in the column
A-100 No sir, the first tank, the one leading the column

Q-101 How was the visibility in the fog, how far could you see
A-101 About 80 yards

Q-102 Was there anybody immediately behind you, did you look behind and see anybody following you
A-102 There was no one immediately behind when we stopped the jeep

Q-103 And the oncoming jeep had lights on
A-103 Yes sir

Q-104 Would you say the jeep had a chance to pull in behind the tank at the time he saw you or not
A-104 No, he did not have a chance, the column on the other side of the road was more or less nose to tail and the driver apparently tried to pull in ahead of the leading tank

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

THE PROSECUTION IS CLOSED.

R.P.40 is complied with

FIRST WITNESS FOR THE DEFENCE. The accused B-72079 Gnr R.J. Healey, 2 Cdn Svy Regt, RCA, being duly sworn, is examined by the defending officer:

Q-105 Will you tell the Court what happened on the evening of the 15th February
A-105 On the 15th February I was driving Lieut Fargey back to Nijmegen following a recce near Cleve. About 1800 hrs we overtook a convoy of four tanks going in the same direction. For about ten or fifteen minutes I followed in behind the four tanks thinking they might turn off the road, enabling us to go ahead. It appeared they were going right into Nijmegen and since I knew that Mr Fargey had an officers' meeting to attend that evening

A-105 (cont) and I knew he was very anxious to get to Nijmegen as quickly as possible I decided to try and pass the tanks. Before deciding to pass these tanks however I was watching them going around a very wide bend in the road. I could see there were four tanks and a good space between each one, so I reasoned if I did meet any traffic coming in the opposite direction before I got to the head of the line of tanks I would be able to swing in between any two of them. However I did not meet any traffic coming in the opposite direction until I had reached the lead vehicle. Just as I was abreast of the leading tank I saw a jeep directly in front. This jeep when I saw it was not turning out and I was under the impression it had not seen me; accordingly I swerved to the right cutting in front of the lead tank in an endeavour to give the approaching jeep as much room as possible. The jeep passed me but the left hand side of the tank struck the right hand side of my jeep and Mr Furgey was killed in the accident and I was not injured

Q-106 Can you state the distance between yourself and the approaching jeep when you first saw it
A-106 I would think about thirty yards

Q-107 About how far could you see
A-107 I believe I could see 100 yards when I turned out to pass the vehicles because I could see the lead tank and the tanks were spaced

Q-108 Can you state if there were lights on the approaching jeep
A-108 They were not on

Q-109 Do you remember at what speed you were travelling
A-109 I did not look at the speedometer - I think about 15 or 18 m.p.h.

Xxd

Q-110 Was there any light at all visible on the tank itself that you were overtaking
A-110 No sir

Q-111 Was there any on the rear of it
A-111 I did not notice any

Questioned by the J.A.

Q-112 You have told us when you were abreast of the lead tank you saw the jeep. Why did you not see the jeep before this?
A-112 One thing I was keeping an eye on the vehicle I was passing, and the fog was in banks

Q-113 Did you try to pass the tank without first ascertaining that the road was clear
A-113 I did not see the jeep until I came alongside the tank, as I was passing the tank it appeared to be safe I did not see the approaching jeep until I was alongside the tank

Q-114 Then it was not safe to pass
A-114 I thought it was, it appeared to be when I approached the tank there was nothing in front of me

Q-115 You say you were passing the tank at about 15 to 18 m.p.h., why that slowly
A-115 There was a fog

Q-116 When you thought the road was clear why did you not try to pass the tank as rapidly as possible
A-116 I thought I had sufficient margin to pass him

Q-117 You thought in spite of the fog you could pass the tank which was going 12 m.p.h. at a speed of 15 to 18 m.p.h.
A-117 I do not know exactly the speed I was travelling, I do not think it was over 20 ,.p.h. There was quite a difference in our speeds

Q-118 Do you always pass vehicles as slowly as that
A-118 It depends on conditions

Q-119 When would you pass a vehicle quickly
A-119 I would pass a vehicle quickly if there was no possibility of getting in behind it and saw a vehicle approaching

Q-120 Are you in the habit of passing vehicles without knowing if the road is clear
A-120 No sir, visibility was poor on this occasion

Q-121 You thought it was safe to pass at around 15 m.p.h. rather than go quickly
A-121 No sir, I had maintained a speed which was considerably faster than the speed of the tank, but I did not wish to travel at too high a speed because if I met vehicles coming in the opposite direction I could put on my brakes and swing in behind the vehicle I was passing. When I saw the jeep approaching I speeded up somewhat in order to pass the leading tank

Q-122 Had Mr Fargey told you he was in a hurry
A-122 No sir, he did not say so in so many words, but I knew from remarks he did make he was in a hurry to get to Nijmegen

Q-123 Were you cautioned at all by Mr Fargey on the drive
A-123 No sir

Questioned by the Court

Q-124 You say that you started to pass the tanks on a wide sweep of the road, on a curve
A-124 No sir, I trailed the tanks and I watched them going around and saw them spaced, but I did not try to pass them there

Q-125 How far would you say the tanks were apart
A-125 About 20 or 25 yards

Q-126 You could see them all
A-126 When I saw them on the turn I was making no attempt to pass them - driving at the same speed - It was while the tanks were on the turn that I watched them, but I did not a ttempt to pass them at that time

J.A. What you are saying is "you saw them on the turn and passed them on the straight
Wit. I saw them on the turn and passed them on the straight

Q-127 Would you say the fog was any thicker when you passed the leading tank than when you saw the whole four of them
A-127 Yes sir

Q-128 You passed the four tanks all with one sweep you did not come behind the leading tank at all
A-128 No sir

Q-129 You were on the left hand side of the road the whole time
A-129 Yes sir

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83'B(

PROSECUTOR'S CLOSING ADDRESS

I feel I am in rather a bad position in being prosecutor on this and that my heart is not in the work.

I feel that this is one of the actions of war which is inevitable, and this may be one of them.

As prosecutor I am supposed to bring out all the facts both for and against the accused. This is my first attempt at this, and with the help of the Court and the J.A. I believe the facts have been brought out.

I do not wish to point out the accused as to blame for anything, and I believe his statement has helped the Court to an opinion to a great extent.

I cannot give any opinion, and I think the Court should bear in mind that there is a war on, such things as this could happen and this did happen.

DEFENDING OFFICER'S CLOSING ADDRESS

In this case the accused is charged with manslaughter, and certain facts must be brought out in the evidence in order for the Court to convict.

On p.117 MMG it states: "Where death results from negligence it must be shown, in order to justify a conviction for manslaughter, that the negligence was so gross and culpable and showed such disregard for the life and safety of others as to amount to a crime against the state and to conduct deserving punishment".

Now first of all the facts must show that there was any negligence at all. The facts are not controversial, and from these facts which have been given before the Court, I would submit that taking into consideration the nature of the accused's duty that the accident occurred more from an error in judgment on his part than from any negligence,

In the evidence which was given it was brought out that when the approaching jeep, the accused's jeep and the tank, were passing, that there was room on the road for all three at the same time; and it was a second or a fraction of a second after that that Gnr Healey's jeep was struck by the tank, which would seem to indicate that had he kept it going straight there would have been no accident at all, and that his swerving to the right was simply an error in judgment on his part and showed no actual negligence.

I think the evidence has also shown that in passing the tanks, in starting to pass the tanks, the accused was in no way negligent, there were gaps in the oncoming traffic which permitted passing without any unnecessary risks, and from the accused's own statement it would seem that owing to weather conditions visibility was considerably worse when he was alongside the leading tank than it was when he had decided to pass the whole troop.

I think the passing of tanks on any highway as wide as this one is not in itself something of a dangerous nature, it is quite a common everyday occurrence; therefore I think that the mere fact of Gnr Healey passing these tanks was not itself a negligent thing.

On this particular occasion I do not think it can be said that it was any more dangerous, but it became more dangerous, and is more in the nature of an accident than any negligence on Gnr Healey's part.

Now if from the evidence given it is decided that the accused was negligent I submit that there is certainly no negligence of the nature required to constitute the crime of manslaughter.

It is a well known principle that the evidence must prove beyond a reasonable doubt the guilt of the accused, and in this case in order to convict the Court must feel beyond any reasonable doubt that Gnr Healey was grossly and culpably negligent. This I submit was not the case.

SUMMING UP BY THE JUDGE-ADVOCATE.

Mr President, Gentlemen:

As you are aware, this is a very serious charge, a charge of manslaughter, and I would like to direct you on the law involved as much as I can.

If I do happen to touch upon the facts I want you to remember that any opinion I give on the facts is purely my own opinion. I am only concerned with the law. You are concerned with the facts.

The charge is laid under A.A. Sec 41, charging the accused with: (Reads charge sheet).

Now you have heard the evidence this morning; what you have to do first of all is to find whether or not the particulars of the charge have been proved, and then you will have to decide whether these proven particulars constitute the offence of manslaughter under the law as now given.

I will read from Archbold, one of the most prominent Criminal Law authorities 31st Ed. 1945, p.859: "Manslaughter is the unlawful and felonious killing of another without any malice either expressed or implied". That is the general definition of manslaughter.

The Army Act on the same question states on p.116 #11: "It may be taken generally that in all cases where a killing though not with malice is nevertheless incapable of justification or excuse, it is manslaughter".

With these two definitions you will have to decide if the facts proved to amount to manslaughter.

As the Defending Officer has pointed out, before a Court can find the accused guilty of manslaughter, they must be satisfied the accused was guilty of negligence, and, in addition, must be satisfied that the accused was guilty of the very highest type of negligence.

The negligence necessary for a conviction on a charge of manslaughter is much greater than that required to prove careless driving or reckless driving. I will read again from Archbold, same exition, p.882: "Where death results in consequence of a negligent act, it would seem that to create criminal responsibility the degree of negligence must be so great as to amount to recklessness. Mere inadvertence, while it might create civil liability, would not suffice to create criminal liability. Simple lack of care such as will constitute civil liability is not enough. For purposes of criminal law there are degrees of negligence, and a very high degree of negligence is required to be proved before the felony is established. Probably of all the epithets that can be applied "reckless" most nearly covers the case though it is probably not all-embracing. In explaining to juries the test which they should apply to determine whether the negligence in the particular case amounted to or did not amount to a crime Judges have used many epithets such as "culpable" "criminal" "gross" "wicked" "clear" "complete". But whatever epithet be used and whether an epithet be be used or not, in order to establish criminal liability, the facts must be such that, in the opinion of the jury; the negligence of the prisoner went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment".

You will find the same principle laid down in MML p.117 reading as follows: "Where death results from negligence it must be shown, in order to justify a conviction for manslaughter, that the negligence was so gross and culpable and showed such disregard for the life and safety of others as to amount to a crime against the state and to conduct deserving punishment. This agrees completely with Archbold.

There you have the legal definition of manslaughter. There must be neglect on the part of the accused, and you must be satisfied that the negligence was so great that it shows a disregard for the life and safety of others and amounts to a crime against the State. That is the question you have to decide from the evidence

Upon the evidence there is no dispute on the facts at all. The accident happened. I think you have a good picture how it happened. The facts are, the accused was driving this jeep, was passing some tanks. It is for you to decide, if, whether or not, in passing these tanks, in view of the visibility, this constituted such negligence as is essential on a manslaughter charge.

Before closing I must again direct the attention of the Court to Archbold, p.900, where it is provided that where alleged manslaughter is connected with the driving of a motor vehicle the accused may be convicted of the offence of reckless or dangerous driving under Section 11 of the Road Traffic Act; and, as I have already stated negligence must also exist to convict for reckless or dangeroud driving, but the negligence necessary here is not of so great a nature as that necessary for a conviction on the count of manslaughter.

Most of you are probably familiar with the term, but I will now define "reasonable dount" as it is understood in the law. Reasonable doubt is a doubt that arises out of the evidence or lack of evidence. It is such a doubt as would make a reasonable man in the conduct of his own affairs and in a matter of importance to him, pull up, hesitate, and seriously consider whether the thing he thinks of doing is right and wise. It must, however, be a real and substantial doubt; not for instance the idle reflection that nothing is perfectly certain in this life, It is a doubt that bases itself on serious gaps or loopholes in the evidence, that persists actively and positively. It is the doubt of a man who has heard and considered all the contentions of the prosecution, and yet who is not satisfied that the accused must have done what he is charged with doing.

If you feel such a doubt about the guilt of this soldier it is your duty to give him the benefit of your doubt and to acquit him. If, on the other handm you find no good grounds for doubt, if what you have heard results in your abiding conviction of his guilt it is equally your duty to convict.

If you have any question, either the prosecutor or defending officer on which you would desire me to advise the Court further please let me know.

Summary of Evidence.

Summary of Evidence in the case of No: B-72079 Gnr. Healy, R.T. of the 2nd Canadian Survey Regiment R.C.A.

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness: 2983812, Sgt. McCulloch, R of the 63rd. Anti Tank Regiment, R.A., sworne state:

While proceeding with my vehicle in the direction of Work we were travelling in a troop Block of four tanks, 60 yards between each of them. Because of a dense fog I was guiding my driver on his offside keeping him as close to the verge as possible. Previously I looked behind and noticed a jeep tailgating me. a few moments later the crash occurred without my seeing it. The driver of my vehicle pulled up immediately.

Q: Did you see the jeep alongside of the tank before
A: No.
Q: Could you see the other jeep approaching.
A: No, I never saw the jeep at all.

R. McCulloch Sgt.

Second Witness: 983194 L/Bdr. Collen, B. of the 63rd. Anti Tank Regiment R.A., Grove Park.

At 1800 hrs. on the 16 Feb 45, I was driving tracked Work Carrier on the right hand side of the road as much as possible under the assistance of my No. 1, 2983812 Sgt. McCulloch. I was driving at approx. 12 m.p.h. when I saw a jeep coming towards me on the other side of the road and suddenly from nowhere I saw the right hand wing of the jeep who was trying to overtake us. I immediately pulled on my brakes as hard as possible thus stalling my engine in stopping my vehicle.

Q: Was my vehicle not pulling ahead of the tank when you saw me.

A: As the light was poor, I saw the wing of the jeep very close to the wing of my track and I immediately stop my track. It was very hard to say whether the accident happened before or after I saw the jeep wing of the jeep.

Collen B. I

Third Witness: T 60581 L/Cpl. Smith J.W. of R.A.S.C., 17th Highland Field Ambulance, sworne state:

At 1810 hrs. on the 15th. of Feb 45 I was in charge of a jeep WD 5826852, 5 cwt., proceeding along the Mook - Gennep Road in a southerly direction when I saw a tank coming in the opposite direction. I also saw a jeep coming in the opposite direction alongside the tank. The driver of my vehicle pulled into the side of the road as far as possible to allow the other jeep to get through. Then I heard a crash, the driver stopped and we got out to see what had happened. I saw that the near side tank had badly damaged the offside of the jeep, killing the passenger who was riding in front of the jeep. The visibility was very bad on account of a heavy fog.

The accused declines to cross-examine this Witness.

J. D. Smith.

Fourth Witness: Capt R.C. Wyld, of the 2nd Canadian Survey Regiment R.C.A., sworne. State:

On the 15 Feb 45 at 1300 hrs. Mr. Fayley received in my presence a written order to deploy an advance C.C.. Lieut Fayley told me he would leave immediately to deploy same and also that after his return from establishing the advance C.C. he had to report to a C.R.A's "O" Group.

At 1500 hrs. Lieut Fayley had not yet returned from establishing his advance R.C.. Knowing the distance he had to travel I did not then expect to see him until after C.R.A's "O" Group.

Mr. Fayley's own vehicle was in L.A.D. for repair and he had Gnr. Healey drive him on this duty.

At about 2015 hrs. Gnr. Healy reported to the Bty Orderly Room where I was on duty, that he had been in an accident and that Lieut Fayley, W.W. had been killed instantly.

I dispatched a party immediately, under Lt. G. McRae to return to scene of accident, and bring back to camp the body of Lieut Fayley.

The accused declines to cross-examine this Witness.

R.C.A.J.

Q: Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A: No, I have nothing to say.

R. J. Healey
Gnr. (Healey R.J.)

The accused does not call any witnesses.

R. J. Healey
Gnr. (Healey R.J.)

I certify that the foregoing Summary of Evidence, consisting of five pages, was taken down by me in the presence of the accused and that RP 4, (C), (D), (E) and (F) have been complied with.

Signed in the field
this 23 day of March 45

Wilfrid Linwood Lt.
Officer taking Summary of Evidence
and Adj. Survey Regt. R.C.A.

SUMMARY OF EVIDENCE

SUMMARY OF ~~EVIDENCE~~ EVIDENCE IN THE CASE OF NO B72079 GNR HEALEY, ROBERT JAMES, OF THE 2 CDN SURVEY REGIMENT RCA.

BY DIRECTION OF THE COMMANDING OFFICER, THE EVIDENCE IS TAKEN ON OATH.

FIRST WITNESS 2983812 Sgt McCulloch, R of the 63rd Anti-Tank Regiment RA, sworn, states:

While proceeding with my vehicle in the direction of MOOK, we were travelling in a troop Block of four tanks, 60 yards between each of them. Because of a dense fog, I was guiding my driver on his offside keeping him as close to the verge as possible. Previously I looked behind and noticed a half-track following me. A few moments later the crash occurred without my seeing it. The driver of my vehicle pulled up immediately.

Q: Did you see me alongside of the Tank before.

A: No

Q: Could you see the other jeep approaching.

A: No, I never saw the jeep at all.

(Sgd) R McCulloch Sgt

SECOND WITNESS

98194 L bdr Collen B of the 63rd Anti-Tank Regiment RA, sworn, states:

At 1810 hrs on the 15 Feb 45, I was driving toward MOOK keeping on the right-hand side of the road as much as possible under the guidance of my No. 1, 2983812 Sgt McCulloch. I was driving at approx. 12 mph when I saw a jeep coming towards me on the other side of the road and suddenly from nowhere I saw the right hand wing of the jeep who was trying to overtake us. I immediately pulled on my brakes as hard as possible thus stalling my engine in stopping my vehicle.

Q: Was my vehicle not pulling ahead of the tank when you saw me?

A: As the light was poor, I saw the wing of the jeep very close to the wing of my tank and I immediately stopped my tank. It was very hard to say whether the accident happened before or after I ~~xxx~~ saw the wing of the jeep.

(Sgd) Collen B

THIRD WITNESS T60581 L cpl Smith, J W of RASC. 174 Highland Field Ambulance, sworn, states:

At 1810 hrs on the 15th of Feb 45 I was in charge of a jeep WD 5826852, 5 cwt, proceeding along the MOOK-GENNEP Road in a southerly direction when I saw a tank coming in the opposite direction. I also saw a jeep coming in the opposite direction alongside the tank. The driver of my vehicle pulled into the side of the road as far as possible to allow the other jeep to get through. Then I heard a crash, the driver stopped and we got out to see what happened. I saw that the nearside tank

(cont to sheet -2-)

THIRD WITNESS T60581 L cpl Smith, J W of RASC, 174 Highland Field Ambulance CONT

had badly damaged the offside of the jeep, kx killing the passenger who was riding in front of the jeep. The visibility was very bad on account of a heavy fog.

The accused declines to cross-examine this witness.

(Sgd) Smith J

FOURTH WITNESS Capt R C Wyld, of the 2nd Canadian Survey Regt RCA, sworn, states:

On the 15 Feb 45 at 1300 hrs Mr Fargey received in my presence a written order to deploy an advance C.C. Lieut Fargey told me he would leave immediately to deploy same and also that after his return from establishing the advance C.C. he had to report to a C.M.As "C" Group.

At 1800 hrs Lieut Fargey had not yet returned from establishing his advance H.Q. Knowing the distance he had to travel I did not then expect to see him until after the CMAs "C" Group.

Mr Fargey's own vehicle was in the L.A.D. for repairs and had had Gnr Healey drive him on this duty.

At approx 2015 hrs Gnr Healey reported to the Bty Orderly Room where I was on duty, that he had been in an accident and that Lieut Fargey W H had been killed immediately.

I dispatched a party immediately under Lieut G McRae to return to the scene of the accident, and bring back to camp the body of Lieut Fargey.

The Accused declines to cross-examine this witness.

(Sgd) R C Wyld

Q: Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given as evidence.

A: No, I have nothing to say.

(Sgd) R J Healey Gnr

The Accused does not call any witnesses.

(Sgd) R J Healey Gnr

I certify that the foregoing Summary of Evidence, consisting of five pages, was taken down by me in the presence of the accused, and that ¶ 4, (C), (D), (E) and (F) have been complied with.

Signed in the field
this 23rd day of Mar 45

Gilbert Simard Lieut
Officer taking Summary of Evidence
2 Cdn Survey Regiment RCA

SA-34

Pk. Neck, N. J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-11934 Pte Joseph Horace HEARN CH of C, 13 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of list see RP 44 fn b.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo 180 days detention

(Sgd) ..... Judge-Advocate, if any. 1 Mar 45 Date awarded. (Sgd) [signature] President. (Rp 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised; AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minutes of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign [illegible] (AA 57(1).)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding. But I mitigate the sentence to read "To undergo [illegible] pfld punishment for 14 days + to forfeit all advance pay for remainder, (90) days"

I direct that the accused be not committed to prison or detention barracks until further ordered.(1)
(1. AA 57A. Delete if not used.)

(Sgd) [signature]
(G.S.N. Gostling), Brigadier,
Commanding 2 Can Base Rft Gp
Confirming Officer.

Date 1 Mar 45

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

A-11934 Pte Joseph Horace Hearn, 4 Mar 45

CR PUBLISHED ON PUNISHMENT CR 14 day Mins 45 BY LIEUT CR OF O 13 Bn. [signature] Capt Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED. 13 C. B. R. Bn.

RECORDED AT CMHQ IN AB 160 50-34

CFA66 (In lieu of AFA51) 40/P & B/169th (8144) 4/388

FIELD GENERAL COURT-MARTIAL

RECEIVED 23 MAR 45 JAG BRANCH C.M.H.Q.

Convened by Order of Brigadier G.S.N. Gostling, ED Comd 2 CBRG dated 27 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed ... and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-11934	Pte	Joseph Horace	HEARN	CH of C 13 CBR Bn

PROCEEDINGS REVIEWED 23 Mar 45

[signature] Capt
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED 21 Army Gp. Date 19 Mar 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 1 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 22/126-

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RPs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 103-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans .....
~~The Interpreter is sworn.(*) Do you object to ..... as shorthand writer? Ans .....~~
The shorthand writer is sworn.(*)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nil (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G.G. MacKENZIE, MBE	FGE, I-9 List 3 Cdn ARTD
Member	LIEUT	D.M. PEAT	CPC 11CBR BN
Member	LIEUT	W.J. OUELETTE	CIC 10CBR BN
Judge-Advocate			
Prosecutor	LIEUT	R.I. MANN	CIC 11CBR BN
Defending Offr	LIEUT	M.W. WHITE	CIC 13CBR BN

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dr p 2.)

A8. The accused A-11934 Pte Joseph Horace HEARN before arraignment make(s) (no) (no) plea (2)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposed, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in All rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form .....

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG WD 4 P 13

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto; or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*b*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans no.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his plea(s) (their pleas) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ~~C~~, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 80(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(F).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans yes.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex G and Ex F respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans yes I do.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 64, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 320, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused A-119[illegible] Pte HEARN, H.J. (OR of C) 15 CBRBn, 2 CBRG., a soldier of the Canadian Army Overseas, is charged with:

First Charge
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the field, did absent himself without leave from 0930 hrs 23 Jan 45 until surrendering himself at 1400 hrs 14 Feb 45 (absent 22 days 4 hrs 30 minutes).

(V.W. Haugen, E.D.) Lt-col
Commanding
15 CBRBn, 2 CBRG.

In the Field
21 Feb 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(G.S.N. Gostling), Brigadier,
Commander
2 Canadian Base Reinforcement Group.

In the Field
27 Feb 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-11934	Pte		Joseph Horace	HEARN	CH of O 13 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 27 Feb 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	G.C. MacKENZIE, MBE		FGH X-9 List 3 Cdn METD

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Lieut	D.H. PEAT		1 Cdn Para Bn 11 CBR Bn
Lieut	to be detailed by OC 10 CBR Bn		10 CBR Bn

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Dat 27 Feb 45

(Signed personally. RP 105 fn 2.)

(G.S.H. Gostling), Brigadier (Rank.)

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 85 (In lieu of AFA 8) SO/P to E/1607 16148)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 118 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 40(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 46(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly, see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 48(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 164, 166, 197, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can 580. As to certified copies of registered books see AA 103 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 90(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined A11937 (No.)

Pte (Rank) Hearn J.H. (Name) and in my opinion he is

fit to undergo trial by Court-Martial.
~~unfit~~

Station FIELD

Date 19 Mar 45

[illegible] (Sgd).
Medical Officer Capt.

(Unit) 13 BN 2 FRC

Statement by accused A11937 Pte Hearn H.J.
having been duly sworn states.

When I was in Hengelo, Holland with 46 Coy 13 Bn. 2 C.R.R.C. I went A.W.L. from this Coy in Holland to pick up personal belongings. I had the intention of returning the next morning but when I had got there the unit had left. I enquired at the Info Bureau & I was told that 46 Coy had moved back to Ghent. I hitched back to Ghent and was told 46 Coy were never here. Therefore I went back to Holland, went to several camps & enquired as to the whereabouts of 46 Coy — No one knew where it was. I then turned myself in to the C.H. of C. - H.Q.; the adj. turned me over to the 11th Provost Coy & they brought me back to 13 Bn in Ghent.

Question by Court.

Q Where was your Kit
A In Ghent at 2 C.R.R.C.
Q.A I had been 2 weeks at 46 Coy,
Q.A I was in Ghent about 4 hrs the first time I got my kit & went back to Holland

O.M. Hearn

Plea for Mitigation of Punishment

for 1 11937 Pte Dean H J.

Sir,

Pte Dean H J. pleas for mitigation of his sentence in that he has served 5 years service in the Can army.

Came overseas in June 1943 with the R.C.C.S. served with unit in England until it moved to France in July 1944

[illegible] in the field at which time he was wounded and sent to hospital

discharged from hospital to 2 C.O.R.R. where he was hospitalized to the C.H.Q. and provided for draft

the arrival at the unit he needed some second clothes which he had left in hospital back a day off unit on returning the following day found the unit had left.

He inquired as to its location, after going from one to the another he finally learned where the unit was located. Road conditions were terrible and traffic was limited

For his long total service he has still on his A.F.H.6

He asks the Court to be lenient in passing sentence so he may rejoin his unit as soon as possible

Pte Dean H J

E.D.

SUMMARY F EVIDENCE in the case of A-119[illegible] Pte HEARN, L.J. (OH of O) of 46 Rft Coy 15 C.R.R.Bn. 2 C.B.R.C., a soldier of the Canadian Army Overseas.

CHARGE: ABSENCE WITHOUT LEAVE

By direction of the CO the evidence is taken on oath.

The following documents are read to the accused, marked as exhibits and are attached to the proceedings.

EXHIBIT A Certified true extracts from Casualty Returns Ser No 8 dated 14 Feb 45 and Ser No 10 dated 18 Feb 45.

EXHIBIT B Certified true copy of the Record of the Declaration of the Court of Inquiry dated 15 Feb 45.

EXHIBIT C ~~Certified true copy of certificate of correction dated 16 Feb 45.~~ Certified true copy of CR 10 d/18 Feb 45.

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RR (c)(d)(e)(f) and (g) have been complied with.

J.R. Lagueux

(J.R.R. LAGUEUX) Capt CIC 15 CBRRn.
Officer detailed to take
Summary of Evidence

Dated in the Field
21 Feb 45.

(X-4) Lt mt CH of O 15 CBRBn. IN LIEU OF AFW3018A SER NO 6 NO SHTS 2 (First)

Exhibit "A"

ABSENT WITHOUT LEAVE
AWL from 0930 hrs 27 Jan 45 and still absent at 0930 hrs 14 Feb 45.
(ZERO DAY)

A-11934 Pte HEARN, H.J. CH of O

14 Feb 45 46 RFT COY 23 C.B.R. Bn.

(W.M. McKelvey) Records Officer Lt.

CERTIFIED TRUE COPY

EXHIBIT "B"

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 15th day of February 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION

The Court declare that No. Aus1934 Pte HEARN, W.J. (CH of O) of 46 Fft Coy 13 C.B.R.Bn. 2 C.B.R.G.

illegally absented himself without leave In the Field at 0630 hrs on the 22nd day of January 1945, that he is still so absent, and that on the 15 Feb 45 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE
Listed on Appx "A" attached			

W.J. HEARN, Lieut INSR 13 CBRBn. — President

C.L. MITCHELL Lieut CSR 13 CBRBn. — Member

K.A. RINTOUL Lieut HLI of C 13 CBRBn. — Member

Signed at In the Field

this 15th day of Feb 1945

Signature of Commanding Officer Lt-col V.W. Hugman, E.D.

Certified true copy W Stanley Colvin Lt Signature of Officer having custody of Records Office 46 Coy 13 CBRBn

M.F.D. 228
A.F.D. 115
2M—6-41 (750)
H.Q. 1772-39-237

APPENDIX "A"

13 CANADIAN BASE REINFORCEMENT BATTALION

2 C.B.R. GROUP.

SCALE III KIT COMPLETE WITH VOCAB & REDUCED PRICES

	100% FULL VALUE	75% FULL VALUE
Anklets Web prs(1)	.99	.74
Blouses Battle Dress	5.25	3.94
Boots Ankle prs (2)	10.92	8.19
Beret Khaki	1.21	.91
Drawers Cellular Short, prs (2)	.86	.65
Greatcoat Drab	11.55	8.66
Jersey Pullover	1.79	1.34
Shirts Angola Drab (2)	4.04	3.05
Socks prs (4)	1.48	1.11
Trousers Battle Dress prs (1)	5.39	4.04
Braces	.28	.21
Brushes Hair	.34	.26
Brushes Shaving	.37	.28
Brushes Shoe Polishing	.28	.21
Brush Tooth	.11	.08
Caps Comforter	.34	.26
Combs Hair	.04	.03
Dressing Field	.24	.18
Discs Identity Set	.07	.05
Forks Table	.19	.14
Holdall	.17	.13
Housewife Complete	.86	.65
Knife Clasp	.15	.11
Knife Table	.06	.05
Razor Safety W/Blade	.07	.05
Spoon Desert	.64	.48
Towels, hand	.67	.50
Belts Waist	.82	.62
Bottles Water	.60	.45
Braces, W.E. Right & Left	.52	.39
Carrier Water Bottle	1.79	1.34
Haversack	2.42	1.82
Helmet Steel	.15	.11
Net Camouflage Helmet	1.64	1.38
Packs (1)	.64	.48
Straps Shoulder Haversack Right & Left	.26	.20
Straps Web Supporting (2)	.35	.26
Tins Mess, T.P.	2.76	2.07
Capes A/G	4.66	3.50
Respirators A/G Complete W/Haversack	.30	.23
Ointment A/G (2)	.45	.34
Eyeshields, A/G (Pkg of 6)	.24	.18
Detectors Individual, prs (2)	3.07	2.30
Blanket	.13	.10
Mugs Drinking	2.94	2.21
Sheets Ground	45.48	45.48
Rifle #4 MK I	2.46	2.46
Bayonet #4 MK I	.06	.05
Bottles Oil	2.38	1.79
Pouches Basic W.E. PAT 37 MK III (2)	.61	.46
Bayonet Scabbard #4 MK I (1)		
	$ 123.31	$ 104.43

EXHIBIT "C"

(X-4) List CH of O 15CBRHn. IN LIEU OF AFW3018A SER NO 10
NO SHTS

STRENGTH INCREASE
TOS X-4 List CH of O 15 CBRHn. on app from des wef 1400 hrs 14 Feb 45.

A-11934 Pte HEARN, H.J. CH of O

46 RFT COY 15 C.B.R.H.

18 Feb 45 14.

(W.M. McKelvey) Records Officer

CERTIFIED TRUE COPY

I wish any officer available to be defending officer at my trial by Court Martial.

Otto Deaver

A-12567 Pt O HEARD, N.J.

EXHIBIT "C"

(K-4) List CH of O 13 CBRBn. IN LIEU OF AFW3012A SER NO 10
NO SHTS 1 & Last

STRENGTH INCREASE
TOE K-4 List CH of O 13 CBRBn. on surrendering himself from desertion wef 1400 hrs 14 Feb 45.

A-11934 Pte HEARN, H.J. CH of O

46 RFT COY 13 C.B.R.Bn.

Lt.
18 Feb 45 (W.H. McKelvey) Records Officer

CERTIFIED TRUE COPY W.H. McKelvey Lt.

EXHIBIT "A"

(X-4) List CH of C 15 CBRBn. IN LIEU OF AFW3012A SER NO 10
NO SHTS 1 & Last

STRENGTH INCREASE
FOR X-4 List CH of C 15 CBRBn. on surrendering himself from desertion wef 1400 hrs 14 Feb 45.

A-11934 Pte MEARN, H.J. CH of C

46 RFT COY 15 C.B.R.Bn.

18 Feb 45

Lt.
(W.H. McKelvey) Records Officer

CERTIFIED TRUE COPY W. H. McKelvey Lt.

EXHIBIT "C"

(X-4) List CH of O 13 CBRBn. IN LIEU OF AF/SO12A SER NO 10
NO SHTS 1 & Last

STRENGTH INCREASE
TOS X-4 List CH of O 13 CBRBn. on surrendering himself from desertion wef 1400 hrs 14 Feb 45.

A-11984 Pte HEARN, R.J. CH of O

48 RFT COY 13 C.B.R.Bn.

16 Feb 45

Lt.
(W.H. McKelvey) Records Officer

CERTIFIED TRUE COPY

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
A11937	PTE	HEARN, H.J.	13 C.B.R. BN., 2 C.O.R.G.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness, the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For AWL - 15 (1)	4 times	? times
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct.

or

~~These are no entries in the conduct sheets of the accused.~~ N.A.D.

2. The accused has not been previously convicted, *or* N.A.D.

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 53 of the Army Act, are set out in the schedule annexed to this statement.~~

3. ~~The accused is not under sentence at the present time, or The accused at the present time is under sentence for~~ beginning on the day of N.A.D.

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 14 days in military custody, making a total of 14 days, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 24

6. The date of his ~~commission~~ attestation N.A.D. specified in his ~~record of service~~ attestation paper is 13 AUG 42 N.A.D.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 6 mths 1 day

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 6 mths 11 d service.

9. The accused is entitled to reckon 2 yrs 6 mths 11 d service for the purpose of determining his pension, etc.

10. The accused is ~~in possession of~~, or entitled to, ~~no military decoration or military award~~ (*or is in possession of or entitled to (state any military decoration or reward)*. C.V.S.M.

11. ~~(If the accused is a warrant officer) The accused before he was made a warrant officer was held the rank of~~ N.A.D.

12. ~~(In the case of an officer) The accused holds or has held the following substantive rank in the regular forces, dated~~ N.A.D.

~~and in his regiment (or corps or department) the rank of~~ dated

W.3502/1589 20M. 5/40. P. Ltd. T12 A.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ *Rank* _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1st day of MARCH

_____

13 C. B. R. Sec.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of _____ from _____

In the rank of _____ from _____

In the rank of _____ from _____

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such records as are available, all the paragraphs converted avoided accordingly.)

Date of Promotion

MFM 6 (AFB 122) 40/PAM/136 (34381)

No A11937 Name HEARN H.J. | Sqn, Batty or Company | Corps C DENT C | Date of enlistment 13 Aug 42 | Service or Proficiency Pay | Character

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17 Sep 43	Pte		AA 11		7 days pay	17 Sep 43	O.C.	7 days pay FR&I 149(2)
"	16 Mar 44	"		AA 15(1) absent 2 days 20 hrs		7 days CB & 7 days pay	17 Mar 44	O.C.	3 days pay FR&I 149(1)(a)
"	29 May 44	"		AA 15(1) AWL from 1745 hrs 29 May 44 to 1125 hrs 30 May 44 (absent 17 hrs 40 mins)		7 days CB & 4 days pay	30 May 44	O.C.	1 days pay FR&I 149(1)(a)
"	30 Sep 44	"		AA 15(1) AWL from 2200 hrs 30 Sep 44 to 1000 hrs 2 Oct 44 (absent 1 day 12 hrs)		14 days pay	6 Oct 44	O.C.	2 days pay FR&I 149(1)(a)

(PTO

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29 Oct 44	Pte		AA 15(1) AWL from 2200 hrs 29 Oct 44 to 1800 hrs 31 Oct 44 (absent 1 day 20 hrs)		27 days FP & 27 days pay	2 Nov 44	O.C.	2 days pay FR&I 149(1)a)

"Duplicate created from MFM 4, 21 FEB 45. Record of conduct in Canada not available.

M. Fenelon, Capt
Officer IC Records "C"
Cdn Sec 2nd Echn HQ 21 A Gp

CERTIFIED TRUE COPY 24 FEB 45

R. A. Dawson Capt CAPT. ADJT.
for V.W. Hugman) Lt.col
commanding
13 C.F.R.Bn. 2 C.B.R.Gp.

Akbo.
Rfm. Haarlem J.N.D.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B155177 Rfn Joseph Norman Douglas HEASTONT QOR of C

	Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 40 s (7)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At ~~(a) (b)~~ under sentence for ~~beginning on (date)~~ (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To suffer penal servitude for the term of five years and to be dismissed with ignominy from His Majesty's Service.

(Sgd) [illegible] Capt — 9 Oct 44 — (Sgd) [illegible] — President (RP 45, 50.)
Judge-Advocate, if any. — Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the finding and sentence for confirmation.

Date 16 Oct 44 (Sgd) [illegible] T/ Commanding 8 Cdn Inf Bde
(T C Lewis) Lt-Col

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:
I confirm the finding of the Court but mitigate the sentence. I confirm the finding of the Court but mitigate the sentence. So that it shall read "To undergo penal servitude for three years" and I confirm the sentence as mitigated.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) [illegible] Lt-Col
Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. — Date. — Signature of Offr.
B 155177 Rfn Joseph Norman Douglas Heastont 2 Dec 44 [illegible] Lt Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECEIVED 27 JAN 1945 Orig

RECORDED AT C.M.J.O. IN AB 160 42-60

CFAMS (To Hon of Mem) Form No. 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Col T C Lewis a/Comd 8 Inf Bde dated 8 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 169. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B/155177	Rfn	Joseph Norman Douglas	HEASTONT	QOR of C

18 years

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVISED Date 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 9 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1600 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with by his CO.~~ (2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans ~~The Interpreter (Name) (1) sworn.~~ Do you object to S/Sgt Phillips, FH as shorthand writer? Ans No
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J C H Lapointe	Regt de Chaud
Member	Capt	L J J Bourassa	Regt de Chaud
Member	Capt	H L Day	North Shore (NB) Regt
Judge-Advocate	Capt	A C Hall	ADJA 3 Cdn Inf Div
Prosecutor	Lieut	J L Pond	QOR of C
Defending Offr	Capt	J Y Gosselin	Regt de Chaud

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans NO (1)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI 9 [illegible])

A8. The accused B/155177 Rfn Heastont, J N D before arraignment make(s) (no) ~~(1)~~ plea. (2)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court, (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

Granett page 113.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*ii*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No, sir (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to give accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any pleas standing as Guilty, Court will advise accused to change such pleas and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D6 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114; KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A65. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6); RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Forms B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No, sir
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MAM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Through my defending officer (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found Guilty. RP 89. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas Act 1958, 1223, MML p. 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 66(1), KR Con 564.* 2. *RP 50. As to release from arrest by Convening Offr see KR Con 567. As to assembly and disposal of record after trial see insstrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, Number B155177 Rfn Joseph Norman Douglas HEASTONT, 10 Pl, B Coy, 1st Bn The Queen's Own Rifles of Canada, C A O, B W E F, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 5 (2)
Army Act

WHEN ON ACTIVE SERVICE,
MISBEHAVING BEFORE THE ENEMY IN
SUCH A MANNER AS TO SHOW COWARDICE,
in that he

In the Field, at approximately 2300 hours, 20th September 1944, from an unsoldierlike regard for his personal safety in the presence of the enemy, failed to obey an order to attack with his platoon.

In the Field
6th day of October, 1944

(S M LETT) Lt-col
Comd 1st Bn The Queen's Own
Rifles of Canada

To be tried by FGCM.

9 Oct 44

(J.C.T. LEWIS) Lt-Col
T/Comd 8 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-155177	Rfn		Joseph Norman Douglas	HEASTONT	QOR of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Oct 44 endorsed by me, (~~or by an officer of my staff for me~~). " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am satisfied by my appmt X(a) these offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached thereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)		(Unit.)
Maj		J.C.H. Lapointe		R de Chaud

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)		(Unit.)
Capt		L.J.J. Bourassa		R de Chaud
Capt		H.L. Day		N Shore R

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)		(Unit.)
Lt		S.S. Soore		QOR of C

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)		(Unit.)
Capt		A.C. Hall		HQ 3 Cdn Inf Div

On Active Service in the Fd

in Belgium (Country.)

(Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

Dat 5 Oct 44 T/ Commanding 6 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 66 (In lieu of AFA 3) 40/P&E/1697 (8143)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 765.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 90(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12346 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 90(*C*), 91(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statements by accused (*not sworn or subject to cross-examn by Prosecutor, Court or JA* (*RP 40 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fns* 2, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 96(*C*).)

(v) Closing address (*on matters other than on mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given on to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can* 865(*a*).)

(vii) Summing up by JA, if any. (*RP* 62.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 5 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 106, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 103 (1) (*g*) (*b*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 116(*C*), *MML p* 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

9 Oct 44

1st Bn The Queen's Own Rifles of Canada (AF)

This is to certify that I have this day examined B159177 Rfn Joseph Norman Douglas HEASTONT and have found him fit to stand trial by Field General Court Martial.

R. D. Galloway, Capt

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

Gentlemen of the Court.

I am going to ask all of you to consider all the facts that have been brought to you by oral witness and before you come to a decision I will ask you to have mercy on Pte J. W. D. Hearnden, B-15-5-177 a soldier of B Coy. L.D.R. of Canada. I had an interview with him yesterday and he admits that as soon as he got under fire or shelling he does not know his name at all. He should be brought in front of a medical officer for a board. There are no charges to take because a man without memory is a danger to his friends and

CFA (3841-3) PLEASE WRITE ON BOTH SIDES

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

2

this war, it is for a soldier to have good news. And the enemy of the country to consider all the facts brought to your before come to a decision.

J. Yves Couture Capt.
Officier Instructeur
Le Regiment de la Chaudière
Officier.

CFA (70)(4213)

PLEASE WRITE ON BOTH SIDES

The president having read to the accused para B2 on record form "B", the Judge Advocate addresses the accused:

I will endeavor to explain to you the effect of a plea of "guilty".

This court and the superior authority who convened this court are most anxious that your trial be fair and just beyond all possible doubt. If, therefore, you have been forced or induced to plead "guilty" by any threat of what would happen if you did not or any promise of a lighter sentence, then it is vital that you now understand that this court has no instrs as to what sentence to give you. If you have been led to think that your sentence would be less if you pleaded "guilty", I must advise you that such is not the case. In fact if you pleaded "not guilty" and witnesses were called, it is possible that facts might be adduced showing extenuating circumstances.

Now if you plead "guilty", no witnesses will be called by the prosecution but the summary of evidence which was taken in your presence will be read to the court so that it will know the circumstances surrounding the offence to which you have pleaded "guilty" in order that it, the court, may be helped in deciding what sentence they will award. Anything that you wish to say or any witnesses you wish to call will be heard and your defending officer may address the court on your behalf, but the whole proceedings will merely be a question of what sentence you are to be awarded.

You have pleaded "guilty" to "misbehaving before the enemy in such a manner as to show cowardice". This is a very serious charge and the court will have failed in its duty if it allows your plea of "guilty" to stand without being convinced beyond all possible doubt that you understand the charge and the effect of your plea of "guilty". This charge is constituted of four distinct elements. The prosecution alleges that all four elements were present when the alleged offence was committed. If you plead "guilty" you admit that all these elements were present, and if any one were not present then you should plead "not guilty". Those elements are:

(a) Misbehaviour: That means that you did something which you should not have done, something which, even if it had not been accompanied by the presence of the enemy or by cowardice, would still be misbehaviour.

(b) Before the enemy: The prosecution further alleges that that misbehaviour happened in a place in which the enemy was substantially making his presence felt. To be "before the enemy" either you must be a member of a body in direct contact with the enemy, e g, making or repelling an assault or a raid; or you must be in an area in which the enemy is substantially making his presence felt, e g, by close shelling or action by aircraft.

(c) The prosecution alleges cowardice. I doubt if there is any need for me to endeavor to define cowardice. The particulars of the charge allege that "from an unsoldierlike regard for his personal safety in the presence of the enemy (you) failed to obey an order to attack with his pl". If you plead "guilty" you admit to this.

(d) The fourth element is that the cowardice was shown. This means that the prosecution alleges that your actions were seen either by the enemy or by our own troops and that those actions were of such a nature that, if seen by the enemy, it was encouraging to the enemy; or, if seen by our own troops, were discouraging and demoralizing to our own troops. The prosecution alleges that not only were your services lost through the cowardice but that it was of such a nature as to be demoralizing to our own troops who were present.

Now if you plead "guilty" you admit that all of these elements were present. If you do not understand anything that I have said or if there be any point of law that you do not understand, the court will close and you may consult me as judge advocate. Do you wish to consult me and do you wish to make any statement now?

Answer: No, sir.

C.A.

Summary of Evidence in the case of 11C.

3155 177 Rfn. Hewston J. M. 1st Bn. The Q.O.R. of C. C.A.O. B.W.E.F.

The Commanding Officer directs the evidence be taken on oath:—

1st Witness

for the prosecution A 71032 Sgt. Collings C.C. 1st Bn. The Q.O.R. of C. C.A.O. B.W.E.F. having been duly sworn states:—

I am pl. Sgt. of 10 Pl B Coy. I attended a briefing by Capt. Elliott my coy. comdr. about 2230 hrs. 20 Sept 44 in connection with a platoon attack on night of 21st on enemy position. All the platoon N.C.O.s were there and afterwards the section leaders returned to their sections to brief them. The section leaders then brought their sections to pl. H.Q. for pl briefing by me, and to clean their equipment. While I was briefing Rfn Dobson said he would not go into the attack and other men complained very nervous.

I reported this to Captain Elliott and he told me to ask for volunteers. There was insufficient so Capt. Elliott told me to order the whole platoon to proceed on the operation. I did so as I could see that Pfc. Loberon and several others were going to refuse and as I wanted to get started, I asked if there were any who absolutely refused to go. A 15577 Pfc. Hewston J. N.D. When I recognized as the accused said he refused to go. I don't remember his exact words, a number others also refused so I took their names and after consulting Capt. Elliott placed them under close arrest. I then proceeded on the operation with the remaining part of the platoon.

C. F. Collings Sgt.

The accused declines to cross-examine this witness.

2nd Witness for the prosecution

B155187 Cpl. Kozlowski MB
1st Bn. The O.O.R.Y.C. C.A.O.
B.W.E.F. having been duly sworn states:-

I am section leader of 2 section 10 pl. B coy. B155177 Pte Wootton J. N.D. When I recognize as the accused is a member of my section. I was briefing my section on the 20 Sept. 44 at about 2245-2300 hrs. in connection with a pl. attack map every position that night. The accused told me he was too nervous and shaky to go and would do more harm than good to the section. When Lt. Collings at the pl. briefing told us that the entire pl. would proceed in the operation and asked if there was any who absolutely refused to go, the accused turned in his name as so refusing.

Cpl. Kozlowski J.L.

The accused declined to cross-examine the witness

3rd Witness for the prosecution

B148477 Cpl. McGregor G.G.
1st Bn. The O.O.R.Y.C. C.A.O.
B.W.E.F. having been duly

sworn states :- I am section leader
of 3 section 10 pl. B Coy 2 R Fus. Headqtrs
When I recognise as the accused is
in 2 section. I was present at the
pl. briefing by Sgt Collings on 20 Sep. 44
at about 2300 hrs. When Sgt. Collings
stated that the entire pl. would go on
the operation and asked if there were
any who absolutely refused, the accused
turned in his name as so refusing.
I don't remember what his exact words
were but he did refuse to go.

Cpl. McGregor G.F.

The accused declines to cross examine this
witness.

The accused was then cautioned as follows:

"Do you wish to make any statement
or to give or call any evidence? You are
not obliged to do so but if you do
it will be taken down and may be
used in evidence."

The accused declined to make a statement

o. to give or call any evidence.

I certify that the foregoing summary of evidence consisting of 5 pages was taken down by me in the field in the presence of the accused and that all relevant Rules of Procedure were complied with.

25 Sep 44 J. H. Pond 2Lt.

44

Additional Summary of Evidence AHH
in the case of B 155177 Rfn. Headstone
J.N.D. 1st Bn. The O.O.R.y C. C.A.O. B.W.E.F.

The Commanding Officer directs the
evidence be taken on oath.:

1st Witness for the pros. Capt. W.C.F. Elliot 1st Bn. The O.O.R.y C. C.A.O. B.W.E.F. having been duly sworn states: I was temporary coy. comdr. of B coy. 1st Bn. The O.O.R.y C. on the night of 20 Sep. 44. My coy. had taken up positions in partly demolished buildings approximately 100 yards from an enemy strong point. The coy. had been under sporadic fire from the position for approximately 24 hrs. The platoon to which the accused belonged the day before been detailed along with supporting arms to attempt to enter the position. The A.V.R.E.s were unable to make a gap in the wall surrounding the strong point, so the attack was called off. About 1600 hrs 20 Sep. 44 there were violent explosions in the enemy positions causing a portion of the wall to be blown away. The before mentioned platoon to enter the enemy position by right charge the gap to obtain a foothold and fire the rest of the coy. in. The position was a complete success.

A.H. Elliot capt

The accused declines to cross-examine the
witness

C A (copy) add

SUMMARY OF EVIDENCE

in the case of

B155177 Rfn Heastont, J N D, 1st Bn The QOR of C, CAO, BWEF.

The Commanding Officer directs the evidence be taken on oath

1st Witness for the Prosecution

A71032 Sjt Collings G A, 1st Bn The QOR of C, CAO, BWEF having been duly sworn states:-

I am pl sjt of 10 Pl, B Coy. I attended a briefing by Capt Elliott, my coy comd, about 2230 hrs 20 Sep 44 in connection with a platoon attack that night on an enemy position. All the platoon NCOs were there and afterwards the section leaders returned to their sections to brief them. The section leaders then brought their sections to pl HQ for pl briefing by me, and to leave their equipment. While I was briefing Rfn Dobson said he would not go into the attack and other men appeared very nervous. I reported this to Captain Elliott and he told me to ask for volunteers. There were insufficient so Capt Elliott told me to order the whole platoon to proceed on the operation. I did so. As I could see that Rfn Dobson and several others were going to refuse and as I wanted to get started, I asked if there were any who absolutely refused to go. B155177 Rfn Heastont J N D whom I recognize as the accused said he refused to go. I don't remember his exact words. A number of others also refused so I took their names and after consulting Capt Elliott placed them under close arrest. I then proceeded on the operation with the remaining part of the platoon.

G F Collings, Sjt.

The accused declines to cross-examine this witness.

2nd Witness for the prosecution

B155189 Cpl Kozlowski, 1st Bn The QOR of C, CAO, BWEF having been duly sworn states:-

I am section leader of 2 section, 10 pl, B Coy. B155177 Rfn Heastont J N D whom I recognize as the accused is a member of my section. I was briefing my section on the 20 Sep 44 at about 2245 - 2300 hrs in connection with a pl

C-A (copy) acth

SUMMARY OF EVIDENCE

in the case of

B155177 Rfn Heastont, J N D, 1st Bn The QOR of C, CAO, BWEF.

The Commanding Officer directs the evidence be taken on oath.

1st Witness for the Prosecution

A71032 Sjt Collings G A, 1st Bn The QOR of C, CAO, BWEF having been duly sworn states:-

I am pl sjt of 10 Pl, B Coy. I attended a briefing by Capt Elliott, my coy comd, about 2230 hrs 20 Sep 44 in connection with a platoon attack that night on an enemy position. All the platoon NCOs were there and afterwards the section leaders returned to their sections to brief them. The section leaders then brought their sections to pl HQ for pl briefing by me, and to leave their equipment. While I was briefing Rfn Dobson said he would not go into the attack and other men appeared very nervous. I reported this to Captain Elliott and he told me to ask for volunteers. There were insufficient so Capt Elliott told me to order the whole platoon to proceed on the operation. I did so. As I could see that Rfn Dobson and several others were going to refuse and as I wanted to get started, I asked if there were any who absolutely refused to go. B155177 Rfn Heastont J N D whom I recognize as the accused said he refused to go. I don't remember his exact words. A number of others also refused so I took their names and after consulting Capt Elliott placed them under close arrest. I then proceeded on the operation with the remaining part of the platoon.

C F Collings, Sjt.

The accused declines to cross-examine this witness.

2nd Witness for the prosecution

B155189 Cpl Kozlowski, 1st Bn The QOR of C, CAO, BWEF having been duly sworn states:-

I am section leader of 2 section, 10 pl, B Coy. B155177 Rfn Heastont J N D whom I recognize as the accused is a member of my section. I was briefing my section on the 20 Sep 44 at about 2245 - 2300 hrs in connection with a pl

attack on an enemy position that night. The accused told me he was too nervous and shaky to go and would do more harm than good to the section. When Sjt Collings at the pl briefing told us that the entire pl would proceed on the operation and asked if there were any who absolutely refused to go, the accused turned in his name as so refusing.

Cpl Kozlowski J L

The accused declines to cross-examine this witness.

3rd Witness for the prosecution

B148477 Cpl McGregor G G, 1st Bn The QOR of C, CAO, BWEF having been duly sworn states:-

I am section leader of 3 section, 10 pl, B Coy. B155177 Rfn Heastont J N D whom I recognize as the accused is in 2 section. I was present at the pl briefing by Sjt Collings on 20 Sep 44 at about 2300 hrs. Sjt Collings stated that the entire pl would go on the operation and asked if there were any who absolutely refused. The accused turned in his name as so refusing. I don't remember what his exact words were but he did refuse to go.

Cpl McGregor G G

The accused declines to cross examine this witness.

The accused was then cautioned as follows:

"Do you wish to make any statement or to give or call any evidence? You are not obliged to do so but if you do it will be taken down and may be used in evidence".

The accused declined to make a statement or to give or call any evidence.

I certify that the foregoing summary of evidence consisting of 5 pages was taken down by me in the field in the presence of the accused and that all relevant Rules of Procedure were complied with.

25 Sep 44 J L Pond, Lt.

Add

ADDITIONAL SUMMARY OF EVIDENCE

in the case

B155177 Rfn Heastont, J N D, 1st Bn The Queen's Own Rifles of Canada, CAO, BWEF.

The Commanding Officer directs the evidence be taken on oath.

FIRST WITNESS FOR PROSECUTION

Capt H C F Elliot, 1st Bn The Q O R of C, CAO, BWEF, being duly sworn states. I was temporary comd of B Coy, 1st Bn The Q O R of C on the night of 20 Sep 44. My coy had taken up positons in partly demolished buildings approximately 100 yards from an enemy strong point . The coy had been under spasmodic fire from the position for approximately 24 hours. The platton to which the accused belonged had the day before been detailed along with supporting arms to attempt to enter the positions. The A.V.R.E.s were unable to make a gap in the wall surrounding the strong point, so the attack was called off. About 1600 hours 20 Sep 44 there were violent explosions in the enemy positions causing a portion of the wall to be blown away. I ordered the beforementioned platoon to enter the enemy position by night through the gap to obtain a foothold and fire the rest of the coy in. The operation was a complete success.

sgnd (H C F Elliot) Capt

The accused declines to cross-examine this witness.

The accused was cautioned as follows: "Do you wish to make any statement or give any evidence? You are not obliged to do so, but if you do it will be taken down and may be used in evidence" The accused declined to make a statement or give evidence.

I certify that the foregoing additional Summary of Evidence consisting of two pages was taken down by me in the field in the presence of the accused and that all relevant Rules of Procedure were complied with;

3 Oct 44 sgnd (J L POND) Lt

The accused was then cautioned as follows. "Do you wish to make any statement or to give any evidence? You are not obliged to do so but if you do it will be taken down and may be used in evidence"

The accused declined to make a statement or give evidence.

I certify that the foregoing additional summary of Evidence consisting of 2 pages was taken down by me in the field in the presence of the accused and that all relevant Rules of Procedure were complied with.

3 Oct 44.

N Lord Lt.

C 6 HC

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.* *	*Name.*	*Regiment (or as the case may be).*
B155177	Rfn	HEASTONT, Joseph Norman	1st Bn The Q O R of C

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, par-ticulars being given by the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Insubordination.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	X	X
For	X	X
For	X	X
For	X	N/A
For	X	X
For	X	X

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted.

3. The accused is not under sentence at the present time. N/A

4. The accused has been in confinement, awaiting trial on the present charges, for N/A seventeen days in military custody, N/A of which NO days were spent in hospital.

5. The present age of the accused according to his record of service is 25 years and 7 months

6. The date of his attestation specified in his record of service is 19 Feb 40

7. N/A

8. N/A

9. N/A

10. The accused is in possession of, or entitled to, or is in possession of (*state any military decoration or reward*). C V S M and Clasp

11. N/A

12. N/A N/A N/A

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B155177 Rank Rfn Name HEASTONT, J N D of 1 Q O R of C Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charge upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court, or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted
		N/A		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 6th day of October, 1944

(S R [illegible] Lt-Col
Comd 1st Bn The QOR of C

Date of Promotion

N/A

N/A

N/A

QO 5-4-3

1st Bn The Queen's Own Rifles of Canada

In the Field 6 Oct 44

Commanding Officer,
1st Bn The Q O R of C

1. This is to certify that I am aware that the Prosecuting Officer, LT J L POND, has had legal training.

J. D. H. Heastont

(J N D HEASTONT) Bde
1st Bn The Q O R of C.

No. B155177 Name Heastont J D N | Sqn., Battery, or Company: B | Corps: CIC | Date of enlistment: 19-2-42 | G.C. Badges | Service or Proficiency Pay | A.F.M. 6 (A.F.B. 122) (Amdt. 7-41 (1215-20) H.Q. 1772-20-1652)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. N C Buchnam, Capt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
BTFD				NO ENTRIES 11-3-42	30-4-43			NC Buchnam, Capt.	

Certified a true copy from the Regimental Books in my custody

(W J WEIR) CAPT
Adjt, 1st Bn The QOR of C
Offr i/c Regt'l Books

(P.T.O.)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B/155177 Rfn Joseph Norman Douglas HEASTONT, QOR of C

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Army Act Sec 5(7)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of his see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer penal servitude for the term of five years and to be discharged with ignominy from His Majesty's Service.

(Sgd) (A C Hall) Capt — Judge-Advocate, if any.
9 Oct 44 — Date awarded.
(Sgd) (J C H Lapointe) Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

I reserve the finding and sentence for confirmation.

Date 16 Oct 44 (Sgd) (T C Lewis) Lt-Col T/Commanding 8 Cdn Inf Bde

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.(AA(4), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minutes of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 63. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 56. The Confirming Offr must sign here personally, AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding of the court but mitigate the sentence so that it shall read, "To undergo penal servitude for three years," and I confirm the sentence as mitigated.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) H D G Crerar, General

Date 24 Nov 44

Commanding First Cdn Army

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B/155177 Rfn Joseph Norman Douglas HEASTONT	2 Dec 44	(S M LETT) Lt-Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

Triplicate

42-60

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA83) 40/P.A.S./1608 (2004)

Convened by Order of Lt-Col T C Lewis s/ Comd 8 Inf Bde dated 8 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B/155177 Rfn	Certified True Copy M Mangh Major D J A., Cdn Sec GHQ 2 Echn 21 Army Gp	Joseph Norman Douglas	HEASTONT	QOR of C

PROCEEDINGS REVIEWED Cdn Sec GHQ 2 Echn 21 Army Gp Date 7 Dec 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 9 Oct 44

RECORD FORM A--OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53; RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to as interpreter? Ans~~ ~~The Interpreter is sworn.(1)~~ Do you object to S/Sgt Phillips,RH as shorthand writer? Ans No The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J C H Lapointe	Regt de Chaud
Member	Capt	L J J Bourassa	Regt de Chaud
Member	Capt	H L Day	North Shore (NB) Regt
Judge-Advocate	Capt	A C Hall	ADJA 3 Cdn Inf Div
Prosecutor	Lieut	J L Pond	QOR of C
Defending Offr	Capt	J Y Gosselin	Regt de Chaud

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused B/155177 Rfn Heastont, J N D before arraignment make(s) (no) (a) plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of accused accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No, sir (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No, sir
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and them to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFB 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Through my defending officer (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything known or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. Where several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and 83 proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 66, 130, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 120. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 52. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, Number B155177 Rfn Joseph Norman Douglas HEASTONT, 10 Pl, B Coy, 1st Bn The Queen's Own Rifles of Canada, C A O, B W E F, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 5 (7)
Army Act

WHEN ON ACTIVE SERVICE,
MISBEHAVING BEFORE THE ENEMY IN
SUCH A MANNER AS TO SHOW COWARDICE,

in that he

In the Field, at approximately 2300 hours, 20th September 1944, from an unsoldierlike regard for his personal safety in the presence of the enemy, failed to obey an order to attack with his platoon.

In the Field
6th day of October, 1944

(S M LETT) Lt-col
Comd 1st Bn The Queen's Own
Rifles of Canada

To be tried by Field General Court Martial.

In the field
9 Oct 44

(Sgd) T C Lewis, Lt-Col
a/Comd 8 Cdn Inf Bde

9 Oct 44

This is to certify that I have this day examined B/155177 Rfn Joseph Hermann Douglas HEASTGET and have found him fit to stand trial by FGCM.

(Sgd) R D Gatway, Capt
Medical Officer
QOR of C

C O P Y

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 187, 193, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B/155177	Rfn	Joseph Norman Douglas	MEASTON†	QOR of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 8 Oct 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	J C H Lapointe (Must be named. RP 106.)	Regt de Chaud (Unit.)

MEMBERS.

Capt	L J J Bourassa	Regt de Chaud
Capt (Rank.)	H L Day (Named or detailed. RP 106.)	North Shore (NB) Regt (Unit.)

WAITING MEMBER.

Lieut (Rank.)	S S Score (Named or detailed, if any. RP 106.)	QOR of C (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.)	A C Hall (Must be named, if any. RP 106.)	HQ 3 Cdn Inf Div (Unit.)

On Active Service in the Fd

in Belgium (Country.) (Sgd) T C Lewis (Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

Date 8 Oct 44 T/Commanding 8 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA95 (In lieu of AFA3) 60/F & B/1097 14651

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Con) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 114 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP 86(C)*, 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn* 10)), or evidence by accused, *as* to facts or his character or both. (*See RP 41 fn* 3, *46 fn* 1, *80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(E)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 81.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 865(a).*)

(vii) Summing up by *JA*, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 562. As to certified copies of regimental books see AA 123 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

The president having read to the accused para 82 on record form "B", the Judge Advocate addresses the accused:

I will endeavor to explain to you the effect of a plea of "guilty".

This court and the superior authority who convened this court are most anxious that your trial be fair and just beyond all possible doubt. If, therefore, you have been forced or induced to plead "guilty" by any threat of what would happen if you did not or any promise of a lighter sentence, then it is vital that you now understand that this court has no instrs as to what sentence to give you. If you have been led to think that your sentence would be less if you pleaded "guilty", I must advise you that such is not the case. In fact if you pleaded "not guilty" and witnesses were called, it is possible that facts might be adduced showing extenuating circumstances.

Now if you plead "guilty", no witnesses will be called by the prosecution but the summary of evidence which was taken in your presence will be read to the court so that it will know the circumstances surrounding the offence to which you have pleaded "guilty" in order that it, the court, may be helped in deciding what sentence they will award. Anything that you wish to say or any witnesses you wish to call will be heard and your defending officer may address the court on your behalf, but the whole proceedings will merely be a question of what sentence you are to be awarded.

You have pleaded "guilty" to "misbehaving before the enemy in such a manner as to show cowardice". This is a very serious charge and the court will have failed in its duty if it allows your plea of "guilty" to stand without being convinced beyond all possible doubt that you understand the charge and the effect of your plea of "guilty". This charge is constituted of four distinct elements. The prosecution alleges that all four elements were present when the alleged offence was committed. If you plead "guilty" you admit that all these elements were present, and if any one were not present then you should plead "not guilty". Those elements are:

(a) Misbehaviour: That means that you did something which you should not have done, something which, even if it had not been accompanied by the presence of the enemy or by cowardice, would still be misbehaviour.

(b) Before the enemy: The prosecution further alleges that that misbehaviour happened in a place in which the enemy was substantially making his presence felt. To be "before the enemy" either you must be a member of a body in direct contact with the enemy, e.g., making or repelling an assault or a raid; or you must be in an area in which the enemy is substantially making his presence felt, e.g., by close shelling or action by aircraft.

(c) The prosecution alleges cowardice. I doubt if there is any need for me to endeavor to define cowardice. The particulars of the charge allege that "from an unsoldierlike regard for his personal safety in the presence of the enemy (you) failed to obey an order to attack with his pl". If you plead "guilty" you admit to this.

(d) The fourth element is that the cowardice was shown. This means that the prosecution alleges that your actions were seen either by the enemy or by our own troops and that those actions were of such a nature that, if seen by the enemy, it was encouraging to the enemy; or, if seen by our own troops, were discouraging and demoralizing to our own troops. The prosecution alleges that not only were your services lost through the cowardice but that it was of such a nature as to be demoralizing to our own troops who were present.

Now if you plead "guilty" you admit that all of these elements were present. If you do not understand anything that I have said or if there be any point of law that you do not understand, the court will close and you may consult me as Judge Advocate. Do you wish to consult me and do you wish to make any statement now?

Accused: No, sir.

SUMMARY OF EVIDENCE

in the case of

B155177 Rfn Heastont, J N D, 1st Bn The QOR of C, CAO, BWEF.

The Commanding Officer directs the evidence be taken on oath

1st Witness for the Prosecution

A71032 Sjt Collings G A, 1st Bn The QOR of C, CAO, BWEF having been duly sworn states:-

I am pl sjt of 10 Pl, B Coy. I attended a briefing by Capt Elliott, my coy comd, about 2230 hrs 20 Sep 44 in connection with a platoon attack that night on an enemy position. All the platoon NCOs were there and afterwards the section leaders returned to their sections to brief them. The section leaders then brought their sections to pl HQ for pl briefing by me, and to leave their equipment. While I was briefing Rfn Dobson said he would not go into the attack and other men appeared very nervous. I reported this to Captain Elliott and he told me to ask for volunteers. There were insufficient so Capt Elliott told me to order the whole platoon to proceed on the operation. I did so. As I could see that Rfn Dobson and several others were going to refuse and as I wanted to get started, I asked if there were any who absolutely refused to go. B155177 Rfn Heastont J N D whom I recognize as the accused said he refused to go. I don't remember his exact words. A number of others also refused so I took their names and after consulting Capt Elliott placed them under close arrest. I then proceeded on the operation with the remaining part of the platoon.

G F Collings, Sjt.

The accused declines to cross-examine this witness.

2nd Witness for the prosecution

B155189 Cpl Koslowski, 1st Bn The QOR of C, CAO, BWEF having been duly sworn states:-

I am section leader of 2 section, 10 pl, B Coy. B155177 Rfn Heastont J N D whom I recognize as the accused is a member of my section. I was briefing my section on the 20 Sep 44 at about 2245 - 2300 hrs in connection with a pl

attack on an enemy position that night. The accused told me he was too nervous and shaky to go and would do more harm than good to the section. When Sjt Collings at the pl briefing told us that the entire pl would proceed on the operation and asked if there were any who absolutely refused to go, the accused turned in his name as so refusing.

Cpl Kozlowski J L

The accused declines to cross-examine this witness.

3rd Witness for the prosecution

B148477 Cpl McGregor G G, 1st Bn The QOR of C, CAO, BWEF having been duly sworn states:-

I am section leader of 3 section, 10 pl, B Coy. B155177 Rfn Heastont J H D whom I recognize as the accused is in 2 section. I was present at the pl briefing by Sjt Collings on 20 Sep 44 at about 2300 hrs. Sjt Collings stated that the entire pl would go on the operation and asked if there were any who absolutely refused. The accused turned in his name as so refusing. I don't remember what his exact words were but he did refuse to go.

Cpl McGregor G G

The accused declines to cross examine this witness.

The accused was then cautioned as follows:

"Do you wish to make any statement or to give or call any evidence? You are not obliged to do so but if you do it will be taken down and may be used in evidence".

The accused declined to make a statement or to give or call any evidence.

I certify that the foregoing summary of evidence consisting of 5 pages was taken down by me in the field in the presence of the accused and that all relevant Rules of Procedure were complied with.

25 Sep 44 J L Pond, Lt.

ADDITIONAL SUMMARY OF EVIDENCE

in the case

B155177 Rfn Heastont, J H D, 1st Bn The Queen's Own Rifles of Canada, CAO, BWEF.

The Commanding Officer directs the evidence be taken on oath.

FIRST WITNESS FOR PROSECUTION

Capt H C F Elliot, 1st Bn The Q O R of C, CAO, BWEF, being duly sworn states. I was temporary comd of B Coy, 1st Bn The Q O R of C on the night of 20 Sep 44. My coy had taken up positons in partly demolished buildings approximately 100 yards from an enemy strong point . The coy had been under spasmodic fire from the position for approximately 24 hours. The platton to which the accused belonged had the day before been detailed along with supporting arms to attempt to enter the positions. The A.V.R.E.s were unable to make a gap in the wall surrounding the strong point, so the attack was called off. About 1600 hours 20 Sep 44 there were violent explosions in the enemy positions causing a portion of the wall to be blown away. I ordered the beforementioned platoon to enter the enemy position by night through the gap to obtain a foothold and fire the rest of the coy in. The operation was a complete success.

sgnd (H C F Elliot) Capt

The accused declines to cross-examine this witness.

The accused was cautioned as follows: "Do you wish to make any statement or give any evidence? You are not obliged to do so, but if you do it will be taken down and may be used in evidence." The accused declined to make a statement or give evidence.

I certify that the foregoing additional Summary of Evidence consisting of two pages was taken down by me in the field in the presence of the accused and that all relevant Rules of Procedure were complied with:

sgnd (J L POND) Lt

3 Oct 44

MFM 6
(AFB 122)
W/AS/156 (3429)

No B155177 Name Heastont J D N | Sqn, Battery, or Company B | Corps CIC | Date of enlistment 19-2-42 | GC Badges | Service or Proficiency Pay |

Character N C Buchnam, Capt

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
BTFD				NO ENTRIES 11-3-42	30-4-43		N C Buchnam, Capt.		

Certified a true copy from the Regimental Books in my custody

(W J WEIR) CAPT
Adjt. 1st Bn The QOR of C
Offr i/c Regt'l BoOks

(PTO)

M.F.B. 355
2251—5-41 (572-3)
H.Q. 1772-39-630
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B155177	Rfn	HEASTONT, Joseph Norman	1st Bn The QOR OF C

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
~~For~~	~~times~~	~~times~~
~~For~~	~~times~~	~~times~~
~~For~~	~~times~~	~~times~~
~~For~~	~~times~~	~~times~~

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.A. 73 A.F.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for~~ N/A ~~beginning on the~~ N/A ~~day of~~ N/A

4. The accused has been in confinement awaiting trial on the present charges, for N/A ~~days in civil custody, and~~ seventeen days in military custody, ~~making a total of~~ N/A ~~days in custody~~, of which No days were spent in hospital.

5. The present age of the accused according to his record of service is 25 years and 7 months ~~attestation paper is~~

6. The date of his ~~enlistment~~ attestation specified in his record of service is 19 Feb 42 ~~attestation paper~~

7. ~~The service which the accused is allowed to reckon towards discharge is~~ N/A

8. ~~The accused is entitled to reckon~~ N/A ~~service for the purpose of determining his pension, etc.~~

9. The accused is in possession of ~~or entitled to, or air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward.~~ ~~military~~ ~~military~~ ~~military~~ C V S M and Clasp

10. ~~If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~ ~~Air Force~~ N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated, and in his regiment (or corps), the rank of dated.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 6th day of October 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked (S M LETT) Lt-Col signed by the president, and annexed to the proceedings. Comd 1st En The QOR of C

Plea in Mitigation of Sentence

I am going to ask all of you to consider all the points that have been brought to you by the several witnesses and before you come to a decision I will ask you to have mercy on B/155177 Rfn J M D Heastont, a soldier of "B" Coy QOR of C. I had an interview with him yesterday and he admits that as soon as he gets under fire or shelling he does not trust his nerves at all. He should be brought in front of a M C for a board. This is no chance to take because a man without nerves is a danger to his friends and you know how important in this war it is for a soldier to have good nerves. I ask the mercy of the court to consider all the facts brought to you before you come to a decision.

A.52
B-7008 Tom Heaven A6.

O.H.M.S.

Correspondence to be PINNED here.

11-52

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

"G"

A. Order convening the Court.

On Active Service, this THIRTY-FIRST day of JULY, 1942,.

Whereas it appears to me, the undersigned, an officer in Command of 1st Canadian Army Tank Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reasons to be stated hereafter]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint:—

*(1. Three officers to form the Court;)

*(2. A Field Officer as President.)

for the following reasons, namely:—]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

PROCEEDINGS REVIEWED

JUDGE ADVOCATE

CAPTAIN W.B.GATE A.D.J.A 1 CDN CORPS

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	H.B. SCHELL	11 CDN ARMY TK BDE

Members.

Rank.	Name.	Regiment.
CAPTAIN	J.G. ANDERSON	1 CDN ARMD TK BDE COY R.C.A.S.C.
CAPTAIN	D.O. PURDY	1ST CDN ARMD TK BDE

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed

Commanding (H.Q. Company, 1st Canadian Army Tank Brigade) Canadian Forces, 1 Cdn Army Tank Bde.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B74322 Tpr Heath, A. J. 14 Cdn Army Tank Bn.	1ST CHARGE, A.A. Sec 15 (1) A.A. The accused, B74322 Tpr Heath, A.J., 14 Cdn Army Tank Battalion (The Calgary Regiment), a soldier of the Canadian Army Overseas, is charged with:- ABSENTING HIMSELF WITHOUT LEAVE - in that he at In the Field, absented himself without leave from 2400 hours 26 Jul 42 until 1200 hours 27 July 42.	GUILTY	GUILTY TO UNDERGO DETENTION FOR SIX MONTHS. Dated. 3 Aug 42. H.K. Schell Major W. B. Bate Capt Judge Advocate.	Finding and sentence confirmed. To be promulgated on a parade of his Regt as soon as possible. [signature] 14 AUG 1942

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer [to be recorded on separate sheet if necessary]:—

(Signed) [signature] (Signed) H.K. Schell Major
(A.A. Wyman) Brigadier
Commanding 1 Cdn Army Tank Bde
Confirming Officer (*e*) President.
W. B. Bate Capt
Judge Advocate

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the 3rd day of August 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B.** Certificate of President as to proceedings.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~ Judge Advocate H.K.S. W.B.B.
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 3rd day of August 1942.

W. B. Bate Capt
Judge Advocate.

H.K. Schell Major.
President of the Court Martial.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. **C.** Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19 .

President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. **D.** Confirmation.

(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 14 AUG 1942 day of 19 .

[signature]
A.A. Wyman Brigadier
1 Cdn Army Tank Bde
Confirming Officer.

Promulgated and extracts taken in the case of B74322 Tpr Heath A.J.

(*a*) (Dated) 7 Aug 42 (Signed) [signature] Asst Adjt Capt
Adjt. 14th ARMY TANK BATTALION (The Calgary Regiment)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

THE ACCUSED ELECTS TRIAL BY
FIELD GENERAL COURT MARTIAL

"B2"
H.K. Sebell
Major
D.A. Cotton CMG
Judge Advocate

CHARGE SHEET

The accused, B.74322, Tpr. Heath, A.J., 14 Can Army Tank Battalion (The Calgary Regiment), a soldier of the Canadian Army Overseas, is charged with:-

Sec 15(1) A. A.

ABSENTING HIMSELF WITHOUT LEAVE -

in that he

FIRST CHARGE

at In the Field, absented himself without leave from 2400 hours 26 Jul 42 until 1200 hours 27 Jul 42

J.B. Legg Major

Act. ~~(I.O. Actg Lt.-Col.~~
Officer Commanding.,
14 Can Army Tank Bn,
(The Calgary Regiment).

To be tried by a Field General Court Martial.

[illegible] Bryan, Brigadier,
Bde Comd, 1 Can Army Tank Brigade.

Proceedings of a Field General Court Martial held at H.Q. 14 Coln. Army Tk. Bde on 3rd day of August 1942 by order of Brigadier R. A. Stigman E.D. Commanding 1 Coln. Army Tank Bde. dated 31st July 1942.

Court :- President - Major H.R. Schell - 11 Coln Army Tk. Bn.
Members - Capt. J.R. Anderson 1 Coln. Army Tk. Bde Coy R.C.A.S.C.

Capt. O.R. Purdy 14 Coln. Army Tk. Bn.

Judge Advocate. Capt. W.L. Coats A.D.J.A. 1 Coln. Corps.

Officer under Instruction
Capt. B.T. Valentine 14 Coln. Army Tk. Bn.

Trial of S.74322 Spr. Heath A.S. 14 Coln. Army Tank Bn.

The Court satisfy themselves as provided by R.P. 22 & 23.

Prosecutor - Capt. A.R. Staulon 14 Coln Army Tk. Bn.

Defending Officer - Lieut. A.L. Breithaupt 14 Coln Army Tk. Bn.

Trial commenced at 1045 hrs.

The Convening Order is read, marked 'C', signed by the President and attached to the proceedings.

The accused is given the right to object to the President and members of the Court, but does not so do.

The President, members, Judge Advocate and Officer under instruction are duly sworn.

The Charge Sheet is signed by the President, marked C2 and annexed to the proceedings

The accused is arraigned and pleads guilty to the first charge. Provisions of R.P. 35(8) are complied with.

The accused is found guilty of the first charge.

The Summary of Evidence is read marked 'B' signed by the President and annexed to the proceedings.

The accused did not give evidence or call witnesses as to character.

In mitigation of punishment the accused stated that he had gone to a pub and had too much to drink: he missed the bus, fell asleep and didn't wake up until the following morning not getting in until 12 o'clock.

Capt. A. R. Stanlow, duly sworn produces A.F.E. 296 (marked J) and a certified true copy of the accused's MFM 6 (marked K) and states they concern the accused and are true extracts from the requisite books.
No cross examination

Lieut. A. L. Brickhaupt, defending officer, addresses the Court. Emphasizes that the accused did try to get back to his unit and asks for leniency on that ground.

Court closed for consideration of sentence.

H. Ekell
Major

W. B. Scott Capt.
Judge Advocate

REGTL. NO. B.74322 RANK. J.PR ...NAME. H.E.S.t.H. H.F.....

This is to certify that the a/m soldier has been examined by me and I found him physically fit to undergo.....days detention. court martial

L. G. Alexander
(L.G. Alexander) Capt., M.O.,
14 Cdn Army Tank Bn (Calg Regt)

Date.....August 2nd/42.....H. Ekell Major

H

Summary of Evidence in the case of B.74322, Tpr. Heath, A. J., 14 Cdn Army Tank Battalion, (The Calgary Regiment).

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

::::::::::::::::::

1st WITNESS FOR THE PROSECUTION

M.26809 Sgt. Hobbins, F.W., "B" Squadron, 14 Cdn Army Tank Battalion (The Calgary Regiment), having been duly sworn, states:-

Sir: I am M.26809, Sgt. Hobbins, F.W., "B" Squadron, 14 Cdn Army Tank Battalion (The Calgary Regiment). I was Orderly Sergeant of "B" Squadron on 26 Jul 42 and 27 Jul 42. B.74322, Tpr Heath, A. J. was granted a pass for the purpose of going to Brighton until 2400 hours 26 Jul 42. The Guard Commander, M.17548, L/Cpl Poirier, A.A. reported to me at Reveille that the accused had failed to return. The accused, whom I recognized, returned at 1200 hours on 27 Jul 42. He was sober and properly dressed and I placed him under open arrest.

F.W. Hobbins
M.26809 Sgt. Hobbins, F.W.

The accused declined to cross-examine the witness.

2nd WITNESS FOR THE PROSECUTION

M.17548 L/Cpl Poirier, A.A., "B" Squadron, 14 Cdn Army Tank Battalion (The Calgary Regiment), having been duly sworn, states:-

Sir: I am M.17548 L/Cpl Poirier, A.A., "B" Squadron, 14 Cdn Army Tank Battalion (The Calgary Regiment). I was Guard Commander for "B" Squadron on 26 Jul 42 and 27 Jul 42. The accused, whom I recognize, was on pass untill 2400 hours. He failed to return and I reported this to the Orderly Sergeant, M.26809, Sgt. Hobbins, F. W. at Reveille on the morning of 27 Jul 42.

A.A. Poirier
M.17548 L/Cpl Poirier, A.A.

The accused declined to cross-examine the witness.

In accordance with Rules of Procedure 4 (g), the following statement was addressed to the accused:-

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A.C. Shell Major

The accused replied that he elected to reserve his defense on the other charges.

A.J. Heath
.....
B.74322 Tpr. Heath, A.J.

Certified that Rules of Procedure 4 (C) (D) (E) (F) (G) have been complied with.

Taken down by me in the presence and hearing of the accused this twenty-ninth day of July, 1942. In the Field.

A.G. Stanton
.....
(A.G. Stanton) Capt.

Last Conduct Sheet Destroyed 27-11-40

48 HIGHLANDERS OF CANADA

No. 74322 Name Heath A.J. | Sqn., Battery, or Company NIL | Date of enlistment 27-5-40 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 21-11-40 | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. R.L. Dinsmore Major (Major)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	17-8-40	Pte.	Nil	AA. Sec. 15(1) A.W.L. from: 2130 Hrs. 17-8-40 until 0930 hrs. 21-8-40. Total 3 Days 12 Hours.	Sjt. Webster J. Cpl. Finlayson S.D. (Doc)	7 Days C.B.	22-8-40	R.L. Dinsmore Major	Forfiets 4 Days Pay FBI CASF
Camp Borden	17-9-40	Pte.	Nil	AA. Sec. 15(1) A.W.L. from: 2130 Hrs 14-9-40 until 2359 15-9-40 Total absence 1 Day 2hours 29 Min	Cpl. Bremner Sjt. Harrod (Doc)	To forfiet 7 Days Pay	16-9-40	Lt-Col I.M. R. Sinclair No. 2CI(R)TC	Forfiets C.C. 2 Days May FBI CAS
Camp Borden	3-10-40	Pte	Nil	AA.Sec.15(2)Failing to appear on sick parade. (2) Failing to appear on Company parade.	L/C Waterfield L/C Payne	14 Days C.B.	3-10-40	R.L.Dinsmore Major	
Camp Borden	23-1-41	Pte	Nil	AA sec15(1) A.W.L. from 2200 hrs 25-1-41 until 0200 hrs. 27-1-41 3 Days 4 Hrs.	Sjt. Lawson J. Sjt Liggett P.D. (Doc)	Forfiets 4 Days Pay AA 46	27-1-41	Lt-Col I.M. R. Sinclair O.C.	Forfiets 4 Days Pay FBI CAA No 2 CI(R)TC

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	7-2-41	Pte	Nil	AA Sec15(2) Failing to appear at the place of parade ie failing to appear at fire piquet	Cpl Kane J.W.	7 Days C.B.	7 Feb 41	Lt. J.M. Hallett	
Camp Borden	7-2-41	Pte	Nil	AASec 15(2) Failing to appear at the place of parade ie failed to appear on defaulters parade	Cpl Charlton	Forfiets 7 Days pay AA 46	10-2-41	Lt-Col IMP Sinclair #2 CI(R)TC	
Camp Borden	7-2-41	Pte	Nil	AA. Sec 15(2) Failing to appear at the place of parade i.e. failing to appear at Coy. Parade	Cpl Kane J.W.	10 Days C.B.	28-2-41	Major R.L. Dinsmore	
Camp Borden	3-3-41	Pte	Nil	(1) AA. Sec 15(1)A.W.L. from: 1800 hrs 3-3-41 until 0700 hrs 4-3-41 Total 13 Hours	Sjt. Webster Sjt. Fletcher Major R.L. Dinsmore	14 Days Detention	5-3-41	Lt-Col IMP Sinclair	Forfiets 1 C.G. Days Pay ERI C(A)A
				(2)AA. Sec15(2)Failing to appear at the place of parade i.e. absent CSM off defaulters parade at 1800 hrs and 2200 hrs. 3-3-41	Christiansen				
				(3) Conduct to the prejudice of good order and military discipline					

48 HIGHLANDERS of CANADA

Corps

MFM 6 (A F B 131)

No. B 74322 Name Heath A.J. Sqn., Battery, or Company

Period not reckoning towards freedom from extra fine

Date of enlistment 27-5-40 G.C. Badges

Service or Proficiency Pay

Sheet No. 3

Date of last entry in Company Conduct Sheet 21-11-40 No. and date of last drunk Nil

Signature O.C. Company, etc. C.E. Page (Major)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				i.c. insolence at Coy. Orderly Room Parade					
Camp Borden	22-3-	Pte	Nil	(1) AA.Sec.15(1) A.W.L. from 2130 hrs. 22-3-41 until 0830 hrs. 23-3-41 (11 Hours)	Cpl Ingram Cpl.Charlton CSM Christian- A.A. 46 Gen T.C.	Forfeits 10 Days Pay	25-3-41	Lt-Col. IMR Forfiets Sinclair OC1 Days Pay No.2 CI(R)TC FRI C(A)	
				(2) AA.Sec.15(2) Failing to appear at the place of parade i.c. absent off Coy. Orderly Room Parade					
Lavington	14-8-41	Tpr.	"	40 A.A. Failing to comply with camp standing orders: i.c. failed to place latrine buckets when ordered to do so.	Sgt Olive W.W. Cpl. Logan W.	3 Days C.B.	15-8-41	C.E. Page Major	
				(2) Absenting himself without leave i.c. Failed to report at tatoo roll call.					

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order suspending punishment	By whom awarded	Remarks
W.Lavington Camp	18-8-41	Tpr.	-	(1) Breaking out of camp i.e.Broke out of camp when his duties required him to be in camp Sec.10(4)AA (2) A.W.L. from tatoo roll call 18-8-41 until 0600 hrs 19-8-41 Absent 8hrs 30 min. Sec 15(1) AA (3) A.W.L. i.e. absented himself without leave from his duty as sanitary fatigue Sec.15(1)AA 19-8-41	Sgt. Olive W.W. Cpl. Logan W. L/Cpl Wyrzykowski.	14 Days Field Punishment	19-8-41	Lt-Col G.R.Bradbrooke	Forfiets 1 Days Pay F R&I 149(1)a Forfiets 14 days Pay FR&I 149(1)a. Total forfieture 15 Days Pay
Field	7-11-41	Tpr.	Nil	Absent from parade AA 15(a)	Sgt. Patrick	2 Days C.B.	8-11-41	Major C.E. Page	
Field	9-11-41	"	Nil	1. Breaking out of barracks 10(4)AA 2. When a defaulter failed to appear on parade. Sec. 15(2) AA 3. Neglected to read Sqn. Orders Sec. 40 A.A. 4. Absent without leave from 1745 hrs 9-11-41 to 1945 hrs 9-11-41 (2hrs) Sec. 15(1) A.A.	Sgt. Patrick H.R.	28 days F.P.	10-11-41	Major J.A. Macdonald	Forfiets 28 days pay under F.R.AI 149

14th ARMY TANK BN.

No. 74322 Name Heath A.J. Sqn., Battery, or Company Corp(CAL. REG'T) Date of enlistment 27-5-40 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 30074—8.39 (1763) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet 9-11-41 No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 4 Signature O.C. Company, etc. C. E. Page (Major)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30-12-41	Tpr	-	A.W.L. from 2359 30-12-41 until 0742 hrs 31-12-41 (absent 7hrs 43 mins.)	Sgt. MacMillan	Fined 7 days pay	31-12-41	Lt-Col. J. G. Andrews	Forfeits 1 days pay FR&I 149(1)a
Field	2-7-42	Tpr.	Nil	A.W.L. 1700 hrs 2 Jul 42 to 0730 3 Jul 42(absent 14 hrs 30 min) A.A. Sec. 15(1)	Sgt. Hobbins	28 Days forfeiture of pay	4 Jul 42	Capt. Humber	Forfeits 1 days pay FR&I 149
Field	26-7-42	Tpr.	Nil	A.W.L. 2400 hrs 26 Jul 42 to 1200 27 Jul 42(absent 12 hrs) AA. Sec 15(1) (Doc)	Sgt Hobbins	6 months Detention	3 Aug. 42	F.G.C.M.	Forfeits 1 days pay FR&I 149(1)a

certified true copy

A/OC 14th Can Army

Capt Hqs
C.O. (A.O.D.)

ARMY FORM B 200

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be)*
B.74322	Tpr	Heath, A.J.	14 Can Army Tank Bn, (The Calgary Regiment)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, K.R., 1940

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AWL AA 15(1)	19 times	19 times.
For Conduct to the prejudice of Good Order and Military Discipline, AA 40	3 times	3 times.
For	times	times.
For Breaking out of Camp, AA 10(4)	1 time	1 times.
For	times	times.

Number of instances of gallantry or distinguished conduct, N/A

or

There are no entries in the conduct sheets of the accused. N/A

2. The accused has not been previously convicted, *or* N/A

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for N/A beginning on the N/A day of N/A

4. The accused has been in confinement, awaiting trial on the present charges, for three N/A days in civil custody, and three days in military custody, making a total of three days, of which no days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 21 years

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 27 May 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). N/A

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated N/A and in his regiment (*or* corps *or* department) the rank of N/A dated N/A

(71654) W1.28244/1052 75,000 12/40 A.G.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B1430 Rank Tpr Name Heath A J of 144 Tank Bn Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be entered.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charge upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the disposing authority.	Punishment remitted
		Nil		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 3rd day of Aug 1942

J Begg Major

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of Promotion.
In the rank of ... years.	
In the rank of ... years.	
In the rank of ... years.	

Nil

(Instructions—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraphs rendered amended accordingly.)

A. Kahlil
Major

1 -

I hereby state that I desire to have an officer represent me at the trial.

W. B. Coats
Capt.
Judge Advocate

In the Field.
29 Jul 42.

A. J. Heath
B.74322 Tpr. Heath, A. J.

55-86.
Pte. Healy

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D125098 Pte HEATH, Jack - 1 Cdn Reception Dep

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. 15 (1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 1 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To forfeit all ordinary pay for a period of 40 days (40) days.

(Sgd) ..... 30 Aug/45 (Sgd) .....
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. Delete if not applicable. See AA 57A. - Delete if not used.)

Date 1 Sep 45 (Sgd) C McConnelly Brig
Commanding 15 Group CRU
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D125098 Pte Heath Jack	4 Sep 45	E Bartington Lt Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 14 SEP 1945 A.G. (BRANCH) G.M.H.Q.

RECORDED AT CMHQ IN AB 160 3-8-46

FIELD GENERAL COURT-MARTIAL

CP/A96 (In lieu of AF A31) 40/F & B/Less (6144) 4/38B

Convened at BRANCH by BRIG A.B. CONNELLY, CBE Comd "B" Gp, CRU dated 28 Aug 45.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D125098	Pte		Jack	HEATH	1 Cdn Reception Dep

PROCEEDINGS REVIEWED 14 Sept 45 Capt. REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date) 30 AUG 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for books and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 51, RP 36, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (/) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1040 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

~~A5. President to accused: Do you object to ..... as interpreter? Ans .....~~

The ~~Interpreter is sworn.~~(1) Do you object to SGT HESINGLAIM as shorthand writer? Ans NO
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO, SIR.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.J. Redman, VD	HQ, CRU
Member	Captain	A.C. HOLLAND	1 CGRU
Member	Lieutenant	N.F. WILTON	1 CGRU
~~Judge-Advocate~~			
Prosecutor	LT	O.S. KLAUS	1CDN RECEP DEPOT
Defending Offr	LT	W.E. HAGAN	1CDN RECEP DEPOT

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans N.A.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea .....(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO STM (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans.....
Ans..... Do you intend to call witnesses on your behalf?
Ans..... Are they witnesses as to character only? Ans.....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF 695. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 137(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans NO - STM
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 358. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans NO
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 56(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused D-125096 Pte. HEATH, Jack CIC on strength of No. 1 Canadian Reception Depot, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE
AA Sec 15(1)

in that he

at Tournai Barracks absented himself without leave from 0815 hrs. 1 Aug 45 until he surrendered himself to the Civilian Police at London at 0215 hrs. 23 Aug 45. (Total absence 21 days 18 hrs.)

(Ronald F. Shaw) Lt.Col
Officer Commanding,
No. 1 Can Reception Depot.

24 Aug 45.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL.

(A.B. Connelly) Brig
Comd "B" Gp
Cdn Fft Units

IN THE FIELD
28 AUG 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D125098	Pte		Jack	HEATH	1 Cdn Reception Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Aug 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D.L. Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	being detailed by CO	1 CGRU
Lieutenant	being detailed by CO	1 CGRU

~~WAITING MEMBER.~~

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

(A.E. Connelly) (Signed personally. RP 105 fn 2.)

Brig (Rank.)

Dat: 26 Aug 45

Commanding "B" Gp, Cdn Fft Units

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (2d Dem of AFA 3) 60/P & S/1697 (S1&3)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades."

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on *new matter*, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than on mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 9-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 60 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 48(E), KR Con 562(a).*)

(vii) Summing up by JA, if any. (*RP 62.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any *deviations* made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Con 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy or item of original see KR Con 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 113(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Station M. I. C R D.

Date 30th August 45

(In lieu of)
(M.F.B. 246)

MEDICAL OFFICER'S REPORT

I certify that No. D125098 Pte Heath J.
of M/Cdr Reception Dept is in a Fit state of health,
awaiting trail by Court Martial

A D M Bulmer Capt

Station

Plea in Mitigation

This soldier on application to the Padre for marriage was told that the unit (1 CKD) was not holding anyone back from draft for marriage.

He has been an E.P.O.W. for 4 mths and has been in the army 4 years or very nearly

After he was told by the Padre that he probably would not be able to stay in the U.K. he went to E.P.O.W. Wing 1 CKD to see if he could get a job in the Provost of this unit. The Sergeant he saw said he would see on words to that effect.

Nothing happened however and the next day he was

led to believe that he would be going out on draft the next day.

This soldier's record is good. Any crimes he has had have been minor as is shown in the evidence for the prosecution. For this reason, his good service, and his desire to get married a very human feeling and desire when one meets the person he loves I request that the court show leniency in awarding the punishment.

W. P. Hagan 1st

SUMMARY OF EVIDENCE

In the case of D-125098 Pte. HEATH, Jack, CIC on strength of No. 1 Cdn Reception Depot, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS
For the prosecution.

Capt. L.E. Donkin, Adjt., No. 1 Cdn Reception Depot, having been duly sworn states:

"I am Capt. L.E. Donkin, Adjt. 1 Cdn Reception Depot. I produce certified extract from Part II Order No. 414 showing D-125098 Pte. Heath, J. absent from 0815 hrs. 1 Aug 45., marked Exhibit "A".

I also produce AMC 1319 showing D-125098 Pte. Heath J. surrendered himself at 0815 hrs 23 Aug 45. marked exhibit "B"."

The accused declines to cross examine the witness.

The accused was cautioned as follows: Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused reserves his defence.

Certified that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

24 Aug 45.

C.H.E. Edwards Lt
(C.H.E. Edwards) Lieut.
Officer detailed to take Summary of Evidence.

EXA

NO1 CANADIAN RECEPTION DEPOT
PART II ORDERS
ISSUED BY
LT/COL R.H.F. BACK E.D. (CAC)

Last Order
No. 213
d/20 Aug 45

This Order
No. 214
d/21 Aug 45

OTHER RANKS SECTION "B"

5. (d) A.W.L. from 0815 hrs. 1 Aug 45 STILL ABSENT 0815 hrs. 9 Aug 45 (8th day)

D125098 PTE HEATH J.

Sgd. A.W. Rahn Capt.
(Ronald H. Back) Lt.Col.
Officer Commanding,
No. 1 Cdn Reception Depot.

CERTIFIED TRUE COPY

A.W. Rahn Capt & Adjt
1 Cdn Reception Depot.

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depots are shown in the Monthly Army List.

† Note.—Special instructions apply in war for the disposal of stragglers and deserters from the Army, who surrender to the civil police; e.g., such personnel will be taken over from the civil authorities by the O.C. the nearest military unit or the O.C. Troops at the nearest military station. (A.C.I. 499/1940).

(22743) W1.38500/181 60,000 10/42 A. & E. W. Ltd. Gp.698
(23950) W1.48008/1269 40,000 2/43 " " Forms/O.1617/13

Ex B

I, CERTIFY that the man whose personal description is given below surrendered himself to* Thomas Francis P.C. 181 W at Trinity Road, S.W.17 at (hour) 2.15 A.M. on the 23rd day of August 1945 as being No. 1250718 (Rank and Name) Pte HEATH John a deserter (or absentee without leave) from The Irish Regiment of Canada and it appears to me from his confession that he is a deserter or absentee without leave.

*After the word "to" to be inserted the name and rank of the police officer concerned.

Age 22 Height 5 Feet 10 Inches

Complexion Fresh Hair Fair

Eyes Blue

Marks

In uniform or plain clothes Uniforms

Probable Date and Place of Attestation	16/9/41
Probable Date of Desertion or beginning of absence, and from what place	15/8/45 Farnborough

Signature of Officer of Police in charge of WANDSWORTH COMMON Station.

23/8/45 Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies *only* in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds incurred by the ..... Police in the case of No. .....

who surrendered to the Police at ..... on .....

Payable to .....

CERTIFIED that this statement of expenses is correct.

..... Superintendent or Officer in charge of Police Station at .....

..... Date of Signature.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-185098	Pte.	Heath, Jack	1 Cdn Reception Depot

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be exhibited to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 15(1) 3 times.

For A.A. Sec 40 3 times.

For A.A. Sec 24 (2) 1 times.

For ____ times.

Date of first entry in Field Conduct Sheet 16 Nov 42

Date of last entry in Field Conduct Sheet 22 Jul 46

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf. Nil

*3. The accused at the present time is under sentence of ____ days' ____ beginning on the ____ day of ____

4. The accused has been awaiting trial on the present charges for ____ days in civil custody and for Nil days in military custody, i.e., 7 days in open arrest, 7 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 22

6. The date of his attestation [crossed out: coming up for duty as an officer] is 16 Sept 41

7. The service which the accused is allowed to reckon is 3 yrs 11 mos

8. The accused is in possession of CVSM & Clasp

*9. If the accused is a warrant officer or N.C.O. The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of ____

In the war substantive rank of ____

In the acting rank of ____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

EXB

(22141) W1-42122/4200 40,000 11/44 A.& E.W.Ltd. Gp.A33 Forms F.2 & W.A.3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court	Punishment remitted or sentence suspended.
		Nil		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 30 day of aug 45

L.E. Larkin Capt Adjt
1 Can Reception Depot

NX-12509 Name Heath J | Sqn, Battery, or Company | Corps RCEME | Date of enlistment 16 Sep 41 | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/136 (7010)

Date of last entry in Company Conduct Sheet: NA | No. and date of last drunk: NA | Period not reckoning towards freedom from extra fine | Sheet No. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Barriefild	16 Nov 42	Pte		AA Sec 15(1) WOAS AWL in t at he was absent without leave from 0600 hrs 16 Nov42 to 1415 hrs 16 Nov 42	Cpl A Martin	7 days CB	17 Nov 42	Major C Jack	Auto Forf 1 days pay FR&I 1491(1)a
Field	26 May 43	Pte		AA Sec 40 Cond to the predj in that he did drive a CM Vdh without permission and cause damage to the same	C[illegible] Hw Milne Doc	21 Days FP	26 May 43	Col Secord	21 Days Pay
Field	4 Dec 43	Pte		AA Sec 40 In that he did allow his boots to become unserviceable through unfair wear	Doc	3 Days awarded pay	7 dec 43	Col Secord	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26 Aug 44	Pte		AA Sec 40 WOAS he appeared of parade with adirty rifle and no Bayonet	Sgt Odd FH	7 Days CB	27 Aug 44	Col AG Secord	
Field	9 Nov 44	Pte		AA Sec 24(2) WOAS in that he in the field lost by neglect three Blankets valued at $3.07	LCQMS Davie WC	6days pay FR&I 149(2)	13 Nov 44	Lt-Col Mathers	
Field	9 Jun 45	Pte		AA Sec 15(1) AWL 18 Days 22 Hrs 31 Min	L/Cpl Ritza	14 days CB 28 days pay FR&I 149(2)a	29 Jun45	Lt-Col RF Back	19days Forf pay FR&I 149(1)
Field	22 Jul 45	Pte		AA Sec 15(1) AWL 1 Day 1 hr 59 Mins	Cpl Adams	168 Hrs Det	25 Jul	Lt-Col RF Back	2 Days pay FR&I 149(1)a

Certified True Copy

R Hopkins Capt & Adjt

Ctr Reception Depot

D-12509

No. Name HEATH Jack | Sqn, Battery, or Company | Corps RCEME | Date of enlistment 16 Sep 41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136 (7010)

Date of last entry in Company Conduct Sheet | No. and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 Aug 45	Pte		AA Section 15 (1) AWL from 0815 hrs 1 Aug 45 until surrendering himself to Civilian Police at London at 0215 hrs 23 AUG 45. (Absent: 21 days 18 hrs)		To forfeit all Ordinary Pay for a Period of 40 days.	30 Aug 45	FGCM	Forf 22 days pay FR&I 149 (1)(a). Forf 8 days pay FR&I 149(1)(c) and Forf 40 days pay FR&I 149 (1)(b) Total Forf. 70 days pay. J.T. Hodgson Capt.

(FTO)

CERTIFICATE

If he is available I wish.....Lt. M.J. Hagan.....

of.....1 Cdn Reception Depot.....to defend me.

.....J. Heath.....
(Signature of Soldier)

CERTIFICATE

I, D-125098 Pte. Heath, J. No. 1 Cdn Reception Depot, hereby acknowledge receipt of a true copy of the Charge Sheet in connection with the charges pending against me. I also acknowledge receipt of one True Copy of the Summary of Evidence.

.....J. Heath.....
(Signature of Soldier)

LIST OF WITNESSES

In the case of D-125098 Pte. Heath, J. on strength of No. 1 Cdn Reception Depot, a soldier of the Canadian Army Overseas.

	(Corps)	(Location)
Capt. L.E. Donkin,	CIC	1 Cdn Reception Depot

LIST OF EXHIBITS

In the case of D-125098 Pte. Heath, J. on strength of No. 1 Canadian Reception Depot, a soldier of the Canadian Army Overseas.

Exhibit "A" Certified extract from Part II Orders No.214.

Exhibit "B" A.F.O. 1617

Exhibit "C"

CCC-15

SGT HEATH H-111

CCC-15

CFA86 (In lieu of AFA31) 40/P.S.&T./1808 (2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig. W.A. Jamieson Comd 2 Armd Bde dated 6 Jan 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) uppmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D46231	Lt.	Harold Rothman	HEATH	27 Ldn Armd Regt (Sqn Ldr)

PROCEEDINGS REVIEWED 19 Feb 44 H.H. Waugh Capt REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date) 10 Jan 44 Date 27 Jan 44 FIRST CDN ARMY

RECORD FORM A--OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0925 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to no interpreter?~~ Ans ~~No~~

~~The Interpreter is sworn.~~(1) Do you object to C96575 Pte Grant RA as shorthand writer? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W.A. Jamieson	6 Cdn Armd Regt (RCR)
Member	Major	R. Rattray	2 Cdn Armd Bde Sqn
Member	Capt	W.E. Burgoyne	10 Cdn Armd Regt (Sask H)
~~Judge Advocate~~			
Prosecutor	Capt	G.L. Wood	27 Cdn Armd Regt
Defending Offr	Capt	W.D. Dempsey	27 Cdn Armd Regt (Sask L)

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused D46231 Lt H.R. Heath before arraignment make(s) (no) ~~no~~ plea (3)

~~Accused says Objn~~

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 112), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For format of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ■ *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans ..... (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, D-46231 Sergeant Harold Mottram HEATH, 27th Canadian Armoured Regiment (SPR) a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
AA Sec 11.

WHEN ON ACTIVE SERVICE NEGLECTING TO OBEY REGIMENTAL STANDING ORDERS, Sec 7 (5)

in that he

in the field on 25 Dec 43, at approximately 2230 hours did drive C.M.V. No. CL 4234406 without a properly authorized work ticket as a result of which damage was accasioned to said C.M.V. No. CL-4234406 to the amount of £12-12- 0 (say twelve pounds twelve shillings)

Open arrest.

2 Jan 44.

(M. B. K. Gordon) Lt-Col.,
Commanding Officer,
27 Cdn Armd Regt (SPR)

To be tried by FGCM.

Field
6 Jan 44

(N.A. GIANELLI) Brig
Comd 2 Cdn Armd Bde

FIELD GENERAL COURT-MARTIAL

(CFA95 (In lieu of AFA8) 40/FAS/1697 (2363))

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 67(6).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	~~(b) Apptmt, A/R or A/Apptmt~~	Full Christian Names.	Surname.	Unit.
D-46231	Sgt		Harold Mottram	HEATH	27 Cdn Armd Regt (Sher Fus)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (date) 6 Jan 44 endorsed by me, ~~(or by an offr of my staff for my)~~ To be tried by Field General Court-Martial".

2. ~~And whereas I am of opinion that it is not practicable that such offence(s) should be tried by one of His Majesty's Courts Martial; and that it is not practicable to delay the trial for enforcement of~~

~~(Delete part in brackets when not required for compliance with RP 106(C).)~~

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I hereby appoint (a) those Offrs to form the Court, (b) a Fd Offr as President, for the purpose of such trial.~~

~~(AA 49, RP 104(B), 107(A). Delete the whole or part, if not applicable.)~~

~~6. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 104(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	W.G.A. LAMBE (Must be named. RP 106.)	6 Cdn Armd Regt (1H) (Unit.)

MEMBERS.

Major	F. PRATTEN	2 Cdn Armd Bde Sigs
Capt (Rank.)	W.C. BURGOYNE (Named or detailed. RP 106.)	10 Cdn Armd Regt (FGH) (Unit.)

WAITING MEMBER.

Lt (Rank.)	M.H. THOMAS-PETER (Named or detailed, if any. RP 106.)	HQ 2 Cdn Armd Bde (Unit.)

JUDGE-ADVOCATE.

~~(Rank.)~~	~~A. [illegible] HALL~~ (Must be named, if any. RP 106.)	~~Hq [illegible] Inf Div~~ (Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

Dat 6 Jan 44

(Signed personally. RP 105 (a) (2)) (Rank.)

(N.A. GIANELLI) Brig
Commanding Comd 2 Cdn Armd Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 98(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP 98(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on matters other than in mitigation of punishment) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 48(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, *etc.* (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of registered books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 85(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

W/Adv.

MEDICAL OFFICER'S REPORT

I certify that No. D-48231 Sgt. Heath H. H.
Of 27 C. A. R. (Sher Fus) in a well state of health
and fit to undergo Trial by Court martial.

B. F. Anderson Capt
Medical Officer

Station In the Field
Date 10 Jan 44
MFH 246

Exhibit "A"

W. J. Hambly Major

EXTRACT OF REGIMENTAL STANDING ORDERS, 27 CANADIAN ARMOURED REGIMENT, PUBLISHED BY LIEUT-COL M. B. K. GORDON, COMMANDING OFFICER:

SECTION 7 Employment of Transport:

Para 5 No one will drive a War Department vehicle unless:

(a) He is in possession of a properly completed work ticket.

(b) He is in possession of MT Drivers Regulations.

(c) He is a qualified driver and has been entered as such in Unit Orders or Casualty Returns.

(d) He is under-going instruction as authorized by a Squadron Leader.

Certified a true extract of Regimental Standing Orders, 27 Cdn Armd Regiment.

G W Côté

.....

(G. W. Cote) Captain and Adjutant.

Note 1

Closing Address by the Defending Officer:

I am Capt W.D. HUMPHREY, 27 Cdn Armd Regt. I have known the accused since he was recruited in 1940 and was in the same squadron for almost a year. He was a good soldier a hard worker with a good sense of respensibility and I would trust him in all circumstances for any duty expected of a troop serjeant.

Note 2

W. A. Lamb Pvt.

Statement by the Accused:

I don't really think there is very much I can say. I am guilty of this charge. You see it was Christmas day and we had been having a few drinks, so we decided to take the veh and I drove it. It is the first time since I have been in the Army I have been on any charge, and I can assure you that this accident was purely accidental. But so far as the charge is concerned I guess I am guilty.

Closing Address of Defending Officer

Page 3 W/d Lance Sgt

Defending Officer submits that this is not a case where the Mosaic Law of "an eye for an eye or a tooth for a tooth" should be considered by the Court. The Accused has stated, and it is reasonable to believe him, that there were serious queries arising from his act the gravity of which were inconceivable at the time of its ~~commission~~ commission.

The Accused is a young soldier of the Canadian Army — 23 years old with 3½ years' record of service. He came Overseas in 1941, rejoined his Regiment in 1942. He is a Troop Sergeant in his Squadron and his record is clean up to the present.

In no way lessening the gravity of the charge but in mitigation of punishment, it should be pointed out that the accident out of which the charge arose occurred on Christmas night, after the traditional Army Christmas, at which free beer ~~etc~~ is liberally distributed. The Accused drove the vehicle in question, but he was in company of two older and senior sergeants, who, if they had done their duty, would have ensured that the Accused did not commit such a breach of Standing Orders. Charges against the two Sergeants in question have been dealt with.

From the view point of pure justice, there is no question but that any punishment this Court, or any other Court, may deem to mete out to the Accused, will fall far short of the punishment his own conscience is inflicting and will continue to inflict upon him. He knows that he is responsible. (But, it is submitted, the

responsibility is not entirely his) for a mishap, the result of which a comrade in arms has lost his life. The Accused will have an opportunity in the near future, of expiating his crime against his conscience, on the field of battle.

In view of the clean record of the Accused, it is submitted that K. R. & O. (Can), Par. 412, is applicable.

EXHIBIT "B"

W/C Adamson Capt

DAMAGE AND INJURY REPORT NOTES

PART II—DAMAGE TO CANADIAN ARMY VEHICLE

Vehicle No. C1-A234406 Make Ford Type 60 cwt.

Particulars of damage.

Superstructure partially destroyed.
Torpedo tora beyond repair
Bumper assemb by to be straightened

Estimated cost of repairs: Labour £2-2-0 (No. of hours) 14 Materials £10-10-0 TOTAL £ £12-12-0.

Any special remarks.
There is a possibility of the frame being out of line but due to the point of impact does not seem probable.

Date 30 Dec 1945. (Signature) R D Farrow Capt.
(Workshop, Unit or Det.) Roll Tech Adj
27 CDN ARMD REGT

(i) The foregoing part must be fully completed and signed by an O.M.E., L.A.D., Wksp Officer or Officer nominated in Overseas R.O. 2291.
(ii) The signing Officer's appointment and unit must be shown in every case.
(iii) Labour costs will normally be based on the rate of three (3) shillings per hour.
(iv) In every case the total costs must be shown.

PART V—FOR COMPLETION BY COMMANDING OFFICER.

(i) RESPONSIBILITY: (Opinion must be clear cut and definite with reasons. "THE HIGHWAY CODE" will be found helpful. Fatal or other serious accidents must be reported immediately to the Formation Claims Officer).

Responsibility for accident rests with driver of vehicle who did not have it under control at the time.

(ii) Length of experience of driver in Canada 2 months In England 3 years

(iii) Disciplinary action taken and stoppages (if any) awarded or recommended Remanded for summary Jurisdiction Charged under A.A. 11 or 72 A.A.A.40.

Exhibit C

Wg A Lambe Major

SUMMARY OF EVIDENCE

in the case of

D-46231 Sergeant Harold Mottram HEATH

27 Cdn Armd Regt (SPR)

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS: D-11663 SERGEANT LEITH, S. P., 27 Cdn Armd Regiment,

having been duly sworn, states:

"I am D-11663 Sgt Leith, S. P., of the 27th Cdn Armd Regt and on the evening of 25 Dec 45 I was in the bar of the Ashley Hotel having a drink with some friends. I left the hotel bar shortly after closing time at 2200 hours. I went out and got into the cab of a 60 cwt truck. I heard some men get into the back of the truck, but I couldn't identify them at the time owing to the darkness. I was riding as co-driver and we started for New Milton. We had only gone a short distance when two men waved us to stop. I could not identify these men because of the dark. We started off again, travelled a few hundred yards and we started down a hill. We were travelling at approximately 15 m.p.h. I would judge then Sgt Heath, who was driving, geared down. There was a number of pedestrians walking on the road to New Milton, who I think had come from the pub. We were still travelling about 15 m.p.h. when we reached the bottom of the hill. Due to pedestrians the truck was so far over to the right of the road that we could not make the turn and hit an electric light pole which was situated on the right edge of the road. I did not see the corner myself until it would have been too late to turn the truck, as the night was very dark and visibility was poor because of a mist. The driver stopped the truck for a moment and then he went on again as if to get back on the road and then stopped again. Someone shouted that somebody was hurt in the back and we got out of the truck. While Sgt Heath was talking to Sgt Beardsley, I looked over the truck. Sgt Heath came over to me and told me that Sgt Beardsley was taking charge of the situation. A crowd began to gather and at that time Sgt Heath and I started to walk home.

Q. Do you know whether or not Sgt Heath had a properly authorized work ticket ?

A. He did not have a properly authorized work ticket.

Q. What was the condition of the road ?

A. Slippery owing to the mist.

Q. Were the lights good ?

A. As far as I remember, yes.

Q. Was the night very dark ?

A. Yes, Sir.

Q. Did you see Sgt Heath drink on the night of 25 Dec 43 ?

A. He was in the pub with us but I do not remember having seen him actually drink.

Q. Did you go up to the pub with Sgt Heath ?

A. Yes, Sir.

Q. When Sgt Heath was driving back from the pub was he driving recklessly or was he driving carefully in regards to the slippery road and the dark night ?

A. I would say he was driving very carefully.

The accused declines to cross-examine this witness.

.....
(D-11663 Sgt Leith, S. F)

SECOND WITNESS D-46374 SERGEANT BEARDSLEY, R. R., 27 Cdn Armd Regiment,

having been duly sworn, states:

"I am D-46374 Sgt Beardsley, R. R., 27 Cdn Armd Regt. I arrived at the Ashley bar on the evening of 25 Dec 43 shortly after nine with some friends. At the bar I had a few drinks of beer. We left the Ashley bar a little after 2200 hours and came out into the yard, and while in the yard I saw a truck in the darkness. I asked where it was going and when I found out it was going to New Milton I got in. The truck left the yard and started towards New Milton at 2215 hours or 2220 hours. A minute or two after we left the hotel the truck slowed down and somebody got aboard. There were two people. I did not recognise them as it was dark. We then proceeded down the road at a moderate speed for a short distance and I knew we were going downhill from the feel of the truck. I heard the driver gear down and the truck slowed down. Almost immediately the truck left the road and we struck something. After the truck stopped it started again and ran for a short distance over very rough ground and stopped again. I got out of the truck at once and there seemed to be a commotion in the back and I heard someone say that a man was hurt and they called for a light. Someone flashed a light in the back of the truck and I heard someone say that Tpr McPhee had been hurt. Several people had gathered around the truck and I told a soldier to go and phone for an ambulance or to get a doctor and I was told that someone had gone. I had seen that Tpr McPhee had sustained head injuries and was bleeding profusely and I told the man in the truck not to attempt to move him until the ambulance had arrived. As soon as the ambulance arrived I asked the crowd to give them room to get the man out onto a stretcher. After the man was placed on the stretcher I told Tpr Mallard to accompany Tpr McPhee to the hospital and turn in a report to our office as soon as he found out how badly he was injured. The police were there by this time and I asked permission to move the truck to our lines. This was granted and I brought the truck home to our lines. I reported the accident to Lieut Grainger at the squadron office.

Q. Do you know who was driving this vehicle ?

A. Sgt Heath.

Q. Did you see Sgt Heath drink on this night of 25 Dec 43 ?

A. I do not remember having seen him actually drink.

Q. Did you see Sgt Heath in the pub ?

A. Yes, Sir.

Q. At about what time ?

A. Sometime between 2115 and 2200 hours.

Q. When driving back was the vehicle being driven recklessly or not ?

A. In my opinion it was not being driven recklessly.

Q. Was the night very dark ?

A. It was, Sir.

Q. Were you with Sgt Heath in the pub ?

A. Yes, Sir.

Q. Did you speak to Sgt Heath before you started back from the pub ?

A. Yes, Sir. I was talking to him in the pub at various times.

Q. Did Sgt Heath appear to have been drinking and intoxicated ?

A. No, he did not appear to have been drinking to excess, and he was not intoxicated.

The accused declines to cross-examine this witness.

R. R. Breadsley

(D-46374 Sgt Breadsley, R. R)

THIRD WITNESS: D-46129 TROOPER MALLARD, G., 27 Cdn Armd Regiment,

having been duly sworn, states:

"I am D-46129 Tpr Mallard, G. of the 27 Cdn Armd Regt. On the 25 Dec 43, about 2215 hours I left the Ashley Hotel to go back to barracks and I saw an army lorry outside facing toward New Milton and I asked for a ride and got in the back. We started away and after a short distance we stopped and picked up Tpr White and Tpr McPhee. We started off again and had only gone a short distance when we stopped abruptly and I was thrown to the floor of the truck. Someone shouted "someone is hurt" as I flashed on my light and noticed that Tpr McPhee was badly hurt. He was unconscious and breathing very heavily. I told the others not to move him until someone that knew something about it arrived. Two soldiers applied their first aid dressing to his head. White called an ambulance and when it arrived I got in it and went to the hospital with Tpr McPhee.

Q. Do you know who was driving the truck ?

A. No Sir.

Q. Did you see Sgt Heath in the pub ?

A. Yes Sir.

Q. About what time ?

A. Around 2130 hours.

Q. Did you see Sgt Heath drinking ?

A. No Sir.

Q. When you came out of the pub and saw an army lorry outside who did you ask for a ride in it ?

A. I asked the driver.

Q. Did you recognize the driver and did you know who he was ?

A. No Sir.

Q. How fast do you think the lorry was going at the time of the accident ?

A. It was not going very fast. It was going less than 20 miles an hour I would say.

Q. Was the night very dark ?

A. Yes Sir, quite dark.

Q. On the way down from the pub what was your impression of the way the lorry was being driven ?

A. It was being driven very carefully I thought.

Q. What made you think this ?

A. There was nothing to give me the impression it was not.

Q. What time did you first see Sgt Heath in the pub ?

A. About 2115 or 2120 hours. I only saw him in there a couple of times.

Q. Did you speak to him in the pub ?

A. I cannot recall having spoken to him, but probably did so.

Q. When you asked the driver of the lorry for a ride back was there anyone else in the front seat ?

A. I was not close enough to tell; it was quite dark.

Q. Do you know who was in the back of the lorry at the time of the accident ?

A. Yes Sir.

Q. Who were they ?

A. Tprs Steen, White, McPhee and myself.

Q. After the accident did you see Sgt Heath ?

A. No Sir. I remained in the back of the truck all the time.

Q. Do you know who drove the lorry back to squadron lines ?

A. No Sir, I went with Tpr McPhee to the hospital and the lorry was still there when I left.

Q. Are you a clerk of "A" Squadron ?

A. Yes Sir.

Q. Did you know the army lorry was from "A" Squadron ?

A. Yes Sir.

Q. Did you know who the regular driver of this lorry was ?

A. No.

Q. Where did you first see Sgt Heath on the night of 25 Dec 43.

A. In the Ashley pub.

Q. How did you get to the pub ?

A. I rode there in the back of a truck.

Q. Was this the same truck you drove back in and in which you had the accident ?

A. I do not know for sure.

Q. Did you know who was driving this truck going up to the Ashley pub?

A. No Sir.

Q. Where did you get in it ?

A. In front of "A" Squadron Officers' Mess.

Q. Who else was in this truck ?

A. Sgt Beardsley, Sgt Dandurand and Tpr Steen.

Q. Anyone else ?

A. Not that I saw.

Q. Were all these people in the back of the truck ?

A. Yes.

Q. Did the truck stop on the way up to the Ashley pub ?

A. Yes.

Q. Do you know why ?

A. The driver evidently did not how to get there and Sgt Beardsley got in the front seat to show him the way.

The accused declines to cross-examine this witness.

Th. Mallard E.
(D-46129 Tpr Mallard, G.)

FOURTH WITNESS C-38313 TROOPER STEEN, R. W., 27 Cdn Armd Regiment,

having been duly sworn, states:

"I am C-38313 Tpr Steen, R. W., of the 27th Cdn Armd Regt, and about 2215 hours on the 25 Dec 43, I left the Ashley Hotel to return home with Tpr Mallard. We hailed an army truck standing in the yard as we came out and we got in. We had only just got started when I thought I heard the truck hit something and I shouted to stop. I did not notice any jar but only heard the sound like the tinkle of glass. The truck stopped and then Tprs McPhee and White got in. We started on again and hadn't got very far until the truck hit something and stopped. I felt a slight tap on the head and fell on the floor. Someone was unconscious on the floor who I later found out was Tpr McPhee. Tpr Mallard put on his light and Tpr Jardine and I put a first field dressing on Tpr Mc Phee's head. I held his mouth open as he seemed to be having trouble in breathing. We left McPhee in the truck and looked after him as best we could until the ambulances arrived. Then Tpr Mallard and I went to the hospital with Tpr McPhee.

Q. At what time did you arrive at the Ashley pub ?

A. About 2115 hours.

Q. Who did you come with ?

A. Tpr Mallard.

Q. How did you come to the pub ?

A. We came down in a truck.

Q. What truck ?

A. One of our squadrons trucks.

Q. Who was driving this truck ?

A. I do not know.

Q. How did you happen to get in this truck if you do not know who the driver was ?

A. This truck was up at the Officers' Mess and Mallard and I came along and we asked if it was going down town and asked if we could have a ride.

Q. Who did you ask ?

A. We asked Sgt Beardsley.

Q. Did you see Sgt Heath there too ?

A. No Sir, I did not.

Q. When you got out of the truck at the pub did you see Sgt Heath ?

A. I do not remember seeing him until we were in the pub.

Q. You saw him in the pub, did you ?

A. Yes, Sir.

Q. Did you speak to him ?

A. No, Sir.

Q. Did you see him drink ?

A. No Sir, I did not.

Q. When you went up to the pub who was in the truck ?

A. Tpr Mallard and myself, Sgt Dandurand and Sgt Beardsley. I do not recall any others.

Q. When you left the pub and got into the truck, did you ask permission of anybody ?

A. I remember asking for a ride.

Q. Who did you ask ?

A. The person driving the truck.

Q. Who was this person ?

A. I could not say, Sir, it was too dark to recognize him.

The accused declines to cross-examine this witness.

W. W. Steen
.....
(C-38313 Tpr Steen, R. W)

FIFTH WITNESS: D-131193 TROOPER WHITE, B., 27 Cdn Armd Regiment,

having been duly sworn, states:

"I am D-131193 Tpr White, B., of the 27 Cdn Armd Regt. I spent the evening of 25 Dec 43 in the company of Tpr McPhee and in the course of the evening we went to the Ashley Hotel and remained there until 2200 hours. At about 2215 hours we started walking back to barracks along the Ashley road towards New Milton with Tpr Mc Phee when I saw an army truck coming from behind and travelling in the same direction as I was. I waved my hand and shouted and the truck stopped and we clam - bered in the back. The lorry then went on. I was in the truck only a few minutes when we hit something and the truck suddenly stopped and we were thrown to the floor of the lorry. McPhee was breathing very heavily and was laying on the floor and I knew he was injured. I went to a private house and telephoned the police and the ambulance and I went to the hospital with him.

Q. How did you get to the Ashley pub ?

A. We hired a taxi.

Q. When you saw the lorry which you stopped coming, did it appear to be travelling fast ?

A. No Sir.

Q. Who did you ask to get in ?

A. I asked if the truck was going to town and the answer was "Yes". I don't know who said it.

Q. Did you see who was driving the lorry, or who was in the front seat ?

A. No Sir.

Q. After the accident did you see Sgt Heath around ?

A. No Sir.

Q. Did you find out who was driving after the accident ?

A. Next day Sir.

Q. How ?

A. General rumours only.

Q. Did you see Sgt Heath in the pub that night ?

A. No Sir.

The accused declines to cross-examine this witness.

.....B. A. White.....
(D131193 Tpr White, B)

SIXTH WITNESS: F-65085 TROOPER JARDINE, H. D., 27 Cdn Armd Regiment,

having been duly sworn, states:

"I am F-65085 Tpr Jardine, H. D., of the 27 Cdn Armd Regt, and shortly after 2200 hours on 25 Dec 43 I was walking toward New Milton, having come from the Ashley Hotel, and had just turned the corner at the bottom of the hill. I heard a crash and saw sparks flying behind us. I ran right back and saw that a truck had collided with a pole and that the pole was broken and lying on the road. I asked if anyone was hurt and was told that there was an injured man in the back. I assisted in taking down the tailgate and got in. I recognized the injured man as Tpr McPhee. I assisted in applying first aid and tried to make the man as comfortable as possible till the ambulance arrived. We did not move him out of the truck.

Q. Who did you see around the scene of the accident ?

A. A number of people, Tprs Steen and Mallard, who were in the back of the truck, also Sgt Beardsley who was behind it.

Q. Did you see Sgt Heath around ?

A. I can't say that I did see him.

Q. You were in the Ashley pub that night, did you see Sgt Heath there?

A, No Sir.

The accused declines to cross-examine this witness.

.....Jardine H.D.
(F-65085 Tpr Jardine, H. D.)

SEVENTH WITNESS: B-50109 SERGEANT DANDURAND, L. J., 27 Cdn Armd Regiment,

having been duly sworn, states:

"I am B-50109 Sgt Dandurand, L. J., 27 Cdn Armd Regt. On the night of 25 Dec 43 I got into a truck in front of "A" Sqn barracks and went as far as the Officers' Mess. From there I rode in it as far as the Ashley Hotel. That is as far as I have seen this truck on that night.

Q. Do you know whose truck this was ?

A. No Sir.

Q. Who was driving this truck ?

A. I could not say.

Q. Who was in this truck ?

A. Sgt Beardsley and myself as far as the Officers' Mess; from there we picked up Tprs Steen and Mallard.

Q. When you got into this truck who was in the front seat ?

A. Sgt Leith and Sgt Heath.

Q. Who was at the driver's seat ?

A. I don't know.

Q. Did Sgt Leith and Sgt Heath go along to the Ashley pub ?

A. Yes Sir.

Q. Did you see Sgt Heath in the Ashley pub ?

A. Yes Sir.

Q. Did you see him drinking ?

A. Yes, a couple of beers.

Q. Did you see him before he left the pub ?

A. I did not .

Q. When did you leave the pub ?

A. I was one of the last ones out - about 2200 hours.

Q. Did you see the truck you came up in outside ?

A. No Sir.

Q. Where there any trucks there at all ?

A. It was very dark, I did not see any.

Q. How did you get back to your barracks ?

A. I walked back part way and was picked up on the road.

Q. Did you see anything of the accident ?

A. No Sir.

The accused declines to cross-examine this witness.

.....
(B-30109 Sgt Dandurand, L. J.)

EIGHTH WITNESS: D-46072 SSM HOWLAND, E. A., 27 Cdn Armd Regiment,

having been duly sworn, states:

"I am D-46072 SSM Howland, E. A. I am Sgt Major of "A" Sqn and Regimental Standing Orders are posted on the Notice Board, in the Men's Recreation Room. I hereby offer as evidence certified true copy of Section 7, Para 5 of said Orders which are posted on the Sqn's Notice Board.

Q. How long have these Orders been posted there ?

A. Since the first week we came to these barracks.

Q. In previous quarters you have occupied were Regimental Standing Orders always posted in a place where everyone could see and peruse them ?

A. Yes Sir.

The accused declines to cross-examine this witness.

SSM Howland E.A.
.....
(D-46072 SSM Howland, E. A.)

THE ACCUSED WAS WARNED AS FOLLOWS:

"Do you wish to make any statement or to give evidence upon oath ? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence"

ANSWER BY THE ACCUSED:

"I do not wish to make any statement or give evidence upon oath.

I certify that Rules of Procedure 4, (b), (c), (d) and (e) have been complied with.

Taken down by me in the field in the presence and hearing of the accused this 2nd day of January, 1944.

G W Cote
.....
(G. W. Cote) Captain,
Officer taking Summary.

I attach as Exhibit "A" certified true ~~xxxxxx~~ extract of Regimental Standing Orders, 27 Cdn Armd Regt (SPR) produced in evidence by the 8th Witness D-46072 SSM Lowland, E. A.

G W Cote

SUPPLEMENTRAY EVIDENCE IN THE CASE OF

D-46231 Sergeant Harold Mottram HEATH

27 Cdn Armd Regt

Statement of evidence of Captain R. F. Garrow,
27 Cdn Armd Regiment.

Captain Garrow states that he is the Regimental Technical Adjutant of the 27th Cdn Armd Regt (SPR) and that he has examined CMV No CL4234406 and as result produces in evidence a damage report note signed by him.

It is certified that Captain R. F. Garrow cannot attend taking down of summary of evidence. I attach as exhibit "B" Damage Report Note on CMV No. CL-4234406 signed by Captain R. F. Garrow.

G W Côté
.....
(G. W. Cote) Captain,
Officer taking Summary.

SUPPLEMENTARY EVIDENCE IN THE CASE OF

D-46231 Sergeant Harold Mottram HEATH

FIRST WITNESS: Major E.W.L. Arnold 27 Cdn. Armd. Regt having been duly ~~xx~~ sworn, states :

" I am Major E.W.L. Arnold O.C. "A" Sqn 27 Cdn. Armd Regt. CMV #CL 4234406 is a 60-cwt on charge to my squadron. On night of 25 Dec 43 this vehicle was taken and suffered an accident. I ha ve investigated and find that there was no authorization for a trip to Ashley Pub on night of 25 Dec. 43.

The accused declines to cross-examine this witness.

E.W.L. Arnold

.....
(E.W.L. Arnold, Major)

THE ACCUSED WAS WARNED AS FOLLOWS:

"Do you wish to make any statement or to give evidence unpon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER BY THE ACCUSED:

" I do not wish to make any statement or give evidence upon oath"

I certify that Rules of Procedure 4, (b), (c), (d) and (e) have been complied with.

Taken down by me in the field in the presence and hearing of the accused this 9th day of January 1944.

G W Cote

.....
(G.W. Cote) Capt.
Officer taking Summary.

No D46231 Name HEATH, Harold Mottram | Sqn, Battery, or Company | Corps C. A. C. | Date of enlistment 15Aug40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 17/48/126 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 3 | Signature OC Company, etc [redacted] F.W.L. ARNOLD | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet one destroyed 13 Feb 41 - No entries. After two yrs clean record sheet two destroyed 19 Feb 43.					
				Certified a true copy: GW Cote (GW Cote) Captain/Adjutant. 27 Cdn Armd Regt (SPR)					

(PTO)

Exhibit D

Wg C Lamb Major

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-46231	Sergeant	Harold Mottram HEATH,	27 Cdn Armd Regiment

1. The following is a fair and true summary of the entries in the Field [illegible] Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Nil	times	Nil	times
For		times		times
For		times		times
For		times		times

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and Nil days in military custody, making a total of Nil days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 23 yrs 2 mos 9 days

6. The date of his attestation specified in his attestation paper is 15 Aug, 1940.

7. [illegible]

8. [illegible]

9. The accused is in possession of or entitled to no military decoration, or military reward

10. [illegible]

11. ~~(In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank .....

Unit

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th day of January 44 (G. Cote) Capt/Adjt.,
27 Cdn Armd Regt.,

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "A" and "B" signed by the president, and annexed to the proceedings.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans .....
Ans ..... Are they witnesses as to character only? Ans .....
(1. RP 155. 2. RP 40(A), see RP(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans Yes, I wish to give testimony & character witnesses. Both be
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)
(1. MFB 255 or AFB 296. 2. As in 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes. Note 2 x 3. (2)
(1. RP 37(C), 66(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the Members of the Court~~.(2)
(1. When several accused tried separately see RP 5(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 64, 138, 182, RP 46-50, 69, 116, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, RP 48. As to sentences for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564, MML p 60, 737-739. As to sentences consigned for civil offences by the law of England see AA 41(5), MML p 130. When accused Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.) 2. RP 50. As to release from arrest by

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D46231 Sgt Heath Harold Nottingham

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA. Sec 11.	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and as loss of kit see RP 44 fn 6.)

~~As present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial: a total of~~ ~~days, of which~~ ~~days were spent in hospital.~~ (1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be reduced to the rank of Trooper and to pay the sum of £3-9-0 (three pounds) towards the costs & damages to C1 v the CL 4236406. The remainder of the cost to be a charge to the public.

~~(Sgd)~~ ~~Judge Advocate~~ 10 Jan 44 (Sgd) D. J. O. Lambe Major

Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(3), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks~~ ~~unless~~ ~~unless~~ ~~unless

5 X-54

ON HIS MAJESTY'S SERVICE

FASTEN Envelope by gumming this Label across Flap.
OPEN by cutting Label instead of tearing Envelope.

Pte. Heath, J.

1/14 (HPS) 20.1
(HPS2 20.1)
(Series of 41)

5 X-54

ON HIS MAJESTY'S SERVICE

FASTEN Envelope by gumming this Label across Flap
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Pte. Heath, J.

1/14 CMSR 811
67-2-333
(Series 2 of 4)

RECORDED AT CMHQ IN AB [illegible] 51-54

FIELD GENERAL COURT-MARTIAL

CPA96 (To take the place of AFA8) A.G./P. & R. 1000 (6144) 4/388

Convened by Order of Brig K G Blackader A/Comd CBD dated 12 Dec 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D125098	Pte	Jack	HEATH	1 Cdn Gen Rft Unit

PROCEEDINGS REVIEWED

BGR Lieutenant-Colonel 4 Jan 46 Capt

REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held at the [illegible] in trench MAG BRANCH CMHQ on (date(s)) 14 DEC 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1430 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to [illegible] as interpreter?~~ Ans [illegible]

~~The Interpreter is sworn.~~(1) Do you object to MAJOR CPL HAMILTON RA as shorthand writer? Ans NO SIR. The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.K. REDMAN VD	HQ CBD
Member	CAPT	R.G. MACFARLANE	1 C GAD
Member	CAPT	A.M. HOMER	1 C GAD
~~Judge-Advocate~~			
Prosecutor	LIEUT	W.E. HAGAN	1 C GAD
Defending Offr	CAPT	J.A. CLARKSON	1 C GAD

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused [illegible] before arraignment make(s) (has) (no) plea [illegible].(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposed, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in RP mark and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D125098 Pte Jack HEATH 1 Cdn Gen Rft Unit

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ [illegible] beginning on (date) [illegible].(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 39 days, of which 24 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To perform all Ordinary Pay Parades of 7 Units (30) Days.

14 Dec/45 — [illegible]

(Sgd) [illegible] Judge-Advocate, if any. Date awarded. (Sgd) [illegible] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date [illegible] (Sgd) [illegible] Commanding [illegible]

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised; AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison on determination hereof, but that the whole of the~~ W. AA 57A. Delete if not used.)

Date 15 Dec 45 (Sgd) [illegible] Blackader Brig CBD

Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D125098 Pte Jack Heath	19 Dec 45	WE Hagan Lt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO - SIR (5)
(1. RP 37(B). 2. RP 37(C) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence arranged as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans.....
Ans..... Do you intend to call witnesses on your behalf?
Ans..... Are they witnesses as to character only? Ans.....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 695. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(a).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO - SIR
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and them to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Bye & by I'll NOTE ATT (2)
(1. RP 37(C), 66(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas Act 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, D125098 Pte Jack HEATH, C.I.C., on the strength of No 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE

SECTION 15 (1)

ARMY ACT

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, absented himself without leave from 1345 hrs 16 Oct 45 until 2155 hrs 5 Nov 45.

Absent: 20 days, 8 hrs, 10 mins.

Comd No 1 Canadian General
Reinforcement Unit
Canadian Army Overseas

Field,

10 Nov 45.

To be tried by Field General Court Martial

12 Dec 45

(K G Blackader) Brig
A/Comd CRU CA(O)

177

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
D125098	Pte		Jack	HEATH	1 Cdn Gen Rft Unit

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 Dec 45 endorsed by me, (or by my duly authorized staff officer), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable that the trial for reference to a qualified offr.~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I also make the appointment (a) that Offr is for the Court, is a Fd Offr as President, for the reasons I have annexed hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate the qualified officer named hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D L Redman ED	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
1 Capt	to be detailed by CO	1 CCRU
1 Capt	to be detailed by CO	1 CCRU

~~WAITING MEMBER.~~

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

(Signed personally. RP 105 fn 2.) (Rank.)

Date 12 Dec 45

~~Commanding~~ (KG Blackader) Brig
Convening Officer.
A/Comd CRU CA(O)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAO (to be of AFAS: 40/P & S/1697 14/8/11)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2692.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as* practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 95(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A. (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 90.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 46 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Con 563(a).*)

(vii) Summing up by J.A. if any. (*RP 62.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A. if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A. if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Con 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Con 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or J.A. if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

THIS is to cerify that the u/m has been examined by me and is fit to undergo Trial.

D-.25098 HEATH J

Date : 14 Dec 45

.....Capt.

Plea for Mitigation in the case of
D-125098 Pte. Heath J.

The Defence wishes to draw the attention of the Court to the following facts which appear relevant to Pte Heath's plea.

Firstly. Pte Heath has served in as a rifleman with the 42nd Lincoln Regiment of Canada on the Italian theatre where he was taken prisoner of war on 20th Dec 43. During his connection as a prisoner of war in Germany, which it will be noted took place in the middle of winter, Pte Heath underwent an harrowing experience. Due to allied bombing, the prisoner of war train was found it necessary in a railway tunnel for seven full days. The prisoners were crowded to the extent of fifty men to a small continental box car. For seven days in complete darkness & freezing cold with little food & water & under fear of the destruction of the tunnel by bombs many of the prisoners became hysterical & out of hand. On many arrival at Weimar many of the prisoners were transported for first aid. It is felt that this experience has quite likely influenced on the accused a nervous strain which will require a considerable time to eradicate

Secondly. On return to the United Kingdom in April 1945 Pte Heath went through a period of frustration. At that time due to the fact that he had not been a prisoner for six months he was not allowed to return to Canada. Next, he had some difficulty in obtaining furlough to marry. When this was finally settled to his satisfaction, he was refused permission to return to his Regiment which was then in North West Europe. Instead he was placed on a Base Camp; a course in which he had not the slightest interest.

Thirdly Thirdly it will be noted that prior to his return as released prisoner of war Pte Heath's infractions of military regulations have been of a comparatively minor nature. In addition while in a theatre of operations the accused was guilty of no serious infractions of discipline.

In summing up the Defence respectfully urges the Court to do so with a view to ~~Summary~~ Leniency take into consideration the above noted facts.

E-3

J. A. Colahan Capt.
Defence Asst.

The prisoner having been in custody for 57 days
awaiting trial. the Defence begs the Court to award
forfeiture of pay rather than a further period of detention

SUMMARY OF EVIDENCE

in the case of,

D125098 Pte Jack HEATH, C.I.C., on the strength of No. 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas.

"I produce the following documents, pursuant to Overseas Routine Order 5352, which have been read over and shown to the Accused, and which are attached hereto as Exhibits:"

(1) Certified True Extract from No. 1 Canadian General Reinforcement Unit Part II Order No. 258 dated 30 Oct 45 which declares in Section "B", Para 6, sub-para (a) that D125098 Pte Heath J., absented himself without leave from 1345 hrs 16 Oct 45. (Marked Exhibit "A")

(2) Certified True Extract from No. 1 Canadian General Reinforcement Unit Part II Order No. 272 dated 15 Nov 45 which declares in Section "B", Para 10, sub-para (b) that D125098 Pte Heath J., returned from absence without leave at 2155 hrs 5 Nov 45. (Marked Exhibit "B")

J. P. Hodgins Capt
.....
(J.P.Hodgins) Capt
Officer detailed to take
the Summary of Evidence

THE ACCUSED WAS CAUTIONED AS FOLLOWS:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The Accused reserves his defence.

The Accused does not call any witnesses.

"I certify that the above Summary of Evidence, consisting of one page was taken down by me in the presence and hearing of the Accused and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with."

J. P. Hodgins Capt
.....
(J.P. Hodgins) Capt
Officer detailed to take
the Summary of Evidence.

Field,

17 Nov 45.

EXA
MY

Exhibit "A"

Certified True Extract from No. 1 Canadian General Reinforcement Unit Part II Orders No. 258 dated 30 OCT 45.

NO. 1 CANADIAN GENERAL REINFORCEMENT UNIT
CANADIAN ARMY OVERSEAS

PART II ORDERS
issued by

LAST ORDER			THIS ORDER
NO. 257	COLONEL	R.C. CLARK, D.S.O.	NO. 258
29 OCT 45	COMMANDING	OFFICER	30 OCT 45

SECTION "B" OTHER RANKS

6. ABSENT WITHOUT LEAVE

(a) AWL from 1345 hrs 16 OCT 45 Still absent 1345 hrs 17 OCT 45 (1st day).

CLKS D-125098 PTE. HEATH, J.

"R.T.J. WEST Lieut"
"for" (R.C. CLARK) COLONEL
COMMANDING OFFICER
No. 1 Canadian General Reinforcement Unit.

CERTIFIED TRUE EXTRACT FROM ORIGINAL DOCUMENT HELD IN MY POSSESSION.

14 NOV 45

(J.F. HODGINS) Captain,
Officer having custody
of original document.

Exhibit B

Certified True Extract from No. 1 Canadian General Reinforcement Unit Part II Orders No. 272 dated 15 NOV 45.

NO. 1 CANADIAN GENERAL REINFORCEMENT UNIT
CANADIAN ARMY OVERSEAS

PART II ORDERS
issued by

LAST ORDER NO. 271 14 NOV 45	COLONEL COMMANDING	R.C. CLARK, D.S.O. COMMANDER	THIS ORDER NO. 272 15 NOV 45

SECTION "B" OTHER RANKS

10. ABSENT WITHOUT LEAVE

(b) Returned from AWL at 2155 hrs 5 NOV 45.

CLKS D-125098 PTE. HEATH, J.

"R.T.J. WEST" Lt.
"for"(R.C. CLARK) COLONEL
COMMANDING OFFICER
No. 1 Canadian General Reinforcement Unit

CERTIFIED TRUE EXTRACT FROM ORIGINAL DOCUMENT HELD IN MY POSSESSION.

16 NOV 45

(J.P. HODGINS) Capt.,
Officer having custody
of original document.

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
D125098	Pte	HEATH J	No 1 Cdn Gen Hft Unit

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For AA 15 (1)	times	3 times
For AA 40	times	3 times
For AA 24 (2)	times	1 times
For ~~——~~	~~times~~	~~times~~
For ~~——~~	~~times~~	~~times~~

~~Number of instances of gallantry or distinguished conduct.~~

or

~~There are no entries in the conduct sheets of the accused.~~

~~2. The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. ~~or The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 37 days in military custody, making a total of 37 days, of which 14 days were spent in hospital.

5. The present age of the accused according to his record of service is 22 yrs ~~attestation paper~~

6. The date of his ~~enlistment~~ attestation specified in his record of service is 16 Sep 41 ~~attestation paper~~

~~7. The service which the accused is allowed reckoned towards pension is~~

~~8. The accused is entitled to deferred pay at the rate of per~~

~~9. The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

10. The accused ~~is in possession of, or entitled to, no military decoration or military award (or~~ is in possession of or entitled to (*state any military decoration or reward*). CVSM & Clasp

~~11. (If the accused is or was an officer.) The accused holds (or has held) the following rank:~~

~~12. (In the case of an officer.) The accused holds in the army the rank of , dated~~ ~~and in his regiment (or corps or department) the rank of , dated~~

W.L.20837/1520 200. 6/40. P. Ltd. T3—1

Ex B

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D125098 *Rank* Pte *Name* HEATH J of No 1 CORU Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating there convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	30 Aug 45	AA 15 (1) AWL 21 days 18 hrs	Forf all crd pay for 40 days FRAI 1491(3)	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 14 day of November, 1945

J. Z. Woodgate Capt
Legal Officer
1 C 4 Pl C

(INSTRUCTION—If any [illegible] the regimental books the [illegible] must be read [illegible] the [illegible] and [illegible] the [illegible] will be entered from such extract as are suitable and

In the rank of

In the rank of

Date of Petition

No D125096 Name HEATH J | Sqn, Battery, or Company | Corps RCEME | Date of enlistment 16 Sep 41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with Trial	By whom awarded	Remarks
Barriefield	16 Nov 42	Pte		AA Sec 15 (1) WOAS AWL in that he was absent without leave from 0600 hrs 16 Nov 42 to 1415 hrs 16 Nov 42	Cpl A Martin	7 days CB	17 Nov 42	Maj C Clark	Auto forf 1 days pay FR&I 149(1)a
Field	26 May 43	Pte		AA Sec 40 Cond to the prej in that he did drive a CM Vch without permission & cause damage to same	Cpl H W Milne documentary	21 days FP	26May43	Col Secord	21 days pay
Field	4 Dec 43	Pte		AA Sec 40 in that he did allow his boots to become unserviceable through unfair wear		3 days award pay	7Dec43	Col Secord	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26 Aug 44	Pte		AA Sec 40 WOAS he appeared on parade with a dirty rifle & no bayonet	Sjt Odd F H	7 days CB	27 Aug 44	Col A G Secord	
Field	9 Nov 44	Pte		AA Sec 24 (2) WOAS in that he in the field lost by neglect 3 blankets valued at $5.07	CQMS Davie W C	6 days pay FR&I 149(2)	13Nov44	Lt-Col Mathers	stoppage of $6.14
Field	9 Jun 45	Pte		AA Sec 15 (1) AWL 18 days 22 hrs 31 mins	L/Cpl Ritza	14 days CB 28 days pay 149 (2)	29Jun45	Lt-Col RF Back	19 days forf 149(1)a
Field	22 Jul 45	Pte		AA Sec 15 (1) AWL 1 day 1 hr 59 mins	Cpl Adams	168 hrs detn	25Jul45	Lt-Col RF Back	2 days pay 149(1)a

MFM 6
(AFB 122)
40/PAS/136 (3458)

No. D125098 Name HEATH J | Sqn, Battery, or Company | Corps RCEME | Date of enlistment 16 Sep 41 | Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	1 Aug 45	Pte		AA Sec 15 (1) AWL from 0815 hrs 1 Aug 45 to surrendering to Civ Police at London 0215 hrs 23 Aug 45 Absent 21 days 18 hrs		Forf pay for 40 days	30 Aug 45	FGCM	22 d.p. 149(1)a 8 d.p. 149(1)c 40 d.p. 149(2)
						Total Forf 70 d.p.			

Certified True copy of original MFM 6 held in my possession

JPHodgins Capt.

(J.P.Hodgins) Capt
Officer having custody of original document

(PTO)

CASE OF D125098 Pte Jack HEATH

(i) LIST OF WITNESSES FOR PROSECUTION

Nil

(ii) LIST OF WITNESSES FOR DEFENCE

Nil

(iii) LIST OF EXHIBITS FOR PROSECUTION

(a) Certified True Extract from No 1 CGRU Part II Order No 258 dated 30 Oct 45 concerning the absence without leave of D125098 Pte Heath J. (Marked Exhibit "A")

(b) Certified True Extract from No 1 CGRU Part II Order No 272 dated 15 Nov 45 concerning the return from absence without leave of D125098 Pte Heath J. (Marked Exhibit "B")

(iv) LIST OF EXHIBITS FOR DEFENCE

Nil

(v) RECEIPT BY ACCUSED FOR COPY OF CHARGE SHEET AND SUMMARY OF EVIDENCE

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken in the Field, preliminary to my Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

.....J. Heath.....
(D125098 Pte Heath J)

(vi) APPLICATION BY ACCUSED FOR DEFENDING OFFICER

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of.....if he is available.

.....J. Heath.....
(D125098 Pte Heath J)

Signed in the Field,

this 2nd day of Dec 45.

HY 112

Pt. Reach, W.P.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H 16178 Pte Heath W.P. 2 C.I.B.R.B.

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. 15 (1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) 6 Mar 45. (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 51 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court:

To suffer Field Punishment ~~Confinement~~ For 40 days. And to Forfeit all ordinary pay For a period of 40 days.

(Sgd) Nil. 6 Mar. 45 (Sgd) J.C. Watts Lt Col

Judge-Advocate, if any. Date awarded. President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 56(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be sent unconditionally to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 9 Mar 45 (Sgd) A.G. Lee Col

Commanding Comd 1 Can Base Bk Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
H 16178 Pte Heath W.P. 2 Can NETD	13 March 45	D'Bucquoy Maj O.C. No 3 Can NETD

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160. 44-112

FIELD GENERAL COURT-MARTIAL

CFA96 (To Dep of AFA2) 40/P & R/1066 (4650) 4/38B

2 MAR 1945 JAG BRANCH C.M.H.Q.

Convened by Order of Col S.A. Lee. M.C. Comd ICBRB. dated 3 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) present, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	Present Rank.	Unit of Present Rank or A/Appmt.	Full Christian Names.	Surname.	Unit.
H 16178	Pte		William Pengelly	HEATH.	2 C.I.B.R.B.

REVIEWING OFFICER'S BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 6 Mar 45.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see fmn for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 36, 63-70, 72, 74, 94, 103, 118, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (2) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 2. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1005 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is fit to undergo trial by court-martial. ~~The Prosecutor informs the Court the accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans ~~.....~~

~~The Interpreter is sworn.~~(1) ~~Do you object to ..... as shorthand writer?~~ Ans ~~.....~~

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(5). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj.	R.W. Potts	2 C.I.B.R.B.
Member	Lt.	M.R. Larin	1 C.I.B.R.B.
Member	Lt.	N.L. Bridoux	2 C.I.B.R.B.
Judge-Advocate	Nil.		
Prosecutor	Capt	S.R. Grayer	2 C.I.B.R.B.
Defending Offr	Lt.	L.G. Phelan.	2 C.I.B.R.B.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See RP 336)

A8. The accused H 16178 Pte. Heath W.P. before arraignment make(s) (no) ~~.....~~ plea (3)

(3. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or in case of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and Finding are recorded per heading "Proceedings of Trial". For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~.....~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Instrs.)

A10. The Court ~~(adjourns) (proceeds)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No Sir.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Para ... of the Schedule is amended accordingly.
(1. *Court may be cleared to consider the statement, but not whole proceedings, etc.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are there witnesses as to character only ? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 93, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(7), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes Yes sir my defending officer
(1. *If evidence has already been given as accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46(*D*). *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces a statement as to Character and Particulars of Service, and certified true copy extract of Conduct Sheet(s)(1), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)
(1. *MFB* 255 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1, *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes by my defending officer.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6). *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 128, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Oversees RO* 309, 2323, *MML p* 90, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see insers on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, H16178 Pte William Pengelly HEATH (Princess Patricia's Canadian Light Infantry), 2 Canadian Infantry Base Reinforcement Battalion, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field in Italy absented himself without leave from about 2359 hours 1st December 1944 until surrendering himself at about 0001 hours 14th January 1945. (Absent - ~~44~~ 43 days, 2 minutes.)

(R. W. LEMT) Lt.-Col.,
Comd, 2 Cdn Inf Base Rft Bn,
Cdn Army, C.M.F.

In the Field,
2nd March 1945.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
3 Mar 45

(S. A. LEE) Colonel
Comd, 1 Cdn Base Rft Gp

FIELD GENERAL COURT-MARTIAL

CFA65 (In lieu of AFAS1 40/PAN/1697 (2965))

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H16178	Pte		William Pengelly	HEATH	2 Cdn Inf Base Rft Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 3 Mar 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior (militical offr)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I nim. appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	R W POTTS	(CIC)	2 Cdn Inf Base Rft Bn

MEMBERS.

Capt or Lieut to be detailed by the OC 1 Cdn Inf Base Rft Bn

Capt or Lieut to be detailed by the OC 2 Cdn Inf Base Rft Bn

(Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

Capt or Lieut to be detailed by the OC 1 Cdn Inf Base Rft Bn

(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in Italy (Country.)

Date 3 Mar 45

(Signed pursuant to RP 105 (c) 2)

(S. A. LEE)

Colonel (Rank.)

Commanding 1 Cdn Base Rft Cy

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 94 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 89(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 46 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. BLANKED FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 86(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

2 CANADIAN INFANTRY BASE REINFORCEMENT BATTALION

I certify that I have this morning examined
M.16178 Pte Hewitt W.C. Plow
and he is fit to undergo trial by Court Martial.

6 Mar 1945 [illegible]
M.O., 2 Cdn Inf Base Rft Bn

Statement as to Character of Lt. Heath

Attached letter states that Heath, while a pte, was doing work normally assigned to an officer. He was inspecting & reporting on the efficiency of Italian personnel employed by A.M.G., and investigating the availability of certain materials to be requisitioned by the A.M.G.

Heath was, in fact, acting as a personal representative of Major Sutherland* doing much of his work for him. He held the position for about a year.

Since he was doing an officer's job, & was considered capable of doing this for ten months, there can be little doubt that Heath was a responsible man, a man who can be trusted & very definitely a soldier of excellent character.

* Major Sutherland was chief of the Agricultural Labour Section, Allied Control Commission

J.G. Sheehan Lt.

JRCS/dd

HEADQUARTERS REGION IV
Allied Control Commission
APO 394

2 September 1944

TO : All P. C.s.

SUBJECT : Forestry Inspection Trip.

1. The bearer, W-16178 Pte Heath, W.F. R.E.C.M.P. accompanied by Dott. Dino Crivillari of the Ministry of Agriculture & Forests, will visit your province during the month of September to inspect and report on the availability of fuel-wood and charcoal, and the efficiency of Italian office personnel in the Forestry Department of the Ministry.

2. It is realised that a private soldier carrying out duties normally assigned to an officer may be at a disadvantage in making certain contacts. It is therefore requested that you give Pte Heath, who is an experienced forester, the necessary facilities to carry out his task.

For the Regional Commissioner:

J.R.C. SUTHERLAND
Major,
Chief, Agriculture Div.

Plea in Mitigation of Sentence for [illegible]

RWP

"

Excellent record of service:—

5½ yrs in army – gave up good position to enlist at outbreak of war.
5 yrs 4 mos overseas
Was in original landings in Sicily
Was wounded in Sicily, returned to regiment & fought all thru the Sicilian campaign & up thru Italy until after Orvieto was taken.
He has participated in some of the hardest fighting of the war.

Since February of last year he has served with the HLI as Company Commander in a very responsible position, & strong testimonials as to his good character.

∴ This man has had a long & excellent record of service & has certainly taken a long & hard part in the war.

In all this 5½ yrs served, he has never had a serious charge laid against him — only 3 very minor offences!

Other Extenuating Circumstances:—

1. Married, ∴ will suffer if pay cut
2. Mother died shortly after he joined army
   Father died in Jan. 44
   Asked for compassionate leave at the time but did not receive it.
3. When with the H.C.C. he was the only Canadian among many Americans & English & consequently was made to feel an outsider among them.

He was the only pte among many officers of the Coy because he had also many of was of a lower rank he could not associate with the other on an equal footing, even tho he was doing equally responsible work.

As a result of these acts, Heath reported & asked for a transfer, to be returned to the unit, the P.P.C.L.I, but was not transferred

4 He did not go absent from the line, but found a less job — a much less serious affair

5 Has already spent 61 days in military confinement

In view of Heath's very fine record both in action & in other work, & considering his clear crime sheet & other extenuating circumstances I regret that court is unable to deal any more leniently with him.

Recd

Exhibit "A"
PWP

SUMMARY of EVIDENCE

Summary of Evidence in the case of H16178 Pte HEATH, W. P. (Princess Patricia's Canadian Light Infantry), 2 Canadian Infantry Base Reinforcement Battalion, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS for the PROSECUTION

M105021 Cpl Pawluk, W. G., 2 Cdn Inf Base Rft Bn, having been duly sworn, states:

"I produce a certified true copy of X-List PPCLI Part II Order No. 15 dated 6th February 1945, para 5 (c) which shows H16178 Pte Heath, W. P. absent without leave from 2359 hours 1st December 1944 until admitted to 15 Cdn General Hospital 14th January 1945 (marked Exhibit "A")."

W. G. Pawluk
(M105021 Cpl Pawluk, W. G.)

The accused declines to cross examine this witness.

The accused was cautioned as follows:

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give any evidence unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given as evidence."

The accused declines to make any statement or give any evidence on oath.

Certified that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

I certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused this 2nd day of March 1945.

J. J. Murphy Lt
(Officer detailed to take Summary)

In the Field,
2nd March 1945.

PWP

A5a (Admin) file

CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY

J. T. Murphy Lt.
Offg Adjt

Exhibit 'A'
JTMurphy Lt

Last Order "X" LIST PRINCESS PATRICIA'S CANADIAN LIGHT INFANTRY This Order
No. 14 Part II Orders, issued by No. 15
1 Feb 45 CDN SEC 2 BCH AFHQ. 6 Feb 45

"A" OFFICERS

1. STRENGTH INCREASE
(a) TOS X-3 List from P.P.C.L.I.
Lieut. N.J. Lewis 4 Feb 45

2. STRENGTH DECREASE
(a) SOS X-4 List (4 Bn) to P.P.C.L.I. Training Increment 30 Jan 45
Auth - ARS/TI/79, d/29 Jan 45
Lieut. R.E. Dahlquist
Lieut. D. Munro

"B" OTHER RANKS

3. STRENGTH INCREASE
(a) TOS X-3 List from P.P.C.L.I.

C 120629	Pte.	Brazier, A.E.	30 Jan 45	
E 106618	Pte.	Girard, J.A.	1 Feb 45	
K 68549	Pte. (A/Cpl)	Lyons, L.A.	31 Jan 45	
H 9869	Pte.	MacGorman, J.P.	4 Feb 45	
H 88044	Pte.	Post, E.A.	4 Feb 45	Carp "C"/GD
E 16354	Pte.	Shields, G.	1 Feb 45	Dr Mech(LV)"C"
B 97094	Pte.	Vollins, H.I.	1 Feb 45	
K 46167	Pte.	Woods, C.M.	30 Jan 45	

(b) TOS X-4 List (2 Bn) from X-9 List 31 Jan 45
Auth - Post Order WIB 4763, d/29 Jan 45
M 8278 Pte. Wabasca, A.

(c) TOS X-4 List (2 Bn) from X-7 List 1 Dec 44
Auth - Cdn 56/X7 List/1(AG1), d/16 Nov 44
H 16178 Pte. Heath, W.P.

(d) TOS X-4 List (2 Bn) from X-4 List (3 Bn) RCOC 31 Jan 45 on trans to CIC from RCOC.
Auth - CICH/46/Trans Reports/1 (A/Pa), d/30 Jan 45

H 99011	Cpl.	Clarke, J.	Stmn T&D "C"
P 35351	Cpl.	Sampson, S.H.	Stmn T&D "C"
P 22336	Pte.	Squires, W.J.	Clerk "C"

(e) TOS X-2 List from P.P.C.L.I. dates shown, on comm to 1 Cdn Div F.P. Camp (awarded 2 yrs impris with hard labour - 22 Jan 45)

H 14816	Pte.	Bernicki, J.J.	30 Jan 45
K 48183	Pte.	Flourde, R.V.E.A.	30 Jan 45
E 106481	Pte.	Shannon, D.M.G.	1 Feb 45

4. INTERNAL POSTINGS

(a) Posted from X-3 List to X-4 List (2 Bn)

H 16380	Cpl.	Frankovitch, M.	30 Jan 45
H 16558	Cpl.	Lowen, C.A.V.	1 Feb 45

(b) Posted from X-4 List (2 Bn) to X-3 List

H 16178	Pte.	Heath, W.P.	14 Jan 45
K 42956	Cpl.	Brewer, A.	1 Feb 45

(c) Posted from X-3 List to X-4 List (4 Bn)

H 16193	Pte.	Lychyporuk, J.	30 Jan 45
H 16810	Pte.	Pritchett, A.G.	30 Jan 45 Dr Mech(MV)"C"
L 36694	Pte.	Robinson, W.R.	30 Jan 45
H 16968	Pte.	Scarlett, C.W.	30 Jan 45
H 17167	Cpl.	Southworth, C.S.	30 Jan 45
D 76121	Sgt.	Sparrow, F.H.	30 Jan 45 Clerk "C"
M 30942	Pte.	Yausie, H.J.	30 Jan 45

(d) Removed from 2 Cdn F.P. Camp to No. 9 Br Military Prison 5 Feb 45

G 60909	Pte.	Gilbert, I.T.	

5. ABSENT WITHOUT LEAVE

(a) A.W.L. from 2359 hrs 1 Dec 44. Still absent 2359 hrs 2 Dec 44

H 16178	Pte.	Heath, W.P.	(1st day)	(2 Bn)

(b) A.W.L. from 2359 hrs 1 Dec 44. Still absent 2359 hrs 9 Dec 44

H 16178	Pte.	Heath, W.P.	(8th day)	(2 Bn)

(c) A.W.L. from 2359 hrs 1 Dec 44. Admitted to 15 Cdn Gen Hosp. 14 Jan 45. (Hour unknown)

H 16178	Pte.	Heath, W.P.

(d) A.W.L. from 0800 hrs 22 Jan 45. Still absent 0800 hrs 30 Jan 45

H 36693	Pte.	Higgens, J.A.	(8th day)	(4 Bn)

(e) A.W.L. from 2230 hrs 23 Jan 45. Still absent 2230 hrs 31 Jan 45

M 56261	Pte.	Jenner, G.D.	(8th day)	(X-3 List)

6. TRADESMEN'S RATES OF PAY

(a) Continue to draw Tradesmen's Rates of pay as shown under FR&I 147(5)(b) 31 Jan 45.

H 99011	Cpl.	Clarke, J.	Stmn T&D "C"
P 35351	Cpl.	Sampson, S.H.	Stmn T&D "C"
P 22336	Pte.	Squires, W.J.	Clerk "C"

7. PUNISHMENTS
(a) On 29 Jan 45 awarded 96 hrs detention for an off under AA 9(2) Forf 4 days pay under FR&I 149(1)(b).
H 1329 Pte. Dyer, E. (X-3 List)

8. NEXT-OF-KIN
(a) Change of address of next of kin Mrs Janet Pinkerton Frankovitch, (wife) from 6 Hill House Road, Rothesay, Bute, Scotland to 31 Columshill Street, Rothesay, Bute, Scotland.
H 16380 Cpl. Frankovitch, I. (2 Bn)

9. STRENGTH DECREASE
(a) SOS X-3 List to X-8 List 28 Jan 45
Auth - Evac Cert
H 102919 Pte. Couvier, T.A.
H 103026 Pte. Brown, R.N.

(b) SOS X-3 List to X-9 List (Pending re-board)
H 203104 Pte. David, V.O. 30 Jan 45
H 17234 Pte. Fuller, F.T. 30 Jan 45
H 103591 Pte. Shannacappo, L. 29 Jan 45

(c) SOS X-4 List (4 Bn) to P.P.C.L.I. 30 Jan 45
Auth - 1 CD/183, d/27 Jan 45
H 12008 Pte. Maxwell, S.R.
H 9718 Pte. Steele, L.M.

(d) SOS X-3 List to 2 Can B.E.T.D. "B" 29 Jan 45
L 110223 Pte. Jasieniuk, P.R.A.

/Lac

(W.H. LAUGHLIN) Captain,
for Officer i/c
Canadian Section, 2nd Echelon, A.F.H.Q.

Exhibit B

Army Form B 213

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
H16178	Pte	Heath, W.P.	2 Cdn. Inf. Bde. Rft. Bn.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement and not annexed to the proceedings.

† See para. 677 K.R. 1926

‡ The accused may be asked whether he admits the entries in the conduct sheet(s) to be correct, and if he admits them they may be proved by the production of the conduct sheet(s) signed by the officer who made the entries, or by a copy thereof certified by the officer who has the custody of the conduct sheet(s) to be a true copy. If the accused does not admit the entries now the matter in dispute should be stated separately and dated.

	* Within last 12 months.	†Since Enlistment.
For A.A. Sec 15(1)	0 times	2 times.
For A.A. Sec 19	0 times	2 times.
For A.A. Sec 40	0 times	1 times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct.~~

or

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, *or*

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 72 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time. ~~The accused at the present time is under sentence for~~

~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 51 days in military custody, making a total of 51 days, of which 46 days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 38 yrs.

6. The date of his ~~commission~~ attestation specified in his ~~attestation paper~~ record of service is 15 Sep 39.

~~7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~

~~8. The accused is entitled to deferred pay or gratuity in respect of service.~~

~~9. The accused is entitled to reckon service for the purpose of determining his pension, viz.~~

10. The accused is in possession of, ~~or entitled to, no military decoration or military award (or is in possession of or entitled to~~ (*state any military decoration or reward*)). C VSM & Clasp, 39-43 Star

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer was held the regimental rank of~~

~~(If the case of an officer.) The accused holds in the Army the rank of dated~~

~~and in his regiment (or corps or department) the rank of dated~~

(Page) WL 13892/144 125,000 8/42 A.E.F.W.1/2 Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. H16178 Rank Pte Name Heath, W.P. of 2 C.I.B.Bn Regiment (or as the case may be).

(INSTRUCTION—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 6th day of Mar 43

J. Murphy Lt

If the accused has served as a non-commissioned officer continuously, without reduction, to the present rank,

In the rank of Pte Date of Promotion

In the rank of ... Date of Promotion

In the rank of ... Date of Promotion

(INSTRUCTION—*If any sentence for an offence against discipline mentioned in the foregoing schedule has been remitted, the particulars should be stated in this column, and also in the case of a trial by field general court-martial the reference which may be called for from such courts as are available under the paragraph concerned, amended accordingly.*)

No. H16178 Name HEATH, William Pengilly | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 15:9:39 | GC Badges | Service or Proficiency Pay $1.50 3/[illegible] | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards pension from extra fine | Sheet No 1 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
U.K.		Pte		(1) AWL from 2200 hrs 22:7:41 to 1500 hrs 23:7:41. (2) Was drunk (3) Improperly dressed.		Admonished Forf 1 days pay FR&I 149(1)(a)	26:7:41		
U.K.		Pte		AA 15		Forf 4 days pay	6 Jul 42		
CMF		Pte		AA 19 (2nd offence)		Fined $5.00	1 Nov 43		
				CERTIFIED TRUE EXTRACT TAKEN FROM MFsM 4, w.e.f. 1 Mar 45. ORIGINAL MFsM 4, held in custody of:		(Sgd) "W. H. Laughlin" (W. H. LAUGHLIN) Captain Officer i/c Records (A5a), Canadian Section, 2nd Echelon, A.F.H.Q.			
				CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY					

...[illegible]...

(P10)

LIST of WITNESSES
in the case of
H16178 Pte Heath, W. P.

For the Prosecution:

(1) M105081 Cpl Pawluk, F. G. 2 Cdn Inf Base Rft Bn

For the Defence:

(1) N i l.

LIST of EXHIBITS
in the case of
H16178 Pte Heath, W. P.

EXHIBIT "A" - X-List PPCLI Part II Order No. 15.

I, H16178 Pte Heath, W. P., P.P.C.L.I., 2 Cdn Inf Base Rft Bn, request that Major H. Allen, R.C.A.M.C. (or) an officer be appointed to represent me at my trial by Court Martial.

2nd March 1945

W. P. Heath
(H16178 Pte Heath, W. P.)

I certify that I have been given gratis, a copy of the Charge Sheet, a copy of the Summary of Evidence, a copy of the List of Witnesses and a copy of the list of Exhibits pertaining to my trial by Court Martial.

2nd March 1945

W. P. Heath
(H16178 Pte Heath, W. P.)

PCWS

W-30

TH HEATHER, D.E.

W.30

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this - - - - - 21st - - - - - - day of- - - - January - - - - - - -, 1943 .

Whereas it appears to me, the undersigned, an officer in Command of 5th Canadian Armoured Division - , on active service, that the person named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial ; ~~*and that it is not practicable to delay the trial for reasons from superior qualified officers.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

~~*I am unable to appoint~~
~~*a. Three Officers to form the Court.~~
~~*b. A Field Officer as President.~~
~~*c. Three Officers having more than one year's service.~~
~~for the following reasons, namely:-~~

Proceedings Reviewed
Martin Capt
Reviewing Officer
2 Feb 43

President.

Rank.	Name.	Regiment.
Major	D.W.Cunnington,	1 Fd Sqn RCE

Members.

Rank.	Name.	Regiment.
Captain	R.C.Cullington,	8 Coy CDC
Captain	R.E.G.Hayward,	4 Fd Pk Sqn RCE
	WAITING ORDER	
Captain	G.T.Walker,	8 Coy CDC
	JUDGE ADVOCATE	
Major	H.C.Fraser,	Cdn Armd Div

* Must be signed personally by the Officer actually in command at the time; and all alterations in the composition of the Court to be initialled by him.

*Signed (C.R.S.Steel) Major-General
Commanding 5th Canadian Armoured Division.
Convening Officer.

2

SCHEDULE.

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-109, Tpr. Donald Ernest HEATHER, Div Hq Sqn (6RCH) 5 Cdn Armd Div.	1st Sec.18(4) A.A. (Alternative) 24/Sec 40, A.A.	Guilty Withdrawn	Guilty Withdrawn	Confirmed 27 Jan 43 Noted. 27 Jan 43
	3d Sec. 40. A.A.	Guilty	Guilty	Confirmed 27 Jan 43
	4th Sec.15(1) A.A.	Guilty	Guilty.	Confirmed 27 Jan 43.
	See att Charge-Sheet		Sentence:- To undergo detention for 150 days and to be put under stoppages of pay until he has made good the value of the following property:- 3 bttls scotch $ 15 - 1½ " rum 2 5 - 2 " gin 2 - - 2 " wine 1 16 - 1 " sherry - 14 - 1 8 2 - whisky about - 2 16 3 " cognac about 3 - Total $ 10/14/8. Refer to Pres. [illegible] Pres.	Confirmed. 25 Jan 43.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on a separate sheet if necessary):—

(Signed) [signature] (Signed) [signature]
(C.H.S.Stein) Major-General — President.
Commanding 5 Cdn Armd Div
Convening Officer (c)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

3

I certify that the above Court assembled on the 22nd day of January, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B.** Certificate of President as to proceedings.

I also certify that:—
1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~ shorthand writer. DNC
*(4. The officers under instruction)
were duly sworn. 5. The Judge Advocate. DNC

* Omit if not applicable.

Signed this 22nd day of January 1943

Neil Fraser Major
Judge Advocate.

D.N. Cunningham Major.
President of the Court Martial.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of A.C.I. 370 of 1918 have been complied with.~~ **C.** Certificate in case of death sentence.

Signed this day of 19

~~President of the Court Martial.~~

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. **D.** Confirmation.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison until further ordered.~~

Signed this 25th day of January 1943

[signature]
Confirming Officer, Gen.
G.O.C. 5 CDN. ARMD. DIV.

Promulgated and extracts taken in the case of B-109 TPR D.E. HEATHER

(a) (Dated) 27 Jan 43 (Signed) L.W. Collins Major.
G.C.H.Q. Sqn. (6R) 5 Cdn

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

G

Dn Summary of Proceedings

CHARGE-SHEET:

The accused B-109 Tpr. Donald Ernest Heather, Div. H.Q. SQN. (6RCH) 5 CDN. ARMD. DIV. a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 18(4)
Army Act

WHEN ON ACTIVE SERVICE STEALING property belonging to a Regimental Mess [illegible]

In that he

in the Field on or about 14 Jan. 43; at approximately 0130 hrs. stole 3 bottles Scotch, 1½ bottles Rum 2 bottles Gin, 1 bottle Creme de Menthe, 1bottle Drambie, 2 bottles Wine, 1 bottle Sherry, 10 bottles Stout, the property of Div. H.Q. Sqn. (6RCH) 5 Cdn. Armd. Div. Officers' Mess, valued at £12-9-3

Second Charge
(Alternative)
Sec 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he

in the Field on or about 15 Jan. 43, was improperly in possession of 3 bottles of Oatmeal stout, 2 bottles of Guinness stout, 1 bottle Creme de Menthe, the property of Div. H.Q. SQN. (6RCH) 5 CDN. ARMD. DIV. Officers' Mess, valued at £1/-

Third Charge
Sec 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISIPLINE

In that he

in the Field on or about the 14th and 15th days of Jan. 43 did improperly and without authority use Canadian Army vehicle; viz.: 5-cwt. 4x4, wd cm 4219010, for private purposes.

Fourth Charge
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

in the Field did absent himself without leave from 2259 hrs. 13 Jan. 43 until apprehended by no.5 Pro. Coy. at 0030 hrs. 15 Jan. 43, time absent 1 day 1 hr. 31 mins.

(L.M. St.B. COLLINS) MAJOR
COMD DIV. HQ SQN. (6RCH) 5 CDN ARM DIV

In the Field,
16 Jan. 43

approved pursuant to KR (Can) 540 and Invoice K 02223
ADJA 5 Cdn Armd Div. Major

To be tried by Field General Court martial
Signed in the field this
16th January 1943

Lt Cunningham Major
President

MEDICAL OFFICER'S CERTIFICATE

K.R. (Can.) Para 557

I certify that I have this morning examined No. B-109, Tpr. Donald Ernest Heather of Div Hq Sqn (GRCH) 5 Cdn Armd Div, and in my opinion he is fit to undergo trial by court-martial.

Station In the Field

Date 22 Jan 43

J M Cameron Major
Medical Officer

Trial of B-109, Tpr.Donald Ernest Heather, Div Hq Sqn (6RCH) 5 Cdn Armd Div.

Held in the Field on 22 January 1943.

PRESIDENT:

Major D.W.Cunnington, 1 Fd Sqn RCE.

MEMBERS:

Captain R.C.Cullington, B Coy CDC.
Captain R.E.G.Hayward, 4 Fd Pk Sqn RCE.

JUDGE ADVOCATE:

Major N.C.Fraser, ADJ, 5 Cdn Armd Div.

The order convening the Court, the charge-sheet, and the summary of evidence are laid before the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor:--Lieut.G.C.McDougall, Hq Sqn (6RCH) 5 Cdn Armd Div.

Defending Officer:--Capt.L.C.Parkinson, RCASC att Hq 5 Cdn Armd Div.

The order convening the Court is read in the hearing of the accused.

The accused does not object to the President, or any member of the Court.

The Court, the Judge Advocate, and the following officers under instruction, are sworn:-

Capt.G.T.Walker, B Coy CDC.
Capt.H.F.Pierce, Div Hq Sqn (6RCH) 5 Cdn Armd Div.

The accused does not object to M-57725, C/Sgt.J.E.Mahood, TLSC, Hq 5 Cdn Armd Div, acting as shorthand writer.

The shorthand writer is sworn.

The accused answers his name and number, and is arraigned on the charges. Charge-sheet marked "C" signed by the President, and annexed to the proceedings.

PLEA The accused pleads guilty to the first, third, and fourth charges.

R.P. 35 (B) is complied with.

The accused having pleaded guilty to the first, third, and fourth charges, the Prosecutor, pursuant to R.P.35(C), withdraws the second (alternative) charge.

FINDING — The court find the accused, B-109, Tpr.Donald Ernest Heather, Div Hq Sqn (6RCH) 5 Cdn Armd Div, guilty of the first, third, and fourth charges.

The summary of evidence is read, marked "H" signed by the President, and attached to the proceedings.

EVIDENCE AS TO CHARACTER, ETC. — Lieut.C.C.McDougall, Div Hq Sqn (6RCH) 5 Cdn Armd Div, the Prosecutor, sworn, states:--I produce M.F.B. 355 and certified copy of M.F.M.6 relating to the accused, which I have compared with the regimental books, and which are true statements as to character and particulars of service of the accused. (Documents read, marked "Y" and "Z" respectively, signed by the President, and attached to the proceedings).

No cross-examination.

The accused does not desire to give evidence or make a statement in mitigation or to call witnesses as to character, but desires that the Defending Officer make a plea in his behalf.

Defending Officer:--The accused has been fit to acknowledge all that he has been charged with, both on the present occasion and his past record, as read by the Prosecutor.

The case of the accused is this: I have known him for a period of time as a good workman, but one who possesses very little will power, he is easily led. This may account for the fact that his record shows he has been in trouble frequently. Recently he has been ill, partially due to his work in hot kitchens for which he had to receive medical treatment for his legs. From my experience with the man I would say that while his work is good he suffers from what we call "browned off". A cook in the Army is not usually looked upon as a very intelligent person, but there has never been any question regarding the accused's work, only his conduct, while on duty. This particular charge against him he doesn't deny, he doesn't even wish to question it, or the officer who states that certain property is missing from the mess.

It is possible that on that night prior to the commission of this offence that he had been drinking, he had been down in Horsted Keynes. If you look over his crime sheet you will see that periodically he has to get relief due to his nature and his work, and being of a weak nature and possibly not possessed of as great an amount of will power as others he lets himself feel the strain.

There is no option for the court, he has pleaded guilty, but what can the court do with this man, We frequently have clinics before which men are brought to take them from one job to another with the idea of making him a better man. This man is a cook and has been kept at it; each time he has committed an offence he has had to go back to it, it is the only job he knows. Nevertheless for his type it doesn't allow him that freedom the ordinary tpr will get.

You have this man, you are about to render your decision as to what should be done with him. The Judge Advocate has stressed the maximum sentence and also the lesser amount. No matter what you do in the way of sentence I suggest that you consider carefully what you are doing and do the right thing by him. In sentencing him to a severe punishment whathave you accomplished? He is of no use serving a heavy term of detention, and in all probability he will come back to a cooking job and all will have to be done over again. I suggest that when his sentence expires he be taken and given a different type of work, that should complete part of his punishment because he would be learning a new trade, would add to this man a certain amount of hardship. Therefore I ask the court to consider what he has done in the past and why he has done it, He must h have some reason to make him periodically break away from his duties. He himself doesn't want to get up and say he was intoxicated, he doesn't dery it, his guilt he admits. I am asking the court to consider the possibility of changing this man's character by their sentence. As I have already stated, to send him to detention for a stated length of time and bring him back to the same work is only reopening this case at a future date, therefore you gentlemen have the power to do justice to the accused when I ask you to take into consideration the points brought out.

The Court is closed for the consideration of the sentence.

SENTENCE

The court sentence the accused, B-109,Tpr.Donald Ernest Heather, Div Hq Sqn (6RCH) 5 Cdn Armd Div, to undergo detention for 150 days and to be put under stoppages of pay until he has made good the value of the following, the property of Div Hq Sqn (6RCH) 5 Cdn Armd Div Officers' Mess:--

1	bottles	Scotch.....	£ 3-15-0
1½	"	Rum.....	2- 5-0
2	"	Gin.....	2- 0-0
2	"	Wine.....	1-16-0
1	"	Sherry.....	0-14-0
2	"	Oatmeal Stout...	1-8
3	"	Guinness Stout..	2-0
		Total	£10-14-8

Sentence:-Deth.for 150days;stopp. £10-14-8.

CERTIFIED A TRUE RECORD OF THIS TRIAL, this 22d day of January, 1945.

Major
President

Major
Judge Advocate

H

Presiding Officer

R.P. 4

SUMMARY OF EVIDENCE

(Accused present at Summary)
(When evidence of witnesses)
(taken down in writing)

Div HQ Sqn (6RCH)
5 Cdn Armd Div
In the Field
16 Jan 43

Summary of Evidence in the case of B-109 Tpr Heather, D.E., Div HQ Sqn (6RCH) 5 Cdn Armd Div, Cdn Army Active Overseas charged with:-

When on Active Service, Stealing

When on Active Service, Conduct to the Prejudice of Good Order and Military Discipline

When on Active Service, Conduct to the Prejudice of Good Order and Military Discipline

When on Active Service, Absenting himself Without Leave.

R.P. 4 — The Commanding Officer directs that all evidence be taken on oath.

FIRST WITNESS — L-55688 Tpr Frape, H.V., Div HQ Sqn (6RCH) 5 Cdn Armd Div, Cdn Army Active Overseas, having been duly sworn, states:

"Sir I am a Trooper in the Scout Car Troop, Div HQ Sqn (6RCH) 5 Cdn Armd Div, stationed in the Field. On the night of the 13/14th Jan 43, when on duty at the 6th Hussars Officers' Mess as guard and for the purpose of answering the telephone, also for the purpose of checking the fires. At approximately 0130 hrs Tpr Heather came into the Officers' Mess and told me the blackout was shining. I looked at it and said there was nothing I could do about it and then he asked me to go into the kitchen to have a cup of tea. I thought it was a good idea because I felt cold and tired. I went into the kitchen with him. When I got to the kitchen Tpr Gibson was there and between the two of them I had a cup of tea and a sandwich. When I was eating the sandwich and cup of tea Tpr Heather went out of the kitchen and he came back in shortly after. He went out again immediately and I followed him to fix the fires which tooke me about five minutes. After fixing the fires I went immediately into the mess. When I got into the mess I found Tpr Heather with the bar door open and inside the bar. I asked him why and exactly what he was doing and he told me that he was starting to pack up for when they moved out in the morning. I did not think anything wrong in that so I let him go along with what he was doing. I did not see him carry anything out and that was the last I saw of Tpr Heather and Tpr Gibson.

The accused declined to cross-examine.

H.V. Frape
L55688 Tpr Frape, H.V.

SECOND WITNESS

B-22046 Gnr Jennings, G.A.H., Div HQ Sqn (6RCH) 5 Cdn Armd Div, Cdn Army Active Overseas, having been duly sworn, states:

"Sir, I am a Gunner in HQ Tp, Div HQ Sqn (6RCH) 5 Cdn Armd Div, stationed in the Field, at present employed at the Officers' Mess supervising the batmen and the Officers' Mess generally. On the morning of the 14 Jan 43 I arose at 0630 hrs and woke the batmen for duty. I then proceeded to call the cook, Tpr Heather, who I found to be absent and his bed had not been slept in. I reported these facts to the Orderly Serjeant. At about 0900 hrs I went to open the bar at the Officers' Mess but could not turn the lock. I noticed that the door to the bar had been jimmied so I got in touch with Mr Lennox at the Camp Comdt's Office and reported these facts to him. I then waited until the Officers returned at lunch time also reporting the state of the lock to them."

The accused declined to cross-examine.

G.A.H. Jennings

B22046 Gnr Jennings, G.A.H.

THIRD WITNESS

Lieut J.H. Lennox, Div HQ Sqn (6RCH) 5 Cdn Armd Div, Cdn Army Active Overseas, having been duly sworn, states:

"I am Lieut J.H. Lennox on the strength of Div HQ Sqn (6RCH) 5 Cdn Armd Div, stationed in the Field. I am also Mess Secretary to the 6th Hussars Officers' Mess. I was present at approximately 1230 hrs, 14 Jan 43 when Lieut McDougall forced the bar door open in the mess anti-room. He was unsuccessful previously in attempting to open it with the bar key. It was evident that the lock had been tampered with. On checking the bar stock we found 22 bottles of spirits, wines, and beers missing. This total was comprised of the following:-

		£.	s.	d.
3 Bottles	Spey Royal Scotch	3	15	-
1½ "	Honey Bee Rum	2	5	-
2 "	Gilbeys Gin	2	-	-
1 "	D'Baubonne Creme de Menthe		15	-
2 "	Unlabelled Wine	1	16	-
1 "	NAAFI Sherry		14	-
5 "	Oatmeal Stout		4	3
5 "	Guinness's Stout		5	-
	TOTAL	£ 12	9	3

The accused declined to cross-examine.

J.H. Lennox Lieut.

(J.H. Lennox) Lieut.

FOURTH WITNESS

D121211 Tpr Beaulac, J.D., Div HQ Sqn (6RCH) 5 Cdn Armd Div, Cdn Army Active Overseas, having been duly sworn, states:

"Sir, I am a Trooper in the HQ Troop, Div HQ Sqn (6RCH) 5 Cdn Armd Div, stationed in the Field. On 13 Jan 43 at approximately 2200 hrs I was coming from Major Knox's office which is located in Offrs' "Q" Mess, I saw WD Vehicle CM4219010 parked in the car park where I had left it at approximately 1900 hrs that evening. The following morning, 14 Jan 43, at 1000 hrs I went to get my vehicle from the car park and discovered it was gone. Due to the fact that I had the keys of the vehicle in my pocket and having not been informed that anyone else had permission to move the vehicle, I assumed that the vehicle had been stolen. I asked Lieut G.C. McDougall what I should do in that case and he said: 'I'll report it right away as stolen'."

The accused declined to cross-examine.

J.D. Beaulac Jr.
.....
B/21211 Tpr Beaulac, J.D.

FIFTH WITNESS — D-124 L/Sjt Withenshaw, D., Div HQ Sqn (6RCH) 5 Cdn Armd Div, Cdn Army Active Overseas, having been duly sworn, states:

"Sir, I am a L/Sjt in the Transport Troop, Div HQ Sqn (6RCH) 5 Cdn Armd Div, stationed in the Field. On 14 Jan 43 at 0700 hrs it was reported to me by Cpl Jenning-s that Tpr Heather was AWL and that his bed had not been slept in on the night of 13/14th Jan 43. I therefore entered an absentee report showing Tpr Heather AWL from 2300 hrs 13 Jan 43. I have not seen the accused since that time until he was returned to this unit under military escort."

The accused declined to cross-examine.

D. Withenshaw
.....
D-124 L/Sjt Withenshaw, D.

SIXTH WITNESS — Lieut G.M. Taylor, Div HQ Sqn (6RCH) 5 Cdn Armd Div, Cdn Army Active Overseas, having been duly sworn, states:

"I am Lieut G.M. Taylor on the strength of Div HQ Sqn (6RCH) 5 Cdn Armd Div, stationed in the Field, at present employed as Tpt Offr. On the morning of the 14th Jan 43 vehicle 5-cwt 4x4 WD CM4219010 was reported as missing. I immediately checked my records to see if higher authority had released this car for duty and found that this was not the case. As I had not authorized this vehicle to be on the road I reported that it was on an unauthorized trip by persons at the time unknown to me.

The accused declined to cross-examine.

G.M. Taylor
.....
(G.M. Taylor) Lieut.

SEVENTH WITNESS

H-86749 Cpl Panagapko, J., No 5 Provost Coy, 5 Cdn Armd Div, Cdn Army Active Overseas.

"A written statement of this witness' evidence, marked 'Exhibit A', and purporting to be signed by him, has been read to the accused and is included in this Summary of Evidence. Having regard to the exigencies of the service, attendance of this witness cannot, in my opinion, be readily procured. The accused does not demand the attendance of this witness for cross-examination."

.....
(G.W. Wright) Lieut.

EIGHTH WITNESS

C-87210 L/Cpl Cowan, D.D., No 5 Provost Coy, 5 Cdn Armd Div, Cdn Army Active Overseas.

"A written statement of this witness' evidence, marked 'Exhibit B', and purporting to be signed by him, has been read to the accused and is included in this Summary of Evidence. Having regard to the exigencies of the service, attendance of this witness cannot, in my opinion, be readily procured. The accused does not demand the attendance of this witness for cross-examination."

.....
(G.W. Wright) Lieut.

The accused, B-109 Tpr Heather, D.E., Div HQ Sqn (6RCH) 5 Cdn Armd Div, Cdn Army Active Overseas.

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give any evidence unless you wish to do so, but whatever you say may or any evidence you give will be taken down in writing and may be used in evidence."

By the accused: "I have nothing to say at this time."

The accused declined to call witnesses on his own behalf.

.....
B-109 Tpr Heather, D.E.

I certify that R.P. 4 has been complied with. Taken by me in the Field, 16 Jan 43, in the presence and hearing of the accused this 16th day of January, 1943.

.....
(G.W. Wright) Lieut.

No. 5 Cdn. Provost Coy.
5 Cdn. Armd. Div.

5P/5-4-3
15 Jan. 43

STATEMENT OF EVIDENCE IN THE CASE OF
B-108 Tpr. Gibson, G.F.
B-109 Tpr. Heather, D.E.

Exhibit "A" Dewright Lieut

Sir:

1. At Haywards Heath, Sussex, on 15 Jan. 43 I was N.C.O. i/c of town patrol. At about 0030 hrs. I was standing near the Civil Police Station when a 5 cwt utility car drove up and the driver asked L/Cpl. Cowan, No. 5 Provost Coy., who was with me, the road to Woking, Surrey. I asked the driver for his work ticket which I saw was out of order and made out to D-121211 Tpr. Beaul[illegible], H.Q. Sqn. 5 C.A.D. I then asked the driver for his name and number which he gave as B-108 Tpr. Gibson, G., H.Q. Sqn. 5 C.A.D. The other soldier in the car was B-109 Tpr. Heather, D.E. of the same unit

2. As the W.D. vehicle was CM 4219010 and had been reported stolen, I arrested Tpr. Gibson and Tpr. Heather and conveyed them to the guard room of the 5 Armd. Regt. (8 N.B.H.) where they were detained in custody.

3. I drove the vehicle to our unit lines, where on searching it I found one Creme De Menthe bottle (empty), two bottles of Guinness's Stout and three bottles of Oatmeal Stout, also on officers trench coat.

J. Panagapko
J. Panagapko, Cpl.
H-86749
No. 5 Provost Coy.

Exhibit "B" Dewright Lieut

I have read over and corroborate the above statement the # in the margin.

D.D. Cowan
D.D. Cowan, L/Cpl.
C-87210
No. 5 Provost Coy.

1 April 43
27 Jan. 1911

M.F.D. 225
10/P & D/41

Dvr Summary of Evidence
President

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-109	Trooper	Heather, D.E.	Div HQ Sqn (6RCH) 5CAD

1. The following is a fair and true summary of the entries in the A.F. B.1 Service and General ~~Regimental and Squadron, Battery~~ Conduct sheets ~~or Company Conduct Sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	Drunkenness I	times	Drunkenness I	times
For	Drunkenness 2	times	Drunkenness 2	times
For		times	Conduct to the prejudice 1	times
For		times	AWL 1	times

~~Number of instances of gallantry or distinguished conduct~~

0

~~Other entries~~ in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~by~~

~~Previous convictions of the accused by a court-martial or award of forfeiture of~~ ~~Air Force Act~~ A.F.A.13 ~~Army Act~~ ~~and dispensations with trial under A.A.13 are set out in the Schedule~~ ~~HEREUNTO THE MARGIN~~

3. The accused is not under sentence at the present time.

or,

~~The accused's present term is under sentence of~~ ~~Beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 7 days in military custody, making a total of 7 days in custody, of which ——— days were spent in hospital.

5. The present age of the accused according to his ~~record of attestation~~ attestation paper is 31 yrs, 11 mos, 3 wks

6. The date of his ~~enlistment~~ attestation specified in his ~~original service~~ attestation paper is 1 Apr 41

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. ~~The accused is entitled to reckon~~ ~~years~~ ~~months for the purpose of determining his pension, viz~~

9. The accused is in possession of or entitled to no ~~distinctive~~ military decoration, or ~~distinctive~~ military reward ~~except~~ ~~and is not entitled to a distinctive decoration or reward~~.

10. ~~The accused is recommended for~~ ~~The accused before he was made a warrant officer was~~ ~~with the regimental rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated, and in his regiment (or corps), the rank of dated.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force
Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22nd. day of January, 1943.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

ABSENTEE REPORT. EXHIBIT "F"

Battalion, Battery, Troop, Company.

Army Form B 200
(In sheets of 7.)

Army No.	Rank and Name	Where going	Hour of Return	In what state	Remarks
B109	Heather DF	2300 hrs. 13 Jan 43			

Date

Orderly Sergeant.

Div HQ Sqn (6RCH) 5 Cdn Armd Div

No. B-109 Name Heather, D E | Sqn., Battery, or Company | Corps | Date of enlistment 1-4-41 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character Excellent

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet One destroyed 1-10-41	A Alex Pirie Capt.				
Camp Borden Ont	4 Oct 41	Tpr	-	AWL from 0600 hrs 4-10-41 until apprehended by No 12 Pro Coy at Toronto at 0145 hrs 7-11-41 (absent 24 dys 45 mins)	Sjt Morgan Sjt Morrie Doc Evidence	Remanded to CC by Mr Neal		RR Munro Major	Forfeits 63 dys pay FR&I
Blackdown Hants	26 Dec 41	"	-	Act to the prejudice of good order and military discipline - Stealing 1 bottle of whiskey from Offrs Mess.	Sjt Morrill RC Tpr Gilchrist CE	28 days Detn	29-12-41	Lt-Col Wm Gillespie	
Field	15 Sep 42	"	1	Drunkenness; in that he on 15 Sep 42 was drunk. Sec 19 AA	L/Col Cross	Admonished	16-9-42	Capt H F Pierce	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20 Sep 42	Tpr	2	Drunkenness; in that he on 20 sep was drunk. Sec 19 AA	Sjt James L S	Fined £1/- KR (Can) 492(a)	21-9-42	Maj L M Collins	

CERTIFIED TRUE COPY: Captain and Adjutant
(G. T. Wright) Lieut.

4A-53

Spr. Heathcington W.A

RECORDED AT CMHQ IN AB 160, HA-53

RECEIV 19 OCT 1944 JAG L.R.

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA32) 40/P.A.S./1606 (2064)

Convened by Order of Brig A.B. Connelly Comd B Group CRU dated 2 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) ~~Appmt, A/R on A/Appmt~~	Full Christian Names	Surname	Unit.
B38346	Spr	William Alvin	HEATHERINGTON	1 CSRU

PROCEEDINGS REVIEWED 20 Oct 44
JCTC Lt Col Deputy Judge Advocate
REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 4 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~DAs, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1142 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 44(6), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~as interpreter?~~ Ans~~r~~

~~The interpreter is sworn.(1) Do you object to~~ ~~as shorthand writer?~~ Ans~~r~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(5). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~DAs, if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R.D. Shaneman	RCASC	1 CASCRU
Member	Capt.	E.B. Van Dine	RCASC	1 CASCRU
Member	Lt	R.G. Parks	RC Sigs	1 CSRU
~~Judge Advocate~~				
Prosecutor	Lt	J.W. Wylie	RCE	1 CER4
Defending Offr	Lt	R.F. Vallance	RCE	1 CER4

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (3)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 59 (3) and fn 2 were not followed. See Dr p 3.)

A8. The accused B 38346 Spr Heatherington W.A. before arraignment make(s) (no; ~~no~~) plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 109), or as to the jurisdiction of the Court (RP 34, 35(b), 113), or in bar of trial (RP 36), or as to accused's unsound mind to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record on refusal to plead or ~~dumb~~ stand, insert in AB mark and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 30, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B38346 Spr HEATHERINGTON, W.A.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AASec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on ~~(date)~~ (1).

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 44 days, of which 33 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 or ~~AF B296 (Overseas Forces)~~ as the case may be.)

Sentence Awarded by the Court: To undergo detention for a period of (60) Sixty months. ~~Dismissed from the service.~~

~~(Sgd)~~ ~~Judge Advocate, if any~~ 4 Oct 44 Date awarded. (Sgd) President. (RP 45, 59)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 32(D) fn 6, 66(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be entered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding but mitigate the sentence to read "To undergo detention for a period of sixty (60) days", and I confirm the sentence as so mitigated.

~~I direct that the accused be kept in custody in prison or detention barracks until further orders.~~(1) N/D

(1. AA 57A. Delete if not used.)

(Sgd) (A.B. Connelly) Brig
Date 6 Oct 44 Commanding Comd "B" Gp Can Rft Units Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B 38346 Spr Heatherington	9 Oct 44	

ENTERED PART II ORDERS
DATE 19 Oct 44 241
ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED BY A.
No. 1 Cdn Engineer Training Unit, C.A.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~and JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. Nil (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....
Do you intend to call witnesses on your behalf? Ans .....
Are they witnesses as to character only? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans Nil
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 6, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46. KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Nil, except my Defending Officer (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 118. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 60, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B 38346 Spr HEATHERINGTON WILLIAM ALVIN, Royal Canadian Engineers, No. 1 Canadian Engineer Reinforcement Unit, a soldier of the Canadian Army (Overseas) is charged with:::--

FIRST CHARGE.
A.A. Sec.15)(1)

WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field at No. 1 C.E.R.U., absented himself without leave from No. 1 C.E.R.U., from 0720hrs 12 Jul 44 until 0100hrs 22 Aug 44 when he was apprehended by the Cdn Provost Police at Euston Station, London.

(Absent 40 days 17 hours 40 minutes)

In the field
30 Sep 44

(G H WHITE) Colonel
Commanding Officer
No. 1 Cdn Engr Rft Unit
Canadian Army (Overseas)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(A.B. Connelly) Brig
Comd "B" Gp
Cdn Rft Units

2 Oct 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
B38346	Spr		William Alvin	HEATHERINGTON	1 CERU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 2 Oct 44 endorsed by me, ~~(or by an offr of my staff for that)~~, To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	R.D. Shaneman RCASC	1 CASCRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	E.B. Van Dine RCASC	1 CASCRU
Lt	E.G. Marks RC Sigs	1 CSRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	To be detailed by	1 CGRU

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) (Rank.)

Date 2 Oct 44

Commanding (A.B. Connelly) Brigadier
HQ B Gp CRU Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA65 (1st Revn. of AFA3) 40-7-5 & 6-1607 (1943)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 41.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 66(E), KR Can 565(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 96(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE.

K.R. (Cmd) Rule 557

I certify that I have this morning examined

No. B.38.346 ..... Sgt. HERTLE, R.H.G/Sax. M.

of. H.Q. C.A.R.U. ..... and in my opinion he

is ~~unfit~~ fit to undergo Trial by Court Martial.

Station. Field .....

Date. 4. Oct. 1944. ....

Medical Officer.

Record - Page 1

The Court adjourn for 1150 hrs & reassemble for lunch.

Pan E3
In attendance at Parliament

The Deputy Sec. states:

"This soldier has over three years of good service, most of which has been overseas. He is a good tradesman and he has applied as much until the discharge of his unit. (Sgn) [illegible] was to be the testator. In view of the fact that this is the first court breach of discipline and that he has been in close arrest awaiting trial for forty-five days, may the Court deal leniently with this case.

Page 1

EXHIBIT A

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B38346 Spr HEATHERINGTON, William Alvin, Royal Canadian Engineers, No 1 Canadian Engineer Reinforcement Unit as a soldier of the Canadian Army (Overseas)

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

First Witness for the prosecution

Lt D.H. Stock RCE of No 1 CERU having been duly sworn states:-

(1) I, Lt D.H. Stock RCE of No 1 CERU present a record of the Declaration of a Court of Inquiry assembled in the Field on the 5th day of August 1944 for the purpose of investigating and recording the absence without leave from his duty and deficiency, if any, in the Arms, Ammunition, Equipment, Regimental Necessaries or Clothing of B38346 Spr HEATHERINGTON W.A. whom I now recognize as the accused. (Marked Exhibit "A").

(2) I, Lt D.H. Stock RCE of No 1 CERU present the Certificate in accordance with P.C. 2797 of 10 Apr 44 in connection with the arrest of B38346 Spr HEATHERINGTON W.A. whom I now recognize as the accused. (Marked Exhibit "B")

D.H. Stock Lt RCE.

The accused declines to cross-examine this witness.

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to give evidence or make a statement.

The accused reserves his defence.

I certify that the foregoing Summary of Evidence consisting of this page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 45(10), (E), (F), & (G) have been complied with.

In the Field
28 Sep 44

D.J. Macgillivray Lt RCE
(D.J. Macgillivray) Lt RCE
Officer detailed to take the Summary of Evidence.

EXHIBIT A

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B 38346 Spr HEATHERINGTON WILLIAM ALWIN, Royal Canadian Engineers, No. 1 Canadian Engineer Reinforcement Unit as a soldier of the Canadian Army (Overseas)

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS

For the Prosecution Lieut D H STOCK R.C.E. of No. 1 C.E.R.U., having been duly sworn states:--

(1) I, Lieut D H STOCK R.C.E., of No. 1 C.E.R.U., present a record of the Declaration of a Court of Inquiry assembled in the Field on the 5th day of August 1944 for the purpose of investigating and recording the absence without leave from his duty and deficiency, if any, in the Arms, Ammunition, Equipment, Regimental Necessaries or Clothing of B 38346 Spr HEATHERINGTON W A whom I now recognize as the accused. (Marked Exhibit "A")

(2) I, Lieut D H STOCK R.C.E., of No. 1 C.E.R.U., present the certificate in accordance with P.C. 2797 of 10 Aug 44 in connection with the arrest of B 38346 Spr HEATHERINGTON W A whom I now recognize as the accused. (Marked Exhibit "B")

D H STOCK Lieut R.C.E.

The accused declines to cross-examine this witness.

The accused was cautioned as follows:--

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to give evidence or make a statement.

The accused reserves his defence.

I certify that the foregoing Summary of Evidence consisting of this page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(C),(D),(E),(F), & (G) have been complied with.

In the Field
28 Sep 44

[redacted] Lieut R.C.E.
Officer detailed to take the Summary of Evidence

Certified true copy of original document.

[redacted] Lieut R.C.E.
Officer detailed to take the Summary of Evidence

Page 5 - Ex A

Exhibit "A"

RECORD of the Declaration of a Court of Inquiry assembled at No.1.C.C.R.U. on the 5th day of August 1944 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No. B.38346 Spr. Heatherington, W.A.

DECLARATION

The Court declare that B.38346 Spr. Heatherington, W.A. wilfully absented himself without leave from No.1.C.C.R.U. at 0720 hrs on the 1st day of July 1944, that he is still so absent, and that on the 5 day of Aug 1944 he was deficient, and that he is still deficient of the following articles to the value of £20.81 (75% of vocab rate. See list on reverse of this sheet)

Signed at No.1. C C R U this 7th day of Aug 1944

N. De Pieces Lt. RCE PRESIDENT
No.1. C C R U

John P. Stirling Lt. RCE MEMBER
No.1. C C R U

R.G. Smith Lt. RCE MEMBER
No.1. C C R U

Signature of Commanding Officer (G.H. SMITH) COLONEL

Certified true copy Signature of officer having custody of original record.

SUB for MFB 375
8/165

Page 6 - Exh

KIT DEFICIENCIES OF R.38346 Spr. HEATHERINGTON W.D. 5 Aug 1944.

Anklets Web	prs	1.	$0.99	$0.74
Badges Cap		1.	0.09	0.06
B.D. Blouses Serge		1.	5.25	3.94
B.D. Trousers Serge	prs	1.	5.39	4.04
Boots Ankle	prs	2.	10.92	8.20
Brushes Hair		1.	0.34	0126
" Shaving		1.	0.37	0.29
" Teeth		1.	0.11	0.07
Cap Field Service		1.	0.56	0.42
Discs Identity		2.	0.02	0.02
Housewife		1.	0.30	0.22
Razor		1.	0.06	0.04
Shirts Flannel		1.	2.03	1.52
Towels Hand		1.	0.32	0.24
Drawers Cellu	prs	2.	0.86	0.64
Pull Through		1.	0.17	0.11
			$27.72	$20.81
			100%	75%

Page 7 - Ex A [illegible] Exhibit "B"

CERTIFICATE IN ACCORDANCE WITH P.C.2797 of 10 APR.42

I certify that No. B/[illegible] . Rank. Spr. . . . Name. Heatherington, W.A..

Unit. No. 1. C.W.R.U. (CRU) . was arrested at. London . . . . (place)

at. 0100 . . (hour) on 28. Aug. 44 . (date) and that at the time of his arrest he was wearing (military uniform) ~~or (civilian clothes)~~. Signature of Provost-Marshal, Assistant Provost-Marshal, or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

London
28 Aug 44

W.R. Birch LIEUT.
R. E. BIRCH,
ADMIN. OFFICER - D.P.M's BR.
(R.J. Smith) Capt.
D.A.P.M. C.M.H.Q.

EXHIBIT B

SUB FOR ARMY FORM B.-96 (WAR).

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank	Name	Unit Regiment (or as the case may be)
B 903646	Spr	HEATHERINGTON W A	No. 1 C.W.R.U.

NOTE:- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entry for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

Strike out if not applicable.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :--

For A.A. Sec 15(1) ... 2 ... times.

For A.A. Sec 11 ... 1 ... times.

For ~~Nil~~ ... ... times.

For ~~Nil~~ ... ... times.

Date of first entry in Field Conduct Sheet 20 March 44

Date of last entry in Field Conduct Sheet 18 June 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3. ~~The accused at the present time is undergoing sentence for ... beginning on the ... day of ...~~ Nil

4. The accused has been awaiting trial on the present charges for ~~Nil~~ ... days in civil custody; and for 44 ... days in military custody, i.e., ... days in open arrest, 44 ... days in close arrest; of which 35 ... days were spent in hospital.

5. The present age of the accused is 22yrs 5months

6. The date of his attestation is 8 June 41.
~~enlisting up for military service~~

7. The service which the accused is allowed to reckon is 3 yrs 36 days ... Nil

8. The accused is in possession of CVSM & Clasp

~~9. (If the accused is a warrant officer or N.C.O.).~~
The accused has served continuously, without reduction, to the present date - Date of Promotion.
~~Nil~~
~~In the substantive rank of ...~~
~~In the war substantive rank of ...~~
~~In the acting rank of ...~~

*State the military decorations (if any held by accused.

INSTRUCTION.- If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

SCHEDULE OF CONVICTIONS BY COURT-MARTIAL OR CIVIL COURT.

...riction of Court by ...ich tried.	Date and Place of Trial.	Charge upon which convicted.	Sentence of the Court	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 4th day of October 1944

Adjt.
1 C. Eng. R.U.

EXHIBIT C

MFM 6 (AFB 122) 40/P&S/156 (3456)

No B-38340 Name Heatherington, W.A. Unit, Battery, or Company — Corps R.C.E. — Date of enlistment 9/6/41 — GC Badges — Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 11/8/41 — No and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No 1 — Signature OC Company, etc (Signed) Major — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Old sheet destroyed 11/8/43 on completion of 2 years service in accordance with Overseas RO 2084									(Signed) Major
Field	20Mar44	Spr		AA 15(1) AWL 10 hrs 1 min.	L/Sjt Milton D.A.	Admonished	22 Mar 44	MJC Spratt Major	Forf 1 days pay FR&I 149 (1)(a)
Field	18Jun44	Spr		(1) AA 15(1) AWL from 0600 hrs 18 Jun 44 to 1050 hrs 20 Jun 44 Absent 2 dys 4 hrs 50 mins (2) AA 11 Neglecting to obey Unit Pt I Order No 130 d/9 May 44 in that he was at Doncaster 20 Jun 44.	Doc.	7 days FP	26 Jun 44	H.G.J. Woods Lt Col (1)(b) and FR&I 149	Forf 3 days pay FR&I 149 (1)(a) 7 days pay FR&I 149 7 days pay (1)(c)

CERTIFIED TRUE COPY OF ORIGINAL DOCUMENT NOW HELD IN MY CUSTODY: [signature] Sep 44
(T.H. Mc CALLUM) Capt RCE
Officer Having Custody of Regimental Documents

(PTO)

LIST OF EXHIBITS

List of Exhibits in the case of B 38346 Spr HEATHERINGTON W A.

"A" WFB 375 dated 5 Aug 44
"B" Certificate in accordance with P C 2797 of 10 Apr 42 dated 22 Aug 44

Page H

Ex A 1021

APPLICATION FOR DEFENDING OFFICER

I B 38346 Spr HEATHERINGTON W A request Lieut R F VALLANCE R.C.E. to defend me in my forthcoming Court Martial.

B38346 Spr Heatherington W A

B 38346 Spr HEATHERINGTON W A

I, B-38346 Spr Heatherington, W.A., do hereby acknowledge receipt of a copy of the Summary of Evidence in my case and one copy of the Charge Sheet.

B38346 Spr Heatherington W.A.

B-38346 Spr Heatherington, W.A.

REGIMENTAL DOCUMENTS

H.Q. FILE No. .....

NAME Pte. HEATHMAN. L. REGIMENTAL No. .....

UNIT OF ENLISTMENT ..... RANK .....

CONTENTS	NON-EFFECTIVE BY
COMBINED DECLARATION FORM OR ATTESTATION AND MEDICAL HISTORY (M.F.M.1 & 1A) OR (M.F.M.2 & 2A)	DEATH
SERVICE AND CASUALTY FORM (M.F.M.4 & 4A) (A.F.B.103)	DATE
PARTICULARS OF FAMILY (M.F.M.5)	CAUSE
FIELD CONDUCT SHEET (M.F.M.6) (A.F.B.122)	AUTHORITY
CERTIFICATE OF SERVICE (M.F.M.8) COPY OF, OR DISCHARGE CERTIFICATE (M.F.M.7) COPY OF	
FORM OF WILL (M.F.M.10 OR M.F.M.10A)	
DENTAL HISTORY SHEET	DISCHARGE
MEDICAL REPORT OR CASE HISTORY SHEET	DATE
MEDICAL EXAMINATION ON LEAVING THE SERVICE	REASON
TRANSFER CLOTHING STATEMENT	AUTHORITY
LAST PAY CERTIFICATE (M.F.D.998A)	
PROCEEDINGS ON DISCHARGE	
PROCEEDINGS COURT OF ENQUIRY	DESERTION
DECLARATIONS COURT OF ENQUIRY	DATE
PAY SHEETS	AUTHORITY
CARDS	
SUNDRY	

1397

Correspondence to be PINNED here.

RECEIVED JUL 8 1942

Army Form A.37

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this SEVENTEENTH day of JUNE, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 6 CANADIAN INFANTRY BRIGADE, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

*~~I am unable to appoint —~~

*~~(1.) Three Officers to form the Court.~~)

*~~(2.) A Field Officer as President.~~)

*~~(3.) Three Officers having more than one year's service.~~)

~~for the following reasons, namely:—~~

* Omit if not applicable.

PROCEEDINGS REVIEWED

K.G. Pearkes Lieut-Col
Commanding 15th Can Inf Bde
21 Jul 42

President.

Rank.	Name.	Regiment.
Major	H.H. Ross	Camerons of C

Members.

Rank.	Name.	Regiment.
Capt.	R. Hainsult	Fus M R
Lieut.	J.E.E. McManus	Camerons of C
	WAITING MEMBERS	
Lieut.	E.P. Thompson	Camerons of C

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed V.W. Sutherland Brig

Commanding 6 Can Inf Bde
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
H 19634 Pte. Heathman, L., Camerons of C.	First Charge A.A. 10(4) W.O.A.S. Breaking out of Camp, in that he, in the field, on the 9 Jun 42, did break out of Camp whilst a defaulter.	Guilty	Guilty N. McKay Major 19 June 42.	Confirmed WWS
	Second Charge A.A. 15(2) W.O.A.S. Absent without leave, in that he, in the field, on the 9 Jun 42, did absent himself from Camp from 1915 hrs 9 Jun 42 to 1825 hrs, 10 Jun 42. Total absence: 23 hrs 10 mins.	Guilty	Guilty To undergo 20 DAYS FIELD PUNISHMENT. N. McKay Major 19 June 42.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) W.W. Southam Brig (Signed) N. McKay Major.
Commanding 6 Cdn Inf Bde — Convening Officer (a) — Cameron of C. — President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 19TH day of JUNE 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) N. McK
*(4. ~~The officers under instruction~~) N. McK.
were duly sworn.

* Omit if not applicable.

Signed this 19th day of June 1942.
N. McKay Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

~~Signed this 19th day of June 1942.~~
~~N. McKay, Major.~~ N. McK
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*I direct that the soldier named in the margin be not committed to prison until further orders.) WWS.

Signed this 24th day of June 1942
W.W. Southam Brig
Confirming Officer.

Promulgated and extracts taken in the case of H 19634 Pte Heathman L.

(a) (Dated) 29th June 1942 (Signed) A.C. Cowley Lieut Governor of Hyde H.M.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] P.M. G. Ltr.

H19834
Heathman L Pte. Camerons of Canada
This is to certify that the w/n soldier is in good health and fit to undergo trial by Court martial.

In the field
19/6/42.

B. Brachman Capt RCAMC
two Camerons of Canada

Field Trial by Field General Court Martial

CHARGE SHEET

The Accused, H 19834 Private Heathman, L., H.Q. Company, The Queen's Own Cameron Highlanders of Canada, Canadian Army Overseas, is charged with:-

First Charge
A.A. 10 (6)

W.O.A.S. Breaking out of Camp, in that he, In The Field, on the 9 June 1942, did break out of Camp whilst a Defaulter.

Second Charge
A.A. 15(f)

W.O.A.S. Absent Without Leave, in that he, In The Field, on the 9 June 1942, did absent himself from Camp from 1915 hours 9 June 1942 to 1825 hours 10 June 1942. Total Absence:- 23 hrs 11 mins.

To be tried by Field General Court Martial.

A.C. Gostling Lt.-Col.
(A.C. Gostling)
Comd. Camerons of Canada.

I hereby request Major White, South Saskatchewan Regiment or Capt. C. Camareire, Fusiliers de Mont Royal, act on my behalf.

L Heathman

H 19834 Pte. Heathman, L.

RECORD OF PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL

Trial of H19834 Pte. Heathman, L.,
The Queens Own Cameron Highlanders of Canada,
Held at Camerons of C, 19 day of Jun 1942.

Court

President: Major N.H. Ross, Camerons of C

Members: Capt. R. Hainault, Fus M R
Lieut. J.E.E. McManus, Camerons of C

Prosecutor: Capt. N.A.T. Young, Camerons of C

Defending Officer: Major E.W. White, S Sask R

The accused is arraigned and pleads "guilty" to the following charges:

First Charge
A.A. 10(4) W.O.A.S. Breaking out of Camp, in that he, in the field, on the 9 Jun 42, did break out of Camp whilst a defaulter.

Second Charge
A.A. 15 W.O.A.S. Absent without leave, in that he, in the field, on the 9 Jun 42, did absent himself from Camp from 1915 hrs 9 Jun 42 to 1825 hrs, 10 Jun 42. Total absence: 23 hrs 10 mins.

Rule of Procedure 35(b) is complied with.

The abstract of evidence is read.

The Prosecutor files AFB 296 and certified copy of M.F.M. 6.

The Defending Officer makes the following statement in mitigation of sentence.

"The accused has gone one year without a crime being entered upon his Conduct Sheet and the Court is asked to take this into consideration.

Pte. Heathman realizes that he was a bit foolish to ask for a Court Martial but was "fed up" after the last punishment was awarded to him. Leniency is asked for".

CERTIFIED A TRUE RECORD OF THIS
TRIAL, 19 day of Jun 1942.

N. H. Ross Major

(N.H. Ross) Major
PRESIDENT.

The Prosecutor, Capt. N. J. T. Young was sworn and he read the Summary of Evidence. M.F.U. 6 was produced and Statement of Character and Particulars of Service of the Accused.

STATEMENT IN MITIGATION OF PUNISHMENT.

The Defending Officer pointed out that the Accused had gone one year without a crime being entered upon his Conduct Sheet and asked the Court to take this into consideration.

Private Heathcote stated that he now realized that he was a bit foolish to ask for a Court Martial but was "fed up" after the last punishment was awarded to him. He asked for leniency.

(Substitute for A.F.B. 296)
or M.F.B. 355

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No. M 12634 NAME Pte. Hoathman, L. UNIT Camerons of C.

AGE 23 MARRIED OR SINGLE Single NO. OF DEPENDENTS None

DATE OF ATTESTATION 7 Oct 39.

NO. OF DAYS SENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL —— MILITARY 6 HOSPITAL —— TOTAL

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY

Nil

A CERTIFIED TRUE COPY OF M.F.B. 6 MUST ACCOMPANY THIS FORM

J.A. Turner Capt. &
(J.A. Turner)
(Officer i/c Records)

Camerons of Canada Unit

Dated ~~at~~ In field
This 19 day of June 1942
(To be dated and signed as of date of trial).

Last Sheet Destroyed 3 - 3 - 41

No. N19834 Name HEATHMAN, L. Sqn., Battery, or Company H.Q. Corps CAMERONS OF C. Date of enlistment 7/10/39 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Shilo Camp	2/10/40	Pte.		A.W.L. 47 days 8 hrs 30 mins. Close arrest 16 days Sec.15(1)A.A.	Doc'y	28 days detention	4/12/40	Major H.J. Hoarde	Total forfeiture 92 days pay.
Delville Brks	5/5/41	Pte.		W.O.A.S. Absent off A.A. Duty from 0600 hrs 5/5/41 until 0900 hrs 5/5/41	L/Cpls Walker. S.	5 days C.B.	5/5/41	Lieut. Ayden	
Denton	3/7/41	Pte.		W.O.A.S. Dirty Rifle on Morning Inspection. (2) Unshaven Morning Inspection.	Sjt. Taylor. L.Y.	6 days C.B.	3/7/41	Capt. R. Thompson	
Denton	17/7/41	Pte.		W.O.A.S. A.W.L. from 2400 hrs 17/7/41 until 1045 hrs 18/7/41.	L/Sjt. Patrick	7 days C.B.	18/7/41	Lieut. A.J. Ayden	forfeits 1 day's Pay

Place	Date of offence	Rank	Cases of Drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Ryde	8/6/42	Pte.		W.O.A.S. Improperly dressed, in that he did have the hooks on the neck of his blouse unfastened.	Cpl. Norton.	7 days C.B.	9/6/42.	Lt-Col. A.C. Gostling	

CERTIFIED A TRUE COPY.

(J.A. Turner) Capt. & Adjt.
Camerons of Canada.

SUMMARY OF EVIDENCE in the case of H 19634 Private Heathman, Lester, H.Q. Coy., The Queen's Own Cameron Highlanders of Canada, Canadian Army Overseas.

First Witness

H 19524 Sjt. Cox, Henry, Stephen, John, H.Q. Coy., The Queen's Own Cameron Highlanders of Canada, Cdn. Army Overseas, having been duly sworn states as follows:-

I am H 19524 Sjt. Cox, Henry, Stephen, John, H.Q. Coy, The Queen's Own Cameron Highlanders of Canada, Canadian Army Overseas.

I am the Company Orderly Sergeant.

On the 9 June 1942, Private Heathman, Lester, broke out of camp while a Defaulter at 1915 hours. He was absent till 1825 hours 10 June 1942, when he returned sober and properly dressed.

Q.1. What proof have you that Pte. Heathman was absent at 1915 hours, 9 June 1942?
A.1. At 1910 hours I left Pte. Heathman in H.Q. Coy lines while I phoned the R.S.M. On my return Pte. Heathman could not be found in camp.

Q.2. What proof have you that Pte. Heathman was a Defaulter at the time of his going absent on 9 Jun 1942?
A.2. I submit his M.F.H. 6, which shows he was awarded 7 days C.B. on 9 Jun 1942.

Q.3. What proof have you that Pte. Heathman returned to camp at 1825 hours 10 June 1942?
A.3. He reported to me at the entrance to the camp at 1825 hours 10 June 1942.

Q.4. Is Pte. Heathman to whom you refer in your evidence the accused?
A.4. Yes, Sir.

THE ACCUSED DECLINES TO QUESTION THE WITNESS.

H. S. J. Cox.
H 19524 S.J. Cox, H.S.J.

THE ACCUSED DECLINES TO MAKE A STATEMENT.

Taken down by me, In The Field, this 15th day of June 1942.

I hereby certify that all the conditions of R.F. 4 (C to E) have been complied with.

W.H. Lang Lieut

6F-28.

Phil. Herbert, A

RECORDED AT CMHQ IN AB 160 5F 28

FIELD GENERAL COURT-MARTIAL

4/38B

RECEIVED 1 MAY 1945

Convened by Order of Lt Col JA ROBERTS / Comd 8 Can Inf Bde dated 6 April 45

ACCUSED.

(For trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank/appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D/139697	Sgt	ARTHUR	HEBERT	R de Chaud

PROCEEDINGS REVIEWED

Joseph de Billy Capt
2 May 45

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER JAG BRANCH C.M.H.Q.

Held in the Fd in (country) HOLLAND on (date(s)) 7 & 8 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 881-69

A1. The President, Members, waiting Member, ~~JA, if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for paths and instrs on how to record addresser, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0945 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial (1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~an interpreter.~~ / ~~a shorthand writer.~~ Ans —

The Interpreter is sworn.(1) Do you object to ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D V PUGH	1 C Scots R
Member	Captain	H G W BEAN	R O R de C
Member	Captain	A H PARKER	3 A/Tk Regt RCA
Judge Advocate			
Prosecutor	Captain	R ROCHON	R de Chaud
Defending Offr	Captain	M P CARDINAL	R de Chaud

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) C. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 1 were not followed). See Ch 9 p 2.)

A8. The accused ~~—~~ before arraignment make(s) (has) (no) plea(s). (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 36, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 132, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the evidence given in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to this para. Insert in AB each plea and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and scan separate copies of CF AF5 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is advised~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D + E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D/139697 Sgt ARTHUR HEBERT R de Chaud

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 12. 1(a)	Not Guilty	Guilty	with the exception that the words "Sergeant" & "Sgt" & "Sgt." Deft. with the exception that he be of his "post" rather than his "platoon" as charged
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 482 fn 4 para 2, RP 44; special findings see RP 44 and MML p 153, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~—~~ beginning on (date) ~~—~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which 0 days were spent in hospital

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for two years.

(Sgd) ~~—~~ Judge Advocate, if any. 8 Dec 44 Date awarded. (Sgd) D V Pugh President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.) 1 C Scots R

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ~~—~~ (Sgd) ~~—~~ Commanding ~~—~~

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be entered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the findings of the court but remit one year of the sentence so that it shall read "To undergo detention for one year".

~~I withhold [illegible]~~ (1. AA 57A. Delete if not used.)

(Sgd) Jas Roberts Lt Col
Date 18 Dec 44 Commanding 8 Can Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D/139697 Sgt Hebert R.	20 Dec 44	W Farthing Lt. Col.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED. Rde Chaud

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 90(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *cf* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E.
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

Serv Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~(an)~~ (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. I wish to make a statement on oath. Do you intend to call witnesses on your behalf? Ans. Yes. Are they witnesses as to character only? Ans. No.....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 495. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 40(*A*) *fn* 1. 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*c*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part II of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(2) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(2), *RP* 45, *117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. A and Ex. B respectively.(3)
(1. *MFB* 355 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes by my defending Offr Lt C (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6). *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182. *RP* 46-50, 69, 118, 119(*A*), *KR Con* 328, 330, 563-566. *Overseas RO* 309, 2323. *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 63(7), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

CHARGE SHEET

THE ACCUSED D-139697 PTE HEBERT ARTHUR OF LE REGIMENT DE LA CHAUDIERE A SOLDIER OF THE CANADIAN ARMY OVERSEAS:

IS CHARGED WITH:

1ST CHARGE
ARMY ACT
SEC. 5(77)
12(1a)

WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE
in that he:
In the Field at 1900hrs on the 14 Nov 44 left his platoon in face of the enemy with entent to avoid action and was later at 1400hrs 15 Nov 44 found at "A"ech Le Regiment de la Chaudiere

IN THE FIELD
24 Nov. 1944

W Taschereau Maj
MAJOR G.O. TASCHEREAU,
COMMANDING,
LE REGIMENT DE LA CHAUDIERE.

TO BE TRIED BY F.G.C.M.

IN THE FIELD
25 Nov. 1944

J.A. Roberts
(J.A. ROBERTS) LT-COL,
COMMANDING 8 CDN INF BDE.

Def.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if outharized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate outhy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 67(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-139697	Pte		Arthur	HEBERT	R de Chaud

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has [illegible] committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 25 Nov [illegible] endorsed by me, ([illegible]). " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ([illegible])

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	D.V. Pugh	1 C Scot R

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	H.G.W. Bean, MC	2/R of C
Capt	A.H. Parker	3 Cdn A Tk Regt

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	S.R. Robertson	Hq 9 Cdn Inf Bde

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland (Country.)

(Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

Dat 6 Dec 44

T/Commanding 8 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 86 (In lieu of AFA 8) 40-7 & 8-1697 (6143)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RQ (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by *him* in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn* 3, *46 fn* 1, *86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, *87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, *87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Con 565(a).*)

(vii) Summing up by JA, if any. (*RP 62.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Con 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Con 560. As to certified copies of regimental books see AA 162 (1) (g) (5).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minimum of sentence awarded. (*AA 53(9), RP 118(C), MML p 739.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

LE REGIMENT DE LA CHAUDIERE

Dvt.

Medical Report.

7 Dec. 44

I certify that I have this morning examined No. R: 139.697
Rank... Pte... Name.....
Regt. de la Chaudiere. and in my opinion he is FIT ~~or UNFIT~~
to undergo trial by court-martial.

Gauthier

Capt. Gauthier P. RCAMC
M.O. R. de Chaud.

Page 4 Accd

Def Witness: Capt P. Gaughan BMC 4 Regt Dublin Brigade
Sworn, States

The accused came to my R.P. between 0500 and 1000 hours 16/10/44 he was nervous and told me he was nervous. I gave him a sedative and told him to go to his platform billet and get some rest to rest for a few hours. In my opinion the man was fit to return to duty after a few hours rest. I do not consider hospitalisation necessary. He was not in a nervous state of shock. I am of the opinion that if remanded now that he will not become

Cross-examined by Prosecution

When in action, is a man allowed to go to the R.A.P. without permission

No

Did the accused have authority to go to the R.A.P.

No

R.P. 83 complied with.

The accused having been questioned - accordance with Rule 95 C.A.A.96 submits the attached statement under Oath and having been sworn is questioned by the Court.

Q1 At what time did you go to breakfast

Ans. Around 0500 hours.

Page 1 Accd

1st WITNESS: Capt E. Walsh Sworn States

Around 1900 hours 14/10/44 the enemy made a night infiltration around our position. The accused 013697 Private Robert A. of 4 Pl Dublin Brigade reported sick to my Platform H.Q. I gave him about 30 minutes to recover himself and then told him to return to his trench he refused to do so. I explained the consequences of his refusing to my order. He still refused to go. I told him to stay in my Platform H.Q. for the night. The next morning I sent him for breakfast and he did not come back.

Questioned by Prosecution

Did accused tell you he was sick?

Yes

Did he complain of being sick or ill on the 14/10/44

No, in my opinion he was not ill

Questioned by Defence:

Was your platoon in the attack or in a defensive position

We were in a defensive position

How far approximately were you from the enemy

About 150 yds

Did he see an officer in charge of Pl H.Q.

No another man brought him in

How long has he been in your Platoon

About 2 or 3 Months.

Did he ask permission to see the M.O

No

A.T.O.

Page 2.

1st Witness. Capt F ARSCOTT Regt No to Stand

Cross Examined by Defence

Q1 In your opinion was he really diseased

A1 He looked really nervous

Q2 In your opinion was he better or worse (Cross Exam)

A2 Not in my opinion

Q3 Had you noticed at any previous time

nervousness in the accused

A3 No.

Questioned by Court

1 When you ordered him back did you

A consider him normal and in a fit

A1 state for duty in the line

yes

2 When should he have returned from Breakfast

A2 About 05.30, the next cars took them.

R.P 83 B complied with

Dismissed

Page 3

2nd Witness 7311 Pte Bradbrook J. to Right Do Oath Sworn State.

On the night of the 14th/15th June in a shell hole with the accused and Pte Bramwell. I saw a enemy M.G in front of us and our own guns were doing a battle shelling. Robert seemed very frightened. He asked to be taken to the Lieutenant I told him that we were not to be frightened of it and he was very calm.

R.P 83 B complied with

3rd Witness 7305 L/Cpl H Ossiette A to Right to stand Sworn State.

I saw the accused on guard at 1 A.M. at 100 Yards N.W. of 44 and asked what was wrong then he told me that he had been to the M.O and was wrong and had been told to rest at H.Q. He had no medical treatment.

R.P 83 B complied with.

Statement, UNDER OATH by. FARMS Dict

D-139697 Pte Arthur HEBERT.

At approximately 1900 hrs 14 Nov. 44. I was on duty in a slit trench on the front line. I was very nervous + shaking and realized that I could not stand it any longer. I asked a comrade Pte Boudreau J. to take me back to Pl HQ to see the officer. I stayed there about half an hour. Then Capt Ansell ordered me back to my slit trench. I told him I was unable to do so. He then called for Sgt Gagné and gave me an order to get out and go to my position. I kept silent and after a while Capt Ansell said: "Are you going back." I answered: "No" I stayed there. At that stage the enemy started to infiltrate through our lines and I got more nervous. Capt Ansell told me to stay where I was and that he would send me back the following day. At breakfast time the following morning Sgt Gagné was leaving the Pl. duty area when Capt Ansell told me to go with him. I went back to the kitchen 200 or 300 yards back and stayed there. I was still dark after breakfast so I decided it was

No use to go and see the M.O. at that time so I decided to wait I went to the M.O. around 9 a.m. (0900 hrs) 13 Nov. 44. The M.O. gave me 4 pills and told me to ask my Captain to let me rest for the day. As the Captain was I in front and nobody could proceed from the Kitchen to the front line in daylight because of the open ground I decided to go from A the R.A.P to A ech. as there was no hope to rest at the kitchen in day time. I had lunch at A ech and I asked for a soldiers to lend me his blankets and was fixing myself to bed when the afternoon parade was called After parade I went to sleep I got up for dinner and the C&M told me I was on guard duty the night. I never at any time had the intention to desert and had had that intention I would have gone away for good and would not have stayed at one A ech

A. K. Ibe

Mitigation of Punishment Recd. & c
in the case
D-139697 Pte Arthur HEBERT

Pte Hebert enlisted on the 16 Feb 43. Before completing his elementary infantry training, he was used as a ~~runner~~ driver until the time he was drafted to Eng where he arrived on the 11th Apr 44. France 15 Jun 44. R de Chaud 1 Aug 44. Used as Bren gunner from 1 Aug till 16 Sept 44 As a driver from that time until 13 Nov 44, the day prior to the offence. He claims he has no knowledge of infantry work and that his nerves are too weak to stand it. He is married, father of two children. I therefore request that the Court should be lenient with him. ~~[redacted]~~ I furthermore request that a request be put forward by the Court so that the man could ~~be~~ be medically observed merely to give him justice and establish if or not he is fit for front line duty

Defending Officer Maj Landers Capt R de Chaud

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-139691	PTE	HEBERT A.	LE REGIMENT DE LA CHAUDIERE

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct-sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number or nature of the convictions, punishments being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.WL	two times	times.
For A.A.Sec. 11	times	one times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

The [redacted] 43

2. The accused has not been previously convicted, *or*

Pre[redacted] of the

Art[redacted]

3. The accused is not under sentence at the present time, [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 21 days in military custody, making a total of 21 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 25 years

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 20 Feb.43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is [illegible]

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*) G.V.R. & CLASP

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated and in his regiment (*or corps or department*) the rank of dated

(7)[illegible] 81-3400/1700 [illegible] A.G.R.W.1st Co-600

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. [illegible]29697 Rank Pte Name Heart A of Chaudière Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment omitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8 day of Dec 44

R L Boulanger Capt A/Adjt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

To the rank of ..... years, ...

To the rank of ..... years .....

To the rank of ..... years, ...

(INSTRUCTIONS.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph retained amended accordingly.*)

The Assistand Judge Advocate General, HQ First Cdn Army, having advised that the conviction in these proceedings is invalid and involves substantial injustice to the accused, I hereby direct that the record of such conviction be and the same is hereby removed and the accused relieved from all consequences of his trial thereon.

In the Field
13 Mar 45

Jas A Roberts
(J.A. Roberts) Brig
Commanding
8 Cdn Inf Bde

PROMULGATED AND EXTRACTS TAKEN

Accused	Date	Signature of Offr
D.139697 Pte. Hebert A		

The assistant Judge Advocate General, HQ First Cdn Army having advised that the conviction in these proceedings is invalid and involves substantial injustice to the accused I hereby direct that the record of such conviction be and the same is hereby removed and the accused relieving from all consequences of his brial thereon.

(SGD) JA ROBERTS) Brig.
Commanding
8 Cdn Inf Bde

In the Field
13 Mar 45

PROMULGATED AND EXTRACTS TAKEN

Accused

Date 19 Mar 45 Signature

D 139697 Pte Hebert A

W.D. Cairncross Capt
A/Commdt

No. D-139698 Name HEBERT A. Sqn, Battery, or Company Support Coy. Corps CIC Date of enlistment 26. Feb. 43 GC Badges n/a Service or Proficiency Pay

3/17 MFM (AFB 122) 40/PAM/108 (5118)

Date of last entry in Company Conduct Sheet n/a No. and date of last drunk n/a Period not reckoning towards freedom from extra fine n/a Sheet No ONE Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				SHEET NO I DESTROYED after 6 months. 26-2-43					
Woodstock ONT.	7 Oct 43	Pte		Fail to obey (any standing orders (gambling)	Doc. evidence	5 days C.B.	7 Oct	Lt Col. Warnock	
Farnham P.Q.	10 Jan 44	Pte		AWL from 0100 hrs 10 Jan 44 until 2100 hrs 10 Jan 44. Total absence 20 hrs.	Pte Lawrence & Doc. evidence	Admonished	10 Jan	Capt S. Rekes	Acft forfeiture 11 day 2 Jan 44.
Field	30 Apr 44	Pte		AWL from 1015 hrs 30 Apr 44 Till 1530 30 Apr 44 Total absence 5 hrs - 15 mins	Sgt Peters	7 days C.B.	1 May 44	Capt Bastin	

Certified true copy
K.P. Bourgeault
Asst I/C Unit Records

(PTO)

SUMMARY OF EVIDENCE

In the case of D-139697 Pte Hebert A. Le Regiment de la Chaudiere, a soldier of the Canadian Army placed on active service.

(a) The C.O. directed that the evidence be taken on oath.

1st.Witness:- Capt. F. Ansell Le Regiment de la Chaudiere, having been duly sworn states:-
I am Capt F. Ansell of Le Regiment de la Chaudiere.
I am O.C. "4 Pl and on 14 Nov 44 we were on an outpost facing the enemy. Around 1900hrs 14 Nov 44 the enemy made a night infiltration around our position. D-139697 Pte Hebert A. Le Regiment de laChaudiere, became scared and came to my Pl. H.Q. where I was. I gave him time to recuperate as he was nervous and shaky, after about 30 minutes, I thought that this would be long enough to recuparate from the shock, I ordered him to return to his slit trench and he refused to do so, I gave him this order in the presence of E-10289 Sgt Gagne L. (who is evacuated now as a casualty). I explained to Pte Hebert A. what the consequences would be if he refused the order and still he refused to go back, he stayed in my Pl.HQ. dugout all night and he was shaking through the night. The next morning he went out for breakfast and did not come back. I did not give him permission to stay behind at the kitchen and he never asked me to goto see the M.O.

F.Ansell (Capt)
Le Regiment de la Chaudiere.

The accused declines to cross examine this witness.

2nd.Witness:- E-5909 A/Cpl Ruest A. Le Regiment de la Chaudiere, having been duly sworn states:-
I am E-5909 A/Cpl Ruest A. of Le Regiment de la Chaudiere/
I am i/c of "3 Sec."Pl 4 and on the evening of the 14th Nov44 G-1224 Pte Arseneault J.A. come to my slit trench to tell me that D-139697 Pte Hebert A. had intention of leaving his position as he was scared and refused to stay. I went over to where I had told Pte Hebert to stay and he was gone. The next morning I did not see him in position nor at breakfast.

Question by accused to 2nd witness:

Did you not see me at breakfast on 15th Nov 44?

Answer by 2nd witness:

To my knowledge, I did not see you.

E-5909 A/Cpl Ruest A.
Le Regiment de la Chaudiere.

3rd.Witness:- G-1224 Pte Arseneault J.A. Le Regiment de la Chaudiere, having been duly sworn states:-
I am G-1224 Pte Arseneault J.A. of Le Regiment de la Chaudiere. On the night of the 14th Nov 44 D-139697 Pte Hebert A. was in the same slit trench as myself. I noticed that he was very C nervous and shaky. He told me that he did not want to stay in position as he was too nervous. I left him and went to see A/Cpl Ruest A. to tell him and the Pl C.O. about this.

On my way back I saw Pte Hebert with E-9317 Pte Boudreau going towards Pl HQ. I did not see him back in position that night. The following morning I saw him at breakfast. After breakfast I went back in position and he was not there. I did not see him all day.

G-1224 Pte Arseneault J.A.
Le Regiment de la Chaudiere.

The accused declines to cross examine this witness.

4th.Witness:- E-9317 Pte Boudreau J. Le Regiment de la Chaudiere, having been duly sworn states:-
I am E-9317 Pte Boudreau J. of Le Regiment de la Chaudiere. On the night of 14th Nov 44 I was in the same slit trench as D-139697 Pte Hebert A. and G-1224 PteArseneault J.A. I noticed that Pte Hebert A. was very nervous. Pte Arseneault left to go and see the Pl. O.C. and during his absence Pte Hebert A. told me:"I am scared and I cannot stay here, will you come with me to see the Pl O.C." I told him that there was no eminent danger that they were not even shelling. He insisted and so I took him over to the Pl HQ. I, there went back into my position. I did not see Pte Hebert A. again that night nor the next morning.

E-9317 Pte Boudreau J.
Le Regiment de la Chaudiere.

The accused declines to cross examine this witness.

5th.Witness:- E-9305 A/CSM Ouellette H. Le Regiment de la Chaudiere, having been duly sworn states:-
I am E-9305 A/CSM Ouellette H. of Le Regiment de la Chaudiere I am A/CSM of "A"ech, at approximately 1400hrs 15 Nov 44 after forming up my parade at "A"ech lines, I noticed that D-139697 Pte Hebert A. was in "A"ech lines.

E-9305 A/CSM Ouellette H.
Le Regiment de la Chaudiere.

The accused declines to cross examine this witness.

Question to the accused:
Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or evidence you give will be taken down in writing and may be given in evidence.

Answer from the accused:
No sir, I reserve my defence.

D-139697 Pte Hebert A.
Le Regiment de la Chaudiere.

I certify that the summary of evidence has been taken down by me in the presence of the accused and the rules of procedure 4 C/D/E/F have been complied with.

Signed in the Field
this 18th of Nov 44.

W. Lochon Capt
Le Regiment de la Chaudiere.

000-22

PTE HEBERT A

FROM: CASUALTY BRANCH 141548OB

TO: CDR GEN AAI

AA868 WP

REFERRED (.) PARA (2) GNR (.) FROM PROCEEDINGS [illegible]
PTE MERRIN A 6758S ALLAIN FE BOTH TRIAL 43/1 RECEIVED
5 JUN 44 AND 10 JUN RESPECTIVELY ENDORSED BY M G A
14 JUN (.) QUOTE (.) I CONFIRM THE FINDINGS AND SENTENCE
AND DIRECT THAT A PART OF THE SENTENCE NOT EXCEEDING
2 YEARS SHALL BE SERVED IN A MILITARY PRISON (2)
UNQUOTE (.) ALLAIN TRIED 31 MAR 44 PROCEEDINGS REACHED
CDR GEN 1 JUN 44 NO EXPLANATION DELAY (.) PARA (2)
TWO (.) FROM PROCEEDINGS [illegible] PTE MERRIN P TRIAL 39D/1
RECEIVED 10 JUN 44 ENDORSED BY M G A 14 JUN (.) QUOTE (.)
I CONFIRM THE FINDINGS BUT I COMMUTE THE SENTENCE TO
READ QUOTE TO UNDERGO DETENTION FOR ONE YEAR UNQUOTE
AND I CONFIRM THE SENTENCE AS SO COMMUTED (.) UNQUOTE (.)

[illegible]
BT 141548 NOV 44

NO SRL 93 142256 WW K

QUEX

Correspondence to be PINNED here.

CERTIFIED TRUE COPY
(R. CORDEAU) CAPTAIN

Hebert A

RECORDED AT CMHQ IN AB 160 000-22

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty-fifth day of April, 19 44.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *and that it is not practicable to delay the trial for [redacted] "PE"

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [redacted] "PE"

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	R McD Hersey	Carlt & York R

Members

Rank.	Name.	Regiment.
Captain	L A Duplisea	Carlt & York R
Lieut	G E Rainsford	Nova Scs
Lieut	F S J Mecan	R 22e R
Waiting		

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed "E. Bernatchez" Brigadier
Commanding 3 Cdn Inf Bde
Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
E5393 Pte Azade HEBERT R 22e R	First Charge Sec 12(1)(a) AA	Not Guilty	Guilty To undergo Penal ~~Sentude~~ Servitude for a period of 3 years. 26 Apr 44 "RMDH"	I reserve finding and confirmation of sentence for higher authority. 29 April 44. "P.E. Bernatchez" Brig Comd 3 Can Inf Bde

*Question to be asked of accused, if he pleads not guilty (R. of P. 29 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(*Signed*) "P.E. Bernatchez" Brigadier (*Signed*) "P.M.D. Horsey" Major

Commanding 3 Can Inf Bde *President.*

Convening Officer (e)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 26 day of April, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses, ~~[illegible]~~ E.4690 Pte. P. Landriau R.22e R.

*Omit if not applicable.

~~[illegible]~~

were duly sworn.

Signed this 26th day of April 19 44

"P.M.D. Horsey" Major

President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 782 M.M.L. 1929

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this day of 19

Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] WILLIAMSON HOUSE [illegible] A.B.E.W. Ltd. Gp.4/45

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined No.S.5393
Rank Pte....Name HEBERT, A...Royal 22e Regiment
and in my opinion he is fit to undergo trial by Court Martial.

Station..In the Field
Date...26th April 1944

"J. Brown" Capt
(Medical Officer)

"RMDH"

A

Army Form A 9.

**All words which are not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held ~~at~~ in the Field on the 26 day of April 19 44 by order of

Brigadier P.A. Bernatchez" D.S.O.

Commanding 3 Cdn Inf Bde

dated the 26 day of April 19 44

President.

Major R.M.D. Horsey C & Y

Members.

Capt L.A. Duplisea C & Y

Lieut G.N. Budreski W.N.S.R.

~~Judge Advocate~~

Trial of "E.5393 Pte Azade HEBERT R.22eR.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court

The Court satisfy themselves that H/A is not available to serve owing to

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut P.A. Tremblay R.22eR

~~Accused~~; or defending officer† Lieut. L.A.R. DesRosiers R.22eR.

At 1100 o'clock the Trial commences.

The order convening the Court is read, and is marked A signed by the President, and attached to the proceedings

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q7205. 50,000 pds. 11/40. K. & E., Ltd. (A6771). Forms A 9 (a).

B

The President, members [redacted] are duly sworn

[redacted]

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you which you have heard read? *Question to the accused.*

Not Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

N/A *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

N/A *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

N/A *Answer.*

The accused having pleaded Guilty to **N/A** charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. Instruction.

C H A R G E S H E E T

In the case of R.5393 Private Asade HEBERT, a soldier of "A" Coy, Royal 22e Regiment, Canadian Army Overseas, CMF, On Active Service, is charged with:-

1st Charge
11 Sec 12(1)(a)

WHEN ON ACTIVE SERVICE

DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field, on 14 Mar 44 when under orders to participate on an attack on "King Bird" absented himself without leave from 1915 hrs 14 Mar 44 until 0900 hrs 15 Mar 44, with intent to avoid taking part in such attack.

"J.V. Allard"
(J.V. ALLARD) Lieut-Col.
Commanding, Royal 22e Regiment.

In the Field
2 Apr 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"P.E. Bernatches"
(P.E. Bernatches) Brigadier
Commanding 3 Cdn Inf Bde.

In the Field
25 Apr 44

"RMDH"

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No

The prosecutor makes an opening address [hands in a written address which is read, marked N/A, signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. See schedule

being duly sworn, is examined by the prosecutor.

Witness in the case of E.5391 Pte. Azade HEBERT, R.22e R.

FIRST WITNESS: E.5898 Sgt. M. Asselin R.22e R. having been duly sworn states:- I am Platoon Sgt in #7 Platoon of A Coy. My Plt Comdr went with the Sec Leaders to make a recce at approx 1830 hrs 14 Mar 44. This recce was made to find out the sections positions prior to the attack; the attack was to capture a group of houses known as Kingbird. The accused, whom I now recognise, was part of the recce, as Platoon runner. I formed up the Platoon at approx 1840 hrs to meet the recce. When the recce arrived I am not sure if the accused was present. We attacked at approx 1945 hrs. After the attack we occupied a position to the left of Kingbird. I asked my section Cmdrs if there were anybody absent in their sections and I personally checked my Plt H.Q. There were a few absent in the sections and Pte Hebert was absent from my H.Q. I saw him again the following morning when, we returned to our billets at approx 0600 hrs. I am sure that the accused was present on the recce and that he knew of the impending attack. I was present when the Platoon Comdr warned them of the attack.

Cross examined by Defence

Q. Did your Platoon Cmdr come back to the F.V.P. after his Recce?
A. Yes, he came back.

Q. Was Pte Hebert with him?
A. I am not sure if he was with him.

"R.McD.H"

(The Judge Cmdg)

Q. When you attacked was the Platoon Cmdr near you?
A. He was approx 50 yds ahead.

Q. Was Pte Hebert with him?
A. I am not sure.

Q. Was it dark?
A. Yes, it was dark.

Q. Was it possible that Pte Hebert could have got lost?
A. Unless the officer sent him on a special errand it would have been impossible to lose himself had he followed the others.

Q. Could Pte Hebert's absence be explained by the fact that he had become a casualty?
A. No, it is impossible, because there were no enemy shells fired at us, nor, H.G. till we reached the objective.

R.P. 83'b) complied with.

Court adjourned 1105 - resumed 1325.

"[redacted]"

D

The prosecution is closed.

Defence.

The accused advised of rights under R.P. 40

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No

Question. Do you intend to call any other witness in your defence?

Answer. No

Question. Is he a witness as to character only? *Answer.* N/A

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. No

The accused in his defence says:†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

ADDRESS BY DEFENCE

Mr. President
Gentlemen

It is clear that the prosecution has failed to prove it's case against the accused K.5393 Pte. Hebert, A. The prosecution's only witness has stated that the accused was seen performing his duties as runner prior to the attack and cannot definitely state that the runner was not accompanying his platoon commander when the platoon left for the attack. Furthermore the accused's absence was discovered only after the attack was over together with that of many others. Was it not possible that the Pl Cdr. had sent his runner in an errand, to report to Coy H.Q. for instance and that the said runner got lost in the darkness? There again the prosecution's witness cannot deny that. He admits it himself that this is a possibility. The accused was not a trained runner and was not trained or familiar with the duties and responsibilities of a runner. If he lost his way, rather than risk ending up in enemy lines he

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took the wiser course of going back to his billets and await the return of the platoon. To find a person guilty of desertion one must prove the intention of leaving his Majesty's Service. This is not the case. The man was definitely on the job. Pte Hebert has a good record. He landed in Sicily and Italy with his unit and took part in all his unit's operations. His conduct sheet shows but minor offences committed during non-operational periods. With these facts in mind I move that this court find Pte. Hebert not guilty of the charge laid against him.

"L. DesRosiers" Lieut.
Defending Officer.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused E.5393 Pte Agade HERBERT R.22R guilty of the charge.

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lieut P.A. Trembley is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked D&E signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused.

No

[Observation.—If in respect of the nature of the service of the accused in a supplementary charge or otherwise the finding of the Court imports the liability to any exceptional punishment on the ground that it be assented by the Court the prosecutor must call the attention of the Court to the fact, and the Court must enquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

MFM 6
(AFB 132)
10/PAY/186 (24458)

No B5393 Name Hebert, A | Sqn, Battery, or Company A | Corps Inf | Date of enlistment 7-3-40 | GC Badge | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	1942								
In the field	19 Jul	Pte		Sec.15. Overstaying his 2359 hrs 19-7-42 till 1300 hrs 20-7-42(TotalAbs:13 hrs 1 mins)	Dpl. Dupuis	2 days CB	21-7-42	Capt Paulins	Forf 1 Days Pay.
Field	15 Nov	Pte		AA Sec 15(1) AWL from 1600 hrs 15-11-42 till 0745 16-11-42 (total Abs: 15 hrs 45 mins)	Cpl Bacon	7 days CB	17-11-42	Capt	Forf 1 days pay
	1943								
In the Field	20 Jan	Pte		AA Sec 40 Neglect to obey an order	CSM Dunais	7 days CB	20-1-43	Capt	
In the Field	10 Feb	Pte		AA Sec 40 Neglect to do his duty	CSM Dunais Cpl Tourangeau	5 days CB	12-2-43	P Carneau	
In the Field	14 May	Pte		AA Sec 15(1) AWL 2 days, 7 hrs	Cpl Gagnon	7 days CB	16 May 43	P Carneau	forf 7 days pay

(P70)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	1943 1 June	Pte		AA Sec 15(1) AWL from 1430 hrs 1 Jun 43 till 1500 hrs 1 Jun 43 (Total Ass: 30 minutes)	Cpl. Lachance	14 days C.B.	3 Jun 43	Lt.Col Pernatches	Forf 14 days pay.
				CERTIFIED TRUE COPY of Original in my possession. "P.A. Tremblay" Lieut.		11 April 44			

RECEIVED A. CMHQ IN AD 160-800-22

RECEIVED 5 Jun 44 JAG BRANCH C.M.H.Q.
Correspondence to be PINNED here.

CANADIAN B.A.O. 4 MAY 1944 G.H.Q. 2nd Echelon

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twnety-fifth day of April, 1944.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

G33

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [~~I am unable to appoint:~~]
*(1. ~~Three Officers to form the Court.~~)
*(2. ~~A Field Officer as President.~~)
for the following reasons, namely:—]

No illegalities or irregularities such as would warrant withholding confirmation.

(E. G. Norden) Lt-Col. A.J.A.G., C.M.H.Q.

PROCEEDINGS REVIEWED 7 July 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

80

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	R McD Horsey	Carlt & York R

Members.

Rank.	Name.	Regiment.
Captain	L A Duplisea	Carlt & York R
Lieut	G N Budreski	West N R
Waiting Lieut	F S J Hogan	R 22e R

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier
Commanding 3 Cdn Inf Bde
Convening Officer.

G33

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B5393 Pte Allde HUBERT R 22e R	First Charge sec 12(1)(a)AA	Not Guilty	Guilty. To undergo Penal Detention for a period of 2 years & be dismissed Service	I confirm the finding and sentence. I direct that the prisoner undergo his sentence at Military Corrective Establishment No 4 Detention Barracks Canadian Base Units

I confirm the finding and sentence and direct that a part of the sentence not exceeding two years shall be served in Military prison.

(P.J. Montague) Lt-Col
i/c Administration
Canadian Military Headquarters
14 JUN 1944

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [signature] Brigadier (Signed) [signature] Major
Commanding 3 Can Inf Bde
Convening Officer (*c*) President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a ~~Field General~~ Court-Martial held ~~at~~ in the Field on the 26 day of April 1944 by order of Brigadier R.P. Bennett D.S.O. Commanding 3 Cdn Inf Bde. dated the 26 day of April 1944

President.

Major L. W.D. Horsey Can. Inf.

Members.

Capt. L.A. Duplessis Can. Inf.

Lieut. S.A. Sudarski W.N.S.R.

~~Judge Advocate~~

Trial of* C5393 Pte Azadi Nebest R22R.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that N.A. is not available to serve owing to

, , waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Lieut L.A. Tremblay R22R.

~~Counsel~~ or defending officer† Lieut L.A.L. Berbiers R22R

At 1100 o'clock the Trial commences.

The order convening the Court is read, and is marked A. signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

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* Here insert No., Rank, full Name, Regiment, and Appointment (if any).

† Here state Rank and Name, and Regiment (if any).

‡ Qualification to be stated.

B

The President, members and ~~judge-advocate~~ are duly sworn.

The ~~following officers under instruction~~ are duly sworn.

Charge-Sheet

Instruction. *If the accused has elected to be tried under Army Act, sec. 18 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

N. A. *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

N. A *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

N. A. *Answer.*

The accused having pleaded Guilty to N. A. charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CHARGE SHEET

In the case of E.5393 Private Azade HEBERT, a soldier of "A" Coy, Royal 22e Regiment, Canadian Army Overseas, CMF, On Active Service, is charged with:-

1st Charge:
A.A. Sec 12 (1)(a)

WHEN ON ACTIVE SERVICE
DESERTING HIS MAJESTY'S SERVICE
in that he

In the Field, on 14 Mar 44 when under orders to participate on an attack on "King Bird" absented himself without leave from 1915 hrs 14 Mar 44 until 0900 hrs 15 Mar 44, with intent to avoid taking part in such attack.

(J.V. ALLARD) Lieut- Col.
Commanding, Royal 22e Regiment

In the Field
8 Apr 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(J P E Bernatchez), Brigadier.
Commanding 3 Can Inf Bde.

In the Field
25 Apr 44

C

Proceedings on Plea of Not Guilty

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No.

The prosecutor makes an opening address [hands in a written address, which is read, marked A, signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. See schedule.

being duly sworn, is examined by the prosecutor.

MEDICAL OFFICER'S CERTIFICATE.

I certify that I have this morning examined No. E6393..... Lt..... Name HEBERT H..... ..... of Royal 22e Régiment and in my opinion he is fit to undergo trial by Court Martial.

Sheffield.
9th Brigade 1.9.44

G. Brown Capt
(Medical Officer)

Lt
Capt Watson to visit of E 53 98 Pt Ayde Kilcot Rx[illegible]

Capt Watson + E 6348 Left M Acadia R 23[illegible] having
having duly sworn states — I am Platoon Leader of
Platoon of A Coy. By PH Bonds order I made a Recce
Patrol to make a recce at approx 1330 hrs 14 Mar 44.
The recce was made to find out the enemy position
from to the attack, the attack was to capture a
group of houses known as Kingsland. The recce
party consisted of myself and part of the men, as
[illegible]
[illegible]
[illegible]
attached at approx 1945 hrs [illegible] I visited my section
a position to the left of Kingsland. I visited my section
leaders & there was nothing about the enemy
and I personally checked by PH. H.Q. The recce
a few about to the section and Pt Kilcot was
about 2 mins away & I [illegible] [illegible]
following morning, [illegible] returned to area
billets at approx 0600 hrs. I am sure that the
recce party [illegible] present on the recce and that I knew
of the impending attack. I was present at the Platoon
Leaders orders of the attack.

X examined by Defence
Q Did your Platoon Leader come back to you after the recce
A Yes he came back
Q Was Pt Kilcot with him
A I do not recall if he was with him. Rdd

Lt. Hart cross-examined

Q = Were you attached near the Platoon Command Post?
A = I was attached to the Platoon Command Post.

Q = Was Pfc Hebert with you?
A = I am not sure.
Q = Was it dark?
A = Yes, it was dark.
Q = Was it possible that Pfc Hebert could have got lost?
A = [illegible]

[illegible]

no enemy shells fired at our area
Till we reached the objective

Pfc Hebert complied with

Lt Hart

D

The prosecution is closed.

Defence

Is accused advised of rights under R.P. 40

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No.

Question. Do you intend to call any other witness in your defence?

Answer. No

Question. Is he a witness as to character only? *Answer.* N.A.

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence? No.

Answer. The accused in his defence says†

[Hands in a written address which is read, marked signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above.)

Mr President addressing by Defence

Gentlemen

It is clear that the prosecution has failed to prove it's case against the accused E 5393 Ck H Ghat A. The prosecution's only witness has stated that the accused was seen performing his duties as runner prior to the attack and cannot definitely state that the runner was not accompanying his platoon commander when the platoon left for the attack. Furthermore the accused's absence was discovered only after the attack was all together with that of many others. Was it not possible that the pl. cdr. had sent his runner on on ward, to report to Bde Coy H.Q. for instructions and that the said runner got lost in the darkness? Then again the prosecution's witness cannot deny that. He admits it himself that this is a possibility. The accused was not a trained runner and was not trained as familiar with the duties and responsibilities of a runner. If he lost his way, rather than risk ending up in enemy lines he

took the most course of going back to his billets and await the return of the platoon. To find a person guilty of desertion one must prove the intention of leaving His Majesty's forces. This is not the case. The man was definitely on the job. Pte Hibbert has a good record. He landed in Sicily and Italy with his unit and took part in all the unit's operations. His record sheet shows but minor offences committed during non-operational periods. With these facts in mind I move that this court find Pte Hibbert not guilty of the charge laid against him.

T. Lt. Rowan Lieut.
Defending Officer

~~to~~ the wiser course of going back to his billets and await the return of the platoon. To find a person guilty of desertion we must prove the intention to leave the ~~Regt~~ Service. This has not been proved. The man was definitely on the job. Pte Hebert has a good record. He landed in Sicily + Italy with his Unit and took part in all his Unit's operations. His conduct sheet shows but minor offences committed during non-operational periods. With these facts in mind, I move that this Court find Pte Hebert not guilty of the charge laid against him

(Sgd) Lt. DesRosiers Lieut
Defending Offr

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused £5393 Pte Agate Albert and guilty of the charge.

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Lieut R. A. Thursday. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked D. E, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused.

No.

Question to the accused.

Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

*Illustration.—If by reason of the nature of the service of the accused in a department, corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

LIST OF WITNESSES FOR THE PROSECUTION

FOR THE PROSECUTION

Lieut F. de St-Victor
E.5898 Sgt. Asselin M.

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

Exhibit "A" Statement by Lieut F. de St-Victor
Exhibit "B" Statement by E.5898 Sgt. Asselin M.

I hereby acknowledge receipt of a true copy of a Summary of Evidence taken prior to my trial by FGCM. I furthermore acknowledge receipt of a true copy of a Charge Sheet upon which I am being brought into Court Martial.

I desire the services of an officer to represent me at my trial.

I desire the Services of Capt Charlebois or Lt Laflache

if he is available.

[signature] Pte.

In the Field
2 Apr 44

SUMMARY OF EVIDENCE

In the case of E.5393 Private A HEBERT, a soldier of "A" Coy, Royal 22e Regiment, Canadian Army Overseas, CMF, On Active Service.

By direction of the Commanding Officer this Summary of Evidence is taken under oath.

1st Witness: For the prosecution.

Lieutenant F. de St-Victor, Royal 22e Regiment.

A writen statement purporting to be signed by the witness is read over to the accused.

A statement marked exibit "A" is attached to the Summary.

The accused ~~declines to exercise~~ does not require have the attendance of the witness for cross-examination.

H Tellier Capt
Officer taking Summary

2nd Witness: For the prosecution.

E.5898 Sgt. Asselin M., Royal 22e Regiment.

A writen statement purporting to be signed by the witness is read over to the accused.

A statement marked Exibit "B" is attached to the Summary.

The accused does not require the presence of the witness for cross- examination.

H Tellier Capt
Officer taking Summary

The accused having been duly cautioned in French in accordance with R.O. 1424 reserves his defense.

I certify that the foregoing Summary of Evidence consisting of one (1) page was taken down by me in the presence and hearing of the accused and that rules of procedure 4 (c), (d), (e), (f) and (g) were duly complied with.

H. Tellier Capt
Officer taking Summary

In the Field
2 Apr 44

R.D.N

EXIBIT "A"

In the case of E.5393 Pte. Hebert A., Royal 22e Regiment.

Lieut. F. de St-Victor, Royal 22e Regiment.

" I am the platoon commander of no. 7 pl. of "A" Coy, Royal 22e Regiment. On 14 Mar 44 at about 1800 hrs, I warned E.5393 Pte. Hebert A. that he would act as my runner during the attack on Kingbird that night. I told him he was to follow me wherever I went. I made a recce of the objective with my section comdrs and returned to Coy HQ. E.5393 Pte Hebert A. followed all the way. When I went to the F.U.P., to inspect my platoon, Pte. Hebert A. came with me but left me at this point as when we moved forward for the attack. He was nowhere to be found. I did not see him until the following morning at about 0900 hrs.

F de Saint Victor Lieut.

EXIBIT "B"

E.5898 Sgt. Asselin M. Royal 22e Regiment.

" I am platoon sergeant of no. 7 pl. at about 1830 hrs on 14 Mar 44, Lieut de St-Victor my platoon commander, made a recce with the section commanders with a view to attaking Kingbird (an enemy outpost). E.5393 Pte Hebert A. acted as runner and went with the pl. comd on the recce. I brought the platoon to the F.U.P. at about 1845 hrs and when my officer returned with the section commanders, Pte. Hebert A. was with him. At about 1915 we attacked, then occupied a defensive position on the left of Kingbird. Lieut de St-Victor then checked the platoon and asked me if I had seen [illegible] E.5393 Pte. Hebert A. as he was not with the pl scout, I answered no, as he was not with me nor had I seen him since the time we left the F.U.P. I did not see him until I returned to the Coy billets the next morning at about 0900 hrs.

M Asselin Sgt.

Wt. 35835/1510. 750m. 12/41. S.P.C.o., 51/1917.

Place	Date of offence 1922	Rank	Corps of Discharge	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order for trying with trial	By whom awarded	Remarks
In the field	1 June	Pte		A.A.Bde. 15 (1): Absent from 1400 hrs 1 June to 2400 hrs 14 June. (Total 14 days 32 mins)	Cpl Cochrane	14 Days F.P. No 2	3 June	Brig. General Commd Brig	Forfeit 14 days Pay.

Certified true Copy.
of Original on my possession
11 Sept. 47.
Adjt 4th Bde Gp Artl
Lieut

FIELD CONDUCT SHEET.

Date of Enlistment: 7-3-40 | Army Form B122 Sheet No. 1

*No. 6353 Name: Hebert. A | Sq. Batty. or Company: A | Corps: INF | Signature O.C. Company, etc.: SHEET-1.

Date of last entry in Company Conduct Sheet: | No. and date of last drunk: | G.C. Badges: | Long Service and G.C. Pay:

Place	Date of offence 1942	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the field	19 Jul	Dvr		Sec. 16. Overstaying leave from 1500 hrs 15-7-42 till 0800 hrs 20-7-42. (Total 4 days 17 hrs 1 Hour)	Capt Dupuis	2 days C.B.	21-2-42	Capt. Pauling	Forf 1 days Pay.
Field	15 Nov.	Dvr		A.A. Sec. 15(4) Absent from 1600 hrs. 15-11-42 till 0745 16-11-42 (Total 4 hrs. 15 hrs. 45 mins).	Capt Bacon	7 days C.B.	17-11-42	Capt Dupuis	Forf. 1 days' Pay.
In the field	1943 7th Jan	Dvr		A.A. Sec. 40. Neglect to obey an order.	C.S.M. Dumais	7 days C.B.	20-1-43	Capt Dupuis by Capt	
In the field	16 Feb.	Dvr.		A.A. Sec. 40. Neglect to obey an order.	C.S.M. Dumais Capt Tourangeau	5 days C.B.	17-2-43.	Capt Dupuis	
In the field	14 May	Dvr		A.A. Sec. 40(2) Drunk. 2 days, 7 days C.B.	Capt Dupuis	7 days C.B.	16-May-43	Capt Dupuis	Forf 2 days Pay

(P.T.O.)

*Serial Number in case of enemy prisoner of war.

E.5393 PTE A. HEBERT R. 22nd R

A.A.156 2 A.A.156 7
A.A.40 2

27 27

26
5 MAR 40

Certified true extract from Records.
"E" Draft
Adjutant.
11 Apr 44.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 26 day of April, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The Interpreter) E4690 Pte P. Landreau R22R
*(4. The officers under instruction)

*Omit if not applicable.

were duly sworn.

Signed this 26 day of April 1944

R. B. Dansey Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this / day of / 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~ Nil

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this day of 19

P/Montague Lieut.-General
Confirming Officer. (P. J. Montague) i/c Administration
Canadian Military Headquarters
14 JUN 1944

Promulgated and extracts taken in the case of E-6398 Pte Hebert, A. R 22e R.

(a) (Dated) 27 June 1944 (Signed) E.P. Chapleau A/O.C. 3 Coy No 1 Bde HQ & Bde Ctl Regt

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

25006] W.T. 28930/411 60,000 12/42 A.& E.W.Ltd Gp.698

COUNTER NUMBER 165890

HOUR 22.00

OPERATOR'S INITIALS [illegible]

RELIEVING OPERATOR _____

END

FIRST

SIDE

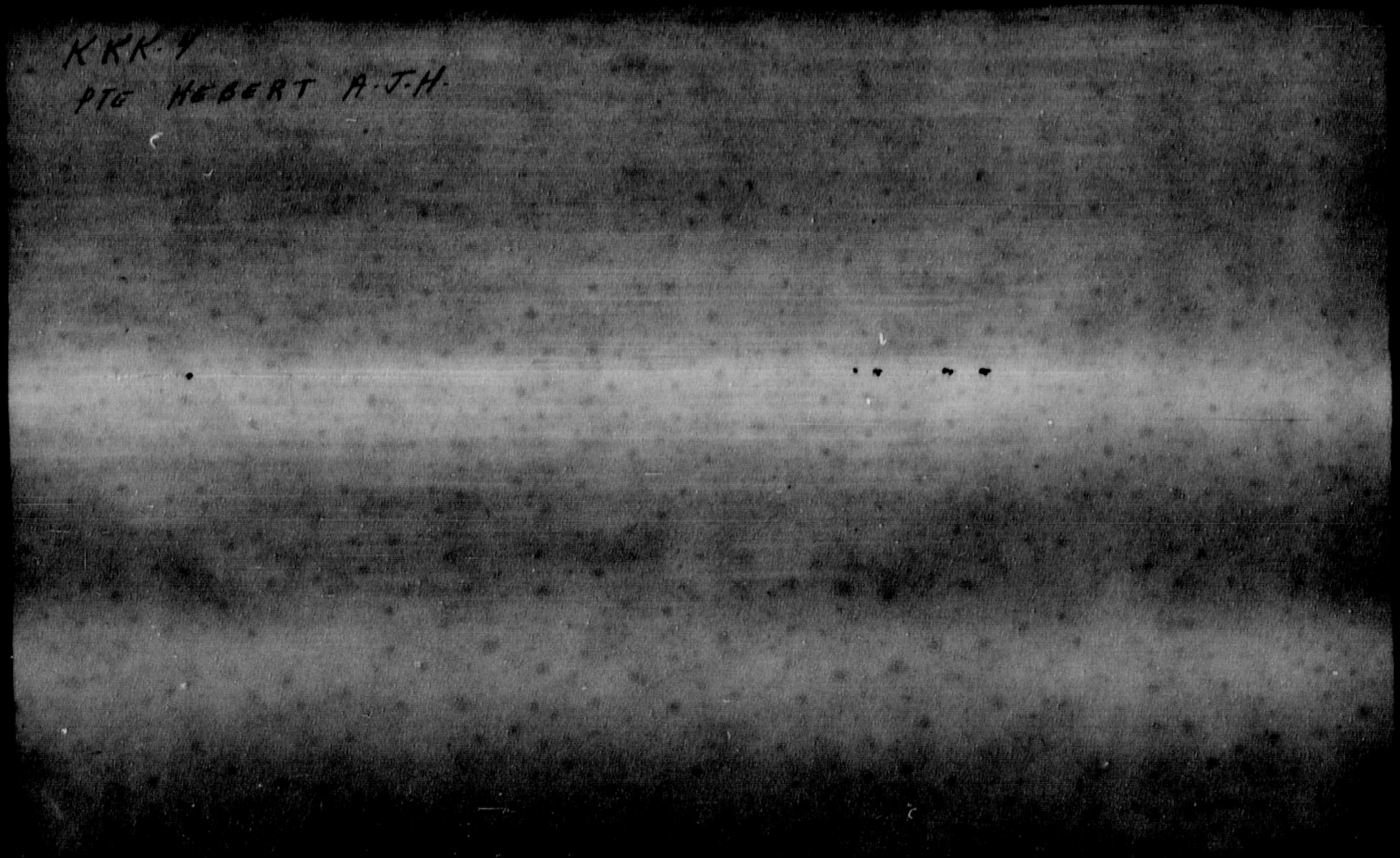
REEL NO. 44.31


REEL
NO.
44.31

START

SECOND

SIDE


KKK-4
PTE HEBERT A.J.H.

RECORDED AT CMHQ IN AB 160

FIELD GENERAL COURT-MARTIAL

Convened by Order of LT. Col. John MacLeod RCAMC A/Cond 7 Con. Inf Bde dated 3. APR. 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt	Full Christian Names	Surname	Unit
G 51282.	Pte.	AURELE JOSEPH	HEBERT	14 Can Fd Amb RCAMC

PROCEEDINGS REVIEWED 11 May 44

J.C. Judd Lieut

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 4. APR. 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 8. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1025 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ... as interpreter? Ans: ...~~

~~The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans: ...~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans: No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR.	F.L. PETERS	REGINA RIF
Member	CAPT.	A.B. MURPHY	14 CON FD AMB RCAMC
Member	LT.	L.G. PUTNAM	REGINA RIF
Judge-Advocate			
Prosecutor	MAJOR	R.T. POTTER	14 Con Fd Amb RCAMC
Defending Offr	LT.	H.G. WILLIAMSON.	C.H.Q.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be entered separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused to be informed as to effect of this and fn 2 above not followed. See fn 1.)

A8. The accused G51282 Pte HEBERT AUREL JOSEPH before arraignment makes(s) (are) (no) plea (s) (1)

(1. If a special plea is made for accused and one or more charges (RP 63(E), 102), or as to the jurisdiction of the Court (RP 34, 102-5, 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the reasons made in support or against the motion, if any, and finding are recorded (per Memo. For forms of record see references to plea in RP chart. Insert G 51 and name of the accused under the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President amends the plea in Part I of the Schedule.

(1. RP 34, 113. See para 1 of Memo p 2. Where more than one Charge Sheet see RP 63; where several accused to be tried separately see RP 71(C), and see separate copies of O Rec to record proceedings. 2. RP 35, RP 32. If otherwise, delete and make appropriate record per Memo.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G. 51282. PTE. HEBERT AUREL JOSEPH

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		NOT GUILTY	NOT GUILTY	
2nd		GUILTY	GUILTY	
3rd		NOT GUILTY	GUILTY	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ... beginning on (date) ... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 2 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 adopted in evidence under E2.)

Sentence Awarded by the Court: To be put all on duty for a period of forty five days. ~~Forfeit forty five days pay~~ ~~Pay fine ... days pay while in detention~~ ~~Total forfeiture 45 days pay~~

(Sgd) ... Judge-Advocate, if any. April 4/44. (Sgd) F. L. Peters Maj. President. (RP 48, 50.)

Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6-66(A), 51-56, 120, MML pp 710-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sentence bars finding or sentence for motion by Court: AA 54(3), RP 120(E). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be entered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 53(3) fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be ... (1. AA 57A. Delete if not used.)

(Sgd) H. Foster Brig

Date 17 Apr 44 Commanding 7 Can Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
G 51282 Pte Hebert A.J.	17 Apr 44	John Emmett Maj A/OC 14 Can Fd Amb

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-35; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans Yes. (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on 1 & 2 charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ~~____ charge(s)~~. Part I of the Schedule is amended accordingly.

(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea pending as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(B).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(C) (D).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B6 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (has) (no) opening address.(1) None to

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the _____ charge(s).(2) The Court is cleared and considers the submission.(3) The Court is reopened, and the President announces that the submission is disallowed on the _____ charge(s), and allowed on the _____ charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans No Do you intend to call witnesses on your behalf?

Ans No Are they witnesses as to character only? Ans N/A

(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A85. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is cleared to consider the finding(s).(1) The finding(s) of the Court as (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 46(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the Not Guilty charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(2) (c), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans No.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *AFB 255 or AFB 256.* 2. *RIM 6.* 3. *RP 46, KR Can 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans No (2)

(1. *RP 37(C), 86(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is cleared to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(2), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) *RP 37(F)*

(1. *Where several accused tried separately see RP 120(B). One sentence only, comprised of the punishment or punishments laid down in AA 71, 72 and 73 as a whole, is to be awarded to each of the charges on which accused found guilty. RP 48. As to sentences see AA 66, 120, 162, RP 48-52, 69, 118, 119(A), KR Can 328, 329, 543-546, Overseas SO 329, 2173, MML p 60, 737-739. As to punishments awarded for civil offences by the law of England see AA 61(1), MML p 130. Where accused already under sentence of imprisonment or detention see AA 66(1)(b), 68(1), KR Can 544.* 2. *RP 38. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, G51282 Pte Aurele Joseph Hebert, RCASC attached 14 Cdn Fd Amb RCAMC, a soldier of the Canadian Army, placed on Active Service, in England, is charged with:-

FIRST CHARGE
A/A 40 (1)

ABSENCE WITHOUT LEAVE in that he in the field did absent himself without leave at approximately 2100 hrs 31 March 1944 from the unit petrol pump where he had been detailed for duty and did remain absent until apprehended by Military Police of the Canadian Provost Corps at 2330 hrs 31 March 1944 in Newport.

SECOND CHARGE
A/A 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE in that he, in the field, did use W.D. vehicle number CA4236658 the property of the Canadian Government without proper authorization at approximately 2330 hrs 31 March 1944

THIRD CHARGE
A/A 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE, in that he, in the field, carried civilian passengers in W.D. vehicle CA4236658 without proper authorization at approximately 2330 hrs 31 March 1944.

In the Field
3 April, 1944

Jas Emile May
A/Officer Commanding
14 Cdn Fd Amb RCAMC

To be tried by Field General Court Martial

Charles Meldrum, Lt.-Col.
Convening Officer
A/C and Edmund Blake

FIELD GENERAL COURT-MARTIAL

CFAES (In lieu of AFA2)
4th/PAS/1097 (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 67(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 14, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname	Unit
G51282	Pte	Aurele Joseph	HEBERT	14 Cnd Fd Amb RCAMC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 3 April 1944 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]
(RP 105(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	F. L. Peters (Must be named. RP 106.)	Regina Rif (Unit.)

MEMBERS.

Capt (Rank.)	A. B. Murphy	14 Cdn Fd Amb RCAMC (Unit.)
Lt (Rank.)	L. G. Putnam (Named or detailed. RP 106.)	Regina Rif (Unit.)

WAITING MEMBER.

Lt (Rank.)	M. J. R. Greer (Named or detailed, if any. RP 106.)	14 Cdn Fd Amb (Unit.) RCAMC

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Dated: 3 April 1944

John Whitaker (Signed personally. RP 106(B), 21)
Lt.-Col. (Rank.)
Commanding A/Bde Comd 7 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and rules for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TÉMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 98(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 88(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 June 83 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 88(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 88(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 60 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 61 fn 3, 66 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 66 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 80(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 60 fns 9-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused changes plea see RP 81.*)

(vi) Closing address by Prosecutor. (*See RP 60 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 48(E), R.R Can 562(e).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 5 of CF A 96 in following order:

(i) Charge Sheet. (*No fee.*)

(ii) Convening Order with any destructions made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*R.R Can 507.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides where both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see R.R Can 800. As to certified copies of registered books see AA 169 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

4 April 44

This is to certify that I have to-day examined G-51282 Pte Hebert A.J. And have found him fit to stand trial by Court Martial.

J. Greenblatt Capt

(J. Greenblatt) Capt.
M.O. 14 Cdn. Fd. Amb. RCAMC.

RECEIVED
4 APR 1944
7 CDN. INF. BDE.

Notes on Testimony Given at FGCM

Capt. E. R. Edwards, RCASC att 14 Cdn Fd Amb RCAMC, having been duly sworn states, when questioned by the prosecution:

"My duties are those of Offr is tpt".
"Pte Hebert is a member of 14 Cdn Amb (RCASC att RCAMC)".
"Pte Hebert was to assume duty at approximately 1700 hrs 31 Mar 44 until 0800 hrs 1 Apr 44".
Witness states that Cpl McPeake was the tpt cpl who assigned the accused the duty.

Witness questioned by the defense:

Q. "What provisions were made for the accused to relieve himself?"
A. "No definite arrangements were laid on for the accused to relieve himself, but from my knowledge of the surrounding area, no difficulty should have been encountered in this matter".
Q. "Was he confined to the area?".
A. "He was to have been present to issue petrol between the hours stated".

Witness questioned by the president:

Q. "Was the accused duly warned for his duty?"
A. "The arrangement was in effect the previous night through the normal chain of command".

G 42633
Cpl McPeake, A.A. RCASC, having been duly sworn, states, when questioned by the prosecution:
"I am att to 14 Cdn Fd Amb".
Witness identifies the accused.
Witness states that he sent accused to relieve Pte Starr and to take over duties from approximately 1730 hrs until 0800 hrs the following morning.
Witness stated in reply to question that he did not personally warn the accused; sent a man to inform him - told him to get an early meal and take a haversack ration.
Witness states in reply to question that he forgets who it was whom he told to to warn the accused, and then states: "No; it was Pte Stoddard".

Witness not questioned by the defense.

K29114 Cpl Redge, T. L. 4 Cdn Provost Coy, having been duly sworn, states, when questioned by the prosecution:
" My duties on the evening 31 Mar 44 were to patrol Newport, ICW".
" At approximately 2330 hrs 31 Mar44 I checked a Cdn veh parked near a house on Hunny Hill, accompanied by my patrol. I went to check the veh and at the same time two civs emerged from it. I asked them what they were doing in the veh; they replied that they had been picked up approximately half the way between Brock

and Newport. I asked the dvr for his work ticket, which he could not produce . I then had two of my patrol escort the dvr and veh to the police stn at Newport; L there checked his identity and phoned his unit for escort to come and get him".

" I definitely saw the civs getting out of the veh".

" I asked the civs right then and they replied that thaey had been picked up as stated".

The witness identifies the accused.

Witness questioned by the defence:

Witness states he was travelling in a 15 cwt vehwith his patrol.

Witness states, when questioned regarding a slight difference between his verbal evidence given here in respect to the place where the veh driven by the accused was parked when checked, and that given in his documentary evidence, that he has since seen the place where the veh was parked by day, and that there is only one house there; therefore it is correct to state that the veh was parked beside a house and not between two houses.

"No, it was not particularly dark that night".

"The civs were just getting out of the veh; the dvr was in the veh at the time".

Witness questioned by the president:

Witness stated that the civs were identified as civs by civ police; they were young lads of about 15 to 16 years of age.

A7o217 L cpl Gailus, J.P. , 4 Cdn Provost Coy:having been duly sworn, states,

"At Newport, IOW, at approximately 2330 hrs 31 Mar 44 we were proceeding home from patrol; we stopped at a cafe to get two of our boys, and as we did so, noticed a civ enter a WD veh parked in a lane; Cpl Hedge and myself noted the veh and I asked the dvr what he was doing with civs in his truck. He replied that he was giving them a ride into Newport. I then asked him for his work ticket which he could not produce. His breath was strong with alcohol; I asked him if he had been drinking and he said 'NO'. I then escorted him to the police station. As I got out of the veh I kicked two bottles of beer, one full, one half-full. When asked whose they were, the accused replied that they were the civs'. An escort was then arranged for the accused and a receipt obtainedon arrival of the escort.

Witness questioned by the prosecution:

Witness states he definitely saw civs enter the veh.

Witness states that he ordered them out of the veh.

Witness has no idea where the petrol pump is that the accused was to have served.

Witness,questioned by the prosecution, states:

" We were proceeding home to Yarmouth at approximately

2330 hrs. Going up the hill, we saw the veh parked in a lane near the tea shop".

"Identified the persons as civs by their clothing as seen from a distance. Definitely saw one get in the veh".

G42644 Pte Stoddard, G. HQASC, having been duly sworn, states, when questioned by the prosecution:

"I am att to 14 Cdn Fd Amb".

"I was ordered by Cpl McPeake to warn Pte Hebert that he was to be in charge of the petrol pump".

"I was warned at about 1730 hrs that the accused would have to take the duty; I took the accused to the pump and showed him how to run it and told him he would be relieved at 0800 hrs the next morning".

"I did not warn the accused that he was not to leave the pump under any condition".

"I told him he was to be on duty during the hours stated".

"I told him he was there for the purpose of dispensing petrol during his hours of duty".

Witness questioned by the defense:

"I do not recall for sur what night it was that I took him (the accused) to the pump".

"I went to the pump on a MC; the accuse followed in an ambulance".

The witness identifies the accused, Pte Hebert.

In reply to question by the president, the accused states that he does not wish to make a statement or to give evidence on oath. The accused does not wish to call character witnesses.

At this point the accused was given an opportunity to have the court adjourned to call witnesses or character witnesses. The accused refused.

Statement in mitigation of sentence by counsel for defense:

"President and Members, the accused in this case, whom you see, is a young man 22 yrs of age; he enlisted 13 Mar 42. He is not the type of man who would with intent knowingly commit such crimes as he is charged with. He had been on duty several hours at the pump and only a small amount of petrol had been drawn during his period of duty. The pump is situated very near a public house, and the accused was informed that he must not leave the pump or the veh provided; he could have gone into the pub and gotten very drunk or had a party in the veh without being detected. He could have left the veh for the purpose of ablution and even for that purpose might have been considered AWL. At such an hour of the night the average man desires food; the accused unthinkingly entered the veh and headed for Newport. He saw two civs walking on the rd and the thought entered his head of being a good fellow and he offered them a lift. His record of service as shown on his Mfm e definitely proves him a good

soldier and had he thought that he was doing wrong he definitely would not have left the area assigned, nor would he have used the WD veh for the purpose which he did."

"To sum up: The human desire for something to eat in his mind is no different from the fact that in this camp many men leave the camp area twice a day to visit tea shop some distance down the road. The fact of his having taken a WD veh is most unfortunate - in that he happened to be the one caught. In view of the youth and record of the soldier, I ask the leniency of the court. The accused had no intention, of committing crime".

Re second charge: Statement by the accused.

" When I took the veh, I had no intention to do wrong - only to go to lunch and get a cup of coffee".

SUMMARY OF EVIDENCE IN THE CASE OF No. G51282 Pte. Aurele Joseph HEBERT, 14 Cdn Fd Amb.,(RCASC Attached) RCAMC, a soldier of the Cdn Army Overseas.

The accused is informed of his rights.

Lt-Col. C.G. Wood, O.C., 14 Cdn Fd Amb RCAMC directs that the evidence be taken on oath.

FIRST WITNESS for the prosecution: Lieut. J. Mackie, 14 Cdn Fd Amb RCAMC having been duly sworn states:-

I was Orderly Officer of the 14 Cdn Fd Amb at approximately 0005 hrs 1 April 44 when Major Merritt informed me that #4 Provost Coy. had detained Pte. Hebert, A.J. under close arrest and also had one of our vehicles. I dispatched Sgt. Dole and S/Sgt West with an escort and two drivers to the Newport Police Station. On returning to the unit the accused was placed under close arrest in the guard room. When seen by me he was seemingly sober.

The accused declines to cross-examine.

J Mackie Lt

(J. Mackie) Lieut.

SECOND WITNESS for the prosecution: Sgt. O.D. Dole, 14 Cdn Fd Amb RCAMC, having been duly sworn states:-

I was Orderly Sergeant of 14 Cdn Fd Amb RCAMC when called by Lieut. Mackie at approximately 0015 hrs 1 April 44. He told me there was some trouble in Newport. When I got there Pte. Hebert was sitting in a chair. The Provost gave me a full and a part bottle of beer as evidence. That was at about 0100 hrs. I signed for the accused and brought him back to the unit where he was turned over to the Cpl. of the guard at about 0200 hrs, 1 April 44. He was kept under close arrest.

The accused declines to cross-examine. OD Dole Sgt

(O.D. Dole) Sgt.

THIRD WITNESS for the prosecution: S/Sgt. C.P. West, 14 Cdn Fd Amb RCAMC, having been duly sworn states:-

At about 0030 hrs. 1 April 44, Sgt. Dole and I with an escort and two drivers went to Newport to pick up a man that the Provost had reported in custody along with an H.U. Ambulance. When we arrived at the Newport Police Station we saw Pte. Hebert in the guard room. Sgt. Dole signed for the accused and received a full and part bottle of beer as evidence. Pte Hebert quite willingly got in the truck and on arrival at the unit I saw him placed in the guard room. One of the drivers, whom we had taken with us brought back the ambulance.

The accused declines to cross-examine.

C P West

(C.P. West) S/Sgt

FOURTH WITNESS for the accused: Capt E.R. Edwards, 14 Cdn Fd Amb RCAMC, having been duly sworn states:-

I am transport officer of 14 Cdn Fd Amb RCAMC. At 1730 hrs 31 March 44, Pte. Hebert was sent to the unit petrol pump at Calbourne to look after the duties as issuer until approximately 0800 hrs, 1 April 44. An H.U. Ambulance had been laid on to permit the night duty man to sleep. At approximately 0005 hrs 1 April 44 Major Merritt advised me that he had received a telephone call from G.M.P.s Newport, to the effect that Pte Hebert had been picked up by them in the town driving an H.U. Ambulance without authorized work ticket.

The accused declines to cross-examine. E R Edwards

(E.R. Edwards) Capt.

FIFTH WITNESS for the prosecution: K-29114 Cpl. T.L. Redge, Canadian Provost Corps, having been duly sworn states:-

At approximately 2330 hrs. 31 Mar 44, I was on patrol at Newport I.O.W. On Hunney Hill, Newport, I saw a W.D. vehicle parked between two houses. I stopped my vehicle and got out to check the other one. I asked the driver for his work ticket which he could not produce. There were two civilians (male) who had just got out of the vehicle. I asked them what they were doing in the vehicle and they replied they had been picked up on the road between Brook and Newport. I started to question the accused as to the authority for the vehicle and he admitted he had none. I had two men escort him and the vehicle to the Police Station at Newport. On looking through the vehicle we found two bottles of beer one full and one half full. Pte Hebert had been drinking by his own admission, but was not drunk. The accused was identified by his M.B.M. I. I phoned his unit and arranged for an escort to be sent. When they arrived he was handed over and receipt obtained for the accused and vehicle.

The accused declines to cross-examine.

T L Redge
(T.L. Redge) Cpl

SIXTH WITNESS for the prosecution: K-76217 L/Cpl J.P. Gailus #4 Provost Coy., having been duly sworn states:-

We were on our way home off patrol at approximately 2330 hrs 31 March 44. We stopped to pick up two boys from the tea shop on Hunney Hill when my attention was drawn to a civilian entering a W.D. vehicle. I opened the door and asked the driver what civilians were doing in his vehicle. He said he was giving them a drive to Newport. I then checked him for his work ticket which he could not produce. At this time his breath smelt of alcohol. I asked him if he had been drinking and he said no. I then escorted him to the Newport Police Station. When I got out of the vehicle I kicked two bottles a full one and a half full bottle of beer. I asked him who they belonged to and he told me the civilians. At the Police Station he admitted to Cpl. Redge that he had been drinking and that he had picked up the civilians off of the road. An escort was then arranged to come and pick him up.

The accused declines to cross-examine.

J P Gailus
(J.P. Gailus) L/Cpl.

The accused having been duly cautioned in accordance with R.P. 4 (2) was asked "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence".

In reply the accused stated" I do not wish to make any statement or to give any evidence on oath".

Certified that R.P. 4 complied with.

In the Field
1 April, 1944

R J Potter
(R.T. Potter) Major
14 Cdn Fd Amb RCAMC
Officer detailed to take the summary.

Ex Lebt B.

No. 351282 Name HEBERT, A.J. Sqn., Battery, or Company | Corps RCAMC | Date of enlistment 13 Apr 42 | G.C. Badges nil | Service or Proficiency Pay | A.F.M. 6 (A.F. B.122) 43-[illegible]/8138 (2965)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of Drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Sydney N.S.	3 Feb 43	Gnr		A.A. 15 (1) AWL from 2330 hrs 2 Feb 43 to 0730 hrs 3 Feb 43	Knodell BSM	14 days CB 7 days pay	3 Feb 43	Major Ellis	1 day Forf

CERTIFIED TRUE COPY. [illegible] Maj
A/O.C. 14 Can Fd Amb.
O/C Records

[illegible] Officer Having Custody of the Original

(P.T.O.)

Exhibit C

STATEMENT AS TO CHARACTER AND PROFICIENCY OF SERVICE OF ACCUSED

Number 051282 Rank Pte Name Hebert, A.J.

Regiment (Or Unit) RCASC Attached 14 Cdn Fd Amb RCAMC

1. The following is a fair and true summary of the entries in the Conduct Sheets [illegible] exclusive of convictions by a Court Martial or a Civil Court, of summary offences under Section 27 of the [illegible] Army Act.

Within last 2 months since enlistment or appointment

For NIL three One

For NIL times

For NIL times

For NIL times

NOTE. If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted.

Previous convictions of the accused by a Court Martial or a Civil Court, or summary offences under Section 27 of the Air Force Act [illegible] with civil offences [illegible] are set out in the particulars annexed to this statement.

3. The accused is not under sentence at the present time.

The accused at the present time is undergoing sentence of [illegible]

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and two days in Military custody, making a total of 2 days in custody, of which Nil days were spent in hospital.

(Date)

5. The present age of the accused according to his record of service is 22 years 11 months

6. The date of his attestation specified in his record of service is 13 April 42

7. The service which the accused is allowed to reckon towards discharge is 1 year 11 months 20 days

8. The accused is entitled to reckon 1½ yrs service for the purpose of determining his pension, etc.

9. The accused is in possession of ~~Military~~ decoration, ~~or Naval or Military~~ ~~which he is entitled to wear~~.

State any ~~Military~~ decoration or reward. C.V.M. and leaf

10. ~~(If the accused is a warrant officer) the accused before he was~~ made a warrant officer held the Air Force rank of N/A

11. ~~(In the case of an officer) The accused holds the~~ Royal Canadian Air Force ~~Permanent Force~~ the rank of N/A dated N/A ~~said~~

12. ~~The accused has served as a non-commissioned officer continuously without reduction, to the present date~~

N/A Date of Promotion

~~In the rank of ..... years~~

~~In the rank of ..... years~~

~~In the rank of ..... years~~

NOTE: If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial ~~[illegible]~~, of summary awards under Section 47 of the ~~[illegible]~~ Army Act and of cases in which trial has been dispensed with of accused, Number C51282..... Rank ...Pte..... Name ..Hebert, Aurele Joseph of RCASC attached 14 Cdn Fd Amb Unit

NOTE: -- A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	NIL			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this .....2nd..... day of 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked EXHIBIT C signed by the president, and annexed to the proceedings.

A.A-144

PTE HEBERT H.

AA-144

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this- - - - -19th- - - - - - - day of - - - - -March- - - - - - , 1943 .

Whereas it appears to me, the undersigned, an officer in Command of 5th Canadian Armoured Division - - - - - - - - - - - - - - - - - , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for the reasons set out against each case~~;

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

*~~Assembled at [illegible]~~

*~~Three Officers (at least) to form the Court~~

*~~Rank [illegible] President~~

*~~Three Officers detailed from this unit's reserve~~

~~[illegible]~~

Proceedings Headquarters 5 Cdn Armd Div 10 Apr 43

President.

Rank.	Name.	Regiment.
Major	C.B.Arrell,	Perth Regt

Members.

Rank.	Name.	Regiment.
Captain	E.A.C.Simons,	HQ 5 Cdn Armd Div Sigs RCCS
Lieut.	C.G.B.Campbell,	HQ 5 Cdn Armd Div Sigs RCCS
	~~WAITING ORDER~~	
Lieut.	W.H.Mitchell,	Ir R C
	JUDGE ADVOCATE	
Capt.	G.M.Morrison,	~~[illegible]~~ HQ 5 Cdn Armd Div

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

(G.W.Stein) Major-General
Commanding 5 Cdn Armd Div
Convening Officer.

2

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-36609, Pte. Henri HEBERT, No 5 Coy Cdn Pro Corps	1 Ch.Sec 18(4) A.A.	not Guilty	Not Guilty	Noted 31 Mar 43
	2 Ch (Alt) Sec 40, A.A.	not Guilty	Not Guilty	Noted 11 Mar 43
	See att charge-sheet		23 Mar 43 C.B. Ansell Perth Regt.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on the proceedings or on sheet if necessary*):—

(Signed) (C.R.Stein) Major-General
Commanding 5 Cdn Armd Div

(Signed) C.B. Ansell Maj. Perth Regt.
Convening Officer (*a*)

(Signed) A.E. Harrison Capt Judge Advocate
President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

3

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23rd day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court and Judge Advocate
2. The witnesses and Short Hand Writer
*(3. ~~The interpreter~~) A.B.A.
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

A.E. Harrison Capt Judge Advocate

Signed this 23rd day of March 19 43

C.B. Ansell Maj.
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 579 of 1918 have been complied with. A.B.A.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this day of 19

Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] P.R. G. 1/41

"L.C.B. Arell Maj. Pen.

CHARGE-SHEET:

The accused, D-36609, Pte. Henri HEBERT, No. 5 Coy Cdn Pro Corps, a soldier of the Canadian Army Overseas Placed on Active Service, is charged with:-

First Charge
Sec 18(4), AA.

WHEN ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

In that he

in the Field on 14 March 1943 at Greens Norton, Northants, stole a leather jerkin, the property of G-384, L/Cpl.F.E.Bell, No. 5 Coy Cdn Pro Corps, a person subject to military law.

Second Charge
(Alternative)
Sec 40, AA.

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he

in the Field on 14 March 1943 at Greens Norton, Northants, was improperly in possession of a leather jerkin, the property of G-384, L/Cpl.F.E.Bell, No. 5 Coy Cdn Pro Corps, a person subject to military law.

In the Field
18 Mar 43

H.M.Childerstone
(H.M.Childerstone) Captain
Commanding,
No. 5 Coy Cdn Pro Corps

To be tried by Field General Court-Martial.

In the Field
20 Mar 43.

J.H. Roberts
Maj. Gen.
G.O.C. 5 CDN. ARMD. DIV.

5th Provost Coy

C.B. Cmdg Maj
Hants Regt.

B. 36609 Pte. Hebert. H.

I have examined the a/m on this date.
He is in good condition and fit to undergo
trial by court. martial

D. Hanni Capt RCAMC

23. Mar 43

Trial of D-36609, Pte.Henri HEBERT, No 5 Coy Cdn Pro Corps.

Held in the Field on 23 March 1943.

PRESIDENT:

Major C.B.Arrell, Perth Regt.

MEMBERS:

Capt.E.A.C.Simons, HQ 5 Cdn Armd Div Sigs RCCS.
Lieut.C.G.S.Campbell, HQ 5 Cdn Armd Div Sigs RCCS.

JUDGE ADVOCATE:

Capt.G.M.Morrison, ADJA, HQ 5 Cdn Armd Div.

The order convening the court, the charge-sheet, and the summary of evidence are laid before the court.

The court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the court.

Prosecutor:-Lieut.A.J.Scotti, No 5 Coy Cdn Pro Corps.

Defending Officer:-Lieut.B.J.Finestone, 9 Cdn Armd Regt (BCD).

The order convening the court is read in the hearing of the accused.

The accused does not object to the President, or any member of the court.

The court, the judge advocate, and the following officer under instruction, are sworn:-

Lieut.W.H.Mitchell, Ir R C

The accused does not object to K-57793, S/Sgt.J.R. Mahood, CASC, HQ 5 Cdn Armd Div, acting as shorthand writer.

The shorthand writer is sworn.

The accused answers his name and number, and is arraigned on the charges. Charge-sheet marked "C" signed by the President, and annexed to the proceedings.

PLEA The accused pleads not guilty to the charges.

The accused does not require an adjournment.

P R O S E C U T I O N

The Prosecutor declines to make an opening address.

The Prosecutor proceeds to call witnesses.

1st WITNESS FOR PROSECUTION — G-384, L/Cpl.F.E.Bell, No 5 Coy Cdn Pro Corps, sworn, examined by Prosecutor:-

Q. 1. Will you tell the court how you came to lose your jerkin Sat morning, 14th Mar?

A. 1. At Greens Norton at approx 1000 hrs took my leather jerkin off to wash and shave, laid it down on the mc kit on the ground in front of our truck. After I had washed and shaved I went to get my jerkin to put it on and found it missinf. Looked around for it and reported to CQMS Staunton. At approx a quarter to 1100 I reported it missing. He told me to look around and see if I could find it. I did look around and couldn't find it at all. A short time later, as a result of a conversation with L/Cpl Jones, I went down to the borrom of the blvd where we had out mc's parked. There was a man digging in a garden and I spied a leather jerkin lying just inside the fence. I picked it up and looked at it and found it was mine.

Q. 2. How did you identify it?

A. 2. By green ink markins on the lapel and on the thread of two buttonholes.

Jerkin in question admitted in evidence as Exhibit H.

Q. 3. At about what time was it L/Cpl Jones gave you the information?

A. 3. 1130 hrs I believe, approximately.

Cross-exanination:

Q. 3. Would you state agian at what time you laid down this jerkin and started to shave?

A. 3. Approx 1000 hrs, maybe a few minutes before or shortly after.

Q. 4. Reading from the summary: "At Greens Norton on the 14th Mar '43 at about 1030 hrs I removed my leather jerkin to wash and shave" Do you remember making that statement?

A. 4. Yes, I said approx 1030.

Q. 5. At what time later on did you first miss the jerkin?

A. 5. I imagine it would be around 1030 after I had washed and shaved, approx 1000 hrs when I took it off.

Q. 6. Who was the first person you informed?

A. 6. CQMS Staunton.

Q. 7. Did you inform anyone else other than he?

A. 7. Yes, quite a number of the boys.

Q. 8. This place where you were washing and shaving was it close to a fence?

A. 8. It was a hedge.

No re-examination.

By Judge Advocate:

Q. 9. This occurrence was during the exercise Spartan?
A. 9. Yes.

Q. 10. Exhibit H was issued to you?
A. 10. Yes.

Q. 11. By whom?
A. 11. The QM of our coy.

In the aopinion of the court and the judge advocate it is not necessary to comply with R.P.83(B).

The witness withdraws.

2d WITNESS FOR PROSECUTION D-1527,L/Cpl.L.C.Jones, No 5 Coy Cdn Pro Corps, sworn, examined by Prosecutor:-

Q. 12. Will you tell the court in as few words as possible just now you found a leather jerkin on 14th Mar?
A. 12. On that day I was walking down the street a gardener digging in a garden, he said "I have another shovel" I proceeded over to give him a hand. On getting there i saw a leather jerkin laying against the fence. I then made my stay as short as possible, went back to the coy and found L/Cpl Bell had lost his jerkin. I took him to where the jerkin was and he said it was his. I then contacted CQMS Staunton and he took over the jerkin.

Q. 13. What time did this take place?
A. 13. Right after dinner.

Q. 14. What time was dinner?
A. 14. Somewhere after 1100 hrs because we were going to church and we were eating at 1100 or shortly after.

Cross-examination:

Q. 15. In the summary you mention: "I did see the accused in the vicinity of the garden where the civilian was digging" Is that correct?
A. 15. Yes.

Q. 16. In what direction was he going when you saw him?
A. 16. The garden in front of the house and he was proceeding around the back of the house. He was going left I would say, he left the front of the house and went around to the back. I didn't see him come out of any doors, just happened to be looking that way and saw him going around the house at the back of the garden.

Q. 17. Was he proceeding in a direction away from where the coy stationed?
A. 17. Yes.

Q. 18. When did you see him?
A. 18. When the QM was talking to the civilian.

Q. 19. That was the only time you saw the accused that morning at that general time?
A. 19. In that area.

No re-examination.

By judge advocate:

Q. 20. How far is this civilian garden from the lines where you were located?
A. 20. We had bikes all the way down the st parked on the sidewalk. It is a plain road, from the road went to the garden and from the garden to the house.

Q. 21. Do you know where L/Cpl Bell shaved that morning?
A. 21. No.

Q. 22. Do you know where he was located in the lines?
A. 22. I know he was inside our harbour.

Q. 23. Roughly, how far would that be from this garden?
A. 23. Our unit at the top of the st, at the bottom of the st was the garden.

Q. 24. How far from the top of the st to the bottom?
A. 24. About 250 yds.

Q. 25. Before discovering this jerkin did you know whether or not it was one missing?
A. 25. No.

Q. 26. Why did you take particular interest in it?
A. 26. Seeing a jerkin lying beside a fence and a scivilian digging and seeing everyone of our boys had one a suspicion came to me.

Q. 27. In other words, you knew it was a military issue?
A. 27. Yes.

Q. 28. Will you look at Exhibit H and say if that is the type?
A. 28. (Witness examines exhibit) Yes.

Q. 29. You can't say definitely that is the one?
A. 29. No, because later L/Cpl identified his own.

Q. 30. Which he did in your presence?
A. 30. Yes.

Q. 31. At what time did you first see this jerkin?
A. 31. Between the hours of 1100 and 1200 I saw it inside the garden, and it was later on when you saw the accused?
A. 31. As I remember when the QM was handed the jerkin is when I saw the accused.

In the opinion of the court and the judge advocate it is not necessary to comply with R.P.83(B).

The witness withdraws:

3d WITNESS FOR PROSECUTION — H-32059, CQMS J.H.Staunton, No 5 Coy Cdn Pro Corps, sworn, examined by Prosecutor:

Q. 32. Will you tell the court what you know about this case?

A. 32. On 14th Mar at approx 1030 hrs I was informed by L/Cpl Bell of my coy that a leather jerkin was missing and he wanted me to have a kit inspection. I told him it was impossible during the move and to look around and see if he could find it. At approx 1130 hrs recd information that L/Cpl Bell had located the jerkin. I proceeded down to where he was in a garden and a civilian there, also the jerkin.

Q. 33. You don't know whether it was in possession of the civilian or not?

A. 33. It was lying across his fence.

Q. 34. What action did you then take in regard to the coy?

A. 34. I had an identification parade then because of information I had from the civilian. I ordered all the coy to parade in an adjacent field, I had that parade in two lines approx 4 ft apart, and myself and the civilian proceeded up the two lines and down again. I instructed the civilian that if he did see the person we were looking for not to speak but at the end of the proceedings to inform me who the man was. At the end of the parade the he pointed the accused out and I called the accused out. After the parade was over I placed the accused in close arrest.

Q. 35. How was the accused dressed at that time?

A. 35. In a sweater, no tunic and no cap, and the civilian pointed him out to me as the man with jersey and no cap, no danger of misunderstanding on that, he was the only man dressed that way.

Q. 36. Did you ask the accused any questions after identification?

A. 36. I got him out and asked him if he had sold the jerkin to the civilian and he denied it. On the evidence I placed him under arrest.

Q. 37. Did you question the accused at any time as to if he stayed in the Camp at all times?

A. 37. I asked him if he had been in the vicinity of this particular spot where the jerkin was found. He said he had been that morning. I asked him why, and he said he knew some people down there and was drinking tea in an adjacent house.

Cross-examination:

Q. 38. Did you go down and interview that civilian personally?

A. 38. Yes.

Q. 39. At the time you were down there did you see the accused?
A. 39. Yes, but at the time he was probably 100 yds away from me and going around the corner of a bldg.

Q. 40. Did you at that time ask him where he had been or later on?
A. 40. Later on.

Q. 41. Could you tell me in which direction the accused was going when you saw him?
A. 41. He was heading away from camp.

Q. 42. Did he come around the corner of the bldg on the other side of the garden?
A. 42. He went around the corner of the building , don't know whether the garden belonged to it or not.

Q. 43. And at the time he stated he had been drinking tea with some people he knew?
A. 43. Yes.

No re-examination:

Q. 44. How many men would be in this indentification parade; did the civilian have an opportunity of seeing all these men before picking out the accused?
A. 44. Yes, roughly 60 to 70.

In the opinion of the court and the judge advocate it is not necessary to comply with R.P.83(B).

The witness withdraws.

4th WITNESS FOR PROSECUTION. J.Thorneycroft, Greens Norton, Northants, sworn examined by Prosecutor:

Q. 45. What is your full name?
A. 45. Joe Thorneycroft.

Q. 46. What is your occupation?
A. 46. Lorry driver.

Q. 47. Will you tell the court exactly what took place on 14th Mar at Greens Norton?
A. 47. Not much to say. This gentleman here (indicating accused) brought a leather coat down to me where I was digging the garden and asked if I would buy it. I asked what he wanted for it and he said 15 shillings. I gave him 15 shillings.

Q. 48. What happened then?
A. 48. The soldier went up towards the convoy he went that way.

Q. 49. L/Cpl Jones apparently reported the matter, that you were in possession of a leather jerkin?
A. 49. Yes.

Q. 50. What happened then?
A. 50. Asked me to come up to the camp and identify the one who sold it to me which I did.

Q. 51. Do you re all the identity parade?
A. 51. Yes.

Q. 52. How was he dressed?
A. 52. Just a woollen garment.

Q. 53. Would you say the accused is English?
A. 53. No.

Q. 54. How can you tell?
A. 54. He didn't seem to speak very good Ehglish to me.

Q. 55. Did he speak broken English?
A. 55. Yes.

Cross-examination:

Q. 56. Have you a friend by the name of Pilgrim?
A. 56. Yes.

Q. 57. To your knowledge did this friend speak or have anything to do with the accused on the the afternoon of the day in question?
A. 57. Not to my knowledge.

Q. 58. Did you have any conversation with this Pilgrim about a leather jerkin before the time you claim the accused offered you one for sale? Did you and Pilgrim come up to the place where the coy in bivouac?
A. 58. I believe Pilgrim did.

Q. 59. You were not there?
A. 59. I was standing on the path the other side of the road.

Q. 60. And Pilgrim went to the gate and asked for the accused by description?
A. 60. He didn't go to the gate.

Q. 61. Dig he get the accused to come and speak to him?
A. 61. I believe he did.

Q. 62. Did he speak to the accused?
A. 62. I think he did, I can't tell you.

Q. 63. How long was he there with the accused?
A. 63. Not above a minute at most.

Q. 64. And have you no idea of what that conversation was about?
A. 64. No.

Q. 65. And when Pilgrim rejoined you he told nothing about it?
A. 65. No.

Q. 66. Did he tell you why?
A. 66. No.

Q. 67. You were there two mins with Pilgrim?
A. 67. About.

Q. 68. After the conversation what did Pilgrim do?
A. 68. Went home.

Q. 69. He didn't come back with you?
A. 69. No.

Q. 70. He just called for the accused and then just walked off and never spoke to you?
A. 70. As far as I know.

Q. 71. What did you do?
A. 71. Went back and got on with my digging.

Q. 72. What did you go up with Pilgrim for?
A. 72. He just walked up with me.

Q. 73. Walked up to the camp just for companionship?
A. 73. Yes.

Q. 74. Why did you remain while the conversation was going on?
A. 74. Just admiring the men.

Q. 75. You knew nothing of this conversation?
A. 75. No.

Q. 76. What time was this conversation?
A. 76. As near as I can say 20 mins or a quarter to 11.00.

Q. 77. What did you say your occupation was?
A. 77. Lorry driver.

Q. 78. What is the occupation of this friend of yours?
A. 78. I believe he works on the railway.

Q. 79. Do you know whether he was interested in acquiring any type of clothing?
A. 79. No.

Q. 80. Although a friend of yours he was not in your confidence?
A. 80. No.

No re-examination:

By Judge Advocate:

Q. 81. Do you recognize the accused?
A. 81. Yes.

Q. 82. You recognize him here today as the man who sold you a leather jerkin on 14th Mar for the sum of 15 shillings?
A. 82. Yes.

Q. 83. Do you recognize Exhibit H there?
A. 83. It was one like that (looking at exhibit).

Q. 84. You can't definitely say that is the one?
A. 84. No.

Q. 85. At what time of day did you purchase if from the accused?
A. 85. Just before or just after 1100 in the mornin g.

Q. 86. On the 14th, was that a Sunday?
A. 86. Yes

Q. 87. Was that the same day you and Mr.Pilgrim walked up to see the accused?
A. 87. I didn't walk up the same day, Pilgrim walked up.

Q. 88. What time was that that you and Pilgrim walked up there?
A. 88. Just before 1100, can't be quite certain about the time.

Q. 89. After the time Pilgrim talked to the accused, the accused came down and offered to sell you the jerkin?
A. 89. Yes.

Q. 90. Did you buy any other articles from any other soldiers in that locality on or around that day?
A. 90. No.

Q. 91. Were you present at an identification parade of the unit that same day?
A. 91. Yes.

Q. 92. How was that parade carried on, how was it conducted?
A. 92. The men were lined up two deep.

Q. 93. What men do you mean?
A. 93. Cdn soldiers.

Q. 94. About how many of them?
A. 94. 30 or 40 as near as I can say.

Q. 95. What did you do?
A. 95. Just walked and looked all through the men and picked the man out.

Q. 96. How did you happen to pick this man?
A. 96. I knew his features, I remembered his face.

Q. 97. What time was the identification parade held?
A. 97. I think about 10 mins.

In the opinion of the court and the judge advocate it is not necessary to comply with R.P.83(B).

The witness withdraws.

5th WITNESS FOR PROSECUTION A-56581, L/Cpl W.R.Webb, No 5 Coy Cdn Pro Corps, sworn, examined by Prosecutor:

Q. 98. On what duties were you on 14th Mar at Greens Norton?
A. 98. On guard.

Q. 99. Did you see the accused at any time during your tour of duty?
A. 99. In the morning, I was on from 0800 to 0900 hrs.

Q. 100. Could you tell the gist of the c nversation you had with the accused?
A. 100. I can't remember the exact words. He came out to the gate and I asked him what he was doing; he said "working in the kitchen helping the cook!" He asked if I could loan him some money, I said "yes" but I was on guard and for him to wait a while till I was through. He said "I think I will sell my leather jerkin" I said "You don't ought to do that" and then he said "No, I won't"

Q. 101. Was he joking when he said he would sell his jerkin?
A. 101. I can't say whether he was joking or in earnest, just a matter of fact statement as I thought

Cross-examination:

Q. 102. On the afternoon preceding was there what is commonly called a game of craps in progress?
A. 102. Yes.

Q. 103. Was the accused in that game?
A. 103. Yes.

Q. 104. And you?
A. 104. Yes.

Q. 105. To your knowledge how did the accused make out in that game?
A. 105. Lost.

Q. 106. All he had or just a portion of it?
A. 106. I think all.

Q. 107. And you made some money in that game?
A. 107. Yes.

Q. 108. Did the accused and yourself make the acquaintance of several women in that neighhourhood that afternoon?
A. 108. Yes.

Q. 109. Where did they live?
A. 109. As near as I can explain at the end of the street and in front of our camp.

Q. 110. There is a street running down from the harbour?
A. 110. Yes.

Q. 111. At the garden house?
A. 111. Yes.

Q. 112. Normally down the street, through the garden across the street to the women's house?
A. 112. Yes.

Q. 113. Two of youhhad gone there the night before?
A. 113. Yes.

Q. 114. At what hours were you on guard?
A. 114. 0800 to 0900 hours.

Q. 115. And what other hours?
A. 115. 1100 to 1200 hrs.

Q. 116. Between the hours of 0900 and 1100 on duty or free?
A. 116. Free.

Q. 117. Did you go down and see these women at that time?
A. 117. Yes.

Q. 118. Did they send any message to the accused while you were there?
A. 118. Yes, they said to be sure and tell him to go and see them before we left.

Q. 119. At the time you were on guard between 0800 and 0900 hrs did the accused come out to see you?
A. 119. Yes.

Q. 120. What was the first thing he asked you for?
A. 120. A loan.

Q. 121. Did you say whether or not you would lend him this money?
A. 121. I said "yes"and to wait until I was through guard.

Q. 122. Do you think it possible that in approaching you for a loan of money and referring to the fact that he was broke that he might possibly mentioned the selling of his jerkin as part of a hard luck story?
A. 122. That could be possible, he told me I had got all his money, I won all he had the night before.

Q. 123. Were you and the accused on friendly terms?
A. 123. Yes.

Q. 124. In other words, it was perfectly normal for him to ask you for a loan and get it?
A. 124. Yes.

Q. 125. Why not give it to him at the time?
A. 125. I was on guard, my money was down in my inside tunic pocket.

Q. 126. Was the impression you left with him that his story was successful and that you intended to give him the loan?
A. 126. Yes.

Q. 127. You saw these women and they sent up a message to the accused to go and see them?
A. 127. Yes.

Q. 128. At what time did you give this message to him?
A. 128. Between 1100 and 1200 hrs.

Q. 129. Can you fix the time?
A. 129. Dinner was at 1100 hrs, I would say it was about 1115 hrs.

Q. 130. At that time you gave him the message?
A. 130. Yes.

Q. 131. What did he do then?
A. 131. Said "I will go down and see them now"

Q.132. Did you see him go while you were on guard?
A. 132. Yes, when he came back.

Q. 133. Did he give you a message at that time?
A. 133. Yes, he said he had been down and seen them and for me to go down if I had a chance.

Q. 134. What did he do then?
A. 134. Went on towards the kitchen.

Q. 135. Is the kitchen visible from where you were on guard?
A. 135. Yes.

Q. 136. In an open or closed place?
A. 136. Open place.

Q. 137. Did he head in the direction of the kitchen?
A. 137. Yes.

Q. 138. Approx what time might this be?
A. 138. Don't know the exact time, but between 1130 and 1200.

Q. 139. How long do you think he was away for?
A. 139. 15 or 20 mins.

Re-examination:

Q. 140. When you gave the message to the accused that his friends wanted to see him how was he dressed?
A. 140. As near as I can remember in battle dress.

Q. 141. Were you on guard when he went through the gate?
A. 141. Yes.

Q. 142. And he was in battle dress?
A. 142. Yes.

In the opinion of the court and the judge advocate it is not necessary to comply with R.P.83(B).

The witness withdraws.

The Prosecutor has no more witnesses.

The Prosecution is finished.

D E F E N C E

R.P.40 (A) and (B) and Note 2 to R.P.40 are complied with.

The accused applies to give evidence, and to call witnesses as to facts.

1st WITNESS FOR DEFENCE — D-36609, Pte.Henri Hebert, No 5 Coy C&n Pro Corps, the accused, sworn, examined by Defending Officer:

Q. 143. Would you tell the court what happened about 1400 hrs the afternoon of Sat 14th Mar?
A. 143. At about that time lost all my money through just watching a game and a man, Pilgrim, standing the other side of the fence asked to know about the game. I explained it to him. He was talking about a leather jerkin, he would like to have one, I was wearing one then, he asked if I would sell it, I said "no" He asked me a couple of times that afternoon if I would sell it and I refused to sell it.

Q. 144. What duty were you placed on on Sun morning the 14th?
A. 144. Kitchen fatigue.

Q. 145. How were you dressed for that fatigue?
A. 146. Just my breeches and sweater.

Q. 147. What time did you start working in the kitchen?
A. 147. About 8.00 o'clock.

Q. 148. Did you leave the kitchen at about 8.30?
A. 148. Yes.

Q. 149. Where did you go?
A. 149. To the gate to see L/Cpl.Webb.

Q. 150. What did you speak to him about?
A. 150. Asked him for a loan of money.

Q. 151. Did you then return to the kitchen?
A. 151. Yes.

Q. 152. When did you next leave the kitchen?
A. 152. Can't remember the exact time, but must have been around 10.30.

Q. 153. Why did you leave the kitchen at that time?
A. 153. I was called to the gate.

Q. 154. Who called you?
A. 154. One of the guard.

Q. 155. Why did he call you?
A. 155. Said someone wanted to see me.

Q. 156. Who were those men?
A. 156. The man who came in here and Pilgrim.

Q. 157. Who did you actually speak to?
A. 157. Mr.Pilgrim.

Q. 158. Where was Mr Thorneycroft then?
A. 158. Close by somewhere, I am not sure, when I came to the gate Pilgrim was alone, but after a few seconds the other one came then we were together.

Q. 159. Did you speak only to Pilgrim?
A. 159. I spoke to both of them.

Q. 160. Thorneycroft entered into the conversation with you?
A. 160. No.

Q. 161. What was the subject of that conversation?
A. 161. Said he recognized me working at the kitchen so had me called, then asked me if I had considered what he asked me the day before about selling the jerkin. I said I was working in the kitchen and had no time, didn't want to sell my jerkin.

Q. 162. What price did he offer at first?
A. 162. 10 shillings.

Q. 163. Did he raise that price?
A. 163. Yes, to 15 shillings.

Q. 164. How long did this conversation last?
A. 164. Only a couple of minutes, went out and in again.

Q. 165. Where did the conversation take place?
A. 165. In front of the gate.

Q. 166. How far was the guard away?
A. 166. Right beside us.

Q. 167. Where did you go after you finished the conversation?
A. 167. Back to the kitchen.

Q. 168. What time was dinner?
A. 168. 1100 o'clock.

Q. 169. But you stayed there until dinner?
A. 169. Yes.

Q. 170. Did you help to serve the dinner?
A. 170. I helped open cans and carry water.

Q. 171. Did you leave after the dinner was over?
A. 171. Yes.

Q. 172. Where did you go at that time?
A. 172. I went to a woman's place.

Q. 173. What time was this that you left after dinner?
A. 173. Around 1120 or 1125, it was right after dinner, I had my dinner, don't remember of I washed the dishes.

Q. 174. Did you speak to the guard?
A. 174. Yes.

Q. 175. Did he give you a message?
A. 175. Yes.

Q. 176. What message?
A. 176. He said the women at the house wanted to see me because we were going away, she wanted to give me tea or something like that.

Q. 177. Did you proceed to the woman's house?
A. 177. Yes.

Q. 178. How long did you stay there?
A. 178. Not more tham 15 mins.

Q. 179. On the way to the woman's house did you see any person or group of persons that you recognized?
A. 179. Yes.

Q. 180. State who you did see?
A. 180. L/Cpl Jones.

Q. 181. Any other persons?
A. 181. A civilian.

Q. 182. Was CQMS Staunton there?
A. 182. I know I saw him but it was not at that time?

Q. 183. You did recognize Jones?
A. 183. Yes,

Q. 184. How long at the woman's place?
A. 184. 15 mins.

Q. 185. Did she give you any message?
A. 185. Yes, told me to come back with Webb for dinner, I told her I had had dinner.

Q. 186. After you left the house where did you go?
A. 186. Back to the kitchen.

Q. 187. Did you speak to anybody on the way back?
A. 187. To Webb.

Q. 188. Was he at the gate?
A. 188. He was on guard.

Q. 189. What did you tell him?
A. 189. That the women wanted us to go back.

Q. 190. Then you went away?
A. 190. To the kitchen.

Q. 191. What happened after arriving at the kitchen?
A. 191. Started working there and a few minutes after that, I think it was Sgt Hockley but I am not sure, said "over the fence, over the fence"

Q. 192. Was that remark addressed to everybody?
A. 192. Yes.

Q. 193. Then what did you do?
A. 193. I said "Why?" I didn't know what he meant at first, then he said "Go over the fence, there is a parade there" so I went over the fence and lined up.

Q. 194. You all lined up in that line?
A. 194. Yes.

Q. 195. What happened then?
A. 195. CQMS STAUNTON came with Mr.Thorneycroft, walked in front of everybody, he went to the first line and then the second line.

Q. 196. Then what happened?
A. 196. I was called.

Q. 197. By who?
A. 197. CQMS Staunton.

Q. 198. What did he tell you?
A. 198. He asked me if I sold a leather jerkin, I started denying it, and then he asked Mr Thorneycroft if he bought the leather jerkin from me, the civilian said yes, I denied everything and CQMS Staunton placed me under arrest.

Cross-examination:

Q. 199. How long have you been in the Pro Corps?
A. 199. More than a year.

Q. 200. Long enough to know the meaning of the word Provost?
A. 200. Yes.

Q. 201. Do you know when anybody offers to buy WD property what your action is?
A. 201. Yes.

Q. 202. Why was that not reported?
A. 202. I knew I was not going to sell it.

Q. 203. Still you are a military policeman?
A. 203. Yes.

Q. 204. Picked out with many others to give discipline to Cdn troops?
A. 204. Yes.

Q. 205. Your former unit was what?
A. 205. Three Rivers Regt.

Q. 206. Still you didn't report when Pilgrim offered to buy WD property?
A. 206. No.

Q. 207. At 1030 you said you were called out by a guard, who was the guard?
A. 207. I don't know who called me out.

Q. 208 In the unit for over a year and don't know the lads?
A. 208. I know he wasn't looking, I said somebody at the gate.

Q. 209. How many guards on the gate?
A. 209. Three.

Q. 210. What was your duty when dinner was being served?
A. 210. I was giving out the biscuits and the butter.

Q. 211. About the last job at the end of the table?
A. 211. Yes.

Q. 212. Dinner was served at 1100 sharp?
A. 212. Yes.

Q. 213. H w long does it take to feed 60 men?
A. 213. Not very long.

Q. 214. And you left right away then?
A. 214. Yes after dinner.

Q. 215. And when you were speaking to Pilgrim and Thorneycroft they were together?
A. 215. Wasn't far away.

Q. 216. Were they side by side?
A. 216. After a while.

Q. 217. Who overheard the conversation going on?
A. 217. Thorneycroft came to use after a few seconds, but when I went out to the gate only one there, Pilgrim.

Re-examination:

Q. 218. You stated you served lunch?
A. 218. Yes.

Q. 219. Did you eat your own lunch?
A. 219. I don't think so, I think eating while serving, had a sandwich, had some jam or something.

Q. 220. With regard to the other matter, the prosecutor stated the duty of any man in the Pro Corps or otherwise to report any irregularities, did you think of that at the time?
A. 220. Yes, I was thinking about it?

Q. 221. You knew that he was speaking out of line?
A. 221. I was waiting, seeing he wanted to buy a leather jerkin, knew if anything disobeyed thinking of reporting him.

By Judge Advocate:

Q. 222. Did Thorneycroft at any time ask you to sell him a leather jerkin?
A. 222. Yes, that is when I went down to the gate.

Q. 223. Did Pilgrim also ask you to sell him a jerkin?
A. 223. Yes, but not for him, he said it was for a bus driver.

Q. 224. What did you tell him?
A. 224. That I din't want to sell it.

Q. 225. When was it that Thorneycroft asked you?
A. 225. The next morning, when they called me out at the gate.

Q. 226. That was Sun morning?
A. 226. Yes, 1030 or something, Pilgrim speaking to me and he came over and said "I am the bus driver, just what I need is a leather jerkin"

Q. 227. Where?
A. 227. Just outside the gate.

Q. 228. What gate?
A. 228. Where we were in harbour at Greens Norton.

Q. 229. Was Pilgrim there?
A. 229. Yes, both there.

Q. 230. What did you tell him?
A. 230. I refused, that is all.

Q. 231. Have you a leather jerkin of your own?
A. 231. Yes, I turned it over to quarter stores.

Q. 232. Do you remember the name of this woman whose house you went to?
A. 232. Yes, it is Graves, that is the one here.

Q. 233. Could you get to her house without going by Thorneycroft's garden?
A. 233. Might have, but don't know the way around there.

Q. 234. Do you know ofany reason he should say you sold him a leather jerkin?
A. 234. I don't know.

By the court:

Q. 235. Did you get a loan from the L/Cpl?
A. 235. No, but I was promised one.

Q. 236. You didn't spend any money around after that?
A. 236. No, I din't have any money then, went broke in the game.

By Judge Advocate:

Q. 237. Was your person searched by anyone?
A. 237. No.

In the opinion of the court and the judge advocate it is not necessary to comply with R.P.(83(B).

The witness resumes his place as the accused.

2d WITNESS FOR DEFENCE — L/Cpl.R.K.Whidden, F-78665, No 5 Coy Cdn Pro Corps, sworn, examined by Defending Officer:-

Q. 238. On the morning of Sun, 14th Mar what duty were you employed on?
A. 238. Detailed to work in the kitchen.

Q. 239. Did you work there the entire morning?
A. 239. Yes, except for a few minutes after 800.

Q. 240. Was the accused working there with you?
A. 240. Yes.

Q. 241. Did he work the entire morning?
A. 241. Yes.

Q. 242. At what time did he arrive?
A. 242. Between 8.00 and 9.00, away for a few minutes, and again between 10.00 and 11.00 was called to the gate by the guard, gone just a few minutes and back again, again after dinner he was gone for a few minutes.

Q. 243. At approximately what time did he leave between 10.00 and 11.00?
A. 243. 10.20 or 10.25.

Q. 244. You stated he was only away for a few mins, what is your idea of a few mins?
A. 244. Not more than five mins.

Q. 245. Did he leave again between that time and time he left after dinner?
A. 245. No.

Q. 246. What time was dinner?
A. 246. 11.00 o'clock.

Q. 247. What time did it take to serve?
A. 247. Approx 20 mins.

Q. 248. When the accused left, as you stated, at about 10.20 what did he tell you?
A. 248. He asked me if I would like to sell my leather jerkin, joking, and said a fellow at the gate wanted to buy one.

No cross-examination

In the opinion of the court and the judge advocate it is not necessary to comply with R.P.83(B).

The witness withdraws.

3d WITNESS FOR DEFENCE G-4549, L/Cpl.S.Sommerville, No 5 Coy Cdn Pro Corps, sworn, examined by Defending Officer:-

Q. 249. Were you on any duty on the morning of Sun, 14th Mar?
A. 249. I was detailed by Sec Sgt as gate guard, between hrs of 10.00 and 11.00 I was on gate duty.

Q. 250. What did you do when you left that guard?
A. 250. Immediately had my dinner.

Q. 251. Dinner was at what time?
A. 251. 11.00 o'clock that day.

Q. 252. Your hours of guard were what?
A. 252. 10.00 to 11.00.

Q. 253. Would you relate anything occurring on that guard which affected the accused?
A. 253. During my hour a civilian came up and wanted to see one of our men, didn't know his name, from the description I judged it was the accused who was on kitchen duty, I called him over to the gate and he went out on the road to talk to the civilian.

Q. 254. How long did he converse with the civilian?
A. 254. A minute or two, three at the most.

Q. 255. What were his actions following that?
A. 255. From the road to the gate and back to the kitchen.

Q. 256. Could you see the kitchen from your post at the gate?
A. 256. Definitely.

Q. 257. It was in your view?
A. 257. Yes.

Q. 258. How far to the kitchen from the gate?
A. 258. Approx 15 yds.

Q. 259. Did you see the accused come down from the kitchen when you called him?
A. 259. Yes.

Q. 260. Was he in your view while talking to the civilian?
A. 260. Yes.

Q. 261. Was he in your view when he went back to the kitchen?
A. 261. Yes.

Q. 262. In other words, in your view the entire time this took place?
A. 262. Yes, but I never watched him.

Q. 263. Do you consider it possible that during that interval at the most of from four to five minutes he could have made a detour over to the far end of the area in which you were located, pick up a leather jerkin and be back again?
A. 263. To the best of my knowledge not over three minutes, wouldn't have time.

Q. 264. Could you fix the time?
A. 264. Not exactly.

Q Cross-examination:

Q. 265. You remember the way out of the grounds?
A. 265. Fairly well.

Q. 266. Where the kitchen truck was wasn't there a path going along the fence hidden from you by a hedge?
A. 266. It was either the kitchen truck or the QM truck on one side, can't be sure of locations where the various trucks parked.

Q. 267. You know right next to where the HUP was?
A. 267. I believe I know where it was, over against the fence in question, but can't be sure, the kitchen truck a 30-cwt.

Q. 268. There is a road there?
A. 268. Over the hedge there is a road.

Q. 269. It might be possible for someone to jump over the fence completely hidden from your view, walk down that path and down the street?
A. 269. It is, if they crouched and stayed below the hedge.

Q. 270. But you wouldn't be looking for any of out lads going down that road?
A. 270. No, just looking to the area of the gate.

No re-examination.

By Judge Advocate:

Q. 271. Did you know anything about L/Cpl Bell losing a leather jerkin?
A. 271. Not till the parade called.

Q. 272. Did you hear any conversation around the unit that day regarding the sale of a leather jerkin?
A. 272. Not until after the parade.

Q. 273. Was it suggested to you that day or at any time that you might be able to sell your leather jerkin?
A. 273. No.

Q. 274. Or sell any leather jerkin?
A. 274. Any leather jerkin or any Govt property was never suggested to me.

In the opinion of the court and the judge advocate it is not necessary to comply with R.P.83(B).

The witness withdraws.

4th WITNESS FOR DEFENCE — Mrs.Isabel Graves, Bengo Lane, Greens Norton, Northants, sworn, examined by Defending Officer:

Q. 275. Are you familiar with the soldier sitting at my left?
A. 275. Yes, I met him twice.

Q. 276. Did he and a L/Cpl visit your home on Sat, 13th Mar?
A. 276. Yes.

Q. 277. And on Sun morning, 14th Mar, between the hours of 9.00 and 11.00 did you receive a visit from one of these two men?
A. 277. Yes, the L/Cpl.

Q. 278. Did you send any message to the accused by that L/Cpl?
A. 278. Yes.

Q. 279. What was the gist of that message?
A. 279. To come down and have tea, said couldn't do that so asked him to come down and say good-bye.

Q. 280. Did the accused come down to say good-bye?
A. 280. Yes.

Q. 281. At what time?
A. 281. Twenty past 11.00 as near as I can say.

Q. 282. How long did he stay?
A. 282. A quarter of an hour or so.

Q. 283. Did you send any message with him when he left?

A. 283. No, I didn't, but I think the lady that lives in my house did, I don't know what the message was.

No cross-examination.

By Judge Advocate:

Q. 284. Are you quite sure of the time the accused was in your house?

A. 284. Quite certain, I was getting potatoes ready for dinner, I said "You shortly will be having your dinner" he said he had it already. I looked at the clock it was a quarter past 11.00.

Q. 285. What day was that?

A. 285. 14th Mar.

Q. 286. When did you first meet the accused?

A. 286. The day previously.

Q. 287. How did you ha pen to become acquainted?

A. 287. The lady that lives with me had met them the day before, I work, was home Sat so had seen them both.

Q. 288. Had the accused ever offered to sell you anything?

A. 288. No.

In the opinion of the court and the judge advocate it is not necessary to comply with R.P.83(B).

The witness withdraws.

The Defending Officer makes a closing address, see Document J attached.

The Prosecutor makes a closing address, see Document K attached.

The Judge Advocate sums up, see Document L attached.

The Court is closed to consider the finding.

FINDING The Court find the accused, D-36609, Pte.Henri Hebert, No 5 Coy Cdn Pro Corps, is not guilty of the charges. The court being re-opened, the accused is again brought before the court and the finding on the charges is read in open court, and the accused is released. R.P.45(A) and R.P.117(B) are complied with.

CERTIFIED A TRUE RECORD OF THIS TRIAL, this 23d day of March, 1943.

Captain
Judge Advocate.

DOCUMENT J

Closing Address by Defending Officer:

On the evidence brought out, both by the Prosecutor and myself, the jerkin was in the possession of the owner up to at least 1000 hrs, and it was discovered by L/Cpl Jones directly after dinner.

During that time we have the testimony of various witnesses which shows that the accused was working in the kitchen and left at approximately 8.30, which was long before the jerkin went missing. He didn't leave again until some time between 10.00 and 11.00. We have the testimony of L/Cpl Webb that that was the only time he left the kitchen, until again for a few moments only when Cpl. Somnerville says he was only down at the gate for two or three minutes, had him under observation all that time and thinks it impossible for him to get away and acqui e a jerkin.

He went back to the kitchen and didn't leave until some time after lunch was served, which was at 11.00 o'clock, at which time he went down to see these women. From his testimony and that of these women and Cpl Webb he had a logical reason for going down. Know he could not have gone down before dinner finished, which we know from Cpl Webb was at 11. 20. Certainly no time to get down and conclude a transation, therefore I feel the testimony discloses the fact that he did not have an opportunity of acquiring the jerkin, or of dispensing with it, in addition to which the evidence of the accused shows that both Pilgrim and Thorneycroft displayed a definite interest in acquiring a leather jerkin. They did this to the extent that Pilgrim spoke to the accused the afternoon before. They both came up to speak to him on the Sun morning and after that I know nothing, am not prepared to state anything, but certainly Thorneycroft ended up with the jerkin. I am not prepared to state any reason by which he acquired that jacket, but will say that the accused has accounted for his whereabouts minute by minute, and I don't think there is any evidence which will support the premise that the accused was able to get hold of the jerkin or dispose of it.

DOCUMENT K

Closing Address by Prosecutor:

As you all well know we had finished a big exercise in the midst of trials in an obvious area where a man cannot possibly account for every minute. He was in the kitchen, knew that his duty was to clean pots and pans, which he admits of doing from 8.30 to 9.00 o'clock, and then again after lunch. During that time quite positive he was in the vicinity of the kitchen, therefore nobody could be in that enclosure without accounting for their movements.

It has been definitely proven that the civilian picked out the accused from some 60 odd soldiers, picked out without any hesitation. Do you think a civilian would have a grudge against anybody he barely knew as inferred by the defence. I think there is enough evidence to establish the guilt of the accused.

DOCUMENT L

Summing up by Judge Advocate:

Here the first charge is a charge of theft under Sec 18(4), A.A., and I shall read to you the deinition of theft as it appears in para 50, page 118, MML, (which reads). Now, there is your definition of theft. I don't think there is any question in this case seriously disputing that L/Cpl Bell lost a leather jerkin on the morning of 14th Mar, and that later that same jerkin was found in the possession of a civilian.

You have heard the explanation of the civilian Thorneycroft as to how he came into possession of the jerkin, and here you have a direct contradiction between the civilian and the accused. The accused denies all knowledge of the theft or the sale to the civilian and it becomes pretty much a matter of which one you believe. If you believe the civilian then the accused was on that day in the possession of the jerkin belonging to L/Cpl Bell, and there is a principle of law that if a person is found in possession of goods recently stolen it is up to him to give a satisfactory explanation of his possession, otherwise he may be convicted of theft, i.e., assuming that you believe the civilian; it is for you to say whether you believe him or not.

In making up your mind as to who you think is telling the truth you will take into consideration the other evidence that has been produced, both on the part of the prosecution and on the part of the defence. You will consider the evidence to find out if the prosecution's evidence contains any possible corroboration of the story given by the civilian. The defence did call witnesses to show that the accused on the date in question did not have an opportunity of selling this jerkin to the civilian. You will take the evidence of these witnesses into consideration and consider carefully the question of whether or not the accused did have that opportunity.

I am sorry that I cannot be of a great deal more help to you. It seems to me that this is either a case of theft or nothing. I cannot see that the second charge (the alternative) needs much consideration from the court; as the evidence has developed it seems the court will have to consider on the basis of theft only.

It is the duty of the prosecution to prove the accused guilty beyond any reasonable doubt, and if you have any such doubt it is your duty to resolve it in favour of the accused.

5-20-3 1/4

SUMMARY OF EVIDENCE IN THE CASE OF REG. NOS. D-36609, PTE. HEBERT, HENRI, NOS. 5 COMPANY, CDN. PROVOST CORPS. TAKEN IN THE ORDELY ROOM ON THE 16th OF MARCH, 1943 AT 14.00 HRS. BY LT. A.J.SCOTTI, ALSO OF THE SAME UNIT.

Summary of evidence in the case of Reg. Nos. D-36609,

Pte. Hebert, H., Nos. 5 Company, Cdn. Provost Corps.

By direction of the C.O. the summary of evidence is taken on oath.

1st Witness for the Prosecution

Reg. Nos. H-32059, C.Q.M.S. Staunton, John Hugh, having been duly sworn, states:
STATEMENT BEGINS:-

At Green Norton (Northants.) on the 14th Mar. '43, at approx. 10.30 hrs., L/Cpl. Bell reported to me that his leather jerkin was missing. I told him to look around the quarters to see if he could locate it. At about 11.45 hrs., L/Cpl. Bell reported to me that he had located the missing jerkin and that it was in the possession of a civilian. As a result of information I received, I asked J.THOMPSON, a civilian if he would accompany me to an identification parade of our unit. He agreed to do this. Ithen paraded the coy. on two lines and the civilian, without hesitation, identified the accused. I might also add, when I went down to interview the civilian, I recognized the accused going around the corner of the house in the vicinity where the jerkin was found. I queried the accused and asked him if he had been down in that vicinity, he stated that he had but has been to a nearby house drinking tea with some people that he knew.

STATEMENT ENDS.

(signed) J.H.Staunton.....

The accused declines to cross-examine this witness.

2nd Witness for the Prosecution

Reg. Nos. G-384 L/Cpl. Bell, Frederick Earl, havind been duly sworn states:
STATEMENT BEGINS:-

At Green Norton, on the 14th Mar. '43, at about 10.30.hrs., I removed my leather jerkin to wash and shave. I laid it down on my M/C coat in front of our section truck on the ground. After shaving, I went to get my leather jerkin but could not find it. I reported the loss to C.Q.M.S. Staunton. He told me to look around and see if I could find it but I could not find it. At about 11.30 hrs., L/Cpl. Jones came to me and asked me if I had lost my jerkin. I told him I had. He said:"Come with me. A civilian has one down here in his garden". I accompanied Jones to where the civilian was digging in his garden and found my leather jerkin inside the fence lying on the ground. I identified the jerkin by green ink markings made by me.

STATEMENT ENDS.

(signed) F.E.Bell.....

Cross-examination by the accused:
1st Question: What time did you find out your leather jerkin was missing?

Answer: Between 10.45 and 11.15 hrs.

3rd Witness for the Prosecution

Reg. Nos. D-1527, L/Cpl. Jones, Leonard Charles, having been duly sworn states:
STATEMENT BEGINS:-

At Green Norton on the 14th Mar. '43, at about 11.20 hrs., I was walking down the street, when a civilian, who was digging in his garden shouted to me: "I have another spade here". So I proceeded over to him to give him a "hand". On doing so, I noticed laying against the fence a leather jerkin. I then made my stay as short as possible with the civilian because I had a feeling that the jerkin belonged to one of our boys. I then proceeded back to the camp and went to L/Cpl. Bell. I took him up to where the jerkin was against the fence. The civilian was still there. L/Cpl. Bell identified the jerkin as his. Bell stayed with the civilian while I went to fetch C.Q.M.S. Staunton, who took over the entire proceedings. I did see the accused in the vicinity of the garden where the civilian was digging

STATEMENT ENDS. (signed) L. C. Jones.....

The accused declines to cross-examine this witness.

4th Witness for the Prosecution

Reg. Nos. A-56581, L/CPl. Webb, Walter Ralph, having been duly sworn states:
STATEMENT BEGINS:-

At Green Norton, on the 14th Mar. '43, at about 08.30 hrs., I was on coy. guard. Pte Hebert came to me to borrow some money. As I was on guard, I told him that I would lend him some later. He then told me that he was thinking of selling his leather jerkin. I told him that he'd better not do it. Pte. Hebert then said: "No, I guess I won't sell it".

STATEMENT ENDS (signed) Walter Ralph Webb.....

Cross-examination by the accused:

1st Question: Did I look as if I were joking when I said I would sell the jerkin?

answer: You seem to say it more or less as a thought.

2nd Question: Did you know that some civilian had asked me the previous day if I could sell my leather jerkin?

Answer: I don't remember anything about that.

4th Witness for the Prosecution (DOCUMENTARY)

Having been duly warned, the following statement was given to Reg. Nos. A-11997, Cpl. Hobson, H.R. by John THOMPSON, a civilian living at Green Norton, near Towcester, Northants.

STATEMENT BEGINS :-
On the 14th Mar'43, at about 10.45 hrs., a soldier, asked me if I would buy a leather coat for 15s. and I said yes. I gave him the money and in return he gave the coat.
At 11.40 hrs. L/Cpl. Jones came to me while I was working in my garden and he asked me where I got the leather coat. I told him that I had bought it off one of the soldiers from his unit.
At 11.50 hrs., a parade of the 5 Pro. Coy. personnel was held and I identified the soldier who sold me the coat as being D-36609 Pte. Hebert, H.

STATEMENT ENDS. (signed) J.Thompson.

This statement has been read to the accused and is included in this summary of evidence. Having regard to the loss of time involved the attendance of this witness cannot be readily procured.

Courtney J. Scott Lt

The accused, having been duly cautioned in accordance withR.P. 4(E) reserves his defense.

Certified that Rule of Procedure 4(C) (D) (E) (F) and (G) have been complied with and taken down by me in the presence of the accused this 16th of March, 1943 at 14.00 hrs. in the field.

Anthony J. Scotti

Anthony J. Scotti Lt.
Nos. 5 Coy. Cdn. Provost Corps.

The witnesses are all members of Nos. 5 Coy. Cdn. Provost Corps, stationed in Odlands, near Nutley, Sussex.

R. 5296 Pte Hulett. J.
R. 22 c R.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 31st day of March, 1911.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn. Inf Bde Gp, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

~~*[I am unable to appoint*~~
~~*(1. Three Officers to form the Court.)~~
~~*(2. A Field Officer as President.)~~
~~*(3. Three Officers having more than one year's service.)~~
~~for the following reasons, namely:—]~~

President.

Rank.	Name.	Regiment.
Major	W.C. Gemmell	West N.S.R.

Members.

Rank.	Name.	Regiment.
Captain	J.B. Rousseau	Carl & yorks R.
Lieut.	H.N.E. Curry	4 Cdn. Fd Coy
(Acting) Lieut.	W.C. Ott	Carl & yorks R.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [illegible]
Commanding [illegible] Infantry Brigade.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E.5296 Pte. Hebert, Jean Rene R.	See charge sheet A.H.			
	1. Sec. 22, A.A.	Guilty		
	2. Sec. 12(1)(a) N.D.A.	Not Guilty	Not guilty of Desertion, but guilty of ~~Absent~~ Absent without leave	Confirmed H.W.G.
	3. Sec. 38, A.A.	Guilty	Sentence on all charges six months Detention ~~and fine $50.00 in~~ default ~~imprisonment~~ ~~and in addition~~	Held
	4. Sec. 35 A.A.	Guilty		

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*): No.

(Signed) B. Bourassa Exhibit (Signed) Off. Commdg. R.C.E.
Commanding Officer (e) President.
Commanding 3rd Infantry Brigade.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the second day of April 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of ~~each~~ such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The interpreter)
*~~(4. The officers under instruction)~~
were duly sworn.

* Omit if not applicable.

Signed this second day of April 1941.

President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

* See footnote (f) on page 762 M.M.L. 1939.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

Signed this 7th day of April 1941.

H.W. Gamsby Brigadier
Commanding Confirming Officer.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Promulgated and extracts taken in the case of E-5296 Pte Hebert, J.

(a) (Dated) 4 April 1941 (Signed) H.W. Parent, Lieut. Capt. Adjutant,
ROYAL 22e REGIMENT, C. A. S. F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused No. [redacted] Pte. Ernest, Jean, Royal [redacted] Regiment, a soldier of the Canadian Army is charged with, while on active service,

WHEN IN CONFINEMENT, ESCAPING

1st charge Army Act Sec. 22 — in that he, in the field on 3 Mar 41 when in confinement in 1 Cdn Div Field Punishment Camp, escaped.

DESERTING HIS MAJESTY'S SERVICE

[redacted]

MAKING A WILFULLY FALSE ANSWER TO A QUESTION PUT TO HIM BY OR BY DIRECTION OF THE JUSTICE BEFORE WHOM HE APPEARED FOR THE PURPOSE OF BEING ATTESTED

3rd charge Army Act — in that he, at Montreal, Canada on 6 Mar 40 when [redacted]

ARMY FORM A.

PROCEEDING OF A F.G.C.M.
HELD IN THE FIELD ON THE
2 DAY OF APRIL 1941.

Trial of Pte.Hebert Jean.
Royal 22nd Regiment, Canadian Army Overseas.

Prosecutor Lieut.S.G.Parent Royal 22nd Regiment.

Defending Officer Lieut.P.Hart Royal 22nd Regiment.

Officers under instruction Nil.

1. The order convening the Court was read in the presence of the accused.

2. The accused was asked the following question.

Do you object to be tried by the president or any member of the Court whose names you have heard read?

Ans. No,Sir.

3. The Members,President and Interpreter were duly sworn.

4. R.P.39 (A) has been complied with.

5. The charges were read:

The accused pleads :- Guilty to the 1st charge under Sec.22 A.A.
Not Guilty to the 2nd charge under Sec.12 (1)a)A.A
Guilty to the 3rd charge under Sec.33 A.A.
Guilty to the 4th charge under Sec.35 A.A.

M.F.D. 292 was presented to the Court by the prosecuting Officer.

The accused was asked the following question.

Do you wish to have the Court adjourned on any grounds?

Ans. No.

1st Witness H 5019 Sjt.Steel A.E.3rd Field Regiment R.C.A. was duly sworn.

1. On the night of the 3rd/4th March 41 at about 2000 hours,it was reported to me by the R.C.M.P.on duty at the 1st Cdn.Div.Field Punishment Camp that some of the Soldiers under Suspension had broken camp. I proceeded to the Camp and found the door of Hut No 4 broken from its hinges. I called the roll and found the accused Pte.Hebert J.absent.I reported the same to the camp S/M.

Defence declines to cross examine.

2nd Witness C 41972 L/Cpl.Allen A.R.Nol Provost Coy.R.C.M.P. was duly sworn.

On the night of the 3rd/4th March 41 I received a complaint that Pte.Hebert J.had escaped from 1st Cdn.Div.Field Punishment Camp.As a result of the investigation I searched his personal belongings at the Unit and found several photographs of the accused.I also received information that the "French House" on Deen St.Soho,was a place frequented by persons of the R 22nd Unit.On the 5th Mar.41 I entered the Pub known as the "French House".I saw the accused dressed in civilian clothing sitting in the Pub.This was about 2300 hours.I asked him if he was Pte.Hebert and he replied"NO.My name is Jean Taillefer.At the same time he produced N.F.M. 7 Discharge Papers.As I had previously seen letters addressed to him under that name I placed him under arrest and escorted him to No 7 Provost Guard Room London.I produced photographs of the accused taken from his belongings also Artillery Badge and button stick.

L/Cpl Allen A.R questioned by the Court.

Q1 How did the accused get back into uniform?

A. He took me to a House in Brixton where it was.

Q2 In his manner did he indicate any intention to desert?

A No.He never mentioned desertion,but said he would like to go back to Canada.

Q3 Did it seem that he was only on a spree?

A I can't Say.

Q4 Have you known soldiers having pictures of themselves with badges of other Units?

A No.

Q5 How did the accused meet Mr.Harris?

A The accused met Mr.Harris in Deen St.and accompanied him Home.Mr.Harris was not home when he took the cloth-ing.Mr.Harris did not know the clothing was taken.

The case is closed by the Prosecution.

The Defence calls no witnesses.

The accused declines to give evidence or make a statement.

Lieut.S.G.Parent Royal 22nd Regiment,
was duly sworn.

I produce a certified true copy of M.F.M.6 (A.F.B.122)

relating to the accused.
(The said copy is signed by the President and attached to the proceedings)

Question to the accused

Pte.Hebert do you have anything to say?

Ans. No,Sir.

Does the Officer for the Defence have anything to say?

Ans. No,Sir.

ARMY FORM A.

PROCEEDING OF A F.G.C.M. HELD IN THE FIELD ON THE 2 DAY OF APRIL 1941.

Trial of Pte.Hebert Jean.
Royal 22nd Regiment, Canadian Army Overseas.

Prosecutor Lieut.S.G.Parent Royal 22nd Regiment.

Defending Officer Lieut.P.Hart Royal 22nd Regiment.

Officers under instruction Nil.

1. The order convening the Court was read in the presence of the accused.

2. The accused was asked the following question.

Do you object to be tried by the president or any member of the Court whose names you have heard read?

Ans. No,Sir.

3. The Members,President and Interpreter were duly sworn.

4. R.P.39 (A) has been complied with.

5. The charges were read:

The accused pleads :- Guilty to the 1st charge under Sec.22 A.A.
Not Guilty to the 2nd charge under Sec.18 (1)a)A.A
Guilty to the 3rd charge under Sec.33 A.A.
Guilty to the 4th charge under Sec.33 A.A.

M.F.B. 202 was presented to the Court by the prosecuting Officer.

The accused was asked the following question.

Do you wish to have the Court adjourned on any grounds?

Ans. No.

1st Witness H 5019 Sjt.Steel A.E.3rd Field Regiment R.C.A. was duly sworn.

Q 1. On the night of the 3rd/4th March 41 at about 2000 hours, it was reported to me by the R.C.M.P. on duty at the 1st Cdn.Div.Field Punishment Camp that some of the Soldiers under Suspension had broken camp. I proceeded to the Camp and found the door of Hut No 4 broken from its hinges. I called the roll and found the accused Pte.Hebert J. absent. I reported the same to the camp S/M.

Defence declines to cross examine.

2nd Witness C 41972 L/Cpl.Allen A.R.No1 Provost Coy.R.C.M.P. was duly sworn.

On the night of the 3rd/4th March 41 I received a complaint that Pte.Hebert J. had escaped from 1st Cdn.Div.Field Punishment Camp. As a result of the investigation I searched his personal belongings at the Unit and found several photographs of the accused. I also received information that the "French House" on Deen St.Soho, was a place frequented by persons of the R 22nd Unit. On the 5th Mar.41 I entered the Pub known as the "French House". I saw the accused dressed in civilian clothing sitting in the Pub. This was about 2300 hours. I asked him if he was Pte.Hebert and he replied "NO. My name is Jean Taillefer. At the same time he produced N.F.M. 7 Discharge Papers. As I had previously seen letters addressed to him under that name I placed him under arrest and escorted him to No 7 Provost Guard Room London. I produced photographs of the accused taken from his belongings also Artillery Badge and button stick.

L/Cpl Allen A.R questioned by the Court.

Q1 How did the accused get back into uniform?

A. He took me to a House in Brixton where it was.

Q2 In his manner did he indicate any intention to desert?

A No. He never mentioned desertion, but said he would like to go back to Canada.

Q3 Did it seem that he was only on a spree?

A I can't Say.

Q4 Have you known soldiers having pictures of themselves with badges of other Units?

A No.

Q5 How did the accused meet Mr.Harris?

A The accused met Mr.Harris in Deen St. and accompanied him Home. Mr.Harris was not home when he took the cloth-ing. Mr.Harris did not know the clothing was taken.

The case is closed by the Prosecution.

The Defence calls no witnesses.

The accused declines to give evidence or make a statement.

Lieut.S.G.Parent Royal 22nd Regiment,
was duly sworn.

I produce a certified true copy of M.F.M.6 (A.F.B.133)

relating to the accused.
(The said copy is signed by the President and attached to the proceedings)

Question to the accused

Pte.Hebert do you have anything to say?

Ans. No,Sir.

Does the Officer for the Defence have anything to say?

Ans. No,Sir.

Pres.

ART FORM A.

PROCEEDING OF A F.G.C.M. HELD AT CAMP WILD ON THE 7 DAY OF APRIL, 1942.

TRIAL OF Pte.Robert Young.
Royal 22nd Regiment, Canadian Army Overseas.

Prosecutor Lieut.G.C.Parent Royal 22nd Regiment.

Defending Officer Lieut.P.Mart Royal 22nd Regiment.

Officers under instruction Nil.

1. The order convening the Court was read in the presence of the accused.

2. The accused was asked the following question.

Do you object to be tried by the president or any member of the Court whose names you have heard read?

Ans. No,Sir.

3. The Members,President and Interpreter were duly sworn.

4. R.P.30 (A) has been complied with.

5. The charges were read:

The accused pleads :- Guilty to the 1st charge under Sec.[illegible] A.A.
Not Guilty to the 2nd charge under Sec.[illegible] (1)(a) A.A.
Guilty to the 3rd charge under Sec.[illegible] A.A.
Guilty to the 4th charge under Sec.[illegible] A.A.

M.F.B. 202 was presented to the Court by the prosecuting Officer.

The accused was asked the following question.

Do you wish to have the Court adjourned on any grounds?

Ans. No.

F xm 3
1st Witness H 5019 Sjt.Stool A.R.3rd Field Regiment R.C.A.
was duly sworn.

Q 1. On the night of the 3rd/4th March 41 at about 2000 hours, it was reported to me by the R.C.M.P. on duty at the 1st Cdn.Div.Field Punishment Camp that some of the Soldiers under Suspension had broken camp. I proceeded to the Camp and found the door of Hut No 4 broken from its hinges. I called the roll and found the accused Pte.Hebert J. absent. I reported the same to the camp O/C.

Defence declines to cross examine.

2nd Witness C 41972 L/Cpl. Allen A.R.Mol Provost Coy.R.C.M.P.
was duly sworn.

On the night of the 3rd/4th March 41 I received a complaint that Pte.Hebert J. had escaped from 1st Cdn.Div.Field Punishment Camp. As a result of the investigation I searched his personal belongings at the Unit and found several photographs of the accused. I also received information that the "French House" on Dean St. Soho, was a place frequented by persons of the R.Canad Unit. On the 8th Mar. 41 I entered the Pub known as the "French House". I saw the accused dressed in civilian clothing sitting in the Pub. This was about 1800 hours. I asked him if he was Pte. Hebert and he replied "No. My name is Joch Taillefer." At the same time he produced R.A.F. 7 Discharge Papers. As I had previously seen letters addressed to him under that name I placed him under arrest and escorted him to No 7 Provost Guard Room London. I produced photographs of the accused taken from his belongings also Artillery Insignia and button stick.

L/Cpl Allen A.R. questioned by the Court.

Q1 How did the accused get back into uniform?

A. He took me to a House in Brixton where it was.

Q2 In his manner did he indicate any intention to desert?

A No. He never mentioned desertion, but said he would like to go back to Canada.

Q3 Did it seem that he was only on a spree?

A I can't say.

Q4 Have you known soldiers having pictures of themselves with badges of other Units?

A No.

Q5 How did the accused meet Mr. Harris?

A The accused met Mr. Harris in Dean St. and accompanied him home. Mr. Harris was not home when he took the cloth-ing. Mr. Harris did not know the clothing was taken.

The case is closed by the Prosecution.

The Defence calls no witnesses.

The accused declines to give evidence or make a statement.

Lieut.S.G.Parent Royal 22nd Regiment,
was duly sworn.

I produce a certified true copy of M.F.M.6 (A.F.B.122) relating to the accused.
(The said copy is signed by the President and attached to the proceedings)

Question to the accused

Pte.Hebert do you have anything to say?

Ans. No,Sir.

Does the Officer for the Defence have anything to say?

Ans. No,Sir.

PROCEEDING OF A G.C.C.M.
HELD AT THE WORLD OF THE
ARMY OF ATTOL TOC.

Trial of Pte.McDart Yadh.
Royal 22nd Regiment, Canadian Army Overseas.

Prosecutor Lieut.S.G.Parent Royal 22nd Regiment.

Defending Officer Lieut.F.Hart Royal 22nd Regiment.

Officers under instruction Nil.

1. The order convening the Court was read in the presence of the accused.

2. The accused was asked the following question.

Do you object to be tried by the President or any member of the Court whose names you have heard read?

Ans. No,Sir.

3. The Members,President and Interpreter were duly sworn.

4. R.P.39 (A) has been complied with.

5. The charges were read:

The accused pleads :- Guilty to the 1st charge under Sec.[illegible] A.A.
Not Guilty to the 2nd charge under Sec.12 (1)a)A.A
Guilty to the 3rd charge under Sec.[illegible] A.A.
Guilty to the 4th charge under Sec.[illegible] A.A.

M.F.D. 202 was presented to the Court by the prosecuting Officer.

The accused was asked the following question.

Do you wish to have the Court adjourned on any grounds?

Ans. No.

Lieut.
Pros.

1st Witness H 5019 Sjt.Steel A.E.3rd Field Regiment R.C.A. was duly sworn.

¶ 1. On the night of the 3rd/4th March 41 at about 2000 hours,it was reported to me by the R.C.M.P.on duty at the 1st Cdn.Div.Field Punishment Camp that some of the Soldiers under Suspension had broken camp. I proceeded to the Camp and found the door of Hut No 4 broken from its hinges. I called the roll and found the accused Pte.Hebert J.absent.I reported the same to the camp S/M.

Defence declines to cross examine.

2nd Witness C 41972 L/Cpl.Allen A.R.Nol Provost Coy.R.C.M.P. was duly sworn.

On the night of the 3rd/4th March 41 I received a complaint that Pte.Hebert J.had escaped from 1st Cdn.Div.Field Punishment Camp.As a result of the investigation I searched his personal belongings at the Unit and found several photographs of the accused.I also received information that the "French House" on Deen St.Soho,was a place frequented by persons of the R 22nd Unit.On the 5th Mar.41 I entered the Pub known as the "French House".I saw the accused dressed in civilian clothing sitting in the Pub.This was about 2300 hours.I asked him if he was Pte.Hebert and he replied"NO.My name is Jean Taillefer.At the same time he produced M.V.H. 7 Discharge Papers.As I had previously seen letters addressed to him under that name I placed him under arrest and escorted him to No 7 Provost Guard Room London.I produced photographs of the accused taken from his belongings also Artillery Badge and button stick.

L/Cpl Allen A.R questioned by the Court.

Q1 How did the accused get back into uniform?

A. He took me to a House in Brixton where it was.

Q2 In his manner did he indicate any intention to desert?

A No.He never mentioned desertion,but said he would like to go back to Canada.

Q3 Did it seem that he was only on a spree?

A I can't Say.

Q4 Have you known soldiers having pictures of themselves with badges of other Units?

A No.

Q5 How did the accused meet Mr.Harris?

A The accused met Mr.Harris in Dean St.and accompanied him Home.Mr.Harris was not home when he took the cloth [illegible] did not know the clothing was taken.

[illegible] case is closed by the Prosecution.

The Defence calls no witnesses.

The accused declines to give evidence or make a statement.

Lieut.S.G.Parent Royal 22nd Regiment,
was duly sworn.

I produce a certified true copy of M.F.M.6 (A.F.B.122)

relating to the accused.
(The said copy is signed by the President and attached to the proceedings)

Question to the accused

Pte.Hebert do you have anything to say?

Ans. No,Sir.

Does the Officer for the Defence have anything to say?

Ans. No,Sir.

Kennedy Maj
Pres

No. E. 5296 Name Hebert Jean | Sqn., Battery, or Company | Corps R. 22e. R. (CASF) | Date of Enlistment 4-3-40 | G.C. Badges | Service or Proficiency Pay | M F M 6 (A F B 152)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. Geo. Guimond Major. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Citadel	11-4-40	Pte.		Absentm from P.T. Parade	A/Sgt. Gravelle J.	3 days C.B.	12-4-40	Capt. L.F. Trudeau	
Citadel	18-4-40	Pte.		Absent from kitchen fatigue at 0645 hrs.	L/C Gravel Z. Pte. Bernard F.	3 days C.B.	18-4-40	Capt. L.F. Trudeau	
Citadel	25-4-40	Pte		A.W.L. from 0630 hrs 25-4-40 till 2300 hrs 7-5-40 Total 12 days 16 hrs 30 min.	Sgt. Gravel J.	5 days ordinary pay	8-5-40	Col P. Leclerc	13 days pay under the F.R. & I.
Valcartier	26-5-40	Pte.		A.W.L. from 1600 hrs 26-5-40 till 1400 hrs 3-6-40	Cpl Trebutsl	8 days ord. pay	2-7-40	Maj. Francoeur	18 days pay under F.R. & I
Valcartier	15-6-40	Pte.		A.W.L. after leaving hospital from 1400 hrs 15-6-40 till 2300 hrs 24-6-40 Total 17 days 7 hrs.	Cpl Desrosiers	14 days C.B.			

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Louisbourg	1-10-40	Pte.		W.O.A.S. Found in a place out of bound during the evening of the 1 Oct 40	Evidence attached	3 days C.B.	3-10-40	W.W. Morgan Mj.	
Louisbourg	3-10-40	Pte.		W.O.A.S. Conduct to the prejudice of good order and Military discipline in that he was found in bed 0100 hr after the reveille	Sgt. Begin Cpl Fontaine	3 days CB	4-10-40	Maj. Morgan	
Louisbourg	7-10-40	Pte.		W.O.A.S. Absent from Parade at 1400 hrs 7-10-40	L/C Colas	7 days C.B.	7-10-40	Maj. Morgan	
Louisbourg	18-11-40	Pte.		Sec 15 (1) A.A. W.O.A.S. A.W.L. from 1345 hrs until appreh by M.P. in London at 2330 hrs Nov. 18-40 Total absence 9 hrs 45 min.	Sgt. Couture Cpl. Girard	1 day's pay 7 days C.B.	19-11-40	~~Lieut. Gauthier~~ Maj. Morgan	
Louisbourg	30-11-40	Pte		W.O.A.S. Sec (40) A.A. neglect to obey an order (2) neglect to appear on sick parade (3) neglect to the prejudice of good order: found in bed late		7 days C.B.		Lieut Gauthier.	

No. E 5296 Name Hebert Jean | Sqn., Battery, or Company | Corps R. 22e. R. | Date of enlistment 4-3-40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3-2-41	Pte		W.O.A.S. Absenting himself A.W.L. from 1000 hrs 30-1-41 till 0700 hrs 2-2-41 Total 2 days 21 hrs.	Cpl. Anderson	3 days's pay	3-2-41	J.P.E. Bernatchez Maj.	
Cat.		Pte.	1-	Sec 18 (1) A.A. W.O.A.S. - A.W.L. from 2230 hrs 8-2-41 till 0020 hrs 18-2-41 Total 10 days 1 hr 50 min	Cpl. Boucher M.				
				2- Travelling under a false name 3. Presented one- out dated pass belonging to another soldier	Evidence of C.P. London	28 days F.P.	19-2-41	Maj. Poirier	Forfeits 11 days' pay

Certified true copy

[illegible] Capt. [illegible]

(P.T.O.)

SUMMARY OF EVIDENCE

IN THE CASE OF

E.5296 PTE. HEBERT, J., R.22e R.

ALIAS

D.61627 PPTE. TAILLEFER, J.

In accordance with R.P. 4 (F) all evidence was taken on oath at the request of the accused.

1st Witness

P.48791 Sgt. L.M. Careau, Royal 22e Regiment, (att'd to 1/CD/Fd Punishment Camp) having been duly sworn states:

"On the night of 3 March 1941 at about 1915 hours as a member of the Staff of the 1 Cdn Div Field Punishment Camp at Nutfield, Surrey, in company with L/Cpl. Moon of the #1 Provost Coy., R.C.M.P., I made a tour of all hutments and saw that all Soldiers Undergoing Field Punishment were present. I locked the doors and then handed over to the night guard."

Q. Did you personally call the roll?

A. I did not call names, but checked the number of men in each Hut and compared the figures with the night Guard Commander. These figures agreed.

Signed L. M. Careau
(P.48791 Sgt. Careau, L.M., R.22e R.

The Accused declines to cross-examine the Witness.

2nd Witness

C.41983 L/Cpl. Cameron, E.A , #1 Provost Coy., R.C.M.P., having been duly sworn states:

"On the night of 3 March 1941 at about 1950 hours, in company with L/Cpl. Moon I made the rounds of the Huts warning all occupants that lights were to be turned off at 2000 Hours. On arrival at #4 hut, I found the building in darkness. We investigated and found that the light bulb was missing from the Hut and that the rear door had been removed from its hinges. I remained in the Hut and L/Cpl. Moon reported the above to Corporal Callis, the N.C.O., in charge of the Night Guard."

Signed E.A. Cameron
(C.41983 L/Cpl. Cameron, E.A.,
#1 Provost Company, R.C.M.P.

The Accused declines to cross-examine the Witness.

3rd Witness.

F.76949 Corporal Callis, A.R., #1 Provost Company, R.C.M.P., having been duly sworn states:

" On the night of 3 March 1941 I was N.C.O., in charge of the Night Guard at the 1 Cdn Div Field Punishment. At about 1915 hours, Sgt. Careau, came to me stating that he had seen all of the Soldiers Undergoing Field Punishment locked in their respective Huts. He compared the numbers he had counted in the Huts with mine; the figures were the same.

At about 1955 hours, L/Cpl. Moon came to me and said that the rear door of # 4 Hut had been removed. I immediately sent word to the Camp S/M and to my own Orderly Sgt. I then proceeded to the concerned Hut and found that the screws in the hinges of the rear door had been removed allowing the door to be opened. This had been done with the aid of a button stick (See Exhibit A) which was later found in the haversack of Pte. Gfroerer. On checking the number of occupants in the Hut I discovered 2 to be missing."

Signed A. Callis.
(F.76949 Cpl. Callis, A.R.,
1 Provost Coy., R.C.M.P.

The Accused declines to cross-examine the witness.

4th Witness.

M.5019 Sgt. Steel, A.E., 3 Field Regiment, R.C.A., (att'd to 1 Cdn Div Fd Punishment Camp) having been duly sworn states:

" On the night of 3/4 March 1941, at about 2000 hours I was notified by the Night Guard at the 1 Cdn Div Field Punishment Camp that two Soldiers Undergoing Field Punishment had escaped from # 4 Hut. I proceeded to the Hut and called the roll. I found that the two men missing were Privates Gfroerer and Hebert. I then reported this fact to the Camp S/Major.

Signed A. E. Steel
(M.5019 Sgt. Steel, A.E.,
3 Field Reg't., R.C.A.

The Accused declines to cross-examine the witness.

5th Witness

C.41972 L/Cpl. Allen, A.R., #1 Provost Company, R.C.M.P., having been duly sworn states:

"On the night of 3/4 March 1941 at about 2200 hours, while in Caterham, Surrey, on investigation duty I received word from the 1 Cdn Provost Coy., R.C.M.P., that 2 men had escaped from the 1 Cdn Div Field Punishment Camp, Nutfield, Surrey and that also a W.D. vehicle had been stolen from the Royal 22e Regiment. Investigations were carried out in the Caterham area and as a result Privates Despres and Fleurant "B" Coy., Royal 22e Regiment were arrested at 0330 hours, 4 March 41, for being Absent Without Leave. Circumstantial evidence showed that these two men had stolen the above-mentioned missing W.D. vehicle.

On the afternoon of 4 March 41 I checked the personal effects of Pte. Hebert wherein the following was found:

EXHIBIT "B" (Photo of Pte. Hebert in artillery uniform) taken at Jerome Studio, Glasgow, 20 Jan 40.

EXHIBIT "C" (Photo of Pte. Hebert taken at Jerome Studio Brixton, 14 Feb 40.

EXHIBIT "D" (Artillery Cap badge-same as shown in photo) exhibit "B"

Acting on the above information I proceeded to the "French House" Dean Street, Soho, London. On entering I saw the accused (about 2155 hours 5 Mar 41) dressed in civilian clothes sitting with an officer of the Royal Air Force. I immediately identified the Accused as Pte. Hebert from the photographs I had found in his personal effects, approached him and asked him the following questions:- I asked him if he was Pte. Hebert. He replied "no". "My name is Jean Taillefer". He then produced a M.F.M. 7 (R.E.) Discharge paper (see exhibit E). However, having previously seen in Pte. Hebert's personal effects, a letter addressed to Jean Taillefer, I was of the opinion that he was Pte. Hebert. I placed him under close arrest and escorted him to #6 Provost Coy, in London where he was detained. In the Guard Room of the Military Police, H.Q., London while I was taking down the particulars of the case, the accused, Pte. Hebert made an attempt to forcibly remove an M.F.M. 7 (Discharge Paper) saying that he did not want to lose it.

The next morning 6 Mar 41, I questioned the accused as to where he had obtained the civilian clothing in which he was dressed at the time of his arrest. He replied that he had obtained the clothing from the home of Philip Harris, Brixton. He gave me every assistance possible in recovering his uniform and equipment, which he had left in the house of Philip Harris (who is being investigated by the Metropolitan Police). At about 1500 hours 6 March 41 I escorted the accused back to the 1 Cdn Div Field Punishment Camp and handed him over to the Orderly Sgt., #1 Provost Coy., R.C.M.P.,

Signed A. R. Allen
C.41972 L/Cpl. Allen, A.R.
#1 Provost Company, R.C.M.P.

The Accused declines to cross-examine the Witness.

5th Witness

C.41972 L/Cpl. Allen, A.R., #1 Provost Company, R.C.M.P., having been duly sworn states:

"On the night of 3/4 March 1941 at about 2200 hours, while in Caterham, Surrey, on investigation duty I received word from the 1 Cdn Provost Coy., R.C.M.P., that 2 men had escaped from the 1 Cdn Div Field Punishment Camp, Nutfield, Surrey and that also a W.D. vehicle had been stolen from the Royal 22e Regiment. Investigations were carried out in the Caterham area and as a result Privates Despres and Fleurant "B" Coy., Royal 22e Regiment were arrested at 0330 hours, 4 March 41, for being Absent Without Leave. Circumstantial evidence showed that these two men had stolen the above-mentioned missing W.D. vehicle.

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Signed A. R. Allen
C.41972 L/Cpl. Allen, A.R.
#1 Provost Company, R.C.M.P.

The Accused declines to cross-examine the Witness.

SIXTH WITNESS.

No. H. 5248, Pte. Taillefer A., R.22e.R., having been duly sworn states:-

" I recognize the accused, Pte. Hébert as my brother Jean Taillefer ."

Arthur Taillefer

(A. TAILLEFER), Pte., H. 5240,
Royal 22e.Regiment, C.A. (O).

The accused declines to cross-examine the witness.

DOCUMENTARY EVIDENCE

Exhibit "P". certified true copy of M.F.M.S. Attestation paper of H 5296 Pte. HERBERT, J. R22R.

The accused having been duly cautioned in accordance with Rules of Procedure 4(E) reserves his defence.

Certified that rules of Procedure 4(C), (D), (E) and (F) have been complied with.

Taken down by me in the presence and hearing of the accused this twenty fourth day of March 1941.

G. Tasherreau

Major.
(G.O.TASHEREAU)
The Royal Canadian Regiment.









MEDICAL CERTIFICATE.

This is to certify that Reg. No. E5284 (Rank). Pte.
(Name). Abbott, J. Royal 22e. Regiment, (C.A.S.F.).,
(is ~~- is not~~) mentally and physically fit to undergo Trial before
a Court-Martial and (is - ~~is not~~) fit to undergo Detention
with ~~or without~~ hard Labour.

Signed. L. P. Robert Capt
Unit. R.22e.Regt.

In The Field,
Date. 8/10/43.

STATEMENT BY ACCUSED TO HAVE AN OFFICER ASSIGNED TO REPRESENT HIM AT HIS TRIAL.

I, No. E-5296, Pte. Jean Hébert, Royal 22e Régiment, desire (do not desire) to have an officer assigned to represent me at my trial by Court-Martial.

I desire the services of..... Lieut. P. Hart .....
if he is available.

29 Mar 41. J. Hébert

LIST OF WITNESSES IN THE CASE OF E-5296, PTE. J. HEBERT, ROYAL 22e REGIMENT

WITNESSES FOR PROSECUTION

P-46796, Sgt. L.M. Careau, R. 22e R. — 1 Cdn. Div. Fd. Punishment Cp

C-41983, L/Cpl. Cameron, K.A. — 1 Prov. Coy., R.C.M.P.

F-76949, Cpl. Callis, A. R., " " " "

H-5019, Sgt. A.E. Steel, 3 Fd. Regt., R.C.A. att'd 1 Cdn. Div. Fd. Punishment Camp.

C-41972, L/Cpl. A.R. Allen, — 1 Prov. Coy., R.C.M.P.

E-5248, Pte. A. Taillefer, — Royal 22e Régiment.

TO BE CALLED:

Capt. H. Langlois, — Les Fusiliers Mont-Royal

EXHIBITS:

Discharge certificate from P.M.R.
M.F.M. 2 Attestation paper.
Two Photographs, button stick and Art'y cap badge.

Witnesses for defence:

NIL

Careau

E-5296 Pte J. Hébert
R. 22e R.

SHORT STATEMENT AS TO PARTICULARS OF SERVICE OF THE ACCUSED.

(a) The accused has been in confinement awaiting trial on the present charges for no days in Civil Custody and 24 days in military custody making a total of 24 days of which none were spent in hospital.

Since 5 March 41

(b) The prese t age of the accused according to his attestation paper is 19 years

(c) The date of his attestation specified in his attestation paper is

4 Mar 40

(d) The accused is in possession of or entitled to no military decoration or military reward.
(or is in possession of or entitled to

Nil

I hereby certify that the foregoing particulars are true extracts from the Regimental Books in my custody.

J.G. Perrault Lieut.
Asst. Adjutant
[illegible] 22nd Regiment, C.A.S.F.

Commanding Officer
Pro.

X 59
G 32472 Pte HEBERT L. J.

Correspondence to be PINNED here.

X 59

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court

On Active Service, this 19 day of November, 19 42.

Whereas it appears to me, the undersigned, an officer in Command of 4 Cdn Armd Div, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior authority.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint

*[Officers to form the Court]

*[Field Officers available]

for the following reasons, namely

* Omit if not applicable.

DEPENDING OFFICER

Lieutenant	E.K. MacEACHERN	48 LAD

PROSECUTOR

Captain	L. WILLIAMS	4 Cdn Armd Bde Ord Coy

JUDGE ADVOCATE

Captain	A.C. HALL	HQ 4 Cdn Armd Div

President.

Rank.	Name.	Regiment.
Major	D.W. BEAUDRY	27 Cdn Armd Regt

Members.

Rank.	Name.	Regiment.
Major	D.J. FARQUHARSON	HQ 4 Cdn Armd Div
Captain	J.R. CRICHTON	29 Cdn Armd Regt
Captain	G.E. REID	4 Cdn Armd Div Sp Sp Coy

WAITING MEMBER

*Signed
Commanding MAJ.-GEN.
G.O.C. 4 CDN. ARMD. DIV.
Officer.

* Insert the signature of the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
G-32472 Pte Hebert L J 7 Cdn Salvage Unit RCOC	A.A. Sec 15(1) See Charge Sheet attached.	Not Guilty	Guilty 28 DAYS DETENTION Nov. 20th 1942	Confirmed. F.F. Worthington Maj Gen Comd. 4 Cdn Armd Div.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):— No. Sir.

(Signed) F.F. Worthington Maj Gen (Signed) [illegible] Lieut-Colonel Pres. President.

Commanding 4 Cdn Armd Div
Confirming Officer (c)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 20th day of Nov, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this 20th day of Nov 1942.

President of the Court Martial.

C. Certificate in case of [illegible] sentence.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suppression.

Signed this 24 day of Nov. 1942.

F.F. Worthington Maj Gen.

Confirming Officer. 4 Cdn Armd Div.

Promulgated and extracts taken in the case of Pte Hebert L J G-32472 Cdn Army in Reference

(a) (Dated) 24 Nov 42 (Signed) [illegible] Lieut Capt O/C 7 Cdn Salvage Unit

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

The accused elects to be tried by F[illegible] general Court-Martial.

CHARGE SHEET

The accused, C-32472, Pte HEBERT, L.J., 7 Cdn Salvage Unit RCOC, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
AA Sec. 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE, in that he, in the field, on the 12 day of Nov 42, having been posted to the duty of hut orderly, did absent himself without leave from 1725 hours until placed under close arrest at 1755 hours

Signed in the field this 17 day of Nov 42

(D. Sigler) Capt.,
Officer Commanding
7 Cdn Salvage Unit RCOC
4 Cdn Armd Div.

47 N. To be tried by F.G.C.M.
J.J. Forestier
A.D.C. 4th Cdn Armd Div

NO I CDN BASE STAGING CAMP

20 Nov 1942

CERTIFICATE OF MEDICAL INSPECTION

I hereby certify that I have examined the u/m personnel of #7 Salvage Unit R.C.O.C. at 0945 hrs 20 Nov 1942 and found them/him medically fit to ~~proceed on draft~~/undergo ~~dem.~~ court martial being free from infection and parasites.

NO.	RANK	NAME
G 32472	Pte	Hebert

DISTRIBUTION:
I copy to Unit
I copy to M.O.

W.O. Williams R.C.A.M.C.
W.O. Williams M.D., Capt.
Medical Officer, No I C.B.S.C.

PROCEEDINGS OF TRIAL

Accused G-32472 (Number) Pte (Rank) L J (Christian Names) Hebert (Surname) RCOC (Unit) 7 Cdn Salvage Unit

Held in the Field in (Country) on 20 November 42

President Major D.W. Beaudry 27 Cdn Armd Regt
Members Major D.J. Farquharson HQ 4 Cdn Armd Div
Captain G.K. Reid 4 Cdn Armd Div Sp Gp Coy.
Judge-Advocate (if any) Captain A.C. Hall HQ 4 Cdn Armd Div
Prosecuting Officer Captain L. Williams-4 Cdn Armd Bde Grd Coy Lawyer? Ans
Defending Officer Lieutenant E.K. MacEachern 4S LAD Lawyer? Ans

(The following procedure must be actually carried out.)

The President produces the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs.P. 17(E); 22(A))

The President, in closed court (R.P.22 fn 1), reads the Convening Order and the Charge Sheet(s) to the members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted, that the accused (are) amenable to Military Law, and that each charge discloses an offence. (R.P.108)

The accused is (are) brought before the Court, and at 10.00 o'clock hours the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can) 557 that the accused is (are) fit to undergo trial by court-martial. The certificate is initialled by the President, and attached to the proceedings.

President to accused

Do you object to ~~P.28126 Sgt. A.H. Sinclair~~, as interpreter? Ans
Do you object to P.28126 Sgt. A.H. Sinclair as shorthand writer? Ans No.
Headquarters, 4 Cdn Armd Div

The names of the President and Members of the Court are read to the accused (R.P.11)

President to accused

Do you object to be tried by me as President or by any of the officers whose names you have heard read over? Ans. No, Sir.

The President, Members, Judge-Advocate, officers under instruction, interpreter and shorthand writer are duly sworn. (R.P. 26-27) (Forms of Oath, p.E)

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused has (not) elected trial by court-martial. (A.A. 46(8))

President to accused

Do you wish to make any special pleas before arraignment, that is to say, before you plead guilty or not guilty? Ans. No, Sir.
(If special plea(s) is (are) made for separate trial on one or more charges (Rs.P. 62(e), 108); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to the accused's mental fitness to stand trial (A.A.30 R.P.57); record such plea and evidence (if any) on separate sheet (s) to be initialled by the President and attached to the proceedings.)

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112) He pleads as follows:

First Charge	Second Charge	Third Charge	Fourth Charge
Not Guilty			

(For procedure on alternative charges, see R.P. 37 fn 2).
Further proceedings are recorded on Pages hereto attached.

(For Use when Accused Pleads Not Guilty to All Charges.)

(All printed matter not applicable to be struck out, and all alterations erasures, and additions to be initialled by the President.)

1. President to Accused
   Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence (R.P.39(A)) Ans. No, Sir.

2. The Prosecutor's opening address (if any) R.P.39(B) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto.

3. The Prosecution is closed. (If submission that there is no prima facie case established, see R.P. 40 fn 1; R.P. 70 fn 1.)

4. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination (R.P.40 fn 2).

5. President to accused:
   Q. Do you apply to give evidence yourself as a witness? Ans. No, Sir.
   Q. Do you intend to call any other witness in your witness in your defence? Ans. Yes, Sir.
   Q. Is he a witness as to character only (R.P.40(B)) Ans. Yes, Sir.

6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses, see Rs.P. 40, 41 and 42.)

8. The Court is now closed to consider the finding. (Rs.P. 43 and 117) (Record finding on p.3.)

9. The Court being re-opened, the accused is again brought before it and the findings of Not Guilty (if any) are pronounced and (if findings of Not Guilty on all charges) the accused is released (R.P. 117(B))

10. Captain (Rank) I. (Christian Names) Williams (Surname) 4 Cdn Armd Bde Ord Coy (Unit) sworn produces Statement of Character and Service, and Field Conduct Sheet, duly certified by the Officer having custody of the Regimental Books. The said documents are read, marked "Y" and "Z", initialled by the President and attached to the proceedings (R.P.46).

11. President to accused:
   Q. Do you wish to address the Court on the Statements of Character, Serice and Conduct and in mitigation of punishment (R.P.46(D))
   Ans. No, Sir.
   (Record address, if any, on separate sheet, initialled by the President and attached hereto.)

12. The Court is now closed to consider the sentence. (Record on p. 3).

(Punishments, A.A. 44, K.R. (Can) 563-566; one sentence only awarded, R.P. 48; jurisdiction of F.G.C.M., R.P. 116)

The sentence is not announced to the accused by the Court.

(Signature of President)

PROSECUTION

1st Witness for the Prosecution

Cpl M L Goldberg, 7 Cdn Salvage Unit RCOC, having been duly sworn, is examined by the Prosecutor.

Q. Corporal Goldberg, do you recognize the accused?
A. Yes, Sir.
Q. On the day of 11 November 1942, at about 1800 hours did you detail any special duties for him to perform?
A. I did, Sir.
Q. Can you define the duties?
A. I detailed Pte. Hebert to be hut orderly at 0630 hours to 0630 hours November 13.
Q. Were you perfectly satisfied that he was familiar with his duties?
A. Yes, Sir, when we left for the Salvage Depot Pte Hebert was carrying out his duties.

Cross examined by the Defending Officer.

Q. Corporal Goldberg, just how is a man detailed for his duties.
A. Well Sir, I detail them, I tell them.
Q. Did you detail his duties in detail?
A. Yes, Sir.
Q. Can you for the benefit of the Court, tell us what those duties are?
A. The duty of a hut orderly is to have his place clean inside and outside and to take care of the backhouse and to stay in at all times until he is relieved. The only time a hut orderly is relieved is 15 minutes before field parade.
Q. You actually detailed this man verbally prior to his taking over his duties as hut orderly?
A. Yes, Sir.
Q. There is no other instructions as to what times he must remain there?
A. He must remain there at all times, Sir.
Q. When do you usually detail these men?
A. Well generally, Sir, after supper or the night before.

Prosecuting Officer declines to re-examine.

In the opinion of the Court and the Judge Advocate it is unnecessary to comply with R.P. 83(B).
The Witness withdraws.

2nd Witness for the Prosecution

Capt D. Sigler, OC 7 Cdn Salvage Unit RCOC after being duly sworn is examined by the Prosecutor.

Q. Capt Sigler, do you recognize the accused as Pte L J Hebert?
A. Yes, Sir.
Q. On the 12 day of November 1942 as you were making your rounds did you find everything to be in order?
A. I did not.
Q. What did you find to be out order?
A. At 1325 hours on November 12 I visited my men's quarters, Hut No Spider "C" Wing 18, I did not find the hut orderly there. I examined the quarters and found them untidy, the work had not been done. I made a thorough search of the premises and made inquiries to ascertain if Pte Hebert was there and I failed to find him.
Q. You are satisfied that the time was 1325 hours. Have you any reason for making note of the time?
A. When I found Pte Hebert absent I realized the time of his absence would be an integrable part of the charge which would be laid against him and I confirmed the time with my time piece. I visited the Trust House Inn and there I found Pte Hebert at approximately 1400 hours and I ordered my Sgt to place him under close arrest.

DMB

Q. Was the accused alone?
A. The accused was sitting at a table with a Corporal.

Cross-examined by Defending Officer.

Q. Capt Sigler, did you find anyone in the hut who could possibly be taking the duties of hut orderly at the time in the hut where Pte Hebert was detailed for duty?
A. I found Pte Forsythe leaving the doors of the building himself.
Q. Would you consider it normal for a hut orderly to leave the confines of the building himself?
A. No, I have told my men on numerous occasions that I do not permit men to exchange duties without permission of the Sgt or myself.
Q. That was not the question Capt Sigler. Would it be normal for any man to leave the confines of the building when on hut orderly duty?
A. None that I can think of. There are only the occasions on which he goes for his meals and on these occasions he is officially relieved by a person so designated by the Sgt.
Q. You have specifically informed members of your unit that duties will not be exchanged?
A. I have.

Prosecuting Officer declines to re-examine.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).
The Witness withdraws.

DEFENCE

(Judge Advocate to Accused) At this point there are three things that you can do. You have the right to sit pat and say nothing at all, letting the Prosecution who have certain things about you, prove it. Secondly, you can give evidence under oath, in which case you are exactly the same as any other witness. You can be cross-examined or asked any questions. Your third right is that you can get up and make a statement, not under oath, and on which they can ask you no questions at all. Now do you understand the three rights you can have?

A. Yes, Sir, I have no statement to make.

1st Witness for the Defence — G16152 Pte H L Moffatt, 7 Cdn Salvage Unit RCOC, after being duly sworn, is examined by the Defending Officer.

Q. Pte. Moffatt do you recognize the accused as Pte Hebert L J?
A. Yes, Sir.
Q. On the 12 day of November 1942, you were present in the hut?
A. Yes, Sir.
Q. Was there any other person there at 1345 hours?
A. Yes, Sir. Pte Forsythe, Sir.
Q. Pte Forsythe was there at that time?
A. Yes, Sir.
Q. Was there any conversation carried on between Pte Forsythe and the accused?
A. I could not say, Sir, I wasn't paying much attention, I was on guard the night before and I was getting ready to press my clothes.
Q. You saw Pte Hebert leave the hut?
A. Yes, Sir.
Q. Can you give the time?
A. At approximately a quarter to two, Sir.
Q. Have you any way of confirming that time?
A. I went into the other side of the hut and I found out the time, and it was then 10 minutes to 2 and it was 5 minutes before that he left, Sir.
Q. It was 5 minutes before that he left?
A. Yes, Sir.

Cross-examined by the Prosecuting Officer.

Q. Pte Moffatt, in the connection of time, you have no way at all of verifying whether it was 1330 hours, or 1345 hours or 1355, or even 1325 hours, when you left the hut? Have you got a watch?
A. No, Sir.
Q. Therefore the statement of time of 1345 hours is merely a guess that has come into your mind. What brought the time of 1345 to your mind?
A. I asked the hut orderly on the other side of the hut, Sir.
Q. But the time factor is not by any means sure, and that was when you were going in to press your trousers?
A. Yes, Sir.
Q. You just started pressing your pants then at 1345 hours?
A. Yes, Sir.
Q. What did you do after you pressed your trousers. How long did that take?
A. About 8 minutes, Sir.
Q. Therefore, you started pressing them at about 1345 and it would take you 8 minutes to press them, and that would be about 1355 by the time you finished pressing them?

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A. Yes, Sir.
Q. What did you do after that?
A. I went back and stayed around the hut and on my own side, Sir.
Q. Did you leave the hut at all?
A. I think I did, Sir. I think I went to the QM Stores.
Q. Where was the accused while you were wandering around the hut?
A. I don't know, Sir.
Q. Did the accused go alone? A. Yes, Sir.
Q. Did you accompany the accused?
A. Well, Sir, he and I went out through the door together, Sir.
Q. What do you mean by that?
A. Well, Sir, to go through our side of the hut, you have to go through one door and you go through a hallways and then you enter another door to go through another door, and I went beyond that to the other side of the hut, and that was the last time I saw him, Sir.
Q. It was during the first part that you accompanied Pte Hebert?
A. Yes, Sir.

Defending Officer declines to re-examine.

Court:

Q. Were you ever a hut orderly?
A. Yes, Sir.
Q. Did the Corporal on each occasion, detail the functions of a hut orderly - are you told that your duties are so and so or are you just told you are hut orderly tomorrow?
A. We are just told that we are hut orderlies tomorrow, Sir.
Q. Is there any other order that you know of detailing the functions of hut orderlies.
A. I am afraid I can't answer that, Sir.
Q. When did you go into the hut at noon that day?
A. Right after dinner after 12 o'clock.
Q. Were you continually in the hut until you pressed your pants?
A. Yes, Sir.
Q. Did you see Captain Sigler in the hut that day?
A. Yes, Sir.
Q. Was that before or after you pressed your pants?
A. I had just laid my pants on the table when he entered.
Q. And by that time the accused had left?
A. Yes, Sir.
Q. Do you know the Trust House Inn?
A. Yes, Sir.
Q. How far is that from your hut?
A. Well, Sir, it is not more than 3 minutes walk, Sir.
Q. What are the duties of hut orderly?
A. To sweep the room out, take and check over the beds, sweep the hallway and half way down towards the wash-room, pick up any matches or clothing that happen to be outside the windows. In the afternoon after the boys go out you are supposed to tidy up, and sweep up under their beds.
Q. Nothing about fire watch at all?
A. Nothing about fire watch, but I think that is automatic.
Q. What about relief?
A. There is a man who comes down for relief and he stays there until you get back.
Q. Those are the duties as you a soldier recognize them?
A. Yes, Sir.
Q. What source did you get this information to do these duties from?
A. All through the army, Sir, as a hut orderly, you practically do the same thing. Everybody knows as a hut orderly, what is his job.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The Witness withdraws.

2nd Witness for the Defence

G53766 Pte E S Forsythe, 7 Cdn Salvage Unit RCOC, after being duly sworn, is examined by the Defending Officer.

Q. Pte Forsythe, do you recognize the accused as Pte Hebert L J?
A. Yes, Sir.
Q. On the day of 12 at approximately 1330 hours were you present in your quarters?
A. I was, Sir.
Q. Was the accused there at that time?
A. Yes, Sir.
Q. Did he ask you anything?
A. He asked me if I was going to remain in the hut for a few minutes, Sir, and I said I was.
Q. Was that all the conversation that occurred between yourself and the accused?
A. Well I informed him that I would remain there until he came back, Sir.
Q. You told him that you would remain there until he came back?
A. Yes, Sir.
Q. What were the details of your conversation - exactly as you carried out your conversation?
A. Well, Sir, I was in the hut there and he simply asked me if I would be there for a few minutes. He said "are you going to be here for awhile?"
Q. What did you unsterstand that to mean?
A. Just for a short period, Sir.
Q. What was the reason for that question?
A. Just as a favour to remain there for him.
Q. Were you present when Captain Sigler entered the hut?
A. Yes, Sir.
Q. Did you make your presence known to him?
A. Yes, Sir.
Q. Did he ask you the whereabouts of the accused?
A. Yes, Sir.
Q. Did you tell him the whereabouts of the accused?
A. I told him I did not know, Sir.

Cross-examined by Prosecuting Officer.

Q. Pte Forsythe when the accused asked you if you were remaining, did you feel it involved anything. Did you feel that you were taking over any duties on that question?
A. Well there were no duties attached in the afternoon Sir.
Q. What was the accused detailed for?
A. To remain in the hut, as hut orderly, Sir.
Q. Is there any order laid down as to substitution of details or can you handle them as you see fit yourself?
A. I have not heard of any, Sir.
Q. When a person is detailed by an order does that mean that he will carry out that order or that anybody can carry it out?
A. Anyone can carry it out, Sir.
Q. Therefore, it is not a custom to get anybody to take over duties for you at random then?
A. No, Sir.
Q. Have you any idea what time Capt Sigler was making his rounds and came into the hut?
A. Between 1.30 and a quarter to two, Sir.
Q. And what happened when Captain Sigler came in?
A. He asked me if I was hut orderly, and I told him that I wasn't, but was staying there for a few minutes for Pte Hebert. He asked me where he was and I told him I did not know.

Defending Officer re-examines.

Q. Have you ever received specific instructions as to

transfer of duties on your own initiative?
A. Not up until that time, Sir.
Q. Have you ever acted as hut orderly before?
A. Yes, Sir.
Q. Since you have been here in this country?
A. Yes, Sir.
Q. Do you recall how you were detailed for that job?
A. Yes, Sir, the Orderly Corporal?
Q. How did he detail you?
A. He warned me the night before, just telling me I was hut orderly, and he told me my duties then.
Q. Do you remember him specifically telling you that one thing you could not do was to get a substitute.
A. No, Sir.
Q. Were you ever told that you could get a substitute?
A. No, Sir.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)
The Witness withdraws.

07013

M.F.H. 353
12M—8-40 (6425-6)
H.Q. 1777-39-629

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C-32472	Pte	Hebert, L.J.	No.7 Cdn Salvage Unit RCOC

1. The following is a fair and true summary of the entries in the Regimental Conduct Sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	A.W.L.	2 times	Drunkeness	1 times
For	Consuming alcoholic beverages in barracks	1 times	A.W.L.	4 times
For		times		times
For		times		times

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

3. The accused is not under sentence at the present time

or,

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 8 days in military custody, making a total of 8 days in custody, of which Nil. days were spent in hospital.

5. The present age of the accused according to his record of service is 21 yrs 3 mos attestation paper is

6. The date of his commission specified in his record of service is 12 Mar 40 attestation attestation paper

7. The service which the accused is allowed to reckon towards discharge is 2 yrs 8 mos.

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to military military (or is in possession of or entitled to). State any military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. ~~(In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit dated ....., and in his regiment (or corps), the rank of dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 20th day of November 1942

Major, Capt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

Major or Capt

SUMMARY OF EVIDENCE

in the case of

G-32472 Pte Hebert, L.J.

7 Cdn Salvage Unit RCOC

A soldier of the Canadian Army placed on Active Service

CHARGES (1) Absence without leave.

The Commanding Officer directs that the evidence be taken on oath.

The rights of the accused with respect to the taking of a Summary of Evidence are explained to him.

FIRST WITNESS Cpl. M.L.Goldberg, 7 Cdn Salvage Unit RCOC, having been duly sworn, states:

On the 11 day of Nov at about 1600 hrs I detailed G-32472 Pte L.J.Hebert of 7 Cdn Salvage Unit RCOC to perform the duties of hut orderly in Hut No. Spider "C" Wing 13 from 0630 hours 12 Nov until 0630 hours 13 Nov. He was instructed to perform the ordinary duties of hut orderly in the said hut and be in attendence during the time stated.

Cpl. M.L. Goldberg

The accused declines to cross-examine this witness.

SECOND WITNESS Capt D Sigler, 7 Cdn Salvage Unit RCOC, having been duly sworn, states:

On the 12 day of Nov at about 1325 hours I attended Hut No. Spider "C" Wing 13 and through inquiries and a thorough search I was unable to find G-32472 Pte L J Hebert, who had been detailed as hut orderly. Subsequently at about 1355 hours I attended the "Trust House" Inn and there found G-32472 Pte L J Hebert drinking beer in the presence of Cpl.G.H.Reynolds. I immediately ordered him into close arrest.

D Sigler Capt

The accused declined to cross-examine this witness.

Question to the Accused

Do you wish to make any statement or to give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or whatever evidence you give, will be taken down in writing and may be given in evidence.

Answer

Yes.

FIRST WITNESS

G-32472 Pte L J Hebert, accused, states:
On the 12 day of Nov 42 while on hut orderly, I was in the hut and Pte E.S.Forsythe was there. I asked Pte Forsythe if he was going to stay in for awhile and he said he was. I asked him if he would take my place for awhile if I went out for a little while. He said it would be all right. That was about 1345 hours. I went up to the Trust House Inn, which we had no warning not to go in and I didnt think there was any harm in it. I sat down and was drinking a glass of beer with Cpl. G.H.Reynolds when Capt Sigler and Sgt Watson found me there and put me under arrest.

Pte L J Hebert

SECOND WITNESS

G-16152 Pte Moffatt,H.L. states:
At about 1345 hours when Pte L J Hebert left the hut I happened to be just behind him going out the door. Therefore I know that Pte L J Hebert left the hut at that hour.

Pte H L Moffatt

THIRD WITNESS

G-53766 Pte Forsythe, E.S. states:
On the date mentioned, being off duty at the time, was asked by Pte Hebert, L.J. if I was going to be in the hut for a few minutes. I informed that I was. The approx. time that he left the hut was about 1345 hrs.

Pte E S Forsythe

I certify that Rules of Procedure 4(c),(d),(e) and (f) have been complied with.

Taken down in writing by

Officer detailed to take Summary.

Sheet destroyed 12-9-40

No. 0-32472 Name Hebert L.J. Sqn., Battery, or Company No.7 Can Salvage Unit Corps R.C.O.C. Date of enlistment 12-3-40 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 117) 17154—7-41—(211-30) H.Q. 1773-39-1652

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 2. — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
St.John N.B.	29-4-41	Pte	1	A.W.L. from 2000 29-4-41 to 2135 hrs 29-4-41 absent 1hr 35 mins Drunkenness.	Sgt Janus J.S Cpl Mayes D.D Sgt McKiel	14 days C.B. Admonished	30-4-41	Capt.Murphy	G.P. A.R.W.
St.John N.B.	7-10-41	Pte		A.W.L. from 0630 hrs.7-10-41 to 0630 hrs.21-10-41.(absent 14 days Sec. 15 a.a.	Cpl W.H. Reynolds	14 days C.B.	21-10-41	Major C.R. MacAlpine	14 Days Pay.
St.John	31-1-42			A.W.L.from 2030 hrs 31-1-42 to 0700 hrs(absent 10 hrs 30 mins) 1-21-42	Sgt.Cunningham J.W. RSM Obell W.B.	(14 days C.B.	3-2-42	Lieut.Seely	Forfiets 1day D.F.(pay)
Debert N.S.	1-8-42	Pte		A.W.L. from 2200 hrs 31-7-42 to 2200 hrs 1-8-42 absent 24 hrs.	Cpl G.H. Reynolds	7 days pay 14 days C.B.	3-8-42	Lt.D.Sigler	1 Day pay and allw.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Debert N.S.	31-8-42	Pte	1	Sec 11,40,25(3) with consuming alcholic beverages in barracks, being up after 2215 hrs, and giving a false name and regimental number to an officer when asked for his name and number.	Sgt. Comeau.	168 hrs Det. 7 days forfeit. Ord. Pay.	3-9-42.	Capt. D. Sigler.	
In the Field	12-11-42.	Pte	1	A soldier WOAS charged under Sec 15 (1) with A.W.L. (40 min) Tried by F.G.C.M.	Cpl Goldberg, M.L. Capt. D. Sigler Pte Moffatt, H.L. Cpl Forsythe E.S.	28 Days Detention	20-11-42	Fld. Cdn. Court Martial Findings and sentence confirmed by GOC 4 Cdn Armd Div	

T. SALV... DEC 21 1942

Lieut. Capt.
O.C. 567 Cdn. Salvage Unit R.C.O.C.

120/HEBERT L.J/1/J

HQ, First Cdn Army
24 Jan 43

REVIEW SHEET

F.G.C.M. - 20 Nov 42
G32472 Pte Hebert L.J.
7 Cdn Salvage Unit, RCOC.

1. The findings and sentence have been duly confirmed and promulgated.

2. The following irregularities have been noted:

(a) The Convening Officer's endorsement on Charge Sheet is not dated.

(b) The Medical Certificate is not in accordance with CMHQ Circular Letter 173.

(c) Page 1 of the Proceedings has not been initialled by the President.

(d) M.F.M.6 is not certified by an officer having custody of the Regimental Books certifying as such. A.A. Sec 163(1)(h).

3. Passed.

(J.J. Kelly) Lieut-Col,
A.J.A.G.,
First Cdn Army

/WJC

Copy to:

A.D.J.A., 4 Cdn Armd Div.

5'6 -103.

Phe. Hebert, Jr.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-66352 Pte Martial HEBERT, R de Mais, 1 Cdn Disciplinary Centre.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15 (1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 86, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for twenty months

(Sgd) ..... 28 Feb 45 (Sgd) P Osler major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50)

(See back of Convening Order re re assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 66. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally, AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....
Date 1 MAR 45 (G S K Gostling) Brig
Commanding 2 CDN BASE RPT GP
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

D66352 Pte Hebert, M 8 MAR 45 ..... Lt-Col.
Comdg, 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CR#234
1/81/Mar-45

RECORDED AT CMHQ IN AB 160 5C-103

REGISTERED 8 MAR 1945

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig G S K Gostling, ED. Comd 2 CBRG dated 28 FEB 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-66352	Pte	Martial	HEBERT	R de Mais, 1 Cdn Disciplinary Centre

PROCEEDINGS REVIEWED
16 Apr 45
[illegible], Capt.
REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 28 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is at p 4. Questions do NOT include all relevant fms RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 885, for oaths and instrs on how to record witnesses, evidence etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1320 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

~~The Interpreter is sworn.(1)~~ Do you object to ..... as shorthand writer? Ans .....
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	P S	Osler	RCA attd 3 Cdn VETY
Member	Capt	J P G	Gagnon	CIC 13 CBRBn
Member	Lt	J Y	Vlandré	CIC 10 CBRBn
Judge-Advocate		nil		
Prosecutor	Lt	J P	Gagnon	CIC 10 CBRBn
Defending Offr	Lt	W H	Sparrow	CIC 10 CBRBn

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 36, 37, 109, 111. Lists of offrs under instr will be returned seperately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dil p 33.)

A8. The accused D-66352 Pte HEBERT M. before arraignment make(s) (no) (the) plea

..... (1)

(1. If a special plea in made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 36, 38(A), 118), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in 48 each and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 886 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B2E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG WD 4 Pl Co.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s)(2) and to call witnesses as to character and make an address in mitigation of punishment.(3)

(*I. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s)(1). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No (5)

(*I. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*I. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*I. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)

(*I. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*I. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*I. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)

(*I. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*I. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(*I. RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*I. Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D6.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(*I. RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*I. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A65. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 84(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*I. RP* 63, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*I. AA* 54(3) (*c*). *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No

(*I. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 6, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex ..... respectively.(3)

(*I. MFB* 253 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes in mitigation of punishment (2)

(*I. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or say anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*I. AA* 54(6). *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*I. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182. *RP* 46-50, 69, 118, 119(*A*), *KR Can* 108, 120, 363-366, *Overseas RO* 309, 2323, *RP* 48. *As to sentences on civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

P30

The accused, D-66352 Pte Martial HEBERT, Regt de Maisonneuve, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT
LEAVE

in that he
In the Field, ~~in HOLLAND~~, absented himself without leave from 0730 hrs 8 Nov 44 until surrendering himself at BRUSSELS, Belgium at 2000 hrs 12 Feb 45.
(Absent 96 days 12 hrs 30 minutes)

In the Field
27 Feb 45

(A C Hood) Lt col
OC 1 Cdn Disciplinary Centre

To be tried by Field General Court-Martial

In the Field
28 Feb 45

(G S N Gostling) Brigadier
Comd
2 Cdn Base Rft Gp

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-66352	Pte		Lucien Martial	HEBERT	R de Mais, 1 Cdn Disciplinary Centre.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 28 FEB 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	P S O Sler RCA	4 S Pl NETD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by OC 13 CBR Bn	13 CBR Bn
Lieut	to be detailed by OC 10 CBR Bn	10 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Dat 28 FEB 45

(Signed personally. RP 105 (n 2).) Brigadier (Rank.)

(G S H Costling)

Commanding 2 CDN BASE RPT GP

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (PAM 96 (In Lieu of AFA 3: 40/P & S/1207 (S1 60))

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(*B*), may be recorded in narrative form as follows:
First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (*or*, None.)
Re-exam: None.
Exam by Court: He said—" I've had enough parades ".
RP 83(*B*) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 90, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:
(i) Opening address by Defending Offr. (*RP* 86(*C*), 87(*C*), 92(*C*) (*D*).)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)
(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 81.)
(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 563(*o*).)
(vii) Summing up by JA, if any. (*RP* 82.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:
(ii) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can* 583.)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 569. *As to certified copies of regimental books see AA* 163 (1) (*g*) (*h*).)
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML p* 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

PHD

MEDICAL OFFICER'S CERTIFICATE

(KR(Com) Para 527)
(CinCPAC CL 173)

I certify that I have this day examined D 66352 (No.)
Pfc (Rank) ~~MARTINEZ~~ (Name) HEBERT, M. and in my opinion he is

~~fit~~ to undergo trial by Court-Martial.

Station C Pkg P
Date 28 Feb 45

(Official title)
(Unit) P. Hosp. C.

Statement by Hebert in mitigation of punishment.

Je suis dans l'armée depuis le 13 sept 1940. J'ai toujours fait mon devoir et pour ainsi dire je n'ai jamais eu de charge contre moi. J'ai été blessé et retourné en Angleterre et à mon retour j'avais encore des douleurs dans la jambe où j'avais été blessé. C'est ce qui m'a décidé à partir, et toute humidité occasionne ces douleurs dans ma jambe. J'ai été environ un mois en action avant d'être blessé, et je suis retourné après pour environ 4 jours avant de m'absenter. Je suis célibataire, catégorie A, et 23 ans. Je désire retourner à mon unité.

This statement was read back to the accused

P20

(1)

Exhibit A pse

Summary of Evidence in the case of D-66352 Pte Martial Lucien HEBERT, Regt de Maisonneuve, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave.

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 67 dated 7 Dec 44.

Exhibit "B" - Certificate of Surrender dated 13 Feb 45.

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that KR 4(C) (D) (E) (F) and (G) have been complied with.

(W D Hungerford) Capt

Officer detailed to take Summary of Evidence.

Dated in the Field
27 Feb 45

PART II ORDER EXTRACT FORM

99/20/ RDEMAIS/1 (A5C)

TO OC
1 Cdn Disciplinary Centre

22 FEB 45 19

EXTRACTS FROM: UNIT LE REGIMENT DE MAISONNEUVE

Part II Order No. 67 dated 7 DEC 44

AWL from 0730 hrs 8 NOV 44 Still absent 0730 hrs 16 NOV 44 (8th day)
D66352 Pte HEBERT M

Certified to be a true extract from regimental books and documents in my custody.

Officer IC Records
Can Sec GHQ 2 Ech 21 A Gp

This is attached "A" to Lt Col Macdonald Capt.

The following documents are { attached. Please acknowledge receipt on attached duplicate. / required. Please forward same.

For your information

Originating Clerk's Initials

for
Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1) J

I A/Capt J. Tweddle, OC 2 Cdn L of C Provost Coy Certify that

Reg No D-66752, Rank Pte. Name HERBERT? L.W.

REGIMENT REGT. DE MAISONNEUVE

UNIT 2 Cdn Div.

STATIONED AT Field

Surrendered himself to No A-65195 Rank Pte. Name Piroski, N.

of the 2 Cdn L of C Provost Coy, C Pro C.

on the 12 th. Day of Feb 1945 at 2000 Hours.

AS AN ABSENTEE WITHOUT LEAVE

at the time of his surrender he was wearing (military uniform) or ~~civilian clothes~~.

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of his Majesty's Forces or the officer, warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on surrender.

Field
13 Feb 45

(J. Tweddle) A/Capt.
OC 2 Cdn L of C Provost Coy.

This is Exhibit "B" to the annexed Affidavit of [illegible]

Exhibit B 930

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-66357	Pte	Lucien Albert Arsenault	R de Mais

NOTE.—The Field Conduct Sheet is to be produced to Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the numbers of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.W.L. 15 D.A.A. 3 times.

For _____ times.

For _____ times.

For (No record of awards &c) _____ times.

Date of first entry in Field Conduct Sheet _____

Date of last entry in Field Conduct Sheet _____

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for NO

beginning on the NO day of NO

4. The accused has been awaiting trial on the present charges for _____

days in civil custody; and for 15 7/12 days in military custody, *i.e.*, NO days in open arrest, 16 23/24 days in close arrest; of which NO days were spent in hospital.

5. The present age of the accused is 22

6. The date of his ~~enlistment~~ attestation ~~calling up for military service~~ is 27 May 40

7. The service which the accused is allowed to reckon is _____

[State the military decorations (if any) held by accused.

8. The accused is in possession of: CVSM & clasp.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of _____	_____
In the war substantive rank of _____	_____
In the acting rank of _____	_____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27883) W1.34020/3484 50,000 7/44 A.& E.W.Ltd. Gp.498 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		Nil.		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 28th day of July 1945

[illegible]
A.O.

LIST OF WITNESSES

N/A

LIST OF EXHIBITS

Certified true copy of Extract from Pt II order No 67 dated 7 Dec 44	"A"
Certificate of Surrender dated 13 Feb 45	"B"

I, D-66352 Pte HEBERT M, hereby certify that I have received one copy of Charge Sheet and one copy of Summary of Evidence free of charge on 27 Feb 45.

D-66352 Pte HEBERT M

QQQ-41

GNR HEBERT O.

RECEIVED 6 JUL 1944 JAG BRANCH GMHQ

RECORDED AT CMHQ IN 73 160. 40 & 41

FIELD GENERAL COURT-MARTIAL

CFA96 (To form of AFA2) 40/P & S/1658 (2064)

Convened by Order of Colonel B.R. Ker, E.D. Comd "C" Gp, CRU dated 20 Jun 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-82132	Gnr	Oscar	HEBERT	2 CARU

PROCEEDINGS REVIEWED 6 Jul 44

W.S. Green

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 21 JUN 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 4. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(8), ~~AA 50 fn 1.~~ For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to an interpreter? Ans~~

~~The Interpreter is sworn.(1)~~ Do you object to P38776 Sgt Soulis, J.F. as shorthand writer? Ans NO SIR

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt Col	D.L.	REDMAN VD	HQ CRU
Member	Capt	J.A.	RICHARD	2 CARU
Member	Lt	S.A.	SINGER	1 CARU
~~Judge-Advocate~~				
Prosecutor	Capt	J.M.	BOYD	2 CARU
Defending Offr	Major	E.F.	McLEOD	2 CARU

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 36, 37, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 59 (3) and (4) 2 were not followed. See RP p 33.)

A8. The accused ~~before arraignment make(s) (no) (a) plea~~ (1)

(1. If accused pleads a guilty for subsequent acts and one or more charges (RP 43(2), MML) or as to the jurisdiction of the Court (RP 43, MML, 112), or in bar of trial (RP 43), or as to the Court's personal interest in event (AA 136, RP 57), or if none of these, and accused pleads guilty to the whole charge sheet (RP 43 (3)), such plea, the evidence must be recorded in extenso, the conclusion, if any, and finding are recorded per Notes. The plea of accused has reference to fact in the charge sheet and names of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and see separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~in closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D and B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-82132 Gnr HEBERT, Oscar - 2 CARU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	NOT Guilty	NOT GUILTY	
2nd AA Sec 40	NOT Guilty	NOT GUILTY	
3rd AA Sec 15(1)	Guilty	Guilty	
4th AA Sec 24(2)	NOT Guilty	NOT Guilty	
~~XXX~~			
~~XXX~~			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 45 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo 4 detention per cwa period of months (90) days

(Sgd) 24 Jun/44 (Sgd)

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 21(D) fn 6, AA 54, 55-56, 120, MML pp 719-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised; AA 54(3). Quashing bad finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 60, MML p 46. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 120A, 64. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be released from custody and that all proceedings be quashed. (further sentence(s))~~ Reserved

(1. AA 57A. Delete if not used.)

(Sgd)

Date 28 Jun 44 Commanding "C" Group, 6th Reinforcement Units. Ca

Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Authorised Officer.
D82132 Gnr Hebert, O	25 June 44	Gen Officer
20 14 d/9 July 44 - Promulgated -		R.C. Kelly Capt 2 CA Pro U

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M ML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ~~ALL~~ CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO-SIR (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement(1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 25(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*B*) (2).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (has) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 99, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1) NOTE-ATI
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. To give evidence Do you intend to call witnesses on your behalf? Ans. Yes Sir Are they witnesses as to character only? Ans. NO Sir
(1. *RP* 116. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOTE ATI
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*a*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 2nd charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. ~~The accused having been found Guilty on one or more of the charges~~, the proceedings are concluded by using Record Form ~~B below~~. B above Continue on

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character 1(1)
Ans. NO-SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(1. *AFB* 253 *or AFB* 294. 2. *AGAM* 6. 3. *RP* 46, *KR Can* 552. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes also have a statement NOTE-ATI
(1. *RP* 37(*C*), 86(*D*). 2. *Address, if any, recorded per Notes. Counsel should not be allowed to call witnesses to prove or call anything here or previously stated which would affect the amount of punishment. RP* 37(*C*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the 3 members~~.(2)
(1. *When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 64, 138, 182, *RP* 46-52, 69, 118, 119(*A*), *KR Can* 326, 525, 543-564, *Overseas RO* 339, 1323, *MML p* 60, 757-759. *As to sentences reassigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 66(8), *sch*(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused D 82132 Gunner Oscar HEBERT, "P" Training Wing, No 2 Canadian Artillery Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

1st Charge
Section 40
Army Act

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF GOOD ORDER
AND MILITARY DISCIPLINE

In that he,

in the field, on the 6 May 44 was improperly in possession of 500 Sweet Caporal Cigarettes the property of G 3501 Gunner Noel, E., a soldier of the Canadian Army Overseas.

2nd Charge
Section 40
Army Act

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF GOOD ORDER
AND MILITARY DISCIPLINE

In that he,

in the field, on or about 5 May 44, was improperly in possession of a carton numbered E 88651 ~~of 1000 British Consol Cigarettes~~ addressed to E 50423, Gunner Ruest, M., a soldier of the Canadian Army Overseas.

3rd Charge
Section 15(1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

In that he,

in the field, absented himself without leave from 2230 hours 20 Apr 44 until being apprehended by Lieut. R.M. Begin at 1500 hours 6 May 44. Absent 17 days, 16 hours and 30 minutes.

4th Charge
Section 24(2)
Army Act

WHEN ON ACTIVE SERVICE
LOSING BY NEGLECT HIS EQUIPMENT
CLOTHING AND REGIMENTAL NECESSARIES

In that he,

at Huron Camp, Bramshott, Hants, on the 12th day Jun 44, was deficient of equipment, clothing and regimental necessaries to the value of One Pound, Five Shilling, Three and one-half Pence (£1:5:3½), which sum is 75% of the vocabulary price of such articles which amounted to One Pound, Thirteen Shilling and Eight Pence (£1:13:8), in accordance with C.A.(O) R.O. 1398. The deficiencies are as hereunder listed.

ARTICLES	QUANTITY	100% Value £ s d	75% Value £ s d
Fork, Table	1	0 0 4	0 0 3
Housewife	1	0 0 9	0 0 7
Knife, Table	1	0 0 8	0 0 6
Drawers, Woollen prs	2	0 10 9	0 8 1
Belt, Waist	1	0 3 4	0 2 6
Braces, R.L.	2	0 2 8	0 2 0
Strap Shoulder	2	0 2 10	0 2 1½
Cape A/C	1	0 12 4	0 9 3
TOTAL		£1 13 8	£1 5 3½

Huron Camp,
Bramshott, Hants,
14 Jun 44

(Mackenzie Waters) Colonel, RCA
Commanding Officer,
No 2 Cdn Arty Rft Unit.

To be tried by Field General Court Martial,

Colonel,
Commanding "C" Group, Cdn Reinforcement Units.
(Convening officer)

Bordon, Hants.
20 Jun 44

FIELD GENERAL COURT-MARTIAL

C7A95 (In lieu of AFA5)
40/PAM/1097 (3m68)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-82132	Gnr		Oscar	HEBERT	2 CARU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~xxx~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 20 Jun 44 endorsed by me, [redacted] " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; [redacted]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]
(AA 49, RP 104(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted]
(RP 104(E). Delete, if none appointed.)

PRESIDENT.

LT-COLONEL (Rank.)	D.L. REDMAN, V.D. (Must be named. RP 106.)	HQ CRU (Unit.)

MEMBERS.

CAPTAIN	Detailed by CO	2 CARU
LIEUTENANT (Rank.)	Detailed by CO (Named or detailed. RP 106.)	1 CARU (Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 104.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

Date 20 Jun 44

(Signed personally. RP 105 (n 2.)) Colonel. (Rank.)

Commanding "C" Group, Cdn Mft Units. Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), as evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused still make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 86(B), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any endorsations made by Convening Offr under RP 104, 105, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of registered books see AA 162 (1) (g) (A).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after remarks of sentence awarded. (*AA 53(9), RP 115(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Medical Officers Certificate
K.R. (Can) para 557

I certify that I have this morning examined No D 82132 Gunner HEBERT, O. of No 2 C.A.R.U. and in my opinion he is fit to undergo trial by Court Martial.

No 2 C.A.R.U.

21 Jun 44

.....RCAMC
(Medical Officer)

Medical Officers' Certificate
K.R. (CAN) para 557

I certify that I have this morning examined D 82132 Gnr Hebert O
of 2 CARU and in my opinion he is ~~fit~~ fit to undergo
trial by Court Martial.

No 2 C.A.R.U.
24 June 1944

.....
(Medical Officer)

F.G.C.M. IN THE CASE OF

D 62132 Gnr HEBERT, O., 2 C.A.R.U.

21 JUNE 1944

When the Defending Officer was asked the question in record form D-1 he said:

There is a witness, which my opinion may be very important to the defence. He is a man who was absent with the accused and has since went absent again, I do not know when he will return or be apprehended.

The Prosecutor stated that he had five witnesses from a field unit and that in his opinion it was important that their evidence should be taken so that they may be returned to their field unit.

It was decided with the approval of the Prosecutor and the Defending Officer that the Court would proceed to take the evidence for the Prosecution and would then listen to any further application the Defending Officer wished to make.

EVIDENCE FOR THE PROSECUTION NOTE D-3

1st WITNESS FOR THE PROSECUTION

Lt R.M. BEGIN, on strength 4 Cdn Med Regt, having been duly sworn states:

I am Lt R.M. Begin of 4 Cdn Med Regt, I know Gnr Hebert whom I recognize as the accused (pointing to accused) in this Court room. At approximately the 1st of May 44 Bdr Brolt reported to me that the mail room had been broken into and that some cigarettes were missing so I went down and inquired and made an inspection of the kit in the billets around the place, but did not find anything so I reported the matter to the Battery Commander. Upon investigation of the mail room I found that it had been broken into and the cigarettes had disappeared. Later on during the month around the 9th or 10th of May Sgt Stirret, my troop sgt reported to me that some cigarettes were missing from "C" Troop lines. I authorized Stirret to take a vehicle and he and I proceeded to investigate. We went down to Croydon and searched all the pubs but there was no trace of any of the missing cigarettes, that might have been sold or otherwise, so we went to the YMCA to see if a man who we suspected was there, that man was the accused. We found out that Gnr Hebert had not stayed there over night. We went over to the other YMCA in Croydon, known as the Homestead. On our way up there the driver pointed out a man to me on the corner and informed me that it was Hebert, the accused, the truck was pulled in and apprehended Gnr Hebert. Upon asking him if he had seen certain cigarettes (Defending officer stated that he did not object to the answer being given) the accused said that he did not know anything about the stolen cigarettes. Then I asked Berube, who was with the accused, he also didn't know anything about stolen cigarettes. I asked one of them where they were staying and (At this point the Defending Officer objected to the remainder of the conversation on the ground that the questions were asked by a person in authority without the usual caution being given) (Court ruled that remainder of the conversation would not be admitted)(Witness continues)- I then proceeded to the Homestead YMCA Hostel to find out if Hebert had been living there. I found out from inquiries that Hebert had been living there, upon getting permission to search the place for missing cigarettes I found an empty

box in the corridor on which the name of Hebert was marked in pencil, "Hebert/RCA". On the day following I returned to the Homstead where I interviewed Mrs Robinson, the Manageress, she handed me another parcel containing 5,00 cigarettes. On the previous day Gnr Hebert had been brought to the Regimental Guard Room.

Q Do you recall what cigarettes were missing on or about 1 May from the mail orderly room?
A 2,000 British Consuls, I do not know how many separate packages there were. I investigated in the Mail room myself, Gnr Ruest and Gnr Noel had lost cigarettes on the 1 May 44, Gnr Ruest lost his cigarettes on the 1 May and Noel lost his later.

Q What time were Noel's cigarettes that were missing reported to you?
A The time that Noel's cigarettes were reported to me as missing was around five or ten minutes to one o'clock in the afternoon, it was on a Monday, around the 9th or 10th of May, I do not remember the date but I am sure it was on a Monday. (Prosecutor said the nearest Monday to 9th or 10th May 1944 was the 8th May, as will be evident in the calendar).

Q Can you identify this empty box you found in the Homestead?
A I can, my initials are on it (Prosecutor shows witness a card board box, witness examines the box) This is one of the boxes that I found in the YMCA Hostel in West Croydon, it is the one that I found in the corridor. I can tell it by the serial No, by the scratches on the top as though someone had torn off the name and any traces of the owner, I also recall the name "Hebert/RCA" written on it with a lead pencil. (Carton marked Exhibit "1" by the Court). The serial No, I believe is E 88651. This box was full of papers which I took out and when I had the box empty I found the card that accompanies the cigarettes, it is called the acknowledgement receipt, it was torn up I put it together and found it to be sent from Mrs Ruest, from some place in Quebec. (Witness is shown the pieces of a card, and continues) Those are the pieces. (Pieces of card marked Exhibit "2" by the Court - from examination of Ex "2" it appeared that it was addressed to"Madame Paul Ruest, St Anaclet, Co Rim, Quebec, Canada")

Q This second parcel that you picked up the following day at the Homestead, can you identify that?
A Yes, it was a card board box with 500 Sweet Caporals in it. It was not addressed to anyone, but I found the serial No on the register to whom it was mailed. There was a No and the "XXL" on it. That is the box that my initials "Lt RMB" are on, I put them on it, on the flap. I put my initials on at the Provost's advice when they arrived. The serial No on this box is"9487 XXL" (Box is produced by the Prosecutor and shown to the witness) That is the box (Box marked Exhibit "3" by the Court)

CROSS-EXAMINATION BY THE DEFENDING OFFICER

I made a check-up on the 1st of May, the date that the unit post office was broken into, and I inspected the kit of the men and found no trace of the articles.

Q You have had a lot of thefts in the 4th Med Regt have you not?
A We have two thefts and no more that I know of. I can't say how many there has been, I have been there since Jan 44.

Q I submit to you that it is pretty common knowledge in that regiment that a lot of cigarettes are stolen and you are just

quibbling around the issue, it is common knowledge that a lot of cigarettes are stolen there, or do you know?

A I do not know.

Q And a lot more stolen since the arrest of the accused.

OBJECTION BY THE PROSECUTOR

OBJECTION OVER-RULED

A They have not been stolen to my knowledge.

QUESTIONS BY THE COURT

Q Did you check at the Homestead Hostel at Croydon to see if Gnr Noel had stayed there at any time previous to the time that you found the cigarettes and the empty carton there?

A I checked the register at the YMCA Hostel and found that Gnr Neel, whose cigarettes had been missing, had not stayed there around the time that his cigarettes had been found missing. I did not check with respect to Gnr Ruest.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

2nd WITNESS FOR THE PROSECUTION

Mrs A.P. Robinson, Homestead YMCA HOSTEL, 42 Wellesley Road, West Croydon, having been duly sworn states:

I am Mrs A.P. Robinson, I am living at the Homestead YMCA Hostel, 42 Wellesley Rd, West Croydon. I would know Gnr Hebert if I saw him (Witness looks around the Court room) that is Gnr Hebert, (pointing to the accused). The first time I saw him I booked a bed for him, I can not remember what day it was, about the 1st of May, I believe. He handed me a box and asked me to look after it for him, I put his name on and a stroke and under that "RCA", it was the next day I believe he asked me for it and I handed it back to him. I did happen to look into the box, the lid was sticking up and I saw cigarettes in it. The box was found in the first lounge by the night porter, it happened to be kept not for any reason (witness is shown a box Exhibit "1") that is the box, it has my writing on it, I observe the name "Hebert/RCA" is on it, I wrote that name.

The second box I took in from him I did not put his name on it. I did look into the second box and saw cigarettes in it. (Witness is shown Exhibit "3") This looks like the second box, that the accused gave me which had cigarettes in it, I have no definite way of identifying it. The second box did contain cigarettes, I was closing up the lid that was open and I saw cigarettes.

Q Do you remember the day the second box was given to you?

A No I do not remember, it was not a long time between the first box and the second box, I don't think I handed him back the second box to take away. The first one I remember quite well, I did not hand him the second box to take away.

I can not remember handing the second box back to Hebert or to anyone else, another man was with him and he handed them in. An officer came later and picked up this box, I do not remember his name (Prosecutor brought in Lt Begin and allowed the witness to look at him) I know this officer, it is the one to whom I gave the box, Exhibit "1". I do not recall giving the second box to anyone, Exhibit "3". I knew Gnr Hebert by sight, he stayed at the Homestead quite a lot, he was there for several days before the 5th May and after that. I wrote his name down and he remarked that I had remembered his name, but I can't remember the exact dates that he stayed there.

CROSS-EXAMINATION BY THE DEFENDING OFFICER

Q Are you very busy?
A Yes, very busy.

Q Can you remember if you were busy, fairly busy when this transaction took place?
A No I was not, I just went into the office when he came. We do have a lot of soldiers in and out.

Q This statement you made in the summary, you made that with the Prosecuting Officer, will you just give the circumstances did you more or less figure out the details.
A It was very clear to me when the officer came, I remembered the man's name, I remembered the box, I remembered the box being found, it was just an accident.

Q I am only suggesting that there were several exact dates that you have stated and yet this morning you were a bit hazy on them. I am going to suggest to you that your evidence is clear in some respects, you recall the facts about the box perhaps because the thing has been discussed and reviewed since the affair happened?
A No it would not make any difference. I remember the man, I remember him giving me the things. I can not remember the dates, but as the officer came in quickly after the affair, and the man had only slept there a day or so.

Q When you identified this man I noticed you looked around the room, you looked at this man twice, I am going to suggest that you would not know him if you saw him in a group?
A I knew him immediately I saw him.

Q Do you know any of the accused brothers?
A No. I know the name "Hebert" and that name brings this person to mind.

Q Why did you not put any name or initials on the first box?
A We never take a man's initials, if we have his number, name and regiment, I just put his name down for saftey sake. We are not supposed to take them in like that but we can not put it in the cloak room and just to oblige them we put that sort of thing in the office just for safty's sake.

Q Do you remember this man being in there before?
A I knew him and I get to know these boys quite wellbefore the first of May or the latter part of April. I can not tell the last time he had slept there, I knew him this time andknew that he had been there before. I can not tell you how long it had been before this occasion. I am not the only person who books beds. There are several voluntary workers there, but I live there and get to know the men who come better than most of the other people who work there.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

3rd WITNESS FOR THE PROSECUTION
A 35520 Sgt STIRRET, F., No 2 CARU, having been duly sworn states:

I am A 35520 Sgt Stirret, F, on strength No 2 CARU, I know D 62132 Gnr Hebert, C., he is in this Court (pointing to the accused) that is he. On the 8 May I was passing through 192 Burntwood Lane and on my way back from lunch about five minutes past 12:00 o'clock, noon, I happened to look around and saw Gnr Hebert and Berube sitting on the back step, they spoke to me and asked when the drivers would be back, I said I did not know and continued on my way, and went to my own billet which was about two miles away. I came back and found Gnr Noel who reported that he had lost 1,000 cigarettes I went with Noel up the street to see Sgt Maj Laporte, where we tried to arrange for a vehicle to make investigations, we got a vehicle. I had a parade to take which I took and left the room with Noel and I went to the parade. I met Lt Begin and reported the incident to him, we did not get the vehicle the first time I tried, however Mr Begin arranged for a vehicle which we got. After the parade was over Lt Begin, myself, and Gnr Noel went to West Croydon in the vehicle that Mr Begin had obtained for me. We searched the pubs to see if we could find the two men we suspected, the accused and Gnr Berube, we did not find them and went to the YMCA and asked if they had checked in there and found that they had not checked in. From the YMCA we went to the Grey Hound Pub which was themost likely place for them, we left there at closing time and returned towards the YMCA. We saw Gnr Berube and the accused near West Croydon Station, we ran after them and stopped them on the street, they made no attempt to get away. About a minute after we had caught them the vehicle with Lt Begin followed up and they were asked to get into the vehicle. We went to the YMCA, the main one on London Road and tried to find any stolen cigarettes or any kit that was left there, we found nothing and nothing was said by the accused. From there we went to the Homestead YMCA Hostel which is on Wellesley Road, we went in and made a search of the building and also inquired if the accused had been registered there and found that he had on several occasions, Berube had also been registered there. On the first floor in a dust pile we found an empty carton, a cigarette carton, which we surmized to belong to Gnr Ruest. After that we also found 500 Sweet Caporals behind the bar, in an open box, then Lt Begin told me to take the accused and Berube back to 4 Med Regt. When we got them back to the guard room at the 4 Med Regt we searched them and we found four packages of Sweet Caporals on Gnr Hebert and thirteen shillings. The day we searched these two men was the 7th or 8th May. I returned from my billets about five to one o'clock when I returned and saw Gnr Noel as I was on my way to the parade. I could identify the empty carton that I found in the Homestead, it had the name "Hebert/RCA" on it (Witness is shown a box, Ex "1") This is the box that we found, I can tell by the way "Hebert/RCA" is written on it, it was written on it when we first saw it.

Q Was anything else found with this box?
A Nothing at all.

Q Did you know Hebert and Berube, had you seen them around the regiment at any time previous to this incident?
A I knew them, I had seen them off and on, I would say that I had seen them three times before the incident, I saw them about five of six days before Noel reported the missing cigarettes.

CROSS-EXAMINATION BY THE DEFENDING OFFICER

Q You have know the accused for some time?
A yes Sir.

Q What sort of a fellow is he?
A I had him on my gun crew and he was the best man I had. For work and morale he was the best, he was always cheerful and when times went badly on schemes he stood up very well. He was the best gunner I had, I had recommended him for a stripe.

Q Do you know anything of him being involved in any thefts in the regiment previous to the affair under review?
A No Sir.

Q Is it true that there are lots of theft in the 4 Cdn Med Regt?
A Yes Sir.

Q Since the 6 May 1944?
A Yes Sir, at least 5,000 cigarettes since the accused was apprehended that I know of.

Q Generally has the regiment a high percentage of theft, that is it has a lot?
A Yes Sir

Q What time did you run into the accused in the street on the 6 May?
A On the street in Croydon, it would be about 20 minutes after three in the afternoon.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

4th WITNESS FOR THE PROSECUTION
D 128936 Gnr LaRoche, L., on strength 4 Cdn Med Regt, having been duly sworn states:

I am D 128936 Gnr LaRoche, L. on strength of 4 Cdn Med Regt. I recognize the accused as Gnr Hebert, he is that one (pointing to the accused) I am the mail orderly in the 58th Bty. I have been since last Nov 43. Cigarettes have been stolen; 1,000 belonging to Gnr Ruest and another thousand from Lunney, they were found to be missing at one o'clock on the 1st May. I can give you the numbers of those parcels by referring to a note book which I have (witness refers to note book). M. Ruest E 8865, is the number of that parcel belonging to Gnr Ruest. On the 1st May the door of the mail orderly room was forced open when I returned in the afternoon. I never issued Parcel No E 8865 to anybody. I issued parcel E 9487 to Gnr Noel on the 19 Apr 44. I know Gnr Berube by sight, he was at Regimental Headquarters. As far as I know I never remember issuing any cigarettes to either Gnr Hebert or Gnr Berube.

CROSS-EXAMINATION BY THE DEFENDING OFFICER

Q Did you forward a package of Winchesters to the hospital where the accused was staying?
A Yes Sir, after he left the regiment and went to the hospital, it was about two weeks ago that I forwarded a carton of Winchesters to the accused.

Q Was he in hospital two weeks ago?
A I have the address as the hospital, I can't give you an accurate idea of the date, the card still shows him in the hospital.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

5th WITNESS FOR THE PROSECUTION
C 3501 Gnr Noel, E., on strength 4 Cdn Med Regt, having been duly sown states:

I am Gnr Noel, E., on strength 58 Bty, 4 Cdn Med Regt. I had a package of cigarettes, 1,000, I do not remember the number, I do remember that it was send to me in May, I lost a thousand cigarettes, I do not know the exact date, but it was on a Monday. I lost them in Caterham where we were billeted, I do not know the name of the street, but it was from the quarters where I was living at that time, during the day these cigarettes were lost, it was between 1100 hours and 1230 hours. I reported this loss to the battery sgt major. I have never stayed at the Homestead YMCA and have never registered there.

Q How far is it from Caterham to West Croydon?
A I do not know.

I could recognize the box of cigarettes that I lost if my name was still on the lid. (Witness is shown Exhibit "3") I can not recognize that as mine, my name is not on it, it was a box like that and it had SWeet Caporals in it.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q When did you last see the box before it was missed?
A I saw it 20 minutes before it was lost.

I know Gnr Hebert, I roomed with him for a while. I never missed anything around the room while I was living with the accused. I have known him for six months and I lived with him in the same room for two months. During that time I never missed anything or had any complaint aginst him.

In the opinion of the Court it is unnecessary to comply with RP 83(8)

6th WITNESS FOR THE PROSECUTION
E 50423 Gnr Ruest, M. on strength 4 Cdn Med Regt, having been duly sworn states:

I am E 50423 Gnr Ruest, M., on strength 58 Bty, 4 Cdn Med Regt.

Q Did you receive, or do you remember receiving a carton of British Consul cigarettes around the 1st May 44?
A No Sir. I am accustomed to receiving cigarettes, I received other kinds, I have received British Consuls at a previous time, but none at or about 1st May 44.

Q Were you ever registered at the Homestead YMCA Hostel?
A Yes, about 15 days before I lost my cigarettes. (Witness is shown Exhibit "1", his attention is directed to space for the name of sender where under each other are the letters "M", "S", "Q", witness continues) this could be my package, the first line beginning with "M" could be "Madame Paul Ruest" there being a "T" at the end of the first line, the remainder of the name has been removed. The "S" in the second line might mean "St Anaclet, Co Rim". The "Q" in the third line could be only "Quebec, Canada." (Witness is shown Exhibit "2") It is addressed to "Madame Paul Ruset", that is my mother's name and address.

Q Have you received a thousand British Consul cigarettes on or after the first May 44?
A I am not sure.

Q When did you get your last thousand British Consuls?
A About ten days ago, in June.

Q When did you receive the one before that?
A I can not say whether I received one in May or not.

CROSS-EXAMINATION BY THE DEFENDING OFFICER

Q Did you live with the accused, Gnr Hebert?
A Yes Sir, same building, same room. He never stole anything from me during the period I lived with him, I found him a very reliable room-mate. Generally he was a good, honest chap, he was in the same room with me for five months, I am sure it was more than five months.

BY THE COURT

Q How far is it from Caterham to West Croydon?
A It is six or seven miles.

Q How do you usually go to West Croydon from Caterham?
A Sometimes we go to West Croydon by train and sometimes by bus.

Q When you were at the Homestead YMCA Hostel did you have any cigarettes with you?
A No Sir.

Q Did you have any cigarettes with you?
A One or two packs, just enought to smoke.

Q Did you ever take a carton of cigarettes to the Homestead YMCA Hostel in West Croydon?
A No Sir.

Q How often to the trains or busses run from Caterham to West Croydon?
A About every 10 of 15 minutes.

BY THE DEFENDING OFFICER THROUGH THE COURT

Q Is it true that the busses only run once an hour from Caterham to Croydon and that is every 15 minuts to the hour?
A No Sir, they run about every 15 minuts.

BY THE PROSECUTOR THROUGH THE COURT

Q How far is it from the billets in which you were living to the bus stop, and to the station?
A About 200 yards from the bus stop.

In the opinion of the Court it is unnecessary to comply with RP §3(B)

7th WITNESS FOR THE PROSECUTION
C 10377 Bdr RAYMOND, V.J., on strength No 2 CARU, having been duly sworn states:

I am C 10377 Bdr Raymond, V.J., NCC in charge kit stores, 2 CARU. I recognize Gnr Hebert as the accused (pointing to accused) I examined his kit against his Part III of his pay book and made a list of deficiencies that I found in his kit. (Witness is shown a list) That is the list that I prepared. (List is marked Exhibit "A" by the Court) The list that I prepared is a true and correct one.

CROSS-EXAMINATION BY THE DEFENDING OFFICER

I checked his kit with his Part III of the pay book. I can not remember the exact date that I checked his kit, it was brought into the office and I checked it.

Q You made two checks of the accused kit did you not?
A No Sir, we did not make two checks.

Q I submit that you made a check that you gave to the Court of Inquiry this check was made and the accused said it was not correct and you went back and made another check in company with him, is that right?
A Yes.

Q On the second check you found certain items you had not found on the first check, where were these items?
A This man was AWL and we checked his kit against a blank form of Part III of a pay book, when he came back we went back and re-checked it in his presence and did not find the missing articles. I had checked his kit against a blank form or the blank Part III, Pay book and charged him for the deficiencies of kit that he should have had.

Q Was his kit marked when it came into the quartermaster stores, was there any name on it?
A No Sir.

Q Was it locked?
A There was a lock inside the kit bag. We keep files of every man whose kits are liable to be opened. We do not open the kit bags until the owner is present, or the RQMS gives us permission. As far as I am concerned it came into the QM stores unlocked.

BY THE COURT

Q Did you have the Part III of the pay book of the accused when you made the final check or inspection on the 12 Jun?
A Yes Sir. It came back with him and I checked his kit against his own Part III then.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

CASE FOR THE PROSECUTION IS CLOSED

The Defending Officer requests an adjournment on the grounds that a witness, who is material, namely Gnr Berube is at present AWL and can not be brought here to testify, and requests adjournment so that an effort may be made to apprehend this man and have him brought before this Court.

Application is granted and the Court is adjourned; to be re-assembled on the call of the President.

COURT RE-ASSEMBLED AT 1100 HOURS ON THE 24th DAY OF JUNE 1944

EVIDENCE FOR THE DEFENCE NOTE D-5

1st WITNESS FOR THE DEFENCE

Accused (D 82152 Gnr Hebert, O) on strength 2 CARU Having been duly sworn states:

With respect to my kit, the Captain who took my evidence at the Summary is here in the Court room this morning. First there was nothing mentioned about it, that is kit deficiencies, until a couple of days after when the same officer took my evidence then a Bdr of the kit stores was there with him, he came in with a list of the stuff. I asked the Bdr, who was Bdr Raymond, how could he check my kit before I was present?

He never answered that question, then I told him that when I left my kit bag was locked, and how could he check it? He said that I was there with the RP, I asked him what RP and he said nothing. Then the officer who was Capt Boyd said that we would leave it like that, then the Bdr came back and took me to the kit stores and asked me if the lock was broken and we had another kit inspection and he made another list which is in the present charge, the other list, the first one was much bigger than this one. I had drawn my kit when I came out of 12 Cdn Gen Hosp on the 7 Apr, they gave me the kit that was turned into stores, it was not a complete kit, a lot of articles were missing when I left the stores I had a complete kit. I had it in the hut with a lock on it. I am positive that everything was locked in my kit bag, everything that I did not have on my back and great coat which was in my big pack. I did not lose anything when I went away, I had nothing with me when I went away.

When I went to stores my kit back was open, the lock was broken and off the bag, I found the lock outside my kit bag and it was broken, I could see the break. I asked why the storeman had gone into my kit bag before I came back, he never answered that.

My fork was in my hold all and was in my kit bag.
My house wife was in my kit bag.
My knife was in my hold all and in my kit bag
My drawers were in my kit bag.
My Cape Anti gas was in my kit bag
My Braces were in my kit bag
My belt was in my kit bag
My strap shoulder was in my kit bag

I was in Croydon between 22 Apr and 8 May 1944. While I was in Croydon I stayed some of the time in the Main YMCA and some of the time I slept at the Homestead YMCA Hostel.

I did not take any parcel of any description into the Homestead YMCA Hostel or the other one at any time. During the time I was in Croydon I visited my old unit, 58 Battery, 4 Cdn Med Regt to see some of the drivers was why I went to the Unit. My visit was on the 8 May, I noticed that no one was around and I waited around out of doors for the drivers to come back but after waiting for a while and they didn't come I returned to Croydon. When I left the unit I went back to Croydon, that was around 1230 hours or 1300 hours. After we got back to town we walked the street for an hour or so, Berube was with me. Then I went down for a shave down past the YMCA in a barber shop. Then I saw Sgt Stirret and Gnr Noel and they stopped me on the street. Sgt Stirret told me that he was putting me under arrest, open arrest, I asked him why and he told me that I would find out why. We got into the truck went to the YMCA on the main street. At the YMCA was Lt Begin of the 4 Cdn Med Regt. We went in here and Lt Begin make some inquiries at the wicket then we returned to the truck and went to the Homestead YMCA. They went in here. I do not know what happened there but Sgt Stirret came out to me, I had stayed in the truck, and told me that I was under close arrest. Then they brought me back to the 4 Cdn Med Regt and put me in the guard house. In the guard house I was searched, they found four packs of Sweet Caporals on me, my pay book, and 16 shillings in money. I had received some Winchester cigarettes while in the 12 Cdn Gen Hosp, they had been forwarded to me from the unit to thehospital, they had been sent by my wife. I never smoked very much while in hosp and still had them when I came out. When I got to 2 CARU I asked for a 24 hour pass, it was refused and I went AWL, while I was in Croydon I met a fellow by the name of Goss,

who I have known for about six months, I took out my pack of Winchesters and he asked for one, and asked if I had any Winchesters to trade, he said that he always smoked them but had had Sweet Caporals sent the last time. I had four or five packs on me and I traded with him, the Winchesters for the Sweet Caporals.

During the time, from 22 Apr to 8 May 44 while I was in the Croydon area I spent most of my time right in Croydon. I had a girl there in the next town, Pearly and apart from the 8 May when I visited the unit I stayed right in Croydon and the place where my girl lives I only visted the unit the once. I was in Croydon on the 1st May which was on a Monday and was the Monday previous to the 8th May, I did not go to the regiment that day, I only went on the 8th when I heard that they might be going away soon. I usually fooled around town I would go to the pictures in the afternoons and I would often see some of the boys to fool around with. I do not remember anything special that happened on the Monday previous to the day I visited the unit.

When I left the hospital I had £4 10/ then when I came back to No 2 CARU I drew £4 10/ giving me a total of £9 when I went AWL. I have my pay book here, I show you an item on the 21 Apr 44 where I drew £4 10/ on a casual pay parade.

CROSS-EXAMINATION BY THE PROSECUTOR

Q You claim your kit was broken into?
A Yes Sir.

Q Did Bdr Raymond say that he had broke into your kit bag?
A No Sir.

PROSECUTOR stated to the Court

For the purpose of record, Sir, and the Capt QM, may I ask the accused what Bdr Raymond said with respect to the Kit bag?

COURT - Yes

Q What did Bdr Raymond say had taken place with respect to your kit bag, what did he say was the normal procedure in cases like that?
A Nothing.

Q Did he not say that he never broke the lock.
A He says "I was there and I had your kit inspection".

Q You were right there when he said that?
A Yes.

Q What did he say with respect to the procedure of examining kit bags of personnel who were AWL?
A He said he had authority to go into anybody's kit bag.

Q I suggest to you that this is what he said, "Anyone away over 21 days must have their kit inspected, personnel whose kit was locked and had been away 21 days Capt Merchant, the QM, would come down and supervise the opening and inspecting of the kit", is that something like it?
A Yes Sir.

Q Perhaps that accounts for the opening of your bag?
A He never said that at the evidence that day.

Q I am asking you what you remember of the conversation.
A I said I was not away 21 days, and that I am not a deserter.

Q Had you not been away 21 days?
A I had been away 17 days.

Q Did Bdr Raymond say he had broken open your lock?
A No Sir

Q Tell us some more about the 8 May, what time did you arrive at the unit?
A I left Croydon at about 1130 hours and took a bus, we got there about 1145 and walked up the hill. From the bus stop to the billets is about 10 minutes walk, it would bring us to the 58 Bty lines at about 1200 hours. I went to the drivers quarters, I do not know the street it is on. Sgt Stirret saw us while we were sitting outside the house. I left between 1230 hours and 1300 hours. I have stayed at the Homestead YMCA prior to the 8 May about seven or eight times. Every time that I slept there it was a man who took my name and number. I cannot say whether Mrs Robinson registered me or not.

Q But she could recognize you and referred to your name?
A Every time I went in there I showed her my pay book.

Q You just told me that you had never had her register you?
A I showed her my pay book. I just put my book in I never recognized who was in the wicket.

Q How do you account for your name being on the cigarette carton, Exhibit "1"?
A I never left it there, anyone could go in there and anybody can go in there and hand a carton of cigarettes and say to whoever is behind the wicket, "this belongs to Hebert". I do not know how it got there, or how my name got on it, I never left it there.

BY THE DEFENDING OFFICER TO THE COURT NOT BEING A QUESTION UNDER RE-EXAMINATION

Q I wanted to find out what happened in the anti room of this court martial when it sat the first day?
A When Mrs Robinson entered the anti room we were all sitting around, she sat across from me and opposite the window, Lt Begin went over to her and he talked to her for a while and with his head he pointed my way, what he said to her I do not know.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

2nd WITNESS FOR THE DEFENCE
K 72015 Gnr Goss, RA., on strength 2 CARU, having been duly sworn states:

I know and recognize the accused as Gnr Hebert (points to the accused) I was in Croydon and saw the accused there. He had some Winchesters, I usually get Winchesters from home and the last cigarettes I had received were Sweet Caporals and I wanted to trade for some Winchesters, when I saw Hebert he had some Winchesters and I asked him if he would trade me some, he said he would and we traded, there were four or five packages traded, it was all he had. I think it was around the 17th or 19 of May.

PROSECUTOR DECLINES TO CROSS-EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(B)

3rd WITNESS FOR THE DEFENCE
E 14285 Gnr Berube, R., on strength No 2 CARU, having been duly sworn states:

I know the accused, I was with him in Croydon earlier this spring. I also visited the 4 Cdn Med Regt with the accused, that was about the 6 May, on a Monday. We saw Sgt Stirret that day. We had left Croydon about 1130 hours and went to the regiment to see the boys. We went to a house in which soldiers were billetted and were sitting on the steps waiting until they came back when Sgt Stirret walked by and stopped and talked to us for a few minutes then went away. When the fellows didn't arrive we went back to Croydon. When we got back to Croydon we returned to the YMCA and remained there for a short while. Sgt Stirret and some others arrested us and took us to the guard room. I remember being registered at the Homestead and the accused was registered there also, at this time we registered together, the accused did not hand in or check any parcels, as far as I know he never did check anything there. We spent all our time between the 20 Apr and 6 May together, we were always together.

CROSS-EXAMINATION BY THE PROSECUTOR

On the 6th May we visited the regiment to see our old friends we figured they would be going away and we were waiting for the drivers to come back. I have belonged to the 4 Cdn Med Regt but not at the time of the 6 May. I left the regiment on 3 Mar 44.

I was with the accused all day on the 6 May. I did not see the accused hand in any parcel that day or anyother day at the YMCA. I did not hand in any parcel to the YMCA for keeping, and I've never taken any parcels into the YMCA neither has the accused, I have never seen him in any case.

A woman registered us in at the Homestead, it has always been a woman, but not always the same woman. We always registered in together.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

4th WITNESS FOR THE DEFENCE
E 19220 BSM (WO II) BEGIN, M., 4 Cdn Med Regt, now on strength 4 CARU, having been duly sworn states:

I know the accused, I have known him for over a year. He was in my troop during that time. He was a good gunner, he was devoted to his duty, I never had to lay a charge against him. In the hut where the gun crew lived he was there and got along very well. In this hut there had been some stealing, we searched the kits of all the men and we found the two men that had done the stealing and it was not the accused. To the best of my knowledge he has always been honest, and reliable. I know that he has been a good soldier and think he still is.

PROSECUTOR DECLINES TO CROSS-EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(B)

CASE FOR THE DEFENCE IS CLOSED

DEFENDING OFFICER ADDRESSES THE COURT ON THE FINDING

Mr President and Members of the Court,

I am not going to say much about the shortage of kit, he has told a straight forward story concerning it that I believe the Court will consider to his benefit.

The principle charges against the accused are the two cigarette charges, i.e. being in improper possession of cigarettes and a carton, addressed to some one else. One article was taken on the 1 May, the other on the 8 May 44. From the evidence it has been clearly established that the theft occurred on the 1 May, there is no evidence before the Court that could convict the accused of stealing anything on the 1 May, he was merely in the area, he was no where near the unit. It was generally known that he was AWL and those concerned with the investigation should certainly take that into consideration.

There is no further evidence until the 8 May. We have his own sworn evidence on that and the evidence of his pal who accompanied him that they did not at any time pass in a parcel at the YMCA Hostel. We come along to the 8 May, they were seen in the area outside the billets, there is no evidence at any time that they entered any building, they were seen by Sgt Stirret at that time. Sgt Stirret was talking to them, and there was no evidence of them having any parcel in their possession at that time. I suggest to the Court that it is extremely unlikely for two men to be identified on the steps of the house and then to go in and rob it.

Mrs Robinson, the chief witness against the accused gives evidence that is the only evidence against the accused, as he is charged. I submit to the Court that this witness' evidence is not as convicting as it sounds. She is definitely a very positive person and I suggest that she is the type to build up a story in her own mind, there is no doubt at all that she came into the Court quite honest, but I submit that she has acquired information here and there and then she has adopted it for her own and believes it. The Court heard that the Accused was pointed out to her by Lt Begin in the anti room, besides that at no less than eight or ten times she heard "accused and escort fall in, right turn quick march" and "accused and escort halt, break off", her attention would have been drawn to this man a dozen or so times before she came into the Court, she was certainly able to identify him. I submit that the identification of the accused was poor and if she were to be called upon to pick him out of a company of men she would have been unable to do so. I do not suggest that she perjured herself, I suggest that she gathered bits here and there, reviewed it, discussed it, built herself her own story and told it here, I do not think it should be accepted.

The cross-examination of the accused. The Prosecutor brought one possible explanation, the defence does not maintain that this is the true explanation regarding the accused name on the box, the defence says there was a mistake made, how? we do not know, we do not have to explain, the possible suggestion that he gave was that somebody came up to this wicket and passed a box into the office and said this belongs to Hebert. We submit that in a busy hostel anyone could have done that and never have been noticed.

The character evidence of the accused has been most strong, every witness for the prosecution and every witness that has been questioned has given this man an "A 1" character. For six months this man lived with these witnesses and there was not the slightest doubt in their minds regarding his honesty.

In the 4 Cdn Med Regt there has been considerable stealing of cigarettes, it has been going on for a long time not only before this man was arrested but since that time. It is quite obvious that some theives are still loose, they did not stop when this man was put under arrest, and those people, whoever they are, may have been concerned in this case.

The accused was not short of money, he had plenty as has been proven, and there was no insentive to steal for money, he had cigarettes, as has been proven by LaRoche and the accused testimony.

The accused and the man who was AWL with him have both given straight forward evidence, the accused has been a bit nervous, but his story must have impressed the Court, I would also mention the witness who traded cigarettes with the accused which accounts for his having some Sweet Caporals, I am sure that the Court can believe nothing about the accused except his honesty and his good intentions on his visit to his old unit when he thought they were going away. There is only one material witness against the accused and I suggest that that evidence isn't very strong, and against that evidence we have that of two gunners, I am sure there is no doubt in the minds of the Court as to this man's innocence and the finding should go in favour of the accused.

PROSECUTOR ADDRESSES THE COURT ON THE FINDING

Mr President and members of the Court:

In regard to the deficiencies of the kit, the first check took place on the 12 May while he was in hospital, that as I understand it is the normal procedure. RH Q requested a list of deficiencies and it was submitted. It was first presented to Gnr Hebert, but it was not made in the presence of the accused. The accused has attempted to say that Raymond said the kit was checked in his presence, Bdr Raymond checks a half a dozen kits a day and it is impossible for him to remember the second check he made . However it was the second check and the correct one that resulted in the list that is before the Court today.

The Defending Officer has attempted to state that Lt Begin did point to Hebert, as the accused, to Mrs Robinson, I think that Mrs Robinson gave her evidence without a doubt in her mind and without the aid of anyone else, her statements are straight forward.

In the second charge the accused is only being charged with improper possession of an empty carton on which appears the name "Hebert/RCA" I suggest that the defence has failed to explain that coincidence to the satisfaction of theCourt. The accused and Berube had been seen in the vicinity where the cigarettes had been stolen, and there is no evidence of these cigarettes ever having been issued to their rightful owner, Gnr Noel.

With regard to registering in the Homestead, Hebert is in some doubt about where he had registered, or who registered him. First he said that Mrs Robinson had never registered him, first he said a "he" had always done it, then a "she" then he didn't know. I suggest that it was Mrs Robinson who registered him in in a great many cases and she therefore has very little doubt about the identity of this man. Both the accused and Gnr Berube have stated very definitely that they never left one another's company at any time from 20 Apr to the 8 May, that seems a little far fetched to me that they should stick together like a pair of Siamese twins.

I suggest that the statement of both these two witnesses be considered lightly and not very seriously in that respect. I also would suggest that the statement to the effect that the accused is being made a scrape goat for this offence is merely a matter of conjecture on the part of the defence only.

The Part II of the accused pay book which was produced and shown to the Court, I notice the date was 21 Apr 44 on which the entry was made, paying the accused some £4 10/-, Hebert was AWL on the 20 Apr, I think that this fact or incident should be accounted for.

COURT IS CLOSED TO CONSIDER THE FINDING

COURT IS RE-OPENED

The accused found not guilty on the 1st Charge and not guilty on the 4th Charge.

PLEA IN MITIGATION OF PUNISHMENT NOTE D-3

Sir,

The accused would like to make a statement.

STATMENT BY THE ACCUSED

Sir,

I am still not guilty of the 2nd Charge, I did not come over here to steal anything, I came over here to fight or at least help fight a war. I am still not guilty. There is no proof that I did it, I did not do it, I have never stolen anything in my life, I never took anything from anybody. I was AWL, when I was in the hospital I had no pass, I had had no pass or leave for a year, and when I came to No 2 CARU I asked for a 24 hour pass, it was refused by the sgt major, I just went absent.

BY THE DEFENDING OFFICER

Sir,

On the second charge I am not prepared to say much, I came here with the idea that the man would be acquitted. I would like to call the Court's attention to the fact that the charge is "improper possession of a carton, "addressed to another peron, the Court will re-call to their minds that there is absolutely no evidence what-so-ever of cigarettes having been in this carton. Further there is no evidence whatsoever to connect the man with the theft, and the only thing that this charge alleges then has been struck out because I think it appears obvious to the convening authority who found no evidence to support that in the summary.

Every man who has spoken of the accused has had a good word for him. Would the Court please refer to his MFM 6 it shows two small crimes - AWL. The last on the 15 Dec 42, one year and a half ago. On the present AWL, he came out of hospital and asked for a pass, he had not had one for a year, his request was refused, so he went AWL.

The main submission is that this man has had an extremely good character and good record throughout his army career and is a very capable soldier and the charge here, and the finding here is that he was in possession of a carton which despite the finding of the Court not on too strong evidence, the Court weighed the matter very carefully and found that he was in possession of that carton, it can not infer anything further. I submit that it is a minor offence and he should be dealt with very lightly. He has been in close arrest awaiting trial since 8 May, almost two months, which is itself a disgrace.

EXHIBIT "D"

No 2 Canadian Artillery Reinforcement Uni
Canadian Army
Overseas

PART II ORDERS
Issued by
Last Order No. 124 d/12 Jun 44 Col.Mackenzie Waters,MC,VD, Commanding Officer
No. 125 d/13 Jun 44

SECTION "B" OTHER RANKS

14. ABSENT WITHOUT LEAVE:

(b) Absent without leave from 2230 hours 20 Apr 44 and absent a period over 8 days.

D 82132 Gnr. HEBERT, O. (A)

(c) Ceases to be absent without leave w.e.f., times and dates as shown.

D 82132 Gnr. HEBERT, O. 1500 hours 8 May 44 (A)
F 16498 Gnr. PURCELL,J.J.P. 1730 hours 23 May 44 (A)

CERTIFIED TRUE EXTRACT 15 Jun 44

(R.L. Alley) Captain, R.C.A.,
Officer i/c Records,
No 2 Cdn Arty Rft Unit.

Officer having custody of original Part II Order

EXHIBIT "E"

Ex 4
RM

LIST OF DEFECIENCIES

for

D 82132 Gnr. HEBERT, O.

Article	Quantity	100% Value £	s	p	75% Value £	s	p
Fork Table	1	0	0	4	0	0	3
Housewife	1	0	0	9	0	0	7
Knife Table	1	0	0	8	0	0	6
Drawers Woolen	2	0	10	9	0	8	1
Belt Waist	1	0	3	4	0	2	6
Braces R.L.	2	0	2	8	0	2	0
Strap Shoulder	2	0	2	10	0	2	1½
Cape A/G	1	0	12	4	0	9	3
	Total	£1	13	8	£1	5	3½

I certify that I have examined the Kit of D 82132 Gnr Hebert O. and find the list of deficiencies.
Dated this 12th day of June 1944.

R. [illegible] Bauman
N.C.O. i/c Kit Store

I certify that the prices charged in above list are in accordance with the priced Scale of Issue as per ORO 3959.

N. Smuchart .....Capt. and QM
No 2 Con Arty Rft Unit
Cdn Army (Overseas)

RM

D 82132

LIST OF WITNESSES

FOR THE PROSECUTION

(6) Lieut. R.M.Begin, 58 Bty, 4 Med. Regt., R.C.A.

3 A 35520 Sgt. Stirrett, R., No 2 C.A.R.U.

Mrs A.P. Robinson, Homestead YMCA Hostel, 42 Wellesley Rd. West Croydon

E 14886 Gnr. Berube, R., No 2 C.A.R.U.

4 D 128936 Gnr LaRoche, L., 58 Bty, 4 Med. Regt., R.C.A.

(5) G 3501 Gnr. Noel, E., 58 Bty, 4 Med. Regt., R.C.A.

E 50423 Gnr. Ruest, M., 58 Bty, 4 Med Regt., R.C.A.

D 6050 Bdr. Deutch, D. 17 Cdn Spec. Employment Coy.

Lieut. G.W. Currie, Admin Offr, "P" Trg Wing, 2 C.A.R.U.

(7) C 10377 Bdr. Raymond, V.J. NCO i/c Kit Stores, 2 CARU

FOR THE DEFENCE

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LIST OF EXHIBITS

(a) Empty carton of British Consol Cigarettes Serial No E 88651.

(b) Torn Acknowledgement card bearing Serial No E 88651.

(c) Carton containing 500 Sweet Caporal Cigarettes Serial No Mac 9487.

(d) Certified True Extract from No 2 C.A.R.U Part II Order No 125. (Appendix G)

(e) List of deficiencies of Kit. (Appendix H)

"P" TRAINING WING
No 2 C.A.R.U.

PW/5-4-6
14 Jun 44

Commanding Officer,
No 2 C.A.R.U.

F.G.C.M.- D 82132 Gnr. HEBERT, O.

1. It is respectfully requested that an officer be appointed to defend me at my forthcoming trial by Field General Court Martial.

Hebert O
D 82132 Gnr Hebert, O.

SUMMARY OF EVIDENCE IN THE CASE OF D 82132
Gunner Oscar HEBERT, "P" Trg Wing, No 2 Cdn Arty Rft Unit, a soldier of the Cdn Army (O)

By direction of the Commanding Officer the Summary of Evidence is taken on Oath.

FIRST WITNESS for the prosecution

Lieut. R.M. Begin, on strength of 58 Bty, 4 Med Regt, R.C.A., an officer of the Canadian Army Overseas,

A written statement of this witness' evidence, purporting to be taken on oath and to be signed by him, has been read to the accused and is included in this Summary of Evidence and marked Appendix "A".

Having regard to the exigencies of the service, the attendance of this witness cannot in my opinion be readily procured.

(J.M. Boyd) Captain, R.C.A.
Officer detailed to take the Summary of Evidence.

The accused does not demand the attendance of this witness for cross-examination.

SECOND WITNESS for the prosecution

A 35520, Sgt. Stirrett, F., on strength of No 2 C.A.R.U., a soldier of the Canadian Army Overseas, having been duly sworn states:

"On the 8 May 44 at Caterham-on-the-Hill, I was a Sgt at HQ of the 58 Bty, 4 Med Regt, R.C.A. On this date at 1205 hours, I was passing through the yard of the house at 192 Burntwood Lane and saw Gnr's Berube and Hebert behind the house sitting on the stone verandah. They did not appear to be doing anything. I asked them what they were doing and they replied that they were waiting for the drivers and asked me when would they be back. I said after lunch. I then continued on to my own billets. On my way back to parade at approximately 1300 hours, I saw Gnr. Noel in the back yard of the aforementioned house looking around in the long grass. He informed me that he had just lost 1000 cigarettes. I helped him look for a couple of minutes and then continued on my way. Realizing that everyone had been at lunch at the time of the loss of the cigarettes, I returned to ask Gnr. Noel if he had seen Hebert and Berube. He informed me that he had not but immediately became suspicious of them. This also aroused my suspicions, and on the way to the parade ground I ran into Lieut. Begin and informed him of the above circumstances. He obtained a vehicle and Lieut. Begin, Gnr. Noel and myself went to Croydon in search of Hebert and Berube. At approximately 1440 hours we found them on the street and placed them under open arrest. They then said that they wanted their kit, but afterwards said that they only had a razor and did not want to bother with it. We became suspicious and went to the Y.M.C.A. on London Road Croydon, but could learn nothing there. We then proceeded to the Homestead Y.M.C.A. Hostel in Croydon. We found that they had been registered there on several occasions, and also found an empty cigarette carton of British Consols, which had contained 1000 cigarettes. This carton had "Hebert" written on the outside in pencil. I then took Hebert and Berube back to the Regimental Guard Room. Upon searching them I found amongst their personal possessions, four unopened packages of Sweet Caporals on Gnr. Hebert, and one package on Gnr. Berube."

F Stirrett

The accused declines to cross-examine this witness.

(to page 2)

THIRD WITNESS for the prosecution — Mrs A.P. Robinson, of the Homestead, Y.M.C.A. Hostel, 42 Wellesley Road, West Croydon.

A written statement of this witness' evidence, purporting to be taken on oath and signed by her, has been read to the accused and is included in this Summary of Evidence and marked Appendix "B".

Having regard to the distance and expense involved, the attendance of this witness cannot in my opinion be readily procured.

(J.M. Boyd) Captain, R.C.A.,
Officer detailed to take the Summary of Evidence.

The accused declines the attendance of this witness for cross-examination.

FOURTH WITNESS for the prosecution — E 14886, Gnr. Berube, R., on strength of No 2 C.A.R.U., a soldier of the Canadian Army Overseas.

This witness declines to make a statement.

The accused declines to cross-examine this witness.

FIFTH WITNESS for the prosecution — D 128936 Gnr. LaRoche, L., on strength of 58 Bty, 4 Med Regt. R.C.A., a soldier of the Canadian Army Overseas.

A written statement of this witness' evidence, purporting to be taken on oath and to be signed by him, has been read to the accused and is included in this Summary of Evidence and marked Appendix "C".

Having regard to the exigencies of the service, the attendance of this witness cannot in my opinion be readily procured.

(J.M. Boyd) Captain, R.C.A.
Officer detailed to take the Summary of Evidence.

The accused does not demand the attendance of this witness for cross-examination.

SIXTH WITNESS for the prosecution — G 3501 Gnr. Noel, E., on strength of 58 Bty, 4 Med Regt. R.C.A., a soldier of the Canadian Army Overseas.

A written statement of this witness' evidence, purporting to be taken on oath and to be signed by him, has been read to the accused and is included in this Summary of Evidence and marked Appendix "D".

Having regard to the exigencies of the service, the attendance of this witness cannot in my opinion be readily procured

(J.M. Boyd) Captain, R.C.A.,
Officer detailed to take the Summary of Evidence.

The accused does not demand the attendance of this witness for cross-examination.

(to page 3)

SEVENTH WITNESS for the prosecution

E 50423, Gnr. Ruest, M., on strength of 58 Bty, 4 Med Regt. R.C.A., a soldier of the Canadian Army Overseas.

A written statement of this witness' evidence, purporting to be taken on oath and to be signed by him, has been read to the accused and is included in this Summary of Evidence and marked Appendix "E".

Having regard to the exigencies of the service the attendance of this witness cannot in my opinion be readily procured.

(J.M. Boyd) Captain, R.C.A.,
Officer detailed to take the Summary of Evidence.

The accused does not demand the attendance of this witness for cross-examination.

EIGHTH WITNESS for the prosecution

D 6050 Bdr. Deutch, D., on strength of 17 Canadian Special Employment Company, a soldier of the Canadian Army Overseas.

A written statement of this witness' evidence, purporting to be taken on oath and to be signed by him in the presence of the accused, and which has been read back to the accused, is included in this Summary of Evidence and marked Appendix "F".

The accused declined to cross-examine this witness.

NINTH WITNESS for the prosecution

Lieut. G.W. Currie, Administrative Officer, "P" Training Wing, No 2 C.A.R.U., an officer of the Canadian Army Overseas, having been duly sworn, states:-

"I Produce:
CERTIFIED TRUE EXTRACT from No 2 C.A.R.U. Part II Order No 125, purporting to be signed by Capt. R.L. Allely, Officer I/C Records, No 2 C.A.R.U., relating to the accused whom I now recognize. This certified true extract is attached to the Summary of Evidence and marked Appendix "G".

The accused declines to cross-examine this witness.

TENTH WITNESS for the prosecution

C 10377 Bdr. Raymond, V.J., NCO i/c Kit Stores, No 2 C.A.R.U., a soldier of the Canadian Army Overseas, having been duly sworn, states:

I have examined the Part III Pay Book and checked the kit of D 52132 Gnr. Hebert, O. in his presence and whom I now recognize. I hereby produce a list of deficiencies of kit of the a/m Gnr. which is attached to this Summary of Evidence and marked Appendix "H".

The accused declines to cross-examine this witness.

(to page 4)

The accused was cautioned as follows. "Do you wish to make any statement or give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of three and one-fourth pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c),(d),(e),(f) and (g) have been complied with.

(J.M. Boyd) Captain, R.C.A.,
"P" Training Wing,
No 2 Cdn Arty Aft Unit.
Officer detailed to take the Summary of Evidence.

Huron Camp,
Bramshott, Hants.,
14 Jun 44

EXA
PM7

V

Lieut. R.M. Begin, on strength of 58 Bty, 4 Med Regt, R.C.A., an offider of the Cdn Army Overseas, having been duly sworn states:-

"Between 1200 hrs and 1300 hrs 1 May 44, two gift cartons of cigarettes each containing 1000 cigarettes addressed to Gnr. Ruest and Gnr, Lunny, W.P. were missing from the Unit Mail Orderly Room. When this theft was reported to me by Bdr. Broult of BHQ, I immediately held a kit inspection of all billets within the immediate area but no trace of these missing articles could be found. A Court of Inquiry was held on which I was a member and the findings of the Court were "that the Mail Orderly Room had been broken into and two cartons of cigarettes Serial Nos E 88651 and E 85405 addressed to Gnr's Ruest and Lunny respectively had been stolen. On 8 May 44 at approximately 1315 hours Sgt. Stirrett reported to me that G 3501 Gnr. Noel, E. was missing a carton of 1000 Sweet Caporal Cigarettes from his billets at 192 Burntwood Drive, Warlingham. Sgt Stirrett also informed me that he had seen Gnr's Hebert and Berube in the vicinity of the billets from which the above mentioned cigarettes had been stolen between 1200 and 1300 hours 8 May 44. At approximately 1400 hours 8 May 44, accompanied by Sgt Stirrett and Gnr. Noel, I proceeded to Croydon, where I thought Hebert and Berube might be found. At 1500 hours 8 May 44 I apprehended Hebert and Berube at Croydon. I asked them if they had any kit and one of them stated that they had some shaving kit at the Y.M.C.A. London, Rd. There was no kit at this Y.MC.A. and so I visited the Homestead Y.M.C.A. Hostel at 42 Wellesley Rd, Croydon, where after making numerous inquiries I discovered that they had been staying there on different occasions. At this Hostel I discovered an empty carton of British Consol Cigarettes bearing the Serial No. E 88651 with a torn acknowledgement card inside from Mrs Paul Ruest, bearing also the Serial No. E 88651. On this empty cigarette box was writtan in pencil the name Hebert. I immediately asked the lady in charge of the Hostel if she recognized the hand writing. She said that it was the Supervisor, Mrs Robinson, handwriting, who was not present at the time. In the meantime Gnr's Hebert and Berube had been taken to the Regt'l Guard Room. The following day 9 May 44, I returned to this Hostel and Mrs Robinson certified that the parcel bearing No E 88651 was checked in by her, and that she had placed the name of Hebert, RCA on the parcel. She then handed me another parcel containing 500 Sweet Caporal Cigarettes, which had been handed to her also by Hebert. The Serial No of this parcel is MAC 9467. I took this parcel to the Bty Mail Orderly Room and found that the package had been addressed to G 3501 Gnr. Noel, E.

R M Begin Lieut
1167

J

Mrs A.P. Robinson of the Homestead Y.M.C.A. Hostel 42 Wellesley Road, West Croydon, having been duly sworn states:-

"I am Supervisor at the Homestead Y.M.C.A. Hostel. On Friday 5 May 44, two Canadian soldiers came in and booked two beds. They each had a pass and gave their Regt'l No's and names as D 62152 Gnr. Hebert and E 14886 Gnr. Berube, Unit R.C.A. Gnr. Hebert gave me a box and asked me if I would look after it for him. This box had been opened and there was something inside of it. I did not examine the contents, but by the weight I judged them to be cigarettes. I wrote "Hebert, RCA" on this box and placed it on a shelf in the office. A day or so later, I cannot remember the date, Hebert came and asked me for the box, I gave it to him. This box was later found in the Lounge, empty behind one of the chairs, by the night porter. This same box was later picked up by Lieut. Begin, 4 Med Regt, RCA, who came to the Homestead, making inquiries for Hebert and Berube. These two soldiers stayed at this Hostel on 23rd, 26th, 28th April and 5 May 44. On the 8 May 44 Hebert came and handed me another cigarette box, and asked me to look after it for him. This box had been opened and I could see some packages of cigarettes inside but I do not know how many. I did notice that the paper which bears the name and address of the person to whom the box was addressed had been torn off. The following day 9 May 44 Lieut. Begin called and I gave this box containing the cigarettes to him. I could recognize both these soldiers again if I saw them.

Adèle P. Robinson.

MM

APPENDIX "D"

G 3501 Gnr. Noel, E. , on strength of 58 Bty, 4 Med. Regt. R.C.A., a soldier of the Cdn Army Overseas, having been duly sworn states:-

"On 8 May 44 I was living at 192 Burntwood Lane, Warlingham. On 8 May 44 I took a sealed carton of cigarettes Ser No. MAC 9487 containing 1000 Sweet Caporal Cigarettes to the above mentioned address just before lunch. Upon returning from lunch at approximately 1220 hours I discovered that this parcel of cigarettes was missing. I reported the loss to Sgt Stirrett who was in the vicinity at the time.

Noel E

APPENDIX "C"

D 128936 Gnr LaRoche, L. on strength of 58 Bty, 4 Med. Regt. R.C.A., a soldier of the Cdn Army Overseas, having been duly sworn states:-

"I have been mail Orderly Clerk for the 58 Bty, 4 Med Regt. R.C.A. since Nov 43 and was in that position in May 44. At approximately 1245 hours 1 May 44, upon returning from lunch, I discovered that the door of the mail room had been broken into. I, therefore, made a check of the parcels and cigarettes in the mail room to see if anything was missing. I found that two cartons of cigarettes, Ser Nos E 88651 and E 85405, addressed to Gnr's Ruest, M. and Lunney, W.P. were missing. On the 19 Apr 44, a package containing 1000 Sweet Caporal Cigarettes and bearing the Ser No. MAC 9487, the property of G 3501, Gnr. Noel, E. were issued to the later on this date.

L. LaRoche

May

APPENDIX "E"

E 50423 Gnr. Rouest, M., on strength of 58 Bty, 4 Med. Regt. R.C.A., a soldier of the Cdn Army Overseas, having been duly sworn states:-

"I have never received from the Unit Mail Room a carton of 1000 British Consol Cigarettes No E 88651.

M Rouest

APPENDIX "F"

D 6050 Bdr. Deutch, D., on strength of 17 Canadian Special Employment Company, a soldier of the Canadian Army Overseas, having been duly sworn, states:-

"On the 20 Apr 44 I was Hut N.C.O. of No 2 Hut, at Huron Camp, No 2 C.A.R.U. At 2230 hours 20 Apr 44 I called Tattoo Roll Call. The accused did not answer his name and was not present. I duly reported him absent without leave.

D. Deutch Bdr.

MFM 6
(AFB 122)
89/PAM/156 (9438)

No D82132 Name nEBERT, O. | Sqn, Battery, or Company | Corps R.C.A. | Date of enlistment 16 May 40 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19Nov 42	Gnr		A.A.Sec.15(1)AWL from 1415 hrs 19 Nov 42 to 1630 hrs 19 Nov 42	?	2 days pay	?	?	Forf 2 days pay FRI 149 (2)
Field	15Dec 42	Gnr		A.A.Sec.15(1)AWL from 2215 hrs 15 Dec 42 to 1000 hrs 18 Dec 42 (2 days, 11 hrs and 45 minutes	?	14 days C.B.	?	?	Forf 3 days pay FRI 149 (1)(a)

CERTIFIED TRUE COPY OF MFM 6 AS TAKEN FROM MFM 4

(G.W. Currie) Lieut., R.C.A.,
Administrative Officer,
"P" Training Wing, No 2 C.A.R.U.
Officer having custody of original document.

Ex
Nil

(PTO)

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D 82132	GNR	[illegible]EBERT, O.	No 2 C.A.R.U.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be entered in the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :— since completion of 6 Mos service within last 12 Mos

For .... times.

For A.A.Sec.15(1) NIL TWO times.

For .... times.

For .... times.

[redacted]

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for ~~##~~ 45 days in military custody, *i.e.*, Nil days in open arrest, ~~##~~ 45 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 31 years [illegible] days

6. The date of his attestation [redacted] is 16 May 40

7. The service which the accused is allowed to reckon is 4 years 3[illegible] days

†State the military decoration (if any) held by accused.

[redacted]

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W1.[illegible] 120,000 4/41 A.& E.W.Ltd. Gp.688
W1.[illegible] 62,000 2/42 " " Forms B.296(War)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which held.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		11/a		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 24 day of June 1944

(G.W. Currie) Lieut. RCA
Admin Offr

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N/a		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 24 day of June 1944

(G.W. Currie) Lieut, RCA
Admin Offr "P" Trg Wing
No 2 C.A.R.U.

TTT-190

Lt. Hebert, Dwt

RECORDED AT CMHQ IN AB 180 TTT-190

(I. 143)

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA23) 40/P & S/1608 (2864)

Convened by Order of Brig T.G. Gibson Comd 2 C I B dated 17 June 44

RECEIVED 1 AUG 1944 JAG'S BRANCH

CANADIAN MILITARY HEADQUARTERS 3 JUL 1944

PROCEEDINGS REVIEWED 17 Aug 44

W.C. Inch Capt.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly, see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apparent, A/rank or A/appointment, if any, see AA 192, 192, fns. KR Con 308, 328, 330.)

Number	(a) Prmnt R. (b) Apparent, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H 41588	Pte	Oliver Ivan	Hebert	1 C I B Sp Gp attached 2 C I B Sp Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 19 June 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President (attials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 104-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 10.15 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 6C fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~to~~ as interpreter? Ans

The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans N.O.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(5). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	Lindsay Gibson	Senior Offr GC
Member	Capt	Alton Jarvis	1 C I B Sp Gp (Coy A 1)
Member	Lieut	D. Grayson	1 C I B Sp Gp (Coy A 2)
Judge-Advocate			
Prosecutor	Capt	J.E. Henry	1 C I B Sp Gp (Coy A 3)
Defending Offr	Capt	G.L. Barkdale	2 C I B Sp Gp (Coy A 4)

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans YES.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be annexed separately with proceedings for information of Conv Offr.)
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (3) and fn 2 were not followed. See D1 p 23.

A8. The accused H 41 588 Pte Hebert O.I. has/has not the right to object before arraignment make(s) (no) (an) objn.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 69(2)), 109(b), or as to the jurisdiction of the Court (RP 26, 69(4), 112), or in bar of trial (RP 70), or as to accused's mental capacity to stand trial (69(1)(a), RP 67), or by co-accused against accused charged jointly to be tried subsequently (RP 16, 71), such plea, the evidence made in support or against, the proceedings, findings and sentence are annexed per Memo. The names of counsel and witnesses to this plea should be added and name of the counsel making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 24, 112. See para 1 of instrs p 2. Where more than one Charge Sheet see RP 62; unless accused consent to be tried separately see RP 71(C), and see separate copies of CF 69a to record proceedings. 2. RP 25, RP 28. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused:

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 9 (2)	Not Guilty	Not Guilty	
2nd AA Sec 40	Not Guilty	Not Guilty	
3rd AA Sec 40	~~Not~~ Guilty	Guilty.	Plea changed by accused to Guilty
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Sixty days detention

(Sgd) Judge-Advocate, if any. 19 June 44 Date awarded. (Sgd) President. (RP 45, 58) Lindsay Gibson

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 56, 57, RP 71(D) fn 6, 44A(B), 54-56, 120, MML pp 759-761, KR Con 567-577. Appellate reports on confirmation and cannot be revised: AA 56(3). Quashing bad finding or sentence for revision by Court: AA 57(2), RP 120(F). If not confirmed, accused may be tried again: AA 153, 154, p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 574. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign last personally. AA 172 (p 1.))

My decision on the finding(s) and sentence set forth in Part I is: I vary the sentence so that it shall be as follows: to suffer field punishment for 60 days and to forfeit all ordinary pay for a period of 60 days and confirm the finding and sentence as varied

I direct that the accused be not committed to prison or detention barracks until ~~he is so sentenced~~.(1)

(1. AA 57A. Subject to any)

(Sgd)

Date 21 June 44 Commanding 2 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
H. 41588 Pte. Hebert, O.I.	27 June 1944	Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. h.o (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on h.d charge(s). ~~The accused is (are) so informed, and he (they)~~ ~~change(s) his (their) plea(s) on charge(s) Part I of the Schedule is amended accordingly.~~ by
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with t, para D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the first second & third charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the third charge(s), and allowed on the first & second charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. h.o Do you intend to call witnesses on your behalf? Ans h.o Are they witnesses as to character only? Ans
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the first second charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (a), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans h.o
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 6, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *AFB 255 or AFB 294.* 2. *See fn 6.* 3. *RP 46, KR Con 550. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes
(1. *RP 37(C), 46(C).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything false or previously stated which could affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part II of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 42, 44 and its proviso, is to be awarded to cover all charges or all charge sheets on which accused found guilty. RP 48. As to sentences see AA 66, 138, 182, RP 46-50, 69, 108, 119(A), KR Con 328, 330, 563-566. Overseas RO 309, 1322, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 120. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 66(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused K-41986 Pte. Oliver Ivan HERBERT 1 Cdn Inf Bde Sp Sp (SLI) attached to 1 Cdn Inf Bde Sp Sp (SLI) a soldier of the Canadian Army Overseas C.E.F., on active service, is charged with:-

FIRST CHARGE
Army Act
Sec 8(2)

WHEN ON ACTIVE SERVICE
USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

In that he, in the field, at or about 1800 hrs on 31 May 1944, after being ordered by his platoon commander, Lieut E. Hogg, to give him, the said Lieut E. Hogg, wine that he was carrying, said, "Why should I", or words to that effect, and when the wine was taken from him by Lieut E. Hogg, said, "If you can eat spaghetti, why can't I drink 'vino'", or words to that effect; immediately thereafter, when ordered by Lieut E Hogg to go to his carrier, he said "No", and then when asked by Lieut E. Hogg "Are you going to your carrier", he replied "No".

ALTERNATIVE
SECOND CHARGE
Army Act
Sec 40

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

In that he, in the field, at or about 1800 hrs on 31 May 44, said "Why should I", when ordered by his platoon commander, Lieut E Hogg, to give him wine he was carrying, and after the wine was taken from him, said "If you can eat spaghetti, why can't I drink 'vino'", or words to that effect; immediately thereafter, when ordered by Lieut E Hogg to go to his carrier, he said "No", and then when asked by Lieut E Hogg, "are you going to your carrier", he replied "No".

THIRD CHARGE
[illegible]

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

[illegible]

(F. de Hogg) Major,
[illegible]
1 Cdn Inf Bde Sp Sp (SLI)

To be tried by Field General Court Martial

[illegible]

Kilcoran Brig
Comd 2 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAS/1697 (2603)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H.41588	PRIVATE		OLIVER IVAN	HERBERT	1 CIB Sp Gp (Sask L.I.)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 June 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial;

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

MAJOR (Rank.)	H.W.J. PATERSON (Must be named. RP 106.)	SEAFORTH OF C (Unit.)

MEMBERS.

CAPT	L.E.M. JARVIS	1 CIB Sp Gp (Sask L.I.)
LIEUT (Rank.)	[redacted] (Named or detailed. RP 106.)	1 CIB Sp Gp (Sask L.I.) (Unit.)

WAITING MEMBER.

LIEUT (Rank.)	J.R. McNAMARA (Named or detailed, if any. RP 106.)	SEAFORTH OF C (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY (Country.)

Dat 17 Jun 44

(Signature. RP 106 (n 2))

(T.G. Gibson) Brig (Rank.)

Commanding Second Canadian Infantry Brigade

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(*B*) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement *by accused (not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 81.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 106, 108, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 580. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

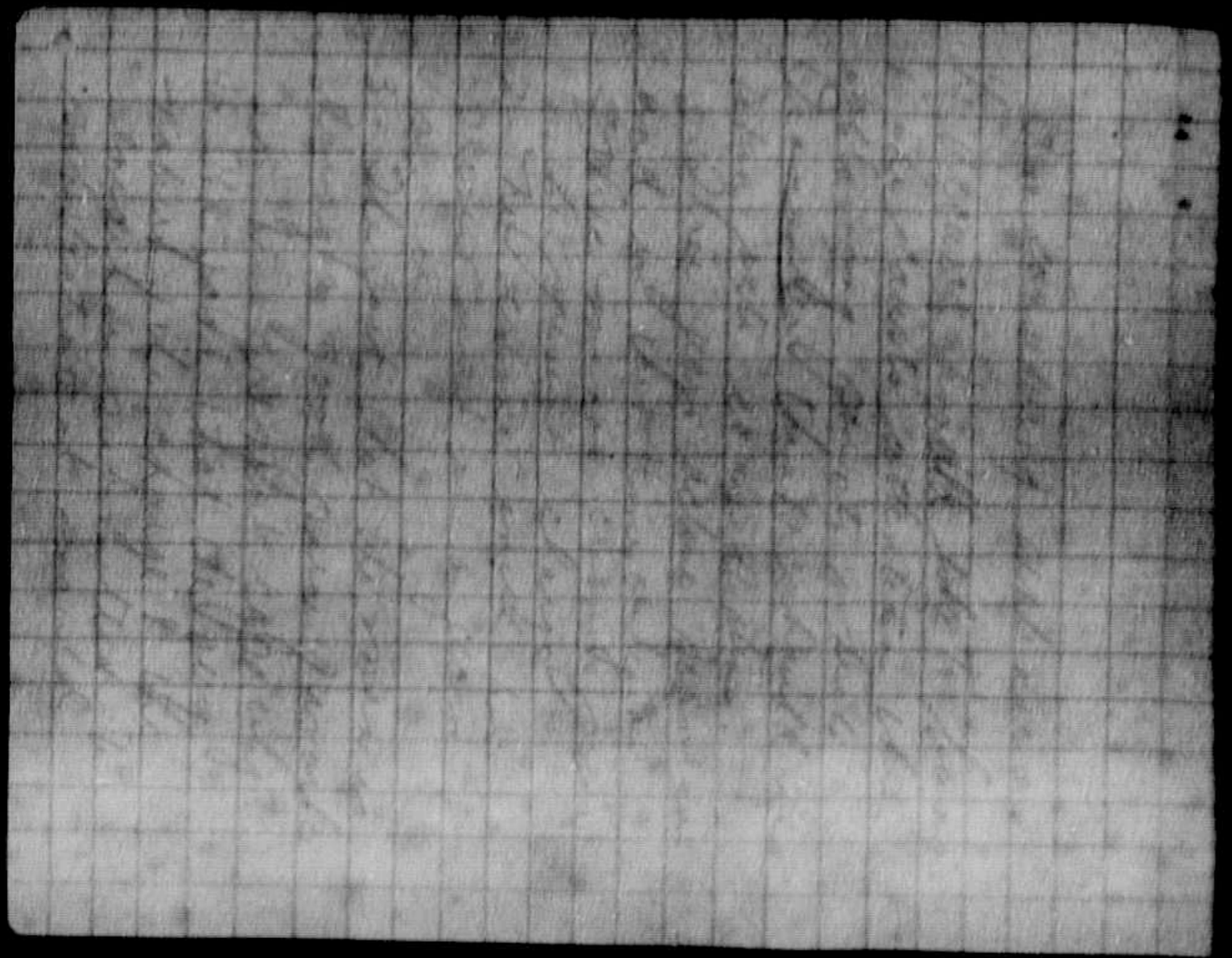
4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined
H-41586 Pte. Hebert, O.I.
1 Coy MMG 1 Can Div M.M.G. Group (Sask.L.I.)
and in my opinion he is fit/~~unfit~~ to undergo
Trial by Court Martial.

Station: In the Field
Date : 1944. JUN 13th

Capt.
(Medical Officer)



Proceedings of a Court Martial

Accused — H 41588 Pte Herbert, O.

First Witness — L/C Hogg (Crown)

Prosecutor sets out to make an opening address to the court

Pros — Do you know the accused as Pte Herbert of the [illegible] Battalion

Wit — He is the man who was on the [illegible] Battalion which had to give up its [illegible] to the enemy

Pros — On about 18th March 1800 hrs on the 3rd Wpg, I was ordered by the O.C. of 48th Highlanders of Canada to get [illegible] my platoon forward. I ordered Pte Herbert to the [illegible] and ordered the [illegible] to keep them [illegible] and to keep in touch with my platoon. They came back later and [illegible]

Pros — Was the line carried by one man, or was each man carrying a [illegible]?

Wit — Each man carried a little bit. I asked the other two men to give me the line. He did not

Pros — Can you be specific. Was the accused one of those who [illegible] the line?

Wit — No. Pte Herbert was not one of the chaps to give me the line.

Pros — Continue your statement.

Wit — Pte Herbert drew in a roll in a manner [illegible] by unrolling one of the [illegible] which had rolled up in the back of one of the [illegible] dressers near a hedge I could see him unroll [illegible]

F. T. O.

Inves. Why did you think he was upset to start?

Wit - Because I could tell from his breath. I knew he had been drinking

Inves - Except for the fact that he had an alcoholic breath did he seem to be alright?

Wit - He seemed okay.

Inves - Continue your observations.

Wit - He drove up to the house and the enemy was watching from

the window. I saw him look over

at Jake and I knew the case

to be [illegible]. I calculated the

Merchant would be [illegible] to do any

really careful observing.

Inves - Did it occur to you that the

Merchant might be the driver

Wit - The Merchant is a very [illegible] man

to have an idea as to what was expected

of him during the trip to our area.

For the safety of everyone on the carrier, I

retained Lieutenant Jake by letting [illegible]

Marines to share the cabin.

Def - Briefly what did you say to the Merchant

to [illegible] you to get [illegible]

to the [illegible]

Wit - At that time, I got three beers

Def - About the spaghetti, could you explain that

more fully?

Wit - Yes - Marines like just [illegible] to the big

[illegible] from the [illegible], I had gotten

- others from a meal of Spaghetti cooked by an

Italian [illegible] with [illegible] and [illegible] from

[illegible]. Everyone on the [illegible] Baby Chef

to have packets in their meal. That is what I think

the Merchant means.

Res. Why did you not put the accused under arrest before coming to the police station?

Wit. — Because I was too busy. It was getting dark and I wanted to get to our post as soon as possible.

(By B) Complainant

Sworn

Pros. Tell the Court which Platoon you belong to and the rank you hold.

Wit. — I belong to the 2nd Platoon M.M.G., and I am the 2nd right.

Pros. Tell us what occurred.

Wit. Yes, Sir.

Pros. Tell the Court what took place on the 31st May.

Wit. — On the 31st of May, at approximately 1.30 p.m. we arrived at the [illegible] Camp. [illegible] we were ordered to fall out for dinner. We had our dinner and then we were ordered to fall in. We formed up and marched to the cookhouse. We received

Def. turns the order concerning the troops not being sent?

Ans. We received a verbal order from the Pay Master.

Q. What made you allege that the accused was drunk?

Ans. For he was staggering & he definitely was drinking.

3rd Witness — Pte Moreno

Pres. — Tell the extent ~~to which~~ the work you do and who you are Pte. Under you?

Wit. — I am attached to the Pte Cmdr. I am acting as a section under.

Pres. Tell the Court of what happened on the 31st of May

Wit — On the 31st of May we received orders to move. The Garrison had to be driven out of Cleary. Pte Herbert was about 3yds behind me. I could not see I drove one extra. When I got on the road the Germans turned up. The Corporal ordered him to his carrier, and then on to the proper place — which he did. On driving into the place. He drove in such a manner that further he stopped. Pte Fraser who was in a carrier in rear of his — fell back to the front of his carrier.

Pres — What did you think of the accused's work.

Wit — He has definitely been drunk.

Pres — Did you change carriers.

Wit. — Yes. Cpl Kilbane drove my carrier.

Pres — Do you consider Pte Herbert if being capable of driving to the rear area.

Wit — No Sir. He seemed more than drunk.

Pres — Did the accused ask to be provided

A. — Pte Herbert asked to be provided to the Pte Cmdr. I provided him, and he started to argue with Mr Hogg. Mr Hogg paid no attention to him. Took him away again. He was guarded by a man all night.

P.T.O.

Pres. At what time was he planning
sunday dinner?

Wit. I could not say definitely.
He may have been considering it
before the game.

1606 – Dec. Sessions.

Hg. On the night of 31st May, were you with your platoon?

A – Yes.

Hg. Briefly, state what happened that night.

A – I was standing facing the back of the waggon when suddenly out of the [illegible] there came a shot. I fell to the ground & [illegible] I got up & saw the accused running [illegible]

Hg. Did you see the accused running [illegible]?

A – Yes I do.

Hg.

Pris. cannot.

A – At ten I felt over [illegible] the Hg running the road towards Pte Herbert to get out of the carriage & he told him that he [illegible] a man, or words to that effect. Mr Hogg mentioned something about [illegible] running over someone that was approximately 1800 hrs.

Pris. At the time, how long were you with the pl.?

A – About seven weeks.

R P Bdes) sighs out

Ex. "A"

Summary of Evidence in the case of H-41588 Pte. Hebert O.J. of the Saskatoon Light Infantry, a soldier of the Canadian Army (Overseas) R.C.A.F.

By direction of the Group Commander the evidence is taken under oath.

First witness for the Prosecution

Lieut. C. H. Ogg, the Saskatoon Light Infantry, having been duly sworn states:-

I am the platoon Commander of number 2 platoon of 1 A.A.A. Company, 1 Can. Div. Sp. Bn. (S.L.I.).

At approximately 1800 hours 31 May 1944 I ordered my platoon to move to the road. Pte. Hebert, Pte. Schroeder and Pte. Robertson were missing. Before the carriers were turned up these three soldiers appeared each carrying a bottle of wine. I ordered Schroeder and Robertson to give me the wine they carried. They did so and I threw it into the ~~same~~ bush. I ordered Pte. Hebert to give me the wine he was carrying. He replied "why should I". I then took the wine from him and threw it into the bush. Pte. Hebert said to me, "If you can't get girls why can't I drink wine". Pte. Hebert is a driver in my platoon. He was under the influence of alcohol. I ordered him to his carrier. He replied "No". I said, "are you going to your carrier". He again replied "No".

I placed him under arrest.

As the carriers were moving he was forced to go to his carrier. He drove it about fifty yards in a direct

soldiers partition, and then slammed on his brakes. This threw Pte. Fraser who was riding in the back of the carrier violently against the front of his compartment.

I decided Pte. Hebert out by the stream seat as he had obviously been drinking, I could not properly observe the carrier, and never head it been reported on the road that which we were to pass. He was not drunk, but had drunk enough so that I did not consider him capable of the necessary care and caution. I told Cpl. Mayhew to relieve the carrier.

When we arrived at our location I spoke to the platoon which I was doing this Pte. Hebert, who appeared to be getting more incapacitated, interfered. My Asst. Sergeant took him away. I subsequently returned Pte. Hebert to Coy. H.Q. where he was kept.

L Hogg Lieut

The accused declined to cross examine the witness.

Second witness for the Prosecution

L-1194 Sgt. Hallonen, H.B., the Saskatoon Light Infantry, having been duly sworn states:-

I am the platoon sergeant of 2 Platoon 1 M.M.R. Company, 1 Can. Div. Sp. Bn. (S.L.I.)

At approximately 1900 hours 31 May, I was ordered to line up the platoon carriers prior to moving to a new area. Pte. Hebert, who drives No 1 of the carriers was absent. I drove his carrier onto the road. Before we left Pte. Hebert returned he had a bottle. The platoon Commander, Lt. Hogg, took the bottle from him and threw it into the ditch. I did not

hear their conversation as I was down the road a certain distance and the engines of the tractors were running.

When we arrived at our post near the platoon commander called the platoon together to speak to them. Pte. Hebert interrupted the officer. Pte. Hebert had obviously been drinking. He ordered him to be quiet. He subsequently interrupted the officer again. Pte. Hogg told me to please have him under escort. I did so.

In my opinion Pte. Hebert was in no condition to drive a car and I had previously reported him, and where position and last parade he was to be released. Pte. Moreno drove Pte. Hebert's carrier to the rest area as Pte. Hogg would not allow Hebert to drive."

F.B. Killoran Lt.

Cross-examined by defence

Q1. Did you see the officer take the "vino" away from me.

A1. Yes. I saw him take a bottle from you.

F.B. Killoran Lt.

Third witness for the Prosecution

C-21590 Cpl. Moreno, F. E., the Saskatoon Light Infantry, having been duly sworn states:—

"I am retired in the capacity of motor commander in 2 platoon 1 M.M.G. Bty, 1 Can. Div. Sp. Bn. (S.L.I.). At approximately 17.45 hrs 3 May 1944 the platoon was ordered to move. Pte. Hebert was driver my carrier was absent. Lt. Killoran then came to me and ordered my carrier to the road. Pte. Hebert returned before we moved off. I heard him arguing with the officer. Pte. Hogg. I did not hear what was said as the carriers had their engines running.

Hebert came to the carrier and got into the

drivers seat. Swerving into line he drove very quickly for about fifty yards, and then clambered of the tanks. Private Fraser, who was riding in the back, violently opposite the front part of the compartment.

Pte. Hebert appeared to me to be under the influence of alcohol. He was not drunk, but could not have driven carefully through a mine field. Mr. Hogg declined me to drive in Hebert's place. I did so.

When we arrived at the rest area Mr. Hogg spoke to the platoon. Pte. Hebert interrupted him. Mr. Hogg asked him removed under arrest.

F. S. Moreno Capt.

The accused declined to cross-examine the witness.

Fourth witness for the Prosecution

L16660 Pte. Fraser, A., the Saskatoon Light Infantry, having been duly sworn states:-

"On 31 May 1944 I was riding in back of a carrier being driven into line by Pte. Hebert. I was standing up straightening out. The carrier pulled out fairly fast and stopped quickly. I was thrown forward against the front of the compartment and sort of fell into the drivers seat. Pte. Hebert appeared to have been drinking. I do not know if he had been, or not, as I only saw him a short time"

A. Fraser

The accused declined to cross-examine the witness

Page 5

First Witness for the Defence

H-7165 Pte Denser, F. J., the Saskatoon Light Infantry, having been duly sworn states:-

"I formed a corner in 2 platoon, 1 M.M.G. Coy., 1 Can. Div. Sp. Bn. (S.L.I.) On the morning 31 May I was dressing my section into line behind that of Lt. Hebert. He appeared to me to be dressing in a normal fashion."

Cross-examined by the accused

Q. Is it unusual to shine boots quickly into line, and to stop quickly

A. No.

F J Denser

The accused, having been warned in accordance with R.P. 4 (e) declines to make a statement.

Taken down by me, in the field, this fifth day of June nineteen hundred and twenty four, in the presence of the accused.

R.P. 4 (c) (d) (e) (f) complied with.

Judge Advocate
The Saskatoon Light Infantry

Ex 'B'

ARMY FORM B 2196.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H41588	Pte.	Hebert, G.I.	1 Cdn Inf Bde Sp Gp (SLI)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—As to trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement and not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The periods having to be stated should correspond with the periods (if any) specified in the certificate being given by the said authority, and in any recorded special acts of gallantry or distinguished conduct.

Where compliance with the above requirements would involve undue labour or expense, a statement may be rendered showing briefly the nature of the offence, the punishment awarded, and the date.

	* Within last 12 months.	*Since Enlistment.
For AA Sec 15 (1)	times	2 times.
For AA Sec 5 (2)	times	1 times.
For	time	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct

or

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, *or*

~~the previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 18 days in military custody, making a total of 18 days, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 19 years, 10 months, 27 days

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 12 Apr 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is NA.

8. The accused is entitled to deferred pay or gratuity in respect of NA. service.

9. The accused is entitled to reckon NA. service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of NA.

12. (*In the case of an officer.*) The accused holds in the army the rank of NA. dated ..... and in his regiment (*or corps or department*) the rank of ..... dated .....

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Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. H41588 Rank Pte Name Hebert D.L. of SASK. L.I. Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
		NIL.		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th day of June 1944.

R. Rankin Major

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of ..... years .....

In the rank of ..... years .....

In the rank of ..... years .....

(Instruction.—If any portion of any of these paragraphs cannot be stated from the regimental books the paragraph must be struck through, but in the case of a field by field court-martial the information may be collated from such books as are available and the paragraph inserted accordingly.)

2 A C

No. H41588 Name HERBERT O.T. | Sqn., Battery, or Company | Corps | Date of enlistment 12-4-41 | G.C. Badges | Service or Proficiency Pay |

M.F.M. 6 (A.F.B. 172) 12334 7-41 (1279-20) H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet N11 | No. and date of last drunk N11 | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous Sheet destroyed 12-10-41					
Field	27-8-42	Rfn		When a soldier acting as a sentinel (on active service) leaving his post before he was legaly relieved. AA Sec 5(2)	Sgt Love	7 days F.P.	29-8-42	H.T.Hewitt	
Field	14-9-42	Rfn		A.W.L. AA Sec 15(1) from 2200 hrs 14-9-42 to 2230 hrs 14-9-42 Time 30 mins	A/Cpl McLeod	4 days C.B.	16-9-42	A.M.Russell Major	
Field	29-9-42	Rfn		AWL AA Sec 15(1) from 2359 hrs 29-9-42 until 1500 hrs 29-9-42	Documentary	14 days CB AA 46 2d,15 days pay	6-10-42	Lt Col JA McIntosh	
				This is a certified true copy from the Regt'l books in my custody.				R. Rankin major 2/4 Cdn Div MMG Coy (S.F.)	

4P-65

Pte. Hebert R.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G 63376 Pte Reginald HERBERT N Shore R 12 Bn 2 CBRG

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 18 (2)	Not guilty	guilty	
2nd AA 40 alternative	Not guilty	Not guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of Nil days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for two years and to be discharged with ignominy from His Majesty's Service.

(Sgd) ..... 10 Dec 44 (Sgd) E P Lee Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 44(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 52, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is

CONFIRMED.

~~I direct that the accused be not committed for trial on detention hereunder until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) E L M Burns Maj Gen

Date 16 Dec 44

Commanding Officer i/c Cdn Sec G.H.Q. 1 Ech

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G 63376 Pte HERBERT R.	26 Dec 44	(Sgd) O.A. Hood Lt Col O.C. 12 Bn 2 CBRG.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

4P-65

CFA96 (To Bell of AFAB) 40/P & S (1604 (2604)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Col C J Laurin A/OIC Cdn Sec GHQ 1 Ech 21 A Gp dated 5 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G 63376	Pte	Reginald	HERBERT N Shore R	12 Bn 2 CBRG

Certified true copy W.H. Haughton Major D.J.A. Cdn Sec G.H.Q 2 Ech 21 Army Gp.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 9 and 10 Dec 44 EPL

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, Adv, if any, and Offr under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn SOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 118, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1430 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by his CO.~~(2)

(1. KR Can 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Can 562(c). Delete, if not applicable.)

A5. President to accused: Do you object to be tried by me as President ? Interpreter ? Ans No Sir

The Interpreter is sworn.(1) ~~Do you object to be tried by me as President ? Ans~~

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ? Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 58(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~Adv, if any, and Offr under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E P Lee	Gen List Cdn Sec GHQ 1 Ech 21 A Gp
Member	Major	M L Troy	AAG Regt att Cdn Sec GHQ 1 Ech 21 A Gp
Member	Capt	F A Baillargeon	Gen List Cdn Sec GHQ 1 Ech 21 A Gp
Judge-Advocate			
Prosecutor	Lt Col	J W L Thompson	E.C. 2 Cdn Corps
Defending Offr	Lt Capt	J H S Cardinal W G D Hungerford	CIC CMHQ (21 A Gp) RCASC att Cdn Sec GHQ 1 Ech

Questions by President: Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans Yes (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)

2. If Pros a lawyer and Def Offr not, accused is granted as an adjournment when RP 26 (a) and (b) 2 were not followed. See D1 p 11)

A8. The accused ~~before arraignment made(s) (no) (a) plea~~ (1)

(1. If a special plea is made for accused and one or more charges (RP 43(C)), viz, as to the jurisdiction of the Court (RP 34, MML 112), or in bar of trial (RP 39), as on autrefois, accused refuses to stand trial (AA 132, RP 57), or pardon, if any, and findings are recorded per Notes. For forms of record see references in fns to RP 43(C). Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 42; unless accused accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(4).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans _____ (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on _____ charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider this statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex _____, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No Sir (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the _____ charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the _____ charge(s) and allowed on the _____ charge(s); and, accordingly, the trial will proceed on the former, but the accused is(are) found Not Guilty on the latter charge(s).(4)~~
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Yes sir to give evidence underoath you intend to call witnesses on your behalf? Ans No sir Are they witnesses as to character only? Ans N/A
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(A).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the first charge(s), being subject to confirmation, will be promulgated later.(1)
(Or, ~~The President announces that the accused is found Not Guilty on all charges and as to be released forth with, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~)(2)
(1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans Yes sir to give evidenc e myself on oath.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor ~~produces the Statement(s) as to Character and Particulars of Service(s), and tenders a true~~ states that Are not available and produces copy (copies) of Conduct Sheet(s)(1), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(d) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E and Ex _____ respectively.(2)
(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes s r by my defending officer (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(8), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA, 41, 44 and its persons, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 130, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 320, 563-566. Overseas AO 309, 2322, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(7), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, G.63376 Pte Reginald HEBERT, North Shore Regiment, on strength 12 Battalion 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Army Act
Sec 10(2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE,

in that he

In the Field, on 18 Jul 44, while with his regiment in the line, by discharging his rifle, wilfully injured himself by shooting himself through the right foot with intent thereby to render himself unfit for service.

SECOND CHARGE
(Alternative)
Army Act
Sec 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, on 18 Jul 44, while with his regiment in the line, so negligently handled his rifle as to shoot himself in the right foot thereby rendering himself unfit for service.

Nov 44
In the Field.

(A.B. Wood) Lt-Col
Officer Commanding,
12 Bn - 2 C.B.R.G.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

Nov 44
In the Field.

(A.W. Beament) Brigadier
OIC
Cdn Sec GHQ 1 Ech-21 A Gp.

9 Dec 44

Tried Guilty 1st Charge
Sgt

To Confirming Officer

The Court recommends that in this case consideration be given to suspension of sentence on review thereof in view of the accuseds service in the line.

(E P Lee) Majr
President

MEDICAL OFFICER'S CERTIFICATE

(K R(can) Para 557)

I certify that I have this day examined C 63376 Pte HERBERT, B. and in my opinion he is fit to undergo trial by Court-Martial.

Ghent

9 & 10 Dec 44

Signed (M M Morris) Capt
1P Bn 2 CBRG
Medical Officer

Signed (E P Lee) Major
President.

FIELD GENERAL COURT-MARTIAL

Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G 63376	Pte		Reginald	HERBERT (N Shore R)	12 Bn 2 CERG

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 4 Dec 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
MAJOR	E P LEE	Gen List- Cdn Sec GHQ 1 Ech - 21 A Gp	

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
MAJOR	M L TROY		Alg Regt - att Cdn Sec GHQ 1 Ech 21 A Gp
CAPT	F A BAILLARGEON		Gen List - att Cdn Sec GHQ 1 Ech 21 A Gp
	~~WAITING MEMBER~~		
		(Named or detailed, if any. RP 106.)	
	~~JUDGE ADVOCATE~~		
		(Must be named, if any. RP 106.)	

On Active Service in the Fd

in BELGIUM (Country.)

(Signed) C J Laurin (Signed personally. RP 105 fn 2.) Colonel (Rank.)

Date 5 Dec 44

Commanding A/OIC Cdn Sec GHQ 1 Ech - 21 A Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (Stamp, or name in full, of Fd Pk & Storage Depot.) (Reference for oaths and notes for use on trial.)

Approved:
(Signed) W M Thompson Capt
(ADJA)

(Signed) E P Lee Major
President

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Con) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jun 67 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 16)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than on mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Con 563(a).*)

(vii) Summing up by JA, if any. (*RP 62.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Con 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy as item of original see KR Con 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not forms part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(2), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Prosecution opening address.

Sgt Ryan and Pte Carr have since been evacuated to UK and are not available as witnesses.

FIRST WITNESS FOR THE PROSECUTION Capt S. Young, RCAMC, staff 2 Cdn Gen Hosp, being duly sworn is examined by the prosecutor.

I examined the accused to-day. Found a healed through and through wound between the 2nd and 3rd toes of the right foot. There were no complaints. No disability and his future efficiency as a soldier is not impaired. The wound was in a vertical direction and there was no indication of a fracture. The wound could have been made by a bullet.

Cross-examination

The accused is physically fit to go back to the front line.

R P 83(B) complied with.

SECOND WITNESS FOR THE PROSECUTION Lt J R Barre SIS Cdn Sec GHQ 1 Ech 21 A Gp being duly sworn is examined by the prosecution.

I recognize the accused, when I interviewed on 13 Sep 44 at No 7 Cdn Gen Hosp. I told him who I was and that I was investigating the circumstances pertaining to his wound. I cautioned him that he was not obliged to say anything unless he wished to do so but anything he said would be taken down in writing and may be used in evidence. He appeared to understand the caution and made a statement in French which was reduced to writing by myself and then he signed it after the statement had been read over to him and he read it. The statement is in the same condition as when signed. The accused was not under arrest at the time.
There is no objection by the defence to the statement.

The statement was admitted as Exhibit "A".

Cross-examination

The defence declines to cross-examine this witness.

Rule 83(B) complied with.

D5
FIRST WITNESS FOR THE DEFENCE The accused G 63376 Pte Reginald H HEBERT R Shore R being duly sworn is examined by the defence.

This particular affair on 18 Jul 44 happened afterI had been in action. I had been in the battles of CARPIQUET and CAEN URG. I was not in a trench at the time the accident happened. I was near a factory.
I started to clean the top of my rifle and take off the mud with a branch. I was sitting on a big pipe at the time. I did take off all the mud off the top and then I took off the magazine. I placed the magazine on the pipe. I started to pass the brush in the chamber. The gun I had was not made like this one and the cocking piece was a round knob. The sights were different also to this one. You put them up and down. (The rifle being used is a US M 1) I do not know the mark of the US Rifle which I had. I took off the mud around the knob. I stood up turned my rifle muzzle downwards. My left hand was holding the rifle with my first two fingers in the trigger guard. With my right hand I began to open the Butt trap to get out my oil bottle and pull through. The trap lid was tight and the weapon fired. I had cleaned my rifle previously the day before. It was necessary that I clean my rifle on this occasion because there was lots of mud on it.

That morning I had done nothing. The day before I had been digging a trench for myself and one for my officer. The day before that I was in an attack and I saw no Germans. Up to that time I had accounted for approximately 25 Germans. I explain my wound as I was demonstrating with my rifle. That is the only explanation. I can give. Oh no I did not mean to do this on purpose. I came into action two or three days after the day. I was with my regiment throughout up to the time this happened. I had no previous trouble. I had never asked to get out of action. Neither my officer nor my NCOs had complained of my work in any way.

Cross-examination

I was called up for service in March 43. I had no reason for not volunteering before that. I had not very much training with my rifle. Always route march. It is correct as I said in my statement that after three months basic I was sent to Edmondston where I took my advanced training for five and a half months I always had a rifle. I passed my TOETs. I had the rifle with which I received my wound since the 6 Jun 44 before I left England. It was in good condition mechanically. I was not in a building at the time I received my wound I was not in a trench. I was outside. My regiment had been in a defensive position for two days before I received my wound. By defensive position I mean about in the front line. We were holding the front line. We were holding the front line I don't know how far away the enemy were. I have said in my statement I used the toe h brush to clean the breech. That is true. We keep our rifles loaded and a round in the chamber always when we were in the front line. The first thing one does when one cleans a rifle is to take off the bolt and then use the pull through. And then pass the "pull through" through. dont know why I did not do it this time. I did not think of cleaning it on the inside, when I started. I did not know my rifle was loaded because when I cleaned it in the morning I take off the magazine and round out of the chamber. During the day my Canadian friends were looking at my rifle and wanted one like it. I did not pay much attention to them and those who were looking at it put it away.

I have said that in the front line I always keep the magazine loaded and a round in the chamber. That is correct. I left the round out of the chamber in the morning. The same morning I was wounded. I thought it was too hard on the spring to leave a cartridge in the breech. I do not know that a round in the chamber has no effect on the spring. I had a good opportunity while cleaning the breech of seeing that the rifle was cocked. I did not notice if the safety catch was on or off. I do not know why I put two fingers in the trigger guard. It was just an idea I had in my mind. It is true as I said in my statement that I did not take the precaution of seeing my rifle was loaded before I started to clean it. I admitted I was negligent. I remembered a Pte Carr. He was there at the time. I do not remember borrowing a pull through from him.

The accuse takes off his boot and indicates where he was wounded between the second and third toes of the right foot.

Those who were near me at the time came around me but they did not do anything or say any thing. I don't know why they didn't. My officer came right away in about a minute.

Cross-examination by The Court. When I say I was cleaning the breech I mean the chamber of the magazine. I mean the inside with the magazine out.

Q. When you were cleaning your rifle you pulled out the cocking handle to clean out the dirt behind it.
A. I pulled it out to the half-cock position.
Q. Are you sure you did not have it fully cocked.
A. I did not pay any attention.
Q. The rifle wouldn't fire if it were half cocked would it?
A. No sir.
Q. When did that round get in the chamber and when did the rifle become cocked if you had released the cocking spring in the morning.
A. I do not know.

(Rule 83(b) complied with.

Address by the prosecuting Officer

This case res s principally on how you consider the credibility of the accused. Whether you can believe him or not; whether what he has said is reasonable; whether reasonable men can accept his statements. We have very little background. There is the incident of being c lled up but many have done that and wai ed. Those who were near did not do anything but his officer did arrive quickly. The regiment had been in a defensive position for two days. I think the evidence finally got down to the fact that the accused had cleaned his rifle the morning he was wounded. He apparently had not been doing anything that day. He says he cleane his rifle again at 1830 hrs that night. There is nothing to show that he was warned for guard duty or going forward. Nothing unusual. Once again it is the question of this explanation being used to cover up his wounding with intent. Another factor is where is the wound. A person intending to wound himself to get out of action and to do the least harm could not have made a better success of it than the accused. It was between two toes and no fracture. Coming to the actual happening what do you find him doing. He said he did not take the precaution of seeing the rifle was loaded. We know the first thing one does in cleaning his rifle is to open the breech but this accused does everything but that one act. He demonstrated how he had carefully cleaned all around the cocking piece with a tooth brush and yet he stated he did not know the rifle was cocked or that the safety catch was not on. I suggest that was the only way he could explain how he received a perpendicular wound between the toes of the right foot. There is for a trained soldier and an intelligent one like the accused in apparently quiet surroundings no excuse for shooting himself. I submit he has given no reasonable explanation whatever and should be found guilty in the first charge.

On the second charge the facts already mentioned apply and in his own statement he admits neglect.

Pte HERBERT Reginald G 63376 Defence Address 2359 hrs 9 Dec 44.

CLOSING ADDRESS BY DEFENDING OFFICER

This accused left the UK with an American rifle just issued to him - on the 8th of June - two days after "D" day. He was with the North Shore Reg't.

He landed in France and kept going for fourty days with his Regiment until this incident happened on the 18th of July.

During that time he fought at CABOURG and CARPIQUET and killed at least twenty five of the enemy, himself. He had never asked to be relieved- he had never had any complaints from his NCOs or officers.

After going through all this heritable hell he finds himself with a short breathing spell and a chance to remove the mud and grime from his rifle. Surely this case speaks for itself. The prosecution have produced absolutely not evidence even of a circumstantial nature which would indicate the guilty mind on this boy's part. (They have in fact only produced a statement he made himself which gives his explanation). When one considers such a record as his, I say all other considerations vanish.

If anyone was ever entitled to a benefit of a doubt here is that case.

It would not be feasible to convict him in the first charge - it may be on the second. But even then, I say, under such a set of circs can you say he is blameworthy?

I say dismiss both charges and let him return and kill 25 more boshes!

Pte HERBERT, Reginald

THE ACCUSED

I was born on 14 Jun 1923. In school I went to grade V leaving school at 16 yrs of age. When I enlisted I was a fisherman and farmer. If given a chance I would feel I want to go back to my regiment. With the experiences I have had I feel I am better equipped to go back now. My father is living. He is dependent on me and I assign him 25 dollars a month. I have five sisters and two brothers, one brother younger and the other older. My father was not in the last war. My mother is dead. She died when I was 19 years, just about the time I joined the army.

PLEAS OF MITIGATION

In my plea of mitigation for the accused there is a good deal to be said for him. One must remember there are a great number who back home have not done a top. When he enlisted he had just lost his mother. He has seen service with the North Shores, one of the finest regiments in the 3 Cdn Div. His battle record is before you. He has told you how anxious he is to get back. All I want to say on his behalf is give him credit for what he had done; give him a chance to return I am quite sure I can say on his behalf, having talked to him and my co-defending officer Lt Cardinal that he will do his best to uphold the hihg traditions nay only for the Province of New Brunswick but of the country of our beyond the seas, which we are proud of today but will indeed be very much prouder of in the days to come. I recommend suspension of sentence. Please do everything you can to see this his last wish is carried out.

signed: (E P Lee) Major
President

SUMMARY OF EVIDENCE

Summary of Evidence in the case of C.63376 Pte Reginald HEBERT, North Shore Regiment, on strength 12 Battalion, 2 CBRD, charged with, when on active service wilfully injuring himself with intent thereby to render himself unfit for service (AA Sec 18(2)), alternative, when on active service neglect to the prejudice of good order and military discipline (AA Sec 40).

By direction of the Commanding Officer the evidence is taken on oath.

The accused does not object to R.63835 Rfm Brassard, H., QOR of C, as interpreter. Rfm Brassard is duly sworn as interpreter.

FIRST WITNESS Lt J.R. Barre, SIS, Cdn Provost Corps, 'C' Inc Cdn Sec GHQ 1 Ech, 21 A Gp, sworn, states:

I am Lt J.R. Barre, SIS, Cdn Provost Corps. I interviewed the accused, Pte Hebert, R., on 23 Sep 44 at No.7 Cdn Gen Hospital. I told him who I was and that I was investigating the circumstances pertaining to his injury. I cautioned him that he was not obliged to say anything unless he wished to do so but whatever he did say would be taken down in writing and may be given in evidence. He appeared to understand the caution and made a statement which was taken down in writing in French by me. This statement was read to him and he read it himself and then signed it.

Q. Is this the statement you refer to in your evidence?
A. Yes, sir. (Statement attached hereto as Exhibit 'A')
Q. Is that the accused's signature?
A. Yes, sir.
Q. Is it in the same condition as it was at the time it was signed by the accused or are there any alterations erasions, additions or interlineations now that were not there at the time it was signed?
A. The statement is in the same conditions it was when it was signed.
Q. Was the accused under arrest at the time?
A. No, sir.
Q. Were there any threats, inducements or promises of reward?
A. No, sir.

The accused declines to cross-examine this witness.

J.R. Barre
Witness

SECOND WITNESS Capt. J.C. Anderson, RCAMC, 8 Cdn Gen Hospital, sworn, states:

I examined the accused to-day and as a result of my examination I find there are the healed scars of a vertical wound between the second and third toes of the right foot. There is no disability.

Q. Could the wound have been caused by a weapon in the man's own hands?
A. I believe so, sir.
Q. Could it have been a bullet wound?
A. Yes, sir.
Q. Is the man now fit for duty?
A. Yes, sir.

The accused declines to cross-examine this witness.

Witness.

The accused is cautioned as follows:

Do you wish to make a statement or give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you do say or any evidence you give will be taken down in writing and may be given in evidence.

The accused does not say anything.

The accused does not call any witnesses.

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence of the accused and that RP 4(C) (D) (E) (F) and (G) have been complied with.

In the Field,
28 Nov 44.

Officer conducting the
the Summary of Evidence.

Hospital Generale Canadienne No 7
Le 23 Septembre 1944.

Declaration du numero Regimentaire G-63376, Pte. Reginald HEBERT, du Regiment'North Shore', Compagnie(B), 3 leme Division d Infantrie Canadienne, attache l'hospital Generale Cannadienne numero(7), prise le 23 Septembre 1944.

IL DECLARE: "J'ai ete mis en garde par le Lieut. J.R.Barre, SIS de la Prevote Canadienne de la maniere suivante: Desirez-vous faire une declaration? Vous n'etes pas oblige de rien dire ni de rendre temoignage a moins que vous ne le desiriez, mais tout ce que vous direz outtoute d deposition que vous ferez sera pris en écrit et pourra servit de preuve. "Je comprends le sense de cette mise en garde et he fais volontairement la declaration suivante; qui est sans menaces, promesses ou faveurs.

(Signature)(Reginald HEBERT)

Je suis le numero Regimentaire G 63376 Pte. Reginald Hebert, du Regiment 'North Shore'. Je suis age de 21 ans. J'ai ete appele pour mon service Militaire au mois de mars 1943, et je suis alle faire mon entrainement au d pot a Fredericton pour trois mois. Apres avoir cinq mois et demi ou j'ai fait un entrainement plus avance. J'ai signe pour l'Armee active quelques mois avant d'avoir tout termine mon entrainement. Je suis arrive en Angleterre Regiment 'North Shore'. Je suis arrive en F France le 10 Juin 1944 avec mon Regiment, et nous avons pris une position defencive a Lyon SurMer. J'ai eu trente-sept jours d'action avec mon Regiment et j'ai participe dans deux attaques, une a Carpiquet et l'autre a Cabourg.

Je me suis blesse le 18 juillet au soir et voici comment la chose est arrive. Nous etions a quelques mille depasse Carpiquet et nous etions dans une position defencive, ou nous sommes reste a pendant deux jours. Vers les 6.30 P.M.; le 18 juillet, j'ai enleve le magasin et me servant de la brosse j(ai nettoye la chambre. Je me suis leve debout 'enant mon fusil de la main gauche, avec deux doigts, l'index et le majeur sur la detente et le pouce au dessus de la mutt. Avec ma main droite j'ai essaye d'ouvrir le receptuer ou etait ma bouteille d'huile et pese, et faisant ca j'ai fait partir le coup parce que j'avais deux doigts sur la detente. La balle est entree entre les deux orteilles du pied droit. Je n'ai pas pris la precaution de regarder si mon fusil etait charge avant de commencer a le nettoyer. C'est un fusil Americain que j'avais et je l'ai eu avant de partir pour la France. Aussitotque je me suis eu blesse, j'ai commence a crier et mon Lieutenant est arrive, son nom je ne M'en souviens pas. Il y avait un Sergeant et un Caporal ainsi que deux autres Soldats Canadien Anglais pres de moi, et ils ne m'ont donne les premiers soins, et m'ont transporte au premiers poste de secours. La le Docteur a regardermon pied et a donne ordre de me transporter a l'hopital Anglais numero(9) ou j'ai racconte a une des gardes malade de langue Anglaise ce qui etait arrive. Je suis reste a cet hopital pendant deux semaines et apres j'ai ete transfere a l'hopital [illegible]adienne numero(7) et sais ici depuis.

Je regrette de m'etre blesse et je suis anxieux de retourner rejoindre mon Regiment au front. J'admets que j'ai ete negligeant en ne prenant pas les precautions necessaires avant de nettoyer mon fusil, mais c'est purement un a cident.

Cette declaration est volontaire, sans menaces, promesses ou faveurs, et c'est la verte. J'ai eu l'offred'ajouter ou d'enlever quoique ce soit de ma declaration, apres qu'on me la ou la l'avoir lu moi-meme.

(Signature) Reginald Hebert

(Temoin)
Signature J.R.Barre Lieut.
Prevote Canadienne.

This is Exhibit 'A' referred to in the Summary of Evidence in the case of G 63376 Pte Reginald HEBERT taken by me this 28th day of November, 1944.

Offr. taking summary:(J W G Thompson Lt Col

ENGLISH TRANSLATION OF: 7 Can. Gen. Hosp.
23 Sept 44.

STATEMENT OF: Nav.No. 63376, Pte. Reginald HEBERT, of the North Shore Regiment, (N. Brly.) 3 Can. Inf. Div., attached 7 Can. Gen. Hosp., taken 23 Sept 44.

WHO STATES: I have been cautioned by Lieut. J.R. BARNE, R.C.A.S., Can. Provost Corps, as follows: "Do you wish to make a statement? You are not obliged to say anything unless you wish to do so but whatever you do say will be taken down in writing and may be given in evidence." I understand the meaning of this caution and make the following voluntary statement without threat, promise, or favour.

(Signed) Reginald Hebert.

I am Nav.No. 63376, Pte. Reginald Hebert, of the North Shore Regiment. I am 21 years of age. I was called up for Military Service in March 43 and went for training at the Fredericton Depot for three months. After completing my three months training I was sent to Debert for five and a half months completing all my training. I arrived in England 8 May 44 as an Infantry Reinforcement and I joined the North Shore Regiment. I arrived in Italy 20 Jun 44 with this Regiment and we took up a defensive position at Lyon for Mar. I had thirty seven days of action with my Regiment and took part in two attacks, one at Carpiquet and the other at Caturns.

I wounded myself on the 10 Jul 44. at night, and this is how it happened. We were a few miles beyond Carpiquet and were in a defensive position where we stayed for two days. At about 10.30 hrs. 10 Jul 44 I started to clean my rifle. I placed my rifle on my knee and with a toothbrush I took all the mud off. I then took the magazine and used the toothbrush to clean the breech. I was then in a sitting position - I stood up and holding my rifle with my left hand, with two fingers, the index and the middle, across, on the trigger and my thumb right above the sight. With my right hand I tried to open the bolt to put my cellophane roll pull-through, and in doing so made the rifle go off as I had two fingers on the trigger. The bullet penetrated between my two toes of my right foot. I did not take the precaution of seeing if my rifle was locked before starting to clean it. I had an American rifle and it was issued to me before leaving for Vernon. As soon as I had wounded myself I started to yell and my officer arrived. I don't remember his name. There was a Sgt. and a Cpl. and two other Italian Cdns soldiers near me and they didn't help me or ask me what had happened. My officer took my belt and sock off and the stretcher bearers arrived and put me on it and took me to the Field Aid Post. [illegible] my foot and gave me some injections and I be taken to an Italian hospital [illegible] where I [illegible] an English-speaking nursing sister that was [illegible] ok. I stayed at that hospital for two weeks and was later transferred to No.7 Can. Gen. Hosp. and have been there since then.

I am sorry I wounded myself and I am anxious to return to my Regiment at the Front. I admit that I was negligent in not taking the necessary precaution before cleaning my rifle, but it was purely an accident.

This statement is voluntary, without threat, promise or favour. I have had the opportunity to add or delete anything I wish from my statement after it had been read to me and I am satisfied it is correct as read.

(Signed) Pte. Reginald Hebert.

Witness: J.R. Barne Capt.
(R.R. [illegible]) C.A.P.S., Can. Prov. C.

I, Pte R. HERBERT desire to have an officer assigned to represent me at my trial by Field General Court Martial.

I desire the services of Capt W G D Hungerford if he is available with a French Canadian Officer to assist.

Date - 2nd Nov 44

(Signed) R. Herbert
(Signature of accused.)

3/17 MFM 6
(AFB 122)
(AS/126 (5413)

No. G 63376 Name HERBERT, R. | Sqn, Battery, or Company | Corp No 71 CA(Basic)TC | Date of enlistment 1 Jul 43 | CC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
A.30 CITC		Pte		AA 15(1) AWL 28 Dec 43 to 7 Jan 44		(forf 25 days pay)	8 Jan 44		
				Conduct bo the prej:		" " "	" 8 Jan 44		
				CERTIFIED TRUE COPY OF MFM 2 FR					
								Exhibit B	
				(Signed) ? Major					
				DAAG Records					
				Cdn Sec GHQ 2 Ech 21 A Gp			(Signed)	E P Lee Major President	

(PTO)

4X-8.
Pte. Hubner. CE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B50042 Pte Helmer. C.E. RH.2.1

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 683 fn 4 para 2, RP 44; special findings see RP 44 and MML p 752, and in lieu of kit see RP 44 fn 6.)

6 As present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 41 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: to suffer field punishment for a period of ninety (90) days and to forfeit 28 Ordinary pay for a period of Ninety (90) days

(Sgd) J.K. Kidd Lieut 31 Jan 45 (Sgd) W.H. Thomson Major
Judge-Advocate, if any. Date awarded. President. (RP 43, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

6 Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minutes of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

6 Confirmed

~~I direct that the accused be not committed to prison or detained in custody until further orders.~~ (1. AA 57A. Delete if not used.)

Date 3 Feb 45 (Sgd) [signature] Commanding Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.		Date.	Signature of Offr.
B50042 Pte Helmer C.E.	R.H.2.1.	4 Feb 45	[signature] Capt & Adjt

(RHQ)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 * 4X8
(PAGES 1 TO 106 OF XRAY) 40/P.W./8/1898 (10/10)

4/388

FIELD GENERAL COURT-MARTIAL

Convened by Order of J E C PANGMAN Lt-Col A/Comd 4 Cdn Inf Bde dated 29 Jan 45

RECEIVED 27 FEB 45 JAG BRANCH

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent & confirmed and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.50042	Private	Charles, Edward	HELMER	RHLI

PROCEEDINGS REVIEWED [illegible] Headquarters JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED [illegible] Can Sec G.H.Q. 21 Army Gp.

PROCEEDINGS OF TRIAL.

Held in the [illegible] OFFICE, (Country) HOLLAND on (date) 31 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see Form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for duties and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (not) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (not) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (not) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans .....
~~The Interpreter is sworn.~~ Do you object to D 36570 Sgt Parks as shorthand writer? Ans NO
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO Sir.

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H.W.P. Thomson	Essex Scot
Member	Capt	R.C.A. Cumberland	Royal Regt C
Member	Capt	A.T. Spalding	R.H.L.I.
Judge-Advocate	Lieut	J.K. Kidd	HQ 2 Can Corps Int
Prosecutor	Lieut	B.E. Easton	R.H.2.1
Defending Offr	Lieut	R.W. Wright	R.H.2.1

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when CF 85 (B) and fn 2 were not followed. See Q&A 23.)

A8. The accused B50042 Pte Helmer C.E. before arraignment make(s) (no) objection(s). (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (not) arraigned (separately) on all charges in the charge sheet.(1) The accused does (not) object to any change.(2) There is (no) amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 61; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*B*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M.M.L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A)* (*B*); *duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No Sir (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Decision may be per curiam.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A)* (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A), (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12a (4 and 5) 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 44(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes. Accused Wishes to give evidence on Oath
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 6, 44 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 1 and Ex 2, respectively.(3)
(*1. MFB 355 or MFB 294. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans By my defending Officer (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or add anything here or previously stated which would affect the amount of punishment. RP 37(C) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, as to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RD 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 58(7), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B50048 Pte Charles Edward HEBNER, 1 Bn Royal Hamilton Light Infantry, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Section 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he

In the field absented himself without leave from 2230 hrs 25 Nov 44 until apprehended by Cdn Pro Corps at 1345 hrs 7 Dec 44.

Total absence 11 days, 15 hrs, 15 mins.

SECOND CHARGE
Section 15(1)
ARMY ACT

WHEN IN ARREST, ABSENTING HIMSELF WITHOUT LEAVE,

in that he

In the field absented himself without leave from 1800 hrs 17 Dec 44 until apprehended by CMP at 1500 hrs 20 Dec 44.

Total absence 2 days, 21 hrs.

In the Field
25 Jan 45

(WD WHITAKER) Lt-col,
Comd 1 Bn RHLI, CA(Os)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
29 Jan 45

A/Comd 4 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. . RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt. A/rank or A/appmt. if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt. A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-50042	Pte		Charles Edward	HEBNER	RHLI

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 29 Jan 45 endorsed by me for trial by a Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable that any of the persons to be appointed to the Court should be persons subject to my authority~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to be the Court, (b) a Fd Offr as President, for the reasons I have mentioned.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate the Offr mentioned hereunder.~~
I also appoint as Judge-Advocate the Offr mentioned hereunder.

(RP 106(A). Delete if not appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Maj	H W P THOMSON		Essex Scot

MEMBERS.

A Capt to be detailed by OC RHLI

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt to be detailed by OC R Regt C		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
A Capt to be detailed by OC Essex Scot		

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Lieut	J K KIDD	Tor Scot (MG), att HQ 2 Cdn Inf Div

On Active Service in the Fd

in HOLLAND (Country.)

(J E C Pangman) (Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

Date 29 Jan 45

A/Commanding 4 CDN INF BDE
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAAS (2d Impl of AFAS) 40/P & G/1601 (4051)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 45 fn 1, 86.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 60 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Con 865(a).*)
(vii) Summing up by JA, if any. (*RP 63.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Con 857.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting to evidence a certified copy in lieu of original see KR Con 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part 7 of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

1 Bn Royal Hamilton Light Infantry

I certify that I examined No. [redacted]
Pte Alcock, C. [redacted] on 31 Jan 45 and that he is fit to undergo trial by Field General Court [redacted] Martial.

In the Field
31 Jan 45

J. W. Cumberbatch Capt
.....
Medical Offr 1 RHLI, Cdn Army

E-1 PAGE 1

First Character Witness, the accused B-50042 Pte Hebner, C E, RHLI, being duly sworn, is examined by the Defending Officer,

Q.1 - How old are you?
A.1 - 24 years old, sir.
Q.2 - When did you enlist?
A.2 - On the 19 Jun 40, sir.
Q.3 - Were you a volunteer or drafted?
A.3 - A volunteer, sir.
Q.4 - How long have you been with the RHLI?
A.4 - Since October, 44, sir.
Q.5 - And what were you before that?
A.5 - In the Artillery, sir.

The Prosecutor declines to cross-examine the witness.

No questions by the Court.

In the opinion of the Court and JA it is not necessary to comple with RP 83(B).

E.3

The Defending Officer makes the following plea in mitigation.

Sir, I have had Pte Hebner in my Pl since October. He hasbeen a very good worker. He not only did his own work but readily volunteered for dangerous work and on one occasion in particular he took considerable risk in bringing out casualties under shell fire. As the army is in need of experienced men right now I would ask the Court to take a lenient view in this case and return Pte Hebner to his unit as soon as possible.

"A"

Summary of Evidence in the case of No: B 500 42 Pte Helmer C.G 1 Bn R.H.L.I. a soldier of the Canadian Army Overseas.

The accused is informed of his rights. The C.O. directs that the evidence be taken on oath.

Chg: 1 First Witness for the Prosecution:

B 42777 Sgt Brooks A 1 Bn R.H.L.I. sworn states: "I am pl. sgt no. 6 Pl. at about 2230 hrs 25 Nov 44 I made a search of 6 Pl billets and found the accused missing. I reported the fact to the Coy. Orderly Sgt."

The accused declines to cross-examine.

Sgd. A. Brooks.

Second Witness for the Prosecution: Capt. W.O. Avery 1st Bn. R.H.L.I., adjt sworn states:

I present:

Certificate of apprehension (arrest) purporting to be signed by O.C. (Sgt i/c) 7 Cdn L.D.C. Prov Sec 2 Cdn Log C Prov Coy attached as exhibit (A).

The accused declines to cross-examine.

Sgd. W.D. Avery.

Chg: 2 & 3

First Witness for the Prosecution:

B 42971 L/Cpl Lord K.H. sworn states: "At about 1800 hrs 17 Dec 44 the accused escaped from the Guard House. I called the roll and he failed to answer to his name. It was difficult to keep guard on the men because some other soldiers had moved into the same room. I reported the escape to the R.S.M."

The accused declines to cross-examine.

Sgd. K.H. Lord.

Second Witness for the Prosecution — Capt. W.O. Avery, 1st. Bn R.H.L.I., adjt. sworn states:

I present: Cert. of apprehension (arrest) (over)

purporting to be signed by O.C. 241 HQ Prov Coy C.M. Police (attached as exhibit B)

The accused declines to cross-examine.

Sgd - [illegible]

The accused having been duly cautioned in accordance with R.P. 44(2) says:

"I don't wish to say anything"

The accused does not wish to call witnesses in his defence at this point.

Certified that R.P. 44 complied with
In the field
25 Jan 45

Sgd [illegible] Court
Offr detailed to
take the summary.

[illegible]

Exhibit B.

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT, SECTION 163(1)(d).

I certify that No. D59068 Rank PTE Name HEGNER C.E.
of SUPPORT COY. R.H.L.I. (CANADIAN ARMY) (unit) was arrested at MAINZ
(place) at 1300 hrs on 20th Dec - xxx (date). He was dressed in uniform.

Date 20 Dec. 1944

Signature of Provost Marshal, ASM or other officer into whose custody the above-named person was taken on arrest.

W R Beard Lieut
O.C. 2nd. ID. PROVOST COY. C.M.P. POLICE.

NOTES.

1. This certificate must be signed personally by the officer concerned.
2. In no circumstances may it be signed by one officer "for" another, or by anyone who does not hold commissioned rank.
3. In no circumstances should the place of apprehension be described as "in the field". The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

Army Form B 252
(See King's Regulations)

R.H.L.I. (CANADIAN ARMY)
SUPPORT

Regiment
~~Battery~~
~~Squadron~~
~~Troop~~
Company

CHARGE against No. B 30042 Rank PTE

Name HEBNER C. E.

Place ..... Date of Offence .....

OFFENCE A.W.O.L. ABSENT WITHOUT LEAVE

FROM .....

UNTIL APPREHENDED BY THE MILITARY POLICE

IN HALIFAX AT ABOUT 1600 HRS on the

20th Dec. 44

Names of Witnesses :—

CPL A. SOWLEY C.M. POLICE

Signature of O.C. Battery, Squadron, Troop or Company }

Punishment Awarded }

By whom Awarded }

Adjutant.

2 3 M G.H.Q.P.P.

A D.A.P.M.
N.L. & C. SUB-AREA

STATEMENT OF EVIDENCE IN THE CASE OF:-

BOOLE No2 HRGNER C.E.
SUPPORT COY R.H.L.I
CANADIAN ARMY
B.L.A.

Sir

On MALINES on the 20th Dec-ber at about 1600 hrs I saw the a/m soldier. On being questioned he stated that he was from KUKE HOLLAND and that he left his UNIT on the morning of the 18th Dec-ber without a PASS, but that he intended to return forthwith. He having no means to substantiate the story or any means of transport back to his UNIT I was forced to detain him.

On the 21st Dec-ber I arrested him & took him to the ARMY GUARD ROOM ORBEST & he detained.

IN THE FIELD
21st Dec-ber

H/125203 Cpl A. Bobby
2nd H.Q. PROVOST COY.

REMARKS

CHARGE

Army Form B 252
(See King's Regulations)

R.M.L.I.

Regiment
Battery
Squadron
Troop or
Company

Sups. coy's

CHARGE against No. [redacted] Rank Pte.

Name Hebert, C.E.

Place Antwerp Date of Offence 7 Dec. 44

OFFENCE #OAS. Absent without leave from? until apprehended on the MKH Antwerp at about 1345 hrs. 7 Dec. 44 by the Cdn. Pro. Corps.

Names of Witnesses :—

1/Cpl. MacMillan. 7 Cdn C. Pro. Coy.

1/Cpl. Macconnachie. " " " ".

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

7 CDN. L. OF C. PRO. SEC. SGT 1/C.

2 CDN. L. OF C. PRO. COY.

P.T.O.

20/46. Wt. 9/21274-1961. [illegible] & H. Ltd. G65/47.

Statement of **EVIDENCE** in the case of
H.50042, Pte. C.E. Hebner.
R.H.L.I. Sup. coy.

Sir,

At about 1345 hrs. on the 7, Dec. 44. I was on patrol and in company with 1/Cpl. Missonnette on the MEIR in Antwerp, I saw the a/m soldier, I checked him and asked him for his pass, he had none. He was A.W.O.L. I escorted him to the town guard room where a body [illegible] receipt was obtained for him.

Antwerp
7, Dec. 44

H.59047 Cpl. MacMillan
H.59047, C.W. MacMillan. 1/Cpl.

Sir,

I have read over and corroborate the above statement.

Antwerp
7, Dec. 44.

R.G. Missonnette 1/Cpl
C.33960, R.G. Missonnette.

REMARKS

Exhibit A.

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42

I CERTIFY THAT No B-50042 Rank Pte. Name Hebner, C.E.

Unit R.H.L.I. Supp. Coy. was arrested at Antwerp (Place)

at 1345hrs. (hour) on 7 Dec 44 (date) and that at the time of his arrest he was wearing (military uniform) or (civilian clothes).

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on arrest.

SGT 1 C

7 CDN. L. OF. C PRO SEC

2 CDN. L. OF. C. PRO C

Exhibit Y

In lieu of Army Form B.296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment
R-50042	Pte	Charles Edward HEBNER	1 Bn WNLI, CA(Os)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:-

	Within last 12 months	Since Enlistment
For AA Sec 15(1) AWL	nil times	6 times
For AA Sec 40	3 times	4 times
For	..... times	..... times
Number of instances of gallantry or distinguished conduct		nil

[illegible]

2. The accused has not been previously convicted, [illegible]

[illegible]

3. The accused is not under sentence at the present time. [illegible]

4. The accused has been in confinement, awaiting trial on the present charges, for .....days in civil custody, and ..... days in military custody, making a total of ..... 41 ....days of which ..... 0 ..... days were spent in hospital.

5. The present age of the accused, according to his record of service is .....24 years, 3 months.

6. The date of his attestation specified in his record of service is .....19 Jun 40

7. [illegible]

8. [illegible]

9. [illegible]

10. The accused is in possession of, or entitled to, [illegible] CVSM & Clasp

11. [illegible]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused

No. B-50042 Rank Pte Name HEBNER, CE Unit 1 Bn RHLI

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or of order dispensing with trial	Charges upon which convicted or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge	Punishment remitted.
		NIL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 6th day of January 1945

(VO AVERY) Capt & Adjt.
1 Bn RHLI, CA(Os)

MFM 6 (AFB 122) 40/PAS/136 (3438)

No B50042 Name HEBNER C.E. | Sqn, Battery, or Company | Corps CIC | Date of enlistment 19 Jun 40 | GC Badges | Service or Proficiency Pay N/A | Character

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 Feb 41	Pte		A.A. Sec 15(1) AWL from 0100 hrs 1 Feb 41 until 0230 hrs 3 Feb 41 Absent 2 days 1 hr. 30 Min	Cpl Pennell	15 days Detention	6 Feb 41	Lt-col Rutherford	Forf 3 day pay FR&I 149 (1) a Forf 15 days pay FR&I 149 1 b Total forf 18 days pay
Field	7 Apr 41	Pte		A.A. Sec 15(1) AWL from 0800 hrs 7 Apr 41 until 1900 hrs 13 Apr 41. Absent 6 days 11 hrs	L/Cpl Gagnon	20 days Detention	14 Apr41	Lt-col Rutherford	Forf 7 days pay FR&I 149 (1)a Forf 20 days pay FR&I 149(1) b Tot forf 27 days pay

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9 Jan 42	Pte		A.A. Sec 15 (1) AWL from 1000Hrs 7 Jan 42 until 2000 hrs 8 Jan 42 Absent 1 day 10 hrs	Sgt MacLeod	Admonished	12 Jan 42	Capt Crearey	Forf 2 days pay FR&I149(1) a
Field	19 Feb 42	Pte		A.A. Sec 15(1) AWL from 2215 hrs 19 Feb 42 until 1000 hrs 23 Feb 42. Absent 3 days 11 hrs 45 min	Cpl Pennil Cpl Nudds	21 days det	23 Feb 42	Lt-col V.R.Fell	Forf 4 days pay F R&I 149(1)a Forf 21 days pay FR&I 149(1)b Tot forf 25 days pay
Field	2 Apr 42	Tpr		A.A.Sec15(1) AWL from 1100 hrs 2 Apr 42 until 0015 hrs 4 Apr 42 Absent 1 day 13 hrs 15 min	BSM Fisher	14 days C.B.	4 Apr 42	Lt-col V.R.Fell	Forf 2 days pay FR&I 149(1)a
Field	17 Sep 42	Gnr		A.A.Sec 15(1) AWL from 1330 hrs 17 Sep 42 until apprehended at 1530 hrs 5 Oct 42 Absent 18 days 2 hrs	Bdr Myke A Documentary	21 days Det	8 Oct 42	Lt-col WJ Finney	Forf 19 days pay FR&I 149(1) a Forf 21days pay FR&I 149 (1) b Forf $10.61 FR&I 149(8) Tot forf 40 days pay

MFM 6 (AFD 122) 45-P&S/136 (5458)

No B50042 Name HABNER C.E. Sqn, Battery, or Company — Corps R.C.A — Date of enlistment 19 Jun 40 — GC Badges — Service or Proficiency Pay n/a — Character

Date of last entry in Company Conduct Sheet n/a — No and date of last drunk n/a — Period not reckoning towards freedom from extra fine n/a — Sheet No two — Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing with trial	By whom awarded	Remarks
Field	29 Oct 42	Gnr		A.A. Sec. 40 An act to the prejudice etc "Did not have a genuine pass	Pte Lockart W Pte Lalonde	28 days detention	30 Oct 42	Lt-col Hinman HVM	Forf 28 days FR&I 149 (1) b
Field	11 Apr 44	Gnr		WOAS Conduct to the prejudice etc driving in excess of 8 m.p.h. contrary to Camp Standing Orders d/14 Jan 44. AA Sec 40	Lt Slater Sgt Gleadow	5 days pay	13 Apr 44	W.E. Fleury Lt-col	Forf 5 days pay FR&I 149 (2) Total forf 5 days pay
Field	18 Aug 44	Gnr		WOAS Conduct to the prejudice etc driving a M.D. vehicle recklessly AA Sec 40	F88386 Gnr Mattie W.N. Documentary	7 days C.B.	19 Aug 44	Lt-col G.T. INCH	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30 Sept 44	Pte		AA Sec 40 Conduct to the prejudice after being warned for guard duty could not be found	Cpl Harrow C	5 days C.B.	4 Oct 44	M.D. Yearwood Capt	

Certified true copy of Regimental Documents held in my custody

(W.O. Avery) Capt & Adjt
1 Bn RHLI, Cdn Army O/S

"I wish the service of a defending officer"

Sgd. C.E. Helmer

In the field
25 Jan 45

Charles Edward Helmer
5 Oct 20
19 JUN 40

5A-62

Mr. Meek. J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M36589 Pte Joseph, HECK.

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY.	GUILTY.	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 86, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ____ beginning on (date) ____ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for ninety (90) days.

(Sgd) ____ Judge-Advocate, if any. 8 Mar 45 Date awarded. (Sgd) L.H. Carr Maj. President. (RP 45, 52.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ____ (Sgd) ____ Commanding ____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, RR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: RR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks [illegible] (1) BJ

(1. AA 57A. Delete if not used.)

Date 9 Mar 45 (Sgd) [illegible] Lt-Col

Commanding

Comd 1 Cdn Base Rft Gp

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, RR Can 576, 577.)

Accused.	Date.	Signature of Offr.
M 36589 PTE J. HECK. 3 Cdn Gen Base Rft Bn	12 Mar/45	[signature] C.O. 3 Cdn Gen Base Rft Bn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDS RECEIVED 21 MAR 45 JAG BRANCH CANADA

5A-60

CPA86 (To Replace AFA3) 40/P 32 (S) 1608 (4/45)

FIELD GENERAL COURT MARTIAL

4/388

Convened at Lt. S.A. LEE 1 Cdn. Base Rft. Comd Gp. dated 7 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 482, 183, fns, RR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
M36589	Pte		Joseph	HECK	3 Cdn Gen Base RFA Bn.

PROCEEDINGS REVIEWED

REVIEWING OFFICER, JAG BRANCH CANADA

PROCEEDINGS SERVED ON ACCUSED 21 MAR 45 at 3 Cdn Gen Base RFA Bn. by Capt. Tate

DJA Cdn Sec GMQ 2 Exh A(Hecks)

PROCEEDINGS OF TRIAL.

Held in (country) ITALY on (date(s)) 8 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

2J-69

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1500 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. RR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see RR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to an interpreter?~~ Ans ____

~~The Interpreter is sworn.(1) Do you object to an shorthand writer?~~ Ans ____

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 108, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJ.	L.N. CARR (CIC)	1 C.I.B.R. Bn.
Member	CAPT.	J.E. COOLEY (CAC)	3 C.B.B.R. Bn.
Member	LIEUT.	W.H. POPE (CIC)	1 C.I.B.R. Bn.
Judge-Advocate		N/A.	
Prosecutor	LIEUT.	G.H. HODGKISS (CAOC)	3 C.B.B.R. Bn.
Defending Offr	CAPT	G. KENNEDY (CAC)	3 C.B.B.R. Bn

Questions by President: Is the Prosecutor a lawyer? Ans N.O. Is the Defending Offr a lawyer? Ans N.O. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pres a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ____ before arraignment make(s) (no) ~~(a)~~ plea (1) NAE

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. The para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

N.150

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 37(*E*) *fn* 6; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans N/C.(5)
(1. *RP* 37(*E*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise~~ accused to change his (their) plea(s) of Guilty to Not Guilty on ~~Late~~ charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) (to)~~ charge(s) ~~Part I of the Schedule is amended accordingly~~.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, and thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 535. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....

Do you intend to call witnesses on your behalf? Ans .....

Are they witnesses as to character only? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 60(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 178. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*b*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans N/C.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)
(1. *MFB* 355 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Plea in Mitigation by Def Off.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to bring on such anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *Where several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas AO* 309, 2323. *RP* 48. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *Where accused already under sentence of imprisonment or detention see AA* 44(18), 60(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A.F.C.

CHARGE SHEET

The accused, M.36589, Private Joseph HECK,
3 Cdn Gen Base Rft Bn., 1 C.B.R.Gp., a soldier
of the Canadian Army Overseas is charged with:

FIRST CHARGE
Section 15(1)
Army Act

When on Active Service ABSENTING HIMSELF WITHOUT LEAVE
in that he
in the field in Italy absented himself without leave
from 0001 hrs, 14 Dec 44 until apprehended at
0030 hrs, 24 Feb 45.
Absent 72 days, 29 min.

(J.G. Vinin[illegible] Lt.-Col.
Commanding Officer
3 Cdn Gen Base Rft Bn.

Field
4 Mar 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
9 Mar 45

([illegible] Colonel
Comd 1 Cdn Base Rft Gp

L.A.C.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62 and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
M36589	Pte		Joseph	HECK	3 Cdn Gen Base Rft Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (*date*) 7 Mar 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	L N CARR (CIC)	1 Cdn Inf Base Rft Bn

MEMBERS.

Capt or Lieut to be detailed by the OC 1 Cdn Inf Base Rft Bn

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lieut to be detailed by the OC 3 Cdn Gen Base Rft Bn		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by the OC 3 Cdn Gen Base Rft Bn		

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy
(Country.)

Date 7 Mar 45

(Signed pursuant to RP 105 fn 2)
(S. N. LEE)
Commanding 1 Cdn Base Rft Gp
Convening Officer.

Colonel
(Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS—

(*See overleaf for oaths and notes for use on trial.*)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 60(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of registered books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

3 CANADIAN BASE REINFORCEMENT BATTALION

Certified that I have examined No. M-36087 Rank Pte.

Name Heck J. and in my opinion is fit

to undergo trial by Field General Court Martial.

In the Field
this 8 day of Oct 1916.

D Kahn Capt.
(Signature of Medical Officer)

Plea in Mitigation of Sentence
in the case of M 365 89 Pte. HECK, J.
Lth. C

Sir:

You have heard the story of Pte. Heck from the accused. I wish merely to emphasize the main points in that story.

I am convinced, and I am sure the court will agree, that Pte. Heck bears a very sincere and deep affection for his mother. He considers that his mother has received a "raw deal" from life, due to the separation of his father, and his lengthy illness. Quite naturally then, being the eldest in the family he considers it his duty to look after and protect her.

After coming overseas, as the accused has told you, he received a series of letters telling of his mother's worsening health. Feeling his responsibility for her, he did attempt, through official channels, to return to Canada, if only to re-assure himself that she was being properly cared for.

After coming to Italy, in July or Aug 44, the accused again had news that his mother's condition was becoming worse. Brooding over this news, and his own inability to do anything about it, the accused, as many of us do, turned to drink for forgetfulness. This, as his A.F.M.C. shows, involved him in several petty crimes.

In Sept 44, Pte Heck again tried, through official channels, to return to Canada to see his mother. This attempt, too, failed.

Mr Heck, now convinced that (if) the Army would never consent to his return to Canada, once still determined to see his mother. As to how that he could, during his 7 day leave in Dec 44, he attempted to get on board a ship at Naples. Failing in this attempt, he determined to keep trying. When his leave ended, he remained about without leave, with the sole purpose of trying again and again to obtain passage to Canada. Fortunately for himself, though he still refuses to acknowledge it, he failed.

He earnestly insists that he had no intention ever to ~~commit any~~ desert His testimony is clear. To Heck's mind, his first duty was to his mother — and in any other time but these abnormal years in which we live, who would condemn a man for thinking thus?

I am sure the court will keep these facts in mind when considering the actions Mr Heck is to answer.

[signature]
Defending Officer

27 Sep 44

A.A.C.

O.C.
41 Cdn Army Tpt Coy., RCASC

Prisoner of War Escort Duty

1. I respectfully submit my name for POW duty, and would please ask that my compassionate reasons be taken into consideration.

2. My compassionate grounds for applying for POW are:

(a) My mother who is suffering from cancer is steadily losing ground, and here doctor gives her only a few years of life.

(b) I am the eldest of four children, three boys and one girl. My brothers are in the armed forces, and my 17-year old sister is at home looking after my mother.

(c) My father deserted my mother seven years ago, and we have not heard of him since.

(d) My brothers and myself are the sole contributors to the support of my mother and sister.

(e) I have served overseas 2 1/2 years, of which 1 1/2 were spent in England, and 1 year in Sicily-Italy.

3. May my application be taken into consideration, please.

I am,
Your obedient servant,

A136579 A/ J.Mack

P.A.C.

SUMMARY OF EVIDENCE in the case of No. M. 30589, Pte. HECK, J., (RCASC"A") 3 Cdn Gen Base Rft Bn. a soldier of the Canadian Army Overseas. Exhibit "C"

By the direction of the Commanding Officer the Summary of evidence is taken on oath.

M.40880, Pte. WHITELEY, J.B., 3 Cdn Gen Base Rft Bn., having been duly sworn stated;

I am Company Clerk of "D" Coy, 3 C.G.B.R. Bn. I produce in evidence the following documents ;

Certified true copy of 41 Cdn Army Tpt Coy RCASC Part II Order issued by Cdn Sec GHQ 2 Echn AFHQ No. 5 dated 15 Jan 45 purporting to be signed by Capt A.H. Wallace and direct attention to para 1 (b) of this order insofar as it pertains to the accused. Marked Exhibit "A".

Certificate of apprehension in accordance with Army Act Sec 103 (1) (jj) purporting to be signed by the Officer Commanding, 279 Provost Coy, C.M.P. relating to the accused. Marked Exhibit "B".

The accused declines to cross-examine this witness.

J.B. Whiteley

(J.B. Whiteley) Pte.

The accused having been cautioned in accordance with Rules of Procedure 4 (e) elects to reserve his defence.

I certify that the above Summary of Evidence was taken down by me in the presence and hearing of the accused this 3rd day of March 1945 and that Rules of Procedure 4(c) (d)(e) 4(f) have been complied with.

George H. Hodgkiss

(George H. Hodgkiss) Lieut.
Officer detailed to take Summary.

Field
3 March 45.

CERTIFIED TRUE COPY

Exhibit "A"
A.H.W.

(D M Owen) Capt
Discipline Section
Cdn Sec 2nd Echelon, AFHQ
Officer having custody of the original

Last Order No 4 13 Jan 45.	41 CANADIAN ARMY TRANSPORT COMPANY RCASC Part II Orders issued by CDN SEC GHQ 2 ECH AFHQ.	This Order No 5 15 Jan 45.

"A" OFFICERS

N I L

"B" OTHER RANKS

1. STRENGTH DECREASE

(a) S.O.S. to X-3 List R.C.A.S.C.(A) dates shown.
L66220 Pte Arsenal, F.X. Dr Mech (MV)"C" 10 Jan 45.
M36397 A/Cpl Haraldson, H.W. 8 Jan 45.

(b) S.O.S. as a DESERTER 7 Jan 45, having been declared illegally absent by a Court of Inquiry from OOCL hrs 14 Dec 44.
Deficiencies in kit:- $14-5-11.
M36589 Pte Heck, J.

(c) SOS. to 1 Cdn Corps Car Coy R.C.A.S.C. 9 Jan 45.
Authy:- LO/T/165 S/ 6 Jan 45.
D121336 Pte Kostrzewski, W.

2. APPOINTMENTS AND PROMOTIONS

(a) Appt'd L/Cpl 6 Jan 45.
M63208 Pte Zak, W.P.

3. TRADESMEN'S RATES OF PAY

(a) Continues to draw tradesman's rates of pay Dr Mech (MV)"C" covering driver i/c 6 Jan 45.
M63208 Pte (L/Cpl) Zak, W.P.

4. HONOURS AND AWARDS

(a) Awarded One Good Conduct Badge 12 Nov 43.
M66567 Pte Smith, T.

A.H.Wallace

(A.H. Wallace) Capt
for Officer i/c
CDN SEC GHQ 2 ECH AFHQ.

/HCR

Exhibit "A"

Exhibit B
L.M.G.

Certificate in accordance with the Army Act Sec. 163 (1) (jj)

I certify that

No M36589 Rank Private Name HECK J.

of the 41 G.T. Coy, R.C.A.S.C.

was arrested at ROME at 0030 Hrs.,

on the 24th day of February 1945

Signature of P. M., A. P. M., or other Officer into whose custody the above named person was taken on arrest.

Rank Captain

Appointment (if any) C.C.

Commanding 279 Provost Company, C.M.Police.

Date 25th February 1945

Exhibit B

Enclosure No. 1

Army Form B.213 (Revised)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number	Rank	Name	Regiment (or as the case may be)
No.36589	Pte	HMIK, J.	3 Cdn Gen Base Rft Bn.

NOTE.—The Field Conduct Sheet is to be produced to Court with the accused, but is not to be referred to in the presence of the accused before findings have been recorded, save in respect of the number of Entries in the Field Conduct Sheet, circumstances being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recommended special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be observed here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For A.A.A. Sec 15(1) ..... one times.

For A.A.A. Sec 9(2) ..... one times.

For A.A.A. Sec 29 ..... one times.

For A.A.A. Sec 69 ..... two times.

Date of first entry in Field Conduct Sheet 26 Aug 42

Date of last entry in Field Conduct Sheet 5 Nov 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for [illegible]

beginning on the [illegible] day of [illegible]

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 11 days in military custody, i.e., Nil days in open arrest, 11 days in close arrest, of which Nil days were spent in hospital.

5. The present age of the accused is 24 years 1886 days

6. The date of his attestation is 3 May 42

7. The service which the accused is allowed to reckon is N/A

8. The accused is in possession of CVIM & D.

9. [illegible] The accused has served continuously, without reduction, to the present date.

Date of Promotion.

In the substantive rank of .....

In the war substantive rank of .....

In the acting rank of .....

INSTRUCTION.—[illegible]

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment mitigated or remitted

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 24 day of March

(G. A. ARMSTRONG) Capt. & Adjt.
3 Can Gen Base R.C.I. No.

No M36589 Name HECK, J. | Sqn, Battery or Company | Corps RCASC | Date of enlistment 3 Nov 1941 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (9438)

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

EXCELLENT

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field				In accordance with RO 2084 upon completion of 6 mos service old sheet destroyed 10-6-42					
Field	28Aug42	Pte		AASec 40 Neglected to drive WD veh in proper manner thereby causing an accident	Sgt Paterson L/S Coupland Cpl Carlin	Forfeits 10 days pay	2-10-42	Major WA Lucas	
Field	7Feb43	Pte		AASec9(2) Disobeying a lawful command given by a superior offr.	L/S Coupland L/C Stevens	14 days C.B.	10-2-43	Lt-Col HL PEASE	
Field	10Jul44	Pte		AASec 15(1) AWL; 2000, 10 Jul to 1700, 14 Jul 44 (3 days 21 hrs)	Sgt Porter	14 days C.B.	15-7-44	??????	Forf 1 day PAY 14/7/44
Field	11Jul44	Pte		AA Sec 19 Drunkenness first offence.	Documentary	Admonished	21-7-44	Major FB DAVEY	

(PTO

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if of order dispensing with trial	By whom awarded	Remarks
Field	5Nov44	Pte		AABec 40; unfit for duty due to previous indulgence in alcoholic stimulants	L/Sgt Wolfe	Frf 3 days Pay	6-11-44		

CERTIFIED TO BE A TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY

C. Armstrong

(C. ARMSTRONG) Capt & Adjt. 3 Cdn Gen Base Rft Bn.
Officer having custody of Regtl Books

In the case of M.36589, Pte HECK, J.

LIST OF WITNESSES

For the Prosecution

1. M.40800, Pte WHITELEY, J.E. - 3 Cdn Gen Base Rft Bn

For the Defence

Nil.

LIST OF EXHIBITS

A. 41 Cdn Army Tps Coy RCASC Pt II Order No 5, dated 15 Jan 45.
B. Certificate in accordance with AA Sec 163(1)(jj)

STATEMENT OF ACCUSED RE DEFENDING OFFICER

In the event that my case is brought before a Court Martial I request that an officer be appointed to defend me.

J. Heck
(J. Heck) Pte.

ACCUSED'S ACKNOWLEDGEMENT OF SERVICE

Receipt is acknowledged of copy of Summary of Evidence and of Charge sheet in my case.

J. Heck.
(J. Heck) Pte.

Field

Gen-101

Gen. Accident J.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F14198 Gnr HECKBERT J.R.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15 (1)	Guilty	Guilty	
2nd	AA 15 (1)	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1) GAH

(1. Insert sentence being served, or delete. If not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : To be imprisoned without hard labour, for two (2) years

(Sgd) ..... Judge Advocate, if any. GAH

4 June 45 Date awarded.

(Sgd) " Geo A Henderson " Major President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 750-761, KR Con 567-577. Acquittals require no confirmation and cannot be quashed : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : I confirm the findings but commute the sentence to read, "To undergo detention for one year and confirm the sentence as so commuted."

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) JSL

(1. AA 57A. Delete if not used.)

(Sgd) " J S Lind " Brig

Date 5 Jun 45

Commanding 3 CBR Gp

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F14198 Gnr Joseph Reuben HECKBERT 9 C.B.R.Bn.	6 Jun 45	" C L Nelson " Capt & Adjt 9 CBR Bn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5M-101

FIELD GENERAL COURT-MARTIAL

CPA98 (In lieu of AFA81, 40/F & B/1698 etc.) 4/38B

Convened by Order of Brig J S H Lind DSO Comd 3 CBRG dated 1 June 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F14198	Gnr		Joseph Reuben	HECKBERT	9 CBR Bn

CERTIFIED TRUE COPY

PROCEEDINGS REVIEWED D.J.A. 18 June 45 Can. Sec. 21 Army Gp.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) BELGIUM on (*date*) 4 June 45 GAH

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 33/56

A1. The President, Members, waiting Member, ~~JA, if any~~, and Offrs under instr, if any, assemble, and the Court is closed. GAH

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(2) GAH GAH

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1020 hours trial commences. GAH

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) GAH
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ GAH

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to ..... as interpreter ? Ans .....~~ GAH
~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....~~ GAH
~~The shorthand writer is sworn.(1)~~ GAH

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	G A Henderson	HQ 3 CBRG
Member	Capt	RH Taber	HQ 3 CBRG
Member	Lt	J A Gunn-Fowlie	9 CBR Bn
~~Judge Advocate~~			
Prosecutor	Lt	M N Joubert	9 CBR Bn
Defending Offr	Lt	R H Williams	9 CBR Bn

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See D1 p 2.)

A8. The accused F14198 Gnr Heckbert J.R. before arraignment make(s) (no) ~~plea~~ plea GAH (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and findings are recorded per Notes. For forms of record see references in fns to RoP concd. Insert in All cases and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule. GAH

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B GAH

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2) GAH

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO (5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~ G A H

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1) GAH

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex L, initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded **NOT GUILTY** the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1) GAH

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans..... Do you intend to call witnesses on your behalf ?

Ans..... Are they witnesses as to character only ? Ans.....

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF AFB. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 66(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42. 103(m).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans NO

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 44 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex II and Ex III respectively.(3) AP 4

(1. AFB 355 or AFB 296. 2. MFM 6. 3. RP 44, KR Can 558. If above documents not produced, see RP 44 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes (2) AP 4

(1. RP 37(C), 66(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1) GAH

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)

(1. When several accused tried conjunctly see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 66. As to sentences see AA 64, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 64(1E), 68(1), KR Can 564. 2. RP 50. As to release from arrest, see Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

3/17 MFM 6
(AFB 122)
40(P&S/136 (5418

No. F14198 Name HECKBERT J R | Sqn, Battery, or Company | Corps RCA | Date of enlistment | GC Badges | Service or Proficiency Pay | Character

Period not reckoning towards freedom from extra fine | Sheet No. Temporary | Signature OC Company, etc

Date of last entry in Company Conduct Sheet: Place	Date of offence	Rank	No. and date of last drunk: Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				ORIGINAL MFM 7 NOT AVAILABLE TOS 9 CBR Bn 30 Mar 45			Ex III	GAH	

Certified a true copy taken from Regimental Books in my custody.
" C L Nelson "
(C L Nelson) Capt & Adjt
HQ 9 Bn 3 C.B.R.Gp.

(PTO)

MFM 6
(AFB 122)
40/P&S/136 (3438)

No F 14198 Name Heckbert J.R. Gnr | Sqn, Battery or Company | Corps X-4 RCA Med | Date of enlistment | GC Badges | Service or Proficiency Pay | Character

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	15-2-45	Gnr		AA 15 (1) Extract from his MFM 4 at 2 Bch. CMH Ref 21 Sent Coy 3 B.R.B.		7 days C.B. 2	days pay		

(FTO

CHARGE SHEET

The accused, F-14198 Gnr Joseph Reuben BECKBERT, on strength 27 Coy, 9 Bn, 3 C.B.R.Gp, a soldier in the Canadian Army Overseas, is charged with:-

FIRST CHARGE
A.A.Sec.15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the field, did absent himself without leave from 1315 hours 31 Mar 45 until apprehended at 1800 hours 14 Apr 45.
Absent 14 days, 4 hours and 45 minutes.

SECOND CHARGE
A.A.Sec.15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the field, while under open arrest, did absent himself without leave from 0915 hours 23 Apr 45 until apprehended at 1145 hrs 28 May 45.
Absent 35 days, 2 hours and 30 minutes.

(J. Henry Carson), Lt.-Col.,
Commanding,
HQ 9 Bn, 3 C.B.R.Gp.

In the Field
30 May 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

" J S Lind "
(J S H Lind) Brig
Comd
3 Cdn Base Rft Gp

In the Field
1 Jun 45.

" Geo A Henderson " Major

GAH

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 339.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
F.14198	Gnr		Joseph Reuben	BECKERT	9 CHR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 1 Jun 45 endorsed by me, (~~or by an offr of my staff for me~~); "To be tried by Field General Court-Martial". JSL

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~) JSL

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ JSL

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate the next the Offr mentioned hereunder.~~ JSL

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	G.A. HENDERSON	HQ 3 CHR Gp

MEMBERS.

Capt	R.H. TABER	HQ 3 CHR Gp
Capt or Lt (Rank.)	To be detailed by CO 9 CHR Bn (Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Capt or Lt (Rank.)	To be detailed by CO 9 CHR Bn (Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.) " J S Lind " (Signed personally. RP 105 fn 2.) Brig (Rank.)

(J S E Lind)

Dat Jun 45 Commanding 3 Cdn Base Sub Area

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 96 (In lieu of AFA 3) 40/F & S/1891 (6143)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 93(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 93(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 80(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 565(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS R, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 93(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE (ER(Can) Para 557) GAH

I certify that I have this day examined F14198

Gnr Heckbert J R and in my opinion he is fit~~xxxxx~~ to undergo trial by Court Martial.

Station Field

Date 4 June 45

" F G Palanek " Capt
Medical Officer

9 Bn 3 C.B.R.G.
Unit

EX 12
GAH

PLEA IN MITIGATION

Mon 4 June 45

F14198 Gnr Joseph Reuben HECKBERT

Service

2 Sept 39 joined 1 Med Regt RCA at Charlottetown PEI
9 Feb 40 landed in England
Served as driver mech.
Went with 1 Med RCA to Sicily and Italy. In Jan 45 he became sick and left his Regt.

After passing through hospital convalescent camp and holding unit in Italy he came to this unit (9 Bn). It will be seen that during this period of long and faithful service his crime sheet is clear. His last leave was nearly two years ago. Since leaving convalescent depot in Feb 45. Gnr Heckbert has had no mail from home. This lack of news has had to considerable worry because of the situation existing in his family.

He himself is married and has three children, his sister, a married woman with four small children has lost her husband at sea. She is at present almost completely dependent on her family for support.

Gnr Heckbert's mother is dead and his father's advancing age makes proper support of the family difficult.

Already the family farm has been lost though these financial troubles.

His actions can not be excused on these grounds, but it is only proper that due consideration be given these factors contributing to what might otherwise be termed on irresponsible failure of duty.

On the whole Gnr Heckbert has served his country well.

" R H Williams " Lt RCA
Defending Officer

EX I

6 A 4

SUMMARY OF EVIDENCE

In the case of F-14198 Gnr Hookbert, J.R., on the strength of 27 Coy, 9 Bn, 3 C.B.R.Gp, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS — Documentary.

The certified Part II Order Extract form, produced as documentary evidence, was read over to the accused, marked Exhibit "A", signed by me and attached hereto.

L.H.J. Smith, Lieut
Officer detailed to take the Summary of Evidence

SECOND WITNESS — Documentary.

The certified true extract of Part II Orders, produced as documentary evidence, was read over to the accused, marked Exhibit "B", signed by me and attached hereto.

L.H.J. Smith, Lieut
Officer detailed to take the Summary of Evidence

THIRD WITNESS — Documentary.

The Certificate of Apprehension, produced as documentary evidence, was read over to the accused, marked Exhibit "C", signed by me and attached hereto.

L.H.J. Smith, Lieut
Officer detailed to take the Summary of Evidence

The accused was cautioned as follows:

Q. Do you wish to make any statement or give any evidence on oath? You are not obliged to say anything or give any evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I do not wish to make a statement.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence of the accused and that Rules of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

L.H.J. Smith, Lieut
Officer detailed to take the Summary of Evidence

In the Field
30 May 45

Certified a true copy of original Summary of Evidence.

(C.L. Nelson), Capt & Adjt, 9 CBR

PART II ORDER EXTRACT FORM

19

EXTRACTS FROM: Unit X List Royal Canadian Artillery (Section B)
Part II Order No. 446 dated 25 Apr.45

5. ABSENT WITHOUT LEAVE
(a) A.W.L. from 1315 hrs 31 MAR 45 Returned from AWL AT 1300 hrs 14 Apr 45 (X-4 List 9 Bn)
F14198 Gnr HECKBERT J R

Certified to be a true extract from the regimental books and documents in my custody.

(C. L. Nelson), Captain,
Adjutant,
9 Bn, 2 C.B.R.Gp.

"This is Exhibit "A" referred to in the Summary of Evidence in the case of F 14198 Gnr. HECKBERT J.R., taken before me this 30th day of May 1945.

(L.R.J. Smith) Lieut.,
Officer detailed to take the
Summary of Evidence.

PART II ORDER EXTRACT FROM

19

EXTRACTS FROM: Unit X List RCA (Section B)

Part II Order No. 55 dated 17 May 45

6. ABSENT WITHOUT LEAVE.

(a) AWL from 0915 hrs 23 Apr 45. Still absent 0915 hrs 1 May 45 (8th day)

F14198 Gnr Heckbert, J.R. (X-4 List 9 Bn)

Certified to be a true extract from the regimental books and documents in my custody.

(C. L. Nelson), Captain,
Adjutant,
9 Bn, 2 C.B.R.Gp.

"This is Exhibit "B" referred to in the Summary of Evidence in the case of F 14198 Gnr. HECKBERT J.R., taken before me this 30th day of May 1945.

(L.H.J. Smith) Lieut.,
Officer detailed to take
the Summary of Evidence.

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42

I CERTIFY THAT No F14198 Rank Gnr Name HECKBERT Joseph Reuben

Unit RCA 27 Coy 9 Bn 3 CBRG was arrested at GHENT (Place)

at 1145 (hour) on 28 May 45 (date) and that at the time of his arrest he was wearing (military uniform) xxxxxxxxxxxxxxxxxxxxxx

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on arrest.

" J A Thomson "

(J A Thomson) Lt
O i/c SIS C Pro C
2 CBRG

This is exhibit "C" referred to in the Summary of Evidence in the case of F14198 Gnr HECKBERT J.R., taken before me this 30 day of May 1945.

" L H J Smith " Lieut
(L H J Smith) Lieut.,
Officer detailed to take the Summary of Evide

Ex II
GAH

Army Form B 296 (War)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For use at trials by Field General Courts-Martial only).

Number	Rank	Name	Regiment
F-14198	Gnr	Heckbert, J.R.	~~9 Bn, 3 C.B.R.Gp~~

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:

For ORIGINAL MFM 6 NOT AVAILABLE _____ Times

For _____ _____ Times

For _____ _____ Times

For _____ _____ Times

Date of first entry in Field Conduct Sheet _____

Date of last entry in Field Conduct Sheet _____

2. Previous convictions of the accused by a Court Martial or a civil court are set out in the Schedule overleaf.

3. ~~The sentence of the present trial is under confirmation for _____ yrs, _____ mths, _____ days.~~

4. The accused has been awaiting trial on the present charges for 10 days in civil custody; and for 17 days in military custody, i.e.; 9 days in open arrest, 8 days in close arrest; of which 9 were spent in hospital.

5. The present age of the accused is 32 yrs 11 mos

6. The date of his Attestation XXXXXXXXXXXXXXXXXXXXXXXXXXXX is 2 Sep 39

7. The service which the accused is allowed to reckon is ~~5 yrs 10 mos~~

8. The accused is in possession of: CVSM & Clasp

9. (The accused has served continuously, without reduction, to the present date-

	Date of Promotion
In the substantive rank of _____	_____
In the war substantive rank of _____	_____
In the acting rank of _____	_____

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of the court	Sentence or Punishment remitted

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 4 day of June 1945

(C.L. NELSON) Capt.
Adjt.
9 Bn. 3 C.B.H.G.

LIST OF EXHIBITS

in the case of

F-14198 Gnr Heckbert, J.R.

Exhibit "A" Certified true Extract of Part II Order No. 46, dated 25 Apr 45, showing commencement of absence on 14 Apr 45

Exhibit "B" Certified true Extract of Part II Order No. 55, dated 17 May 45, showing commencement of absence on 23 Apr 45.

Exhibit "C" Certificate of Apprehension, showing termination of absence on 28 May 45

LIST OF WITNESSES

in the case of

F-14198 Gnr. Heckbert, J.R.

For the prosecution: NIL

For the defence: NIL

521-44
6 fn. Hedstrom, E.L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K-75516 Cfn Hedstrom, Einar, Axel 7 Cdn Lt Rec Sec RCEME

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 19(4)	Not Guilty	Guilty	
2nd AA 40(Alt)	Not Guilty	Not Guilty	
3rd			----------"E A"
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

Al [illegible] (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 27 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for nine (9) months

(Sgd) "E B Bull" Major — 28 Sep 45 — (Sgd) "J V Emory" Maj r
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 56. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be [illegible] (1. KR 576. Delete if not used.)

(Sgd) "L G Clarke" Brigadier
Date 30 Sep 45 (L G Clarke) Brigadier
Commanding RCA 3 Cdn Inf Div (Offg)
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
K-75516 Cfn Einar Axel Hedstrom	2 Oct 45	"J E A Thomas Lieut." OC No 7 Cdn Lt Recovery Sec RCEME

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

(PAGE 1 to line 37 of AFRAS 40/J & S/1608 AMEND)

4/188

Convened by Order of Brig L G Clarke Com RCA 3 Cdn Inf Div 21 Sep 45.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-75516	Cfn	Einar Axel	HEDSTROM	7 Cdn Lt Rec Sec RCEME

Certified true Copy

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date) 26, 27, 28 Sep 45 "EBB"

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 37/244

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 895, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and "EBB" each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences. "EBB"

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(2) [illegible] "EBB" summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Mr Rouse Van Hook as interpreter? Ans No

The Interpreter is sworn.(2) [illegible] "EBB"

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(2) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J V Emory	15 Cdn Fd Regt RCA
Member	Capt	W E S Harpe	19 Cdn Army Fd Regt RCA
Member	Capt	G E A Hamma	Regina Rifles
Judge-Advocate	Major	E B Bull	HQ 3 Cdn Inf Div
Prosecutor	Lieut	W H Pigmiter	3 Cdn Inf Div Sigs RC Sigs
Defending Offr	Capt	G A Patterson	19 Cdn Army Fd Regt RCA

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (2) and fn 2 were not followed. See Div p 3.)

A8. The accused [illegible] before arraignment make(s) (no) plea(s) "EBB"

(1) (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does [illegible] not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 896 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB 160 F II p 80

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 8 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

(3). The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (~~XX~~ opening address.(1) "EBB"
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the first & second charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the first & second charge(s), ~~and allowed on the~~ charge(s), and that, accordingly, the trial will proceed on ~~the remainder, and the Court is now closed to consider~~ "EBB" ~~the said charge(s).~~
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans I will make a statement Do you intend to call witnesses on your behalf ?
Ans No ~~Are you represented by Counsel or Defending Officer~~ "EBB"
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(b).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened. "EBB"
(*1. RP 41, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the First charge(s), being subject to confirmation, will be promulgated later.(1) "EBB"
~~You are now convicted and the Court proceeds to consider the sentence.~~ "EBB"
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true "EBB" copy ~~XXXX~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for "EBB" examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and "EBB" marked Ex B and Ex C respectively.(3)
(*1. MFB 155 or AFB 296. 2. Make 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in "EBB" mitigation of punishment ?(1) Ans Yes, through my Defending Officer (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1) of Sentence (RP 71 D)
(*1. AA 56(6), RP 120(A).*) x The Court postpones until 28 Sep 45 the Consideration

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 162, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas AO 309, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41 (2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 52. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFICER'S CERTIFICATE

(KR(Can)Para 567)

I certify that I have this day examined K-75516 Cfn

Headstrom, E.A. and in my opinion he is fit/~~unfit~~ to "KAF"

undergo trial by Court Martial.

Station

Date 26 Sept 45

"K.A. Fraser" (Sgd)
Capt RCAMC

MEDICAL OFFICER'S CERTIFICATE

(KR(Can)Para 557)

I certify that I have this day examined K-75516 Cfn

Hedstrom, E.A. and in my opinion he is fit "XAF" to

undergo trial by Court Martial.

Station

"K.A. Fraser"
Capt RCAMC (Sgd)

Date 27 Sept 45

Unit

"EBH"

CHARGE SHEET

The accused, K-75516 Cfn Hedstrom, Einar Axel, 7 Canadian Light Recovery Section RCEME, a soldier of the Canadian Army Overseas, is charged with :-

First Charge
Sec 14(4)
Army Act

WHEN ON ACTIVE SERVICE, STEALING PUBLIC PROPERTY

in that he

In the field in the Netherlands between 28 Aug 45 and 1 Sept 45 stole a Chevrolet 60 Cwt Lorry WD No. 5927 01 public property from 5 Canadian Armoured Troops Workshop, R.C.E.M.E.

Second Charge
(Alternative)
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the field in the Netherlands on 31 Aug 45 was improperly in possession of the Chevrolet Lorry above mentioned in the first charge

In the Field
14 Sept 45

* A.W. Pierce * Lt
(A.W. Pierce) Lt
A/OC 7 Cdn Lt Rec Sec
R.C.E.M.E.
Canadian Army Overseas

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
21 Sept 45

* L.G. Clarke *
(L.G. Clarke) Brigadier
CRA 3 Cdn Inf Div (Offg)

Approved under
KR (Can) 540
E.B. Bull A.J
DJA @ 3 Cdn Inf Div

"658"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-75516	Cfn		Einer Axel	HEDSTROM	7 Canadian Light Recovery Section RCEME

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 21 Sep 45 endorsed by me, (as "LOC" on my own staff for the) "LOC" To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified auth.) "LOC"

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) [illegible] to the Court, (b) a Fd Offr as President, for the reasons stated hereto. "LOC"

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	J.Y. Emery		13 Cdn Fd Regt RCA

MEMBERS.

A Captian of and to be detailed by OC 19 Cdn Army Fd Regt RCA

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	G.E.A. Harman	Regina Rifles

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieutenant	F.W. White	1 C Scot R

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Major	E.B. Bull	Hq 3 Cdn Inf Div (Cdn)

On Active Service in the Fd

in Holland (Country.)

"L.G. Clarke" (Signed personally RP 105 fn 2.) Brigadier (Rank.)

Date 21 Sep 45

(L.G. Clarke) Brigadier
Royal Canadian Artillery
Commanding 3 Cdn Inf Div (Cdn) Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAES (In lieu of AFAT 4001) (See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (*or*, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".
RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:
(i) Opening address by Defending Offr. (*RP 95(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 80.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(v) Closing address (on *matters other than* in *mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)
(vii) Summing up by JA, if any. (*RP 62.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:
(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 105, 107, 114.
(iii) Medical Certificate(s). (*KR Can 567.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Opening Address by Pros.

I wish to state some of facts I will endeavor to prove:

1. Accused som time between 28 Aug 45 and 1 Sep 45 took or helped take a lorry from 5 CAT Wksp without authority, and that he then helped to take lorry to Hague where he attempted to dispose of truck.

2. The truck was found in the yard of civilian in Hague and accused identified as man who placed it there.

"NMP"

for the PROSECUTION
First Witness/Supervisor T H Bullock Aux Ser 5 CAT Wksp RCEME having been duly sworn is examined by the prosecutor:-

I am as above. I had occasion to turn in my 60 cwt lorry to 5 CAT Wksp for repair on 29 Aug 45. The no of the veh is ending in No 801, but I forget the first 4 nos. The truck I have now is the one that I put in Wksp. I went back to wksp to look fot truck after putting it in wksp on 3 Sep 45. I looked for it thro shop and looked everywhere in general. I couldn't locate it. Next morning I reported to control Office and I checked and it wasn't there. My Corp Cpl Snider, is the dvr-- he is the only dvr of veh at no time did I give authy to any one to remove veh from 5 CAT wksp. I next saw veh on Monday this week. ie 24 Sep 45. I saw it back in shop. At no time before 24 Sep was veh there in 5 CAT wksp to my knowledge.

No XX

JA. There is a generator attached in the back of th veh.

Capt D C Little Control Offr 5 CAT Wksp RCEme
Second witness for the PROSECUTION/ been duly sworn is examined by the Prosecutor.

I am as above. I am wksp Control Offr. I am i/c of all vehs coming into wksp for repair. WD Veh No. 5927801 was brought into wksp for mech repair on 29 Aug 45. Repairs were made on 30 Aug 45. The normal procedure is when a veh is repaired it is put in completed veh park to be picked up by the unit. The veh was put in this park on Morning of 31 Aug 45. The unit concerned did not come to pick it pu. On a report being made on morning of 4 Sep 45, I made a search of the unit lines and the veh was not there. I had other men search Arty lines but without result. I know veh was brought back 24 Sep 45 or 25 Sep . It was brought from Helversum from #3 Cdn Pro Coy. When vhh is repaired, the person taking it away must sign work card before it can go. It is possible for someone with a wrecker to come in park and tow veh out Recovery vehs are not checked at gate normally, because they are in and out all day.

XX First time I knew veh was missing was 4 Sep 45. It is quite possible for anyone with a [illegible] to drive in and tow it out. Recovery veh never takes a completed veh out. Recovery vehs wouldn't take completed veh. There is a check on completed vehs going out. The only way a 3 tonner could get out would be suspended on a recovery veh or with a "On test" sign driven by one of our own NCO's. In compound of that size possible for wrecker to go up to a completed veh and suspend it without anybody knowing it. The picket on the gate of whole compound not on gate of completed veh park.

Court. There is no fence between completed veh park and other parts. Vehs wether completed or backloaded would go out same gate. I gave no authority for this veh to leave the Part at all. All come out same gate.

R P 83(B) complied with.

Third Witness for the PROSECUTION Lieut J E A Thomas 2 Cdn Lt Rec Sec RCEME having been duly sworn is examined by the prosecutor:
(Notice given to acc) (No objection to witness)

I have 8 breakdown vehs in my sec. 7 Cdn Lt Rec Sec Cfn Young HA is one of the drivers. of one of my breakdown vehs. The acc is a co-driver. This is a work ticket for Cfn Young's veh. Breakdown No. CH 4246259 Either I or my 2 i/c Mr. Piercy sign the work ticket. The veh was not authorized for use on 31 Aug 45. There is an entry but no signature and so not authorized.

Work ticket referred to by witness produced to Ct and marked exhibit "A" and initialled by Pres.

On 31 Aug 45, there were no vehs sent out on recovery work. No veh was authorized to go to 5 GAT wksp I did not look for Young's veh or know it was away that day, ie 31 Aug 45.

No XX

Court. It is possible for someone to take a breakdown out without someone seeing them.

JA Acc was co-driver with Young on occasion but I don't know if he was on 31 Aug 45 or not. They shift around. Normally he was co-driver with Young. There must be two men on wrecker Should be two men who can drive, but maybe one doesn't. Need two to do the work. The acc is a co-driver.

RP 83(B) complied with.

Fourth Witness for the PROSECUTION F de Bruyn Buygenspark #6 The Hague having been duly sworn is examined by the prosecutor.

I am as above. At end of Aug 45 I had occasion to put two Canadian soldiers in the Hague. This was about 23 or 24, 25 or 26 Aug 45. It was during last week of Aug. I met them in Polly Bar Cafe, Wagenstraat in Hague. The accused is one of these two soldiers (indicates acc. I asked the two soldiers if they could sell any tires for my truck and then the accused said he was a mchanic I referred to acc as Andy. He told me his name was Andy. The acc said I can supply you with a whole truck next week. He asked me what price was of truck. I said "5 or 6 thousand guilders". There was no further conversation that day. I next saw accused on Friday 31 Aug when he brought the truck It was the Queens birthday. I was at corner of Groneweg and Wagenstraat when I saw accused that day. I was standing on street. The accused came walking up. He was with another soldier One of them said "I have brought a truck for you." Then we went together the 3 of us, to the truck, which was 300 metres away along the canal. It was about 230 or 3 pm. The truck was behind a recovery truck. It was handing to recovery truck, just back wheels on ground, the others were suspended. I was interested in buying truck. It was understood that I was going to buy the truck. I don't remember if anybody said "This is the truck or not". Then we went with two trucks to 170 C Zuid Oose Buitensingel. I was in recovery truck The accused was in cab with me. Harry was driving the recovery. The accused was not driving. The other truck was towed to above address. We went to that address because it was an acquaintance of mine. A week before I went to that adress and asked if I had a veh, if I could leave it there. We towed tuck to front of house. There the truck was unhitched The colored soldier unhitched the truck and the accused drove it into the back yard through an archway. There was nobody with him when he drove it into back. Then we went [redacted] the three of us went to Zukske near the bridge on Wagenstraat where we left the recovery truck. We left other truck in back yard and three of us drove in Recovery truck. The two Canadian soldiers one being accused was with me in recovery truck. After getting out of recovery truck we, three walked to "Het Wapen Van Dordrecht". We went inside and 2 soldiers sat down at table and I stood and ordered the beer.

One of the soldiers had asked for money when I saw him first that day He asked for money on the corner where I met them before I saw the truck. I did not sit down nm I gave money for payment of truck I gave him the money because I thought that If I sold the truck I would deduct the 700 Guilders I gave 700 Guilders. I was going to sell the truck. I gave the 700 Guilders to the accused. He didn't notice what he did with money. He took the money from me. He said he would come back the next day at 5 pm. That is the accused said that. He said it would be back for settlement of the payment of hte truck. I was going to try to sell it, and I would settle the affair next day at 5 pm I would give the money to tne soldiers. I was to meet them at the Polly Bar. Then I went toMr. Van der Pol in Schevinger and asked him to buy the truck. Then Van der Pol went with me to look at the truck, where we had left truck and the police were there and Canadian police and I was arrested. I was taken to Cdn Provost HQ There were about 4 Cdn soldiers there. I went back to Prov HQ next day, and there I identified the two soldiers ie the accused and the other soldier. There is no doubt that the accused is the man who took the700 Guilders. There was no other man in deal about truck. A man named Zanderbergen had nothing to do with it. He is an acquaintance of mine. On Friday on noontime I had dinner mmm at his house. I am a driver of a delivery truck. I drive for anybody. I have not been convicted of any crime or been in jail.

XX

I met accused first approx 23 or 24 Aug. I can't remember what day. I think it was at end of week. I think it was Saturday or Sunday. I don't remember exact date. I do think it was end of week. It must have been the last week of Aug. Isaw a recovery truck. I only saw a star on front. It was a big recovery veh. I couldn't identify recovery veh. I couldn't identify other veh. I didnt see any nos of signs on it. 170c Buitensicil St is where De Jorges Live. They are not friends of mine, but I have had some business with them. They areacquaintances. I was apprehended on Friday 31 Aug by civilian police. I was taken to Cdn Pro HQ. They took a statement from me there and then I was taken to police HQ at Alexander plat. A Cdn Pro took the statement from me. Next day I came back to Cdn HQ Pro When I went there I was asked to identify somebody. There were four of five there. I can't tell for sure, maybe six. The Pro asked me if I knew any of them, and I said yes. mmm The people there were Dutch police and soldiers, there were 4 or 5 or 6 Canadian soldiers. 3 or 4 Cdn soldiers had tunics on. One of them was in shirt sleeves. I did not know person in shirt sleeves. I identified the two I did business with. That is only place I saw accused on Saturday. After I left Pro HQ I went to Dutch gaol. I saw 2 Cdn soldiers on Polly Bar on approx 23 or 24 Aug. I asked them if they had tires to sell. I understood I was doing wrong. I am being charged. I am out on bail. I have never been in trouble before, never been in jail before. Never been arrested for speeding. I was in gaol when statement was made. I know man called Zanderbergen He is a good friend of mine. He is a business relation, He is a business relation rather than friend.

Court

I was at corner of Grenweg andWagenstraat when I saw accused on Friday. I knew he was coming but it was not an appt. He told me was coming Tues Wed Thurs or Fri. My house is in the neighbourhood I didn't go there to meet him. He said he would meet me either in the Polly Bar or Wagen van Dordiert. When I met accused at corner it was by accident. I had arranged a meeting in either ofthe cafes. SA.

I did'nt look in back of truck that was being towed at first. I looked in after it was put in back yar. An engine was in it.

RP 83(B) complied with.

Fifth Witness for the PROSECUTION : Mrs. C Zanderbergen Berkestraat 36 The Hague, having been duly sworn is examined by the prosecutor:-

I am as above. I know Fransicus De Buyn. He is a busi gee relation At end of Aug 45, I saw De Buyn in a cafe with 2 Can soldiers. I recogn[illegible] the accused (indicating) I saw acc in a cafe in Wagenstraat in the Hague. The cafe was the Polly Bar. The acc was with another soldier This was Sumday before 31 Aug 45. The soldiers were drinking a glass of beer and talking to Fransiscus Ole Buyn. I was about a metre away. The convsesation was partly Dutch and English. I heard some of the conversation. I heard something about 5 or 6 thousand guilders. I dont understant English. De Buyn said "if it is a good car 5 or 6 thousand guilders I heard nothing further. I was not in conversation at all. I had nothing to do with the transaction. That is all I heard. De Buyn was talking to 2 soldiers about 1 hr. I was there all the time. De Buyn and I went away. I dont know where soldiers went. I was not interested in talk of car at all. I next saw accused on Friday 31 Aug 45 in afternoon. It was Queens Birthday. I saw accused near the Wagenstraat I saw him talking to De Buyn. The other soldier was there I was not in conversation. I was in the house in front of which veh was parked. De Buyn came up to me and said dome thing. Later in afternoon I saw accused in Polly Bar cafe. The two soldiers were sitting in cafe. They were alone. I went up and told them that truck was taken aw ay. After conversation at hedge between soldiers and De Buyn. I took De Buyn's truck to the cafe Wapen Van Datrecht, where De Bryn lives. This was De Buyn's own car. I went inside cafe and stayed there. I played billiards Then after about 10 mins. De Buyn and the accused and the other soldier caem in. They had a glass of beer and De Buyn gave money to accused. I was about 2 metres away. I couldn't see if large or small amount of monty. I can't decribe money. but most of it was small notes. I cant tell how many there were. De Buyh counted the money. Accused put money in pocket. They 2 soldiers went awsy. I didn(t hear any conversation at table. I saw accused again in the afternoon the same day. in the Polly Bar. I saw them having a glass of beer. I say them next day Saturday, in the Wagenstraat. Schutchof, was with me, Also some soldiers. I was walki g up and dwon the street to see if I saw the Can soldiers ie the accused and other. I saw acc in Wagenstraat Identified soldiers to Schouloff by pointing them out. I was 3 or 4 metres away at this time. There were 3 other soldiers about at that time. I identified acc myself by pointing him out.

XX.

I saw accused in neighbourhood of 25 Aug 45. It is correct I saw accused on Sunday preceeding Queens birthday. I didn't stated in my statement that I saw accused at this time. I don't know if they asked me ie the person who took the statement from me. I was questioned. I can swear I saw accused on 25 Aug 45 if 25 Aug is Sunday preceding 31 Aug. I saw him in Polly Bay. De Buyn doesn't speak English. Maye a few words. The accused didn't speak Dutch. De Buyn only one spoke Dutch. De Buyn said about 5 ot 6 thousand guilders. I dont know exactly what he said. On 31st I [illegible] took De Buyns truck back to hotel Dotrecht and this is where I saw De Buyb later on. The next day I was in Coy of Police. about 5 o'clock. The accused was on street. Schoutoof was with me. Nobody else was with us. We were waiting bout 1 hour. Then soldiers came along. I know where Cafe Metro is it is about acroos from Polly Bar. We went into Metro. They went into Metro. I saw them in Wagenstraat, and saw them go out Cafe Metro and inside I pointed them out to Schutoff. I also pointed them out on Wagenstraat. Inside Metro I had to point them out in there. When we went i sider Metro there were soldiers with us. After pointing out accused. I went away.

Court.

I was walking up and down Wagenstraat with Schouloff. I saw the 2 soldiers and pointed them out to Schoutoff. Then accused then went in Metro and Can Fro and Schoutoff and I went into Cafe and I pointed them out again.

RP 83(B) complied with.

Sixth Witness for the PROSECUTION K-45561 Pte (L/Cpl) J C Kallenberger #3 Cdn Pro Coy duly sworn is examined by the prosecutor.

I am as above. I am stationed in the Hague. In view of infm recd at 1625 hrs 31 Aug 45 I proceeded with two civilian police to 170c Bitenszi in the Hague. I observed a 60 cwt in back yard of this address. The veh was 5927801. It was a 60 cwt Chev. It was an army veh WE property I waited by veh for somebody to come. Two civilians came back, one was De Buyn and the other was Zandbergen. I did nothing further that day. On the follwowing day at approx 1700 hrs 1 Sep 45 I proceeded to Polly Bar in company with 2 civ police Schouloff and Praamsta and Zandbergen We waited for wuite some time. I waited on street. Zandbergen and Schoutoff. I think tried to locate two Cdn soldiers. They wa ited around Polly Bar. I did not go out with them. They came back and said somethi g In view of infm rec'd went to Metro Bar. a short distance from Polly Bar. We entered Bar and Zandebergen identified 2 soldiers. He pointed out 2 soldiers, one colored and one taller one. The acc is one of the men pointed out. I asked the soldiers to come down to HQ. I did not place them under arrest. They came. At HQ, De Buy was brought down and when he came in. I asked him if he knew soldiers or not. There were maybe 2 or 3 other lads there. approx 5 soldiers on room altogthere. I asked De Buyn if he knew soldiers. He said yes. He pointed out dark colored lad as being the driver going by name of Harry, and the other lad white, as a mechanic going by name of Andy. There was one soldier no acc in shirt sleeves, and others in battle dress. The accused and other soldier were on couch together. De Buyn might have looked around room first. I didn't ttake De Buyn in as an identification parade. I just asked him if he recognized these two men.

XX.

I did not see any recovery truck on Friday or Saturday. Not usual to conduct an identification parade in this manner. I just asked De Buyn if he knew these two men. I might have looked at them and he followed my look. In identifiaction parade you bring in several soldiers usually. I didn't line anyone up. I didn't follow usual procedure. One acc is colored. No other colored person there. I accompanied an offr and acc when summary was being taken. DeJonys came down to our HQ. There were 10 or 11 soldiers lined up in presence of offr. taking Summary. Not lined up but lounging around room. Then Mrs. De Jong was brought into room. She identified accused. not first time she came in. She only came in once. It took her ½ minute or so to identify acc. I don't know what she said. At first she kind of stated he wasn't in room and then she looked around and said he was. She had a little time to look about room. The colored chap was not in room at time. There weren't any other colored chaps around to get. I wasn't with Zandbergen Policeman all the time on Wagenstraat. I was present when identification was made in Metro Bar. Mr. De Jong didn't attempt to identify accused. De Buyn kind of gave me a rough idea of how they looked. About Young he described as about medium built, then thin face. He did say he had a moustache. He identified Bedstrum about built and features - no particular feature or characteristic. No identifiaction was held in usual identification parade. I searched the acc next day. There was no large sum of money.
Young had a few guilders.

Re-Exam.

I was inside Metro Cafe when Zandbergen identified acc and young in Metro Bar. There were several other soldiers there also there was another colored soldier in Metro Zandbergen just walked in and pointed out acc and other.

R P 83(B) complied with.

Seventh Witness for the PROSECUTION Jan Schoytof, Ploice Det. The Hague having been duly sworn is examined the prosecutor:-

I am as above. I am detective of the police in the Hague. As a result of infm received, on afternoon of 31 Aug 45 about 3 pm, I saw a fellow detective of mine and we went together to 170c Buitensingel and saw there a big Canadian truck with a maple leafe on it. Then we went to Provost. Before we went to Can Pro we went to see owner of yard, named De Jonge. We went to Pro and got assistance of 2 Pro and went back to yard. We waited there and after ½ hr I went away together with one of Pro. The other detective and one Pro stayed there. De Bruyn was arrested that afternoon. I was with Zandberger thenext afternoon in the Wagenstraat walking up and down to give him an opportunity to find two soldiers. Also there were one pro and 1 det in a veh. We walked up and down Zandebergen identified someone, he identified two soldiers, He was 10 or 12 metres away. The two soldiers went into Metro Bar. When he first identified them they were in street. Then I stood beside door and gave sign to police in car and then I went in followed by Pro and other detective and Zandbergen. Inside, Zandebergen identified two soldiers. The accused is one of the soldiers. (pointing) There were approx 6 or 7 soldiers in cafe.

No XX

JA.

The soldiers identified by Zandebergen in cafe were same soldiers as he identified in street.

Eighth Witness for the Prosecution. Mr. J M de Jonge. 170c Buitensingel The Hague, being duly sworn is examined by the prosecutor.

I am as above Between 1500 hrs 31 Aug 45 a veh was parked before the gate leading to my yard. There were two trucks, one was a recovery truck the other a chevrolet truck. The same truck behind the recovery truck was lifed ½ metre from ground. There were two soldiers with the trucks. The acc is one of the two soldiers at truck. (pointing) The soldiers were busy unhitching the second truck. The trucks were separated Then I went away for a out ½ hr to 1 hr. When I came back I went upstairs I saw a truck parked in the yard. the same truck as I saw before. It was alone in yard, no one was there. I told the police. I know De Bruyn I was standing beside trucks outside house a out 5 minutes. I was a few metres away. I next saw accused on a Thursday after 31 Aug 45 at Pro HQ where a statement was read to me. I saw soldiers there - about five.

XX.

There were nos on the veh. I dont know what they were. There were no numbers on the Chev truck after 31 Aug 45. I was told to go to Pro HQ. I was asked to identify soldiers. There were 5 there. There were two at table. 2 were sitting in corner and a 5th was on a kind of a chesterfield. Nobody pointed to any soldiers. They asked me if I knew anybody.

(R P 83(B) complied with.

Ninth Witness for the Prosecution. Johanna Martina de Jonge 170c Bultensingel. The Hague, being sworn id examined by Prosecutor.

I am as above. I am wife of last witness, about 3 o'clock 31 Aug 45 I haard a veh. I went out and saw a military veh and 2 soldiers and Mr De Buyn. The veh had stopped and asked De Buyn what he wanted. I saw the two soldiers in the yard. I was one or one and a half metres away. I wasn't talking to them. I saw them for one second. I coyld recognize the soldiers if I saw them. I recognize the acc as one of soldiers (pointing) I was down at Pro HQ later, but I can't tell date I can't say how long after. I don't know how many soldiers were there I identified two soldiers there. I identified acc used there that day.

XX.

When I was brought into room at Pro HQ I only saw other soldier there I was taken to a room where only one was there. When I first taken to room I don't know how many soldiers were there, because I had to leave right afterwards. When I came in I saw soldiers standing in a line Then I was taken out and them I was brought back. in, I don't know how many soldiers were in the room. There were more then five. When asked if I knew anybody there, first I said no, because I didn't recognize anybody. I was then asked again and I said "yes" I am sure I said yes the second time. I was asked.

R P 83(B) complied with.

Motion of No Prima Facie Case by Defending Offr.

1. No evidence of recovery veh ever missing from 7 Lt Rec Sec. No identificat on of recovery veh in whole case.

2. No evidenc e that acc was absent from lines on 31 Aug 45.

3. Whole method of identifiaction stinks. Original identifaction at time ofSummary. If proper identification had been carried out, no particular point. Evidence improper identification was held. evidence discussed. The accused lost all protection.

4. Evidence of De Buyn does make a case, but he is a n accomplice, therefore it must be very carfuly and accept it with great caution.

6 Evidence discussed.

Answer to by Prosecution

1. I agree if reasonable doubt it must be resolved if favor of accused At this pt Ct is not discerning whether accused is guilty or not, but whether or not there is a prima facie case.

2. Evidence reviewed. Accused identified as being present in Hague on 31 Aug 45 Zandbeger best evidence. saw accused several times-- (Discussed) De Buyn also identified definitely -- De Jonge and Mrs De Jonge also identify accused. admitt De Buyn an accomplice -- Zandebergen not an accomplice but corroborates De Buyn.

No reply by Def Offr.

The JA advised the Court as to meaning of submission ofDef Offr and principles involved.

at 1 745 hrs 26 Sep 45 the Court adjourns until 0930 hrs 27 Sep 45.
at 0930 hrs 27 Sep 45 theCourt reassembles present the same members as at 1745 hrs 26 Sep 45.

Statement by the accused K-75516 Cfn Hedstrom E A 7 Cdn Lt Rec Sec RCEME

In answer to the charges made against me I sates as follows:-

That I was never in possession of a Chevrolet 60 cwt Lorry WD No 5927801 and therefore am not guilty of stealing same or being improperly in possession of same.

That on the 31st day of August 1945 I was marked present on the roll call that day and was not absent from the lines of 7 Cdn Lt Rec Sec and therefore was not nor could I have been present in the Hague as alleged.

On the 1 Sep 1945 in company with Cfn Young I went to the Hague in a Liberty Truck supplied by our Unit. It was on this day that I first saw Franciscus de Bruyn and Cornelia Zandberger and only after I had been apprehended and taken into custody by 1/Cpl Kallenberger of the Cdn Provost Prior to that date I did not know these two men nor did I have any dealings with them.

I further state that the methods of identification used were most unjust any very slip-shod and not at all in the usual manner. That at no time when identifications wer being made was there more than four or five other Canadian soldiers present. I further state that when De Buyn was asked to identify young and myself, 1/Cpl Kallenberger pointed us out and asked "are these the men"? When Mrs De Jonge was brought to Provost HQ in The Hague to give evdience for the Summary of Evidance in this case she was brought into the same room in which only young and I were present then she was withdrawn and four or five more soldiers were brought i to the same room Mrs. de Jonge then came back into that room. Mrs.de Jonge then came back into that room and on being asked on two separate occasions if she knew anyone there she stated "I do not know".

I therefore submit that I am not guilty as charged and ask that I be acquitted by this court.

Signed 27th day of September 1945.

"E Hedstrom"

Argument presented on behalf of K-75516 Cfn Hedstrom E A 7 Cdn Lt Rec Sec RCEME.

In order to support a charge of theft it is absolutely necessary that the article stolen be strictly identified. The evidence in this trial does not in any respect prove that the accused was ever in possession of Chrvrolet 60 cwt Lorry WD No 5927801. Even admitting that the evidence for the prosecution is true (which is denied) the only fact proved is that a Canadian soldier was in possession of a Canadian Vehicle in a yard on a street in The Hague. No witness has been produced for the prosecution who in any way identifies this vehicle other than that it was a Canadian Truck - no WD numbers or Tactical signs are mentioned by any witness. The only witness who identified the vehicle is L/Cpl Kallenberger who locates a 60 cwt Lorry WD No. 5927801 in a certain yard in The Hague but the accused was not present and there is no evidence linking him with the vehicle identified by L/Cpl Kallenberger.

The prosecution has failed to produce a little of evidence that the accused was absent from his unit on or about the 24th or 25th of August nor is there any evidence that the accused was August absent from his unit on the 31st but on the contrary the accused states that he was marked present on the roll call that date and was in his unit's lines that day.

Evidence has been given for the prosecution that a recovery vehicle purportedly on charge to Cfn Young did not have a work-ticket signed for 31st Sep. This is inconsequential and has no bearing on the charge as no witness was produced to prove that a recovery vehicle was absent from the unit lines on the 31st September. Several witnesses say that they saw a recovery veh in The Hague but not one could identify it to the Court.

Capt Little, witness for the prosecution, states that the Chevrolet Lorry in question was not reported missing until Sep 4th and he also states that the only way a vehilce could be removed from the completed vehicle Part was by Means of signing a work order or by putting a sign on the vehicel "on test" He also states that a vehicle on two by a recovery vehcle without being checked. This latter statement is a bit difficult to understand simply because it would be senseless tohave a picquet unless he did check out going vehicles.

The whole process of identification of the accused on the taking of the Summary of Evidence has a disagreeable odour to it. The accused was never justly treated at anytime during this process. At no time were the usual methods of personel identification used, no parades or line-up of other Canadian soldiers were used. Witnesses giving evidence were merely called into a room in which the accused was present along with three or four other soldiers and was actually pointed out by hand or by glance to the person attempting to make the identification. Mrs. de Jonge a witness for the prosecution was unable toin two tries to identofy the accused. The only conclusion that can be reached is that the witnesses on the Summary of Evidence had no choice other than the accused and that when they (the witnesses) appeared at this trial they readily identified the accused simply because they had a splendid opportunity to see during the time they gave the evidence on the Summary and not because they recognized the accused as being the soldier they saw in possession of the MD vehicle purportedly stolen.

De Bruyn a star witness for the rprosecution was relied on to identify the accused as one of the soldiers. He had been dealing with. The evidence shows that De Bryn was an accomplice of the perons charged with stealing government property and therefore the Court must be very wary. It is as if a Red Light was suspended on this evidence and the Court is therefore obliged to receive such evidence with very great caution. Zandbergen is in exactly the same position as De Bruyn despite the fact that the prosecution attempted to establish that he was an independent character and had nothing to do with the attempted purchase of the stolen properlty. It is like saying that a man accompanying another man that robs a bank is not an accomplice even though he does not assist the other one in the robbery. Zandbergen was with De Buyn or close by during all negetiations. Therefore his evidence also must be treated by the court with great caution.

It is a principle of English Law that the accused is presumed to be innocent until he is proved guilty and that the burden of proff rests upon the prosecution unless, therefore, the guilt of the accused has been established beyond reasonable doubt, the accused must be acquitte as the prosectuion has failed to sustain adequately the burden of proving his guilty. Thus the prosecution must not only prove the accused guilty but is must prove the accused guilty beyond reasonable doubt. If there is any doubt as to the accused's guilt he must therefore be allowed to go free.

In this Court-Martial the prosecution has failed to prove the accused guilty beyond a reasonable doubt and therefore he must be acquitted.

Closing Address by Pros.

1. Repeat what I said on no prima facie case.

2. Rely on identification of De Bruyn, Zandbergen, and De Jonge and to some extent Mrs De Jonge.

3. Zandbergen identified accused from group of soldiers on street.

4. De Bruyn had no difficulaty in identifying accused De Bruyn had many opportunities to know accused. In cafe, on street, in veh in yard and in second cafe. Mr. De Jonge saw accused for some little time in yard and had no difficulty in identifying accused at HQ Pro Coy.

6. Accused waspresent with a 60 cwt in Hague. That is possession He drove it in to back yard. He also received money, showing principal in matter.

7. Identification of veh. Pro L/Cpl found a veh in backyard and gave no ~~evidence~~ which was missing veh.

8. Absent from lines - evidence to contrary in prosecution's witnesses who saw him in Hague

9. If reasonable doubt, agree should be acquitted.

10. Submit a case made out of guilty.

Summing up by J.A.

Function of J.A. & Ct respectively - J.A. to advise on law - Ct sole and only judges on fact - Ct to apply law to facts - Any expression of opinion of J.A. on facts to be disregarded - Ct sole judges of fact.

2. First charge read - Sec 18(4) read - essential ingredients of charge enumerated - (1) Stealing & (2) Property stolen public property.

3. Definition of stealing - MML p. 118 read - broken down to (a) taking (b) carrying away (c) without color or claim of right & fraudulently (d) object capable of being stolen (e) intent to permanently deprive owner at time of taking. Each discussed and examples given - MML p.119

4. Must satisfy Ct - Acc committed theft if a theft committed. Basis of defence in this case is not so much no theft, but who committed it.

5. Who can committ the offence - principals in 1st & 2nd degrees, accessorys before and after fact discussed & explained. Archbold p.724 - 1427 - 1429 referred to and extracts given.

6. Evidence discussed - no evidence acc actually stole veh as alleged in direct way - evidence that a veh was in fact stolen on 31 Aug 45 from 5 CAB wksp & opinion of offr i/c how a vehicle could be stolen from that place - evidence that acc was a co-driver on a wrecker at that time - no evidence acc was there & had opportunity to steal, but no evidence to contrary also - Evidence before CT that acc had possession & exercised dominion over stolen vehicle on the afternoon of the theft, made some deal with it & accepted money in relation to it - matter of credibility & fact in this case.

7. If Ct finds acc was in possession - actual or constructive, of veh in Hague & dealt with it as alleged, doctrine of recent possession may be applied - MML 124 read & explained.

8. Defence not an explanation of alleged possession, but denial completely of possession - mistaken identity or frame up.

9. Evidence of De Bruyn & Zandbergen discussed - De Bruyn is an accomplice & Zandbergen may be altho denied. Question of fact- corroberation required before convicting on evidence of accomplice - MML p.83 read & explained at length - Ct warned of danger.

10. Facts of possible corroboration discussed - identification & evidence of De Jonge & his wife.

11. Evidence of identification discussed & manner of same criticized, Ct warned to use caution in regard to identifications, but advised evidence can be accepted if clearly satisfied that Mr & Mrs De Jonge did in fact recognize the accused.

12. Circumstantial evidence discussed & MML p. 81 & 82 read and explained

13. Second charge read & explained - Necessary to prove possession in Acc. - Ct to decide on facts whether proper or improper. If improper must determine whether conduct to prejudice of both good order & military discipline. Same principles as set out before apply to this charge with exception that Ct not satisfied as to theft committed by accused or reasonable doubt of same. Cannot convict on both - "alternative charges "explained.

14. Credilibity of witnesses discussed - right of Ct to beleive a dis believe all a part of any witness - sole judges - demeaner etc.

16. Attn to be paid to defence of acc ' submissions of his Def offr. Also Pros not to be disregarded.

15. Must try case on evidence heard in this case & not outside or elsewhere etc.

17. Onus of proof - innocent until proved guilty - burden of proof on prosecution - duty of pros to prove guilty beyond all reasonable doubt,- principle of British Justice - Not all doubt, but all reasonable coubt - reasonable doubt defined & "business man's test" given. If Ct satisfied of innocence or reasonable doubt as to guilt MUST acquit.

18. Mr. Pres are there any further matters upon which you wish me to advise the Ct. Ans. NO

Mr. Pros. Same question - Ans. NO

Mr. Def.Offr. Same question - Ans NO

"EE"

STATEMENT IN MITIGATION

1) Reason is not producing character evidence is new to unit & cannot locate anybody not repatriated.

2) Conduct sheets good - been a good soldier.

3) He was a L/Cpl doing his job up to that time.

4) Take into consideration past record & give mercy & benifit of any doubt.

"FF"

Army Form G 3518 (Revised 1947) Young Capt

TRANSPORT WORK TICKET

TO BE COMPLETED IN INK WHENEVER PRACTICABLE

Exhibit "A"

MAKE OF VEHICLE: Mack | CLASS: Breakdown | UNIT: 7 C.L.R.C. Cda | SECTION: | DRIVER'S NAME: "Hedslum" Cfn. Young H.A. Capt | No. 7620 | W.D. No. CH4245259 | MONTH & YEAR: 8-45

DATE	FOR WHOM JOURNEY IS PERFORMED	DETAILS OF LOAD	ROUTE From	ROUTE To	SIGNATURE OF PERSON AUTHORISING JOURNEY	LUBRICATING OILS Type	LUBRICATING OILS Pints	FUEL GALLONS At Start	FUEL GALLONS Drawn At This	FUEL GALLONS Used	TIME Out	TIME In	SPEEDOMETER Out	SPEEDOMETER In
			(Weight forward from Work Ticket No. 7L174)											
20-8-45	Our Unit	Recovery	Ede	Ede Area	"JEAThomas" Lt			90	8	98	8	0915	1100	broken Spec
21/8/45	Our Unit	Recovery	Ede	Arnhem	"JEA Thomas" Lt			90	8	98	8			
22/8/45	Our Unit	Recovery	Ede	Utrecht	"JEA Thomas" Lt			90	8	98	8			
24-8-45	Our Unit	Recovery	Ede	Utrecht	"JEA Thomas" Lt			90	90	90	40	0730	1430	
25-8-45	Our Unit	Recovery	Ede	Utrecht	"JEA Thomas" Lt			90	21	90	21	0730	1430	
26/8/45	Our Unit	Recovery	Ede	Arnhem Utrecht	"JEA Thomas" Lt			90	27	90	27	0730	1500	
27/8/45	Our Unit	Road test	Ede	Utrecht	"JEA Thomas" Lt			90	22	90	22	0730	1400	
7-9-45	Our Unit	Recovery	Ede	Ede Area	"JEA Thomas" Lt			90	13	90	13	0830	1200	
10-9-45	Our Unit	Recovery	Ede	Hoogkapel	Zuidgouw	"Wm Gray" Lt		90		90				
11-9-45	Our Unit	Recovery	"	Leusden	Zuidgouw	"JEA Thomas" Lt		90		90		0730		
				Leusden		"Wm Gray" Lt						0930		

M.T.O. for week ..... or totals carried over.

Exhibit 4 - "Wm Gray" Lt

"Young" Capt

Exhibit "A"

No 7620

Army Form G 3518 (Revised 1942)

TRANSPORT WORK TICKET

TO BE COMPLETED IN INK WHENEVER PRACTICABLE

DRIVER'S NAME "Hedslum" Capt

W.D. No. CH4245259

MONTH & YEAR 8-45

MAKE OF VEHICLE: Mack

CLASS: Breakdown

UNIT: 7 C.L.R.C. Coy

SECTION:

Cfn. Young H.A.

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORISING JOURNEY (7)	LETTER & TIME DUE Type (8)	LETTER & TIME DUE Time (9)	FUEL GALLONS At start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Run (17)	SPEEDOMETER Out (18)
			Brought forward from Work Ticket No. 7L174														
20-8-45	Our Unit	Recovery	Ede	Ede Area	HA Young	"JEAThomas" Lt			90	8	98	8	0915	1100	Broken Spec		
24/8/45	Our Unit	Recovery	Ede	Arnhem	HA Young	JEA Thomas Lt			90	8	98	8					
27/8/45	Our Unit	Recovery	Ede	Utrecht	HA Young	JEA Thomas Lt			90	40	98	40	0834	1230			
28/8/45	Our Unit	Recovery	Ede	Utrecht	HA Young	JEA Thomas Lt			90	21	98	21	0900	1430			
24-8-45	Our Unit	Recovery	Ede	Utrecht	HA Young	JE Thomas Lt			90	27	98	27	0830	1400			
25-8-45	Our Unit	Recovery	Ede	Arnhem Utrecht	Young	JEA Thomas Lt			90	22	98	22	0830	1400			
26/8/45	Our Unit	Recovery	Ede	Utrecht	HA Young	JEA Thomas Lt			90	13	98	13	0845	1200			
30/8/45	Our Unit	Road Test	Ede	Ede Area	HA Young	JE Thomas Lt			90	-	98	-					
31/8/45	Our Unit	Road Test	Ede	Harskamp	Ginkgoren	Wo Wray 2/Lt			90		98		0830				
1-9-45	Our Unit	Recovery	Ede	Enschede	Ginkgoren	JEA Thomas Lt			90		98		0915				
1-9-45	Our Unit	Recovery	Ede	Enschede		2nd Lieut Wray 2/Lt							0930				
1-9-45	" "	Recovery	"	Enschede													

M.P.G. for week ..... or totals carried over.

Exhibit 2 - "HA Wray" 2/Lt

DATE	FOR WHOM JOURNEY PERFORMED	DETAILS OF LOAD	ROUTE From	ROUTE To	SIGNATURE OF PERSON ACTING FOR COMPANY	VEHICLE TOOLINGS Type	VEHICLE TOOLINGS Plate	FUEL GALLONS At Start	FUEL GALLONS Depot At End	FUEL GALLONS Used	TIME Out	TIME In	SPEEDOMETER In	SPEEDOMETER Run	SPEEDOMETER Out
			Brought forward from Reverse												

M.P.G. for week..... Totals carried to Work Ticket No.....

LINE	SPECIAL INSTRUCTIONS TO DRIVER	DATE	DRIVER'S REPORT OF BREAKDOWNS, ACCIDENTS AND DEFECTS	SIGNATURE OF DRIVER	COUNTERSIGNATURE

Bank

Ex "B" "EB3" ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
K-75516	Cfn	Hedstrom, E.A.	7 Cdn Light Recovery Section RCEME

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the numbers of Entries in the Field Conduct Sheet, parenthesis being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	AWL	2 times.
For	Conduct to the prejudice	2 times.
For		times.
For		times.

Date of first entry in Field Conduct Sheet 30 July 41

Date of last entry in Field Conduct Sheet 1 Aug 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*Nil "AKP"

"AKP" "AKP"

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 27 days in military custody, *i.e.*, Nil days in open arrest, 27 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 34

6. The date of his attestation is 13 June 41

7. The service which the accused is allowed to reckon is 4 Years 93 days

8. The accused is in possession of CVSM & Clasp, France&Germany Star

State the military decorations (if any) held by accused.

9. "AKP"

	Date of Promotion.
"AKP"	
"AKP"	
"AKP"	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through*

(37633) Wt.24930/3404 50,000 7/44 A.& E.W.Ltd. Gp.685 Forms/B.296(War)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
NIL	NIL	NIL	NIL	NIL

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 27th day of September 45

"A.K. Piercy"
(A.K. Piercy) Lieut
A/OC 7 Wdn Light Recovery Sec

MFM 6
(AFB 122)
40/PAM/156 (5438)

No K75516 Name Hedstrom Einar Axel | Sqn, Battery, or Company | Corps R.C.E.M.E. | Date of enlistment 13 June 41 | Rank | Service or Proficiency Pay Ex "C" "EBE" | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Vernon,B.C.	30 July 41	Pte		AWL 4 days 8 hrs Sec 15(1)	A/Cpl Harris	7 days C.B.	4 Aug41	Maj Grant A.H.	forf 5 dys pay FR&I 149 (2)
Vernon, B.C.	13 Dec 41	Pte		Origianl destroyed on completion of six months service from date of attestation				W.". Exley Capt	
Vernon, B.C.	15 Jul 43	L/Cpl		Conduct to the Prejudice Sec 40 A.A.	Capt Bamford	Reverts to Perm rank of Private	3 Aug 43	Maj P.D. Major	
Meaford,Ont	27 May 44	Cfn		AWL 12 hrs 25 min. Sec 15(1)	A/Lieut Cranston	14 days C.B.	30 May 44	Lt. R.H. Todd	Forf 1 dys pay FR&I 149(2)
Barriefield	1 Aug 44	Cfn		Conduct to the prejudice Sec 40 A.A.	Pte Nelson	96 hrs Det'n	9 Aug44	Col A.E. Duncanson	Cost of Appreh 14.27 Forf 4 days pay

CERTIFIED TRUE COPY OF ORIGINAL "A.K. Piercy" (A.K. Piercy) Lieut A/OC 7 Cdn Light Recovery Sec RCEME (PTO)

Summary of Evidence in the case of K75516 Cfn. Hedstrom, E.A., 7 Cdn Light Recovery Section ROYAL, 3 Cdn Infantry Division (Canada) Canadian Army, Overseas, Charged with When on active service stealing public property in that he, in the field, in the Netherlands on 31 Aug 45 or there abouts stole a 60 Cwt Chevrolet lorry WD No. 9927801, from the lines of 5 Canadain Armoured Troops Workshop, R.C.E.M.E. Canadian Army, Overseas

The Commander R.C.E.M.E. 3 Canadian Infantry Division (Canada) directs that the evidence be taken on oath

FIRST WITNESS

B53600 Cpl. McGrattan, H.V. of 7 Canadian Light Recovery Section RCEME, sworn, states:-

I am B53600 Cpl. McGrattan H.V. of 7 Canadian Light Recovery Section, the N.C.O. i/c recovery work and that on the 31 Aug 45 there were no breakdown vehicles sent out on recovery work

The accused declined to cross examine the witness

Signed " H.V. McGrattan "
(B53600 Cpl. McGrattan, H.V.)
7 Cdn Light Recovery Section RCEME CMA

SECOND WITNESS

Supervisor Bullock, T.H., Salvation Army Supervisor attached to 5 Canadain Armoured Troops Workshop Sworn, states:-

I am Supervisor T.H. Bullock of the Salvation Army and am attached to the 5 Canadian Armoured Troops Wksp. On 29 Aug 45 my vehicle a 60 Cwt lorry WD No. 5927601 was turned into 5 Canadian Armoured Troops Workshop for repair. About 3 Sept 45 I went around the Wksp to find my vehicle but could not locate it. On 4 Sept 45 I went to the Control office and I was told it was among the completed vehicles . I went to this Section to to look for it but could not locate it. I reported this to the control Office and they took the matter up from there. Ihave not seen the vehicle since. There was a new generator bolted in the back of this vehicle

The accused declined to cross examine the witness

Signed " T.H. Bullock "
T.H. Bullock Supervisor
Salvation Army
Attd to 5 C.A.T. W/S RCEME

THIRD WITNESS

Capt. D. C. Little, Wksp Contorl Officer on strength 5 Cdn Armoured Tps Wksp sworn, States;-

On 4 Sept 45 one of the clerks in the Control Office informed me that the Auxiliary Service veh W.D. No. 5927601 was missing from the completed vehicle park in the unit lines. This veh had been under repair and upon checking the work card in control office, found that it had been completed on 29 Aug 45 and turned in to the Park 30 Aug 45. I made a personal check to locate the vehicle on the 4 Sept 45 but was unable to find it in our own lines. I organized a complete check of the compound lines but the vehicle could not be found. I then made an official report to the Commanding Officer, there was no authority given by me for this vehicle to leave the completed vehicle park or by my office.

The accused declined to cross examine the witness

Signed " D.C. Little " Capt

(D.C. Little Capt.)
Wksp Control Officer
5 Cdn Armoured Tps Wksp RCASC

FOURTH WITNESS

K45561 L/Cpl. Kallenberger, J.G. No. 3 Cdn Provost Coy CMP sworn, states:-

I am K45561 L/Cpl. Kallenberger, J.G. No. 3 Cdn Provost Coy. At approx 1625 hrs. 31 Aug 45 it was reported to this HQ by the Civilian Police, The Hague that some Canadian Soldiers had delivered a truck to the backyard of 170 C Buitensingel, The Hague and the soldiers were accompanied by a civilian. I proceede to this address in company with two civilian police J. Schatheff and P.J. Praamstra to investigate. I found one 60 cwt WD No. 5927801 and one electric generator No. P.R. 398289 in the back of the truck at 170 C Buitensingel, The Hague. From my investigation I learned the soldiers would be returning, who brought the vehicle I may have waited for about an hour and two civilians returned one named De Bruyn and the other Zandbergen. These two persons were questioned by the civilian Police and arrested. As a result of investigation of these two civilians I went to the Polly Bar, Wagenstraat on 1 Sept 45 about 1700 hrs in company with the two civilian police and the Civilian Zandbergen. After waiting for quite some time, the people we were looking for failed to show. Zandbergen noticed the two soldiers were across the street at the Metro Bar. We entered the Metro and he pointed out two soldiers whom I now recognize as Cfn. Young and Cfn. Hedstrom. I went up to the soldiers and asked them to come down to the Sec H.Q's. I Told them that I was investigating a sale of an Army Veh and that they were under suspicion. From Sec HQ, I went to the Civil Jail and brought De Bruyn him to our Sec HQ. I asked De Bruyn if he he recognized Hedstrom or Young and he said that they were the two soldiers who had sold him the truck. He said the driver was the Soldier I now recognize as Young who went by the name Harry and the other went by the name "Andy" who said he was a mechanic whom I now recognize as Hedstrom.
De Bruyn said he recognized Young because he was colored. I asked the Soldiers if they knew anything about what De Bruyn had said and their reply was they knew nothing about it.
I asked the soldiers if they wished to make a statement and they refused.

The accused declined to cross examine the witness

Signed "J.G. Kallenberger"
K45561 L/Cpl. Kallenberger, J.G.
No. 3 Cdn Provost Coy

FIFTH WITNESS

J. Schoutof, Police Detective, The Hague having been duly sworn states:-

I am Jan Schoutof, and am employed at the Hague as a Police Detective. Information came to our office at 1500 hrs. 31 Aug 45 that a Cdn vehicle had been brought up to 170 C Buitensingel St, The Hague. In company with Police Detective P.J. Praamstra. I investigated this matter and found a Cdn 60 Cwt truck at the above address. We reported this to the Cdn Provost who took the matter up from here. As a result of our investigation we arrested F. de Bruyn who lives at 8 Huygenspark, The Hague.

Signed " Jan Shoutof "
Jan Schoutof

I certify that the above evidence was accurately translated by me. I have been sworn so do under oath.

Signed ~~[illegible]~~ "??????"
Interpreter

SIXTH WITNESS

J.M. de Jonge 170 C S.E. Buitenmingel The Hague sworn States:-

I recognize the accused as one of the persons whom I saw at about 1500 hrs 31 Aug 45 outside my home I noticed two Army Trucks, one a recovery truck painted dark green and the other was a chevrulet truck. Two soldiers whom I now recognize as the accused Medstrom and Young, got out on the road and were standing between the two vehicles and were loosening them. A steel cable from the from of the Chev truck was joined to the hook of the recovery truck. They unhitched the two trucks. I went away from home for about three quarters of an hour and the recovery truck was gone and the Chev truck was in my back yard when I returned. I then informed this matter to the civilian police who came to investigate. The two soldiers I saw in front of my house were dressed in shirt sleeves with sleeves rolled. The larger was about my height and the other was shorter. The shorter was coloured and the taller was white.

The accused declined to cross examine this witness

Signed "J.M. de Jonge"
J.M. de Jonge

I certify that the above evidence was accurately translated by me. I have been sworn to do so under oath.

Signed "??????????"
Interpreter

SEVENTH WITNESS

Johanna Martina de Jonge S.E. 170 C Buitensingel, The Hague, sworn states:-

At about 1500 hrs 31 Aug 45 I heard a truck coming into our yard. I went down to see what it was doing there. My husband was not at home at the time. I did not see the truck before it came into our yard. There were two soldiers with it one of whom I recognize as the accused, Hedstrom by his height and his face and Young by his face and colour. There was a civilian there called de Bruyn, I asked him what he was doing and he said " I will be back in a few minutes" Then all three left my yard. I was about one metre from the two soldiers when they passed me to leave the yard. I was only talking to them about one minute

The accused declined to cross examine the witness

Signed "J.M. de Jonge"
Johanna Martina de Jonge

I certify that the above evidence was accurately translated by me. I have been sworn to do so under oath

Signed "????????"
Interpreter

DEFN WITNESS

Franciscus de Bruyn
Huygenspark No. 8
The Hague

I certify that in my opinion the attendance of this witness is owing to the absence of this person from The Hague, not readily procurable, and a written statement of his evidence, signed by him has been read to the accused and is attached hereto as Exhibit "A"

Signed " A.K. Piercy "
A.K. Piercy Lieut
7 Cdn Light Recovery Section RCEME

I do not require the attendance at this Summary of Evidence for the purpose of cross examination the above mentioned Franciscus de Bruyn, Huygenspark No. 8, The Hague

Signed " E. Hedstrom "
R75516 Gdn. Hedstrom, E.A.
7 Cdn Light Recovery Section RCEME

ADDITIONAL WITNESS

Cornelid Zandbergen
Benkestraat 36,
The Hague

I certify that in my opinion the attendance of this witness is owing to the absence of this person from The Hague, not readily procurable and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as Exhibit "B"

Signed " A.K. Piercy " Lt
Lieut. A.K. Piercy
7 Cdn Light Recovery Section RCEME

I do not require the attendance of Cornelid Zandbergen for the purpose of cross examination in this Summary of Evidence

Signed " E. Hedstrom"
K75816 Cfn. Hedstrom, E.A.
7 Cdn Light Recovery Section RCEME

The accused was warned as follows:-

Do you wish to make any statement or to give evidence upon oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused: I have nothing to say at this time

Signed "E. Hedstrom"
(K75216 Sfn. Hedstrom, E.A.)
7 Cdn Light Recovery Section RCEME

The accused declined to call any witnesses in his own behalf

Signed "E. Hedstrom"
(K75216 Sfn. Hedstrom, E.A.)
7 Cdn Light Recovery Section RCEME

I certify that R.P. 4 (c) (d) (e) (f) have been complied with

Taken by me in the field in the Netherlands in the presence and hearing of the accused these 12 and 13 days of Sept 45.

Signed "A.K. Piercy" Lt
(Lieut. A.K. Piercy)
7 Cdn Light Recovery Section RCEME

LIST OF WITNESSES FOR THE PROSECUTION

First Witness	B53600 Cpl. McGrattan, H.V. 7 Cdn Light Recovery Section RCEME
Second Witness	T.H. Bullock, Supervisor Salvation Army, Att: 5 Cdn Arm'd Tps Wksp
Third Witness	Capt. D. C. Little Wksp Control Officer 5 Cdn Arm'd Tps Wksp RCEME
Fourth Witness	K45561 L/Cpl. Kallenberger, J.C. No. 3 Cdn Provost Coy Cdn Forces Netherlands
Fifth Witness	Jan Schoutof Police Detective The Hague
Sixth Witness	J.M. de Jonge, 170 C S.E. Buitensingel The Hague
Seventh Witness	Johanna Martina de Jonge 170 C S.E. Buitensingel The Hague
Eighth Witness	Franziscus de Bruyn Huygenspark No. 6 The Hague
Ninth Witness	Cornelid Zandbergen Benkerstraat 36, The Hague

LIST OF WITNESSES FOR DEFENCE

NIL

STATEMENT

I desire the Convening Officer to detail an Officer with legal experience to represent me at my forth coming trial by Field General Court Martial

Field
13 Sept 45

Signed " E. Hedstrom"
(K75516 Cfn. Hedstrom, E.A.)
7 Cdn Light Recovery Section RCASC

I acknowledge that I have been notified that is is proposed to detail an officer with legal qualifications to act as Prosecutor at my forth coming trial by Field General Court Martial

Field
13 Sept 45

Signed " E. Hedstrom"
(K75516 Cfn. Hedstrom, E.A.)
7 Cdn Light Recovery Section RCASC

APPENDIX

1. Exhibit "A"

Statement by F. de Bruyn
Huygenspark 8,
The Hague

2. Exhibit "B"

Statement by G. Zandbergen
Benkenstraat 36,
The Hague

- Statement of Franciscus de Bruyn
Huygenspark No. 8,
The Hague

I voluntary state, that on the 22 or 23 Aug 45 I was in the Polly Bar Wagenstraat the Hague drinking beer, two Canad an Soldiers were in this cafe and I sat at the bar next to the soldiers. After sitting at bar a few minutes, I aksed the soldiers what their profession was? Then the one soldier said that he was a mechanic and the other said that he was a truck driver.
The soldier that said to me that he was a mechanic, was a tall, light coloured, thin-faced and calling himself by the name of Andy, the other soldier was a negro, being a medium - sized soldier and calling himself by the name of Harry.
I then asked the soldiers if they had any tyres to sell, I then started to explain to the soldiers what size of tyres that I wanted, then Andy said that they had no tyres but that they could supply me with a car, Andy then asked me how much money could we get for a car?
I then said that they could get about 5000 or 6000 guilders Andy then said that the following week on Tuesday, 28th of August or Wednesday 29th. or Thursday or Friday, the 31st. that they would bring a car to The Hague for me.
The soldiers then said O.K. and so I left.
Then on Friday, the 31st. of August at about 1500 hrs. I was waiting for my friend near the bridge on Wagenstraat when the two soldiers walked by, the soldiers stopped and came back to me and said to me that they had brought a car with them for me.
I then called my friend who was in a house and told him that I was going with these two Canadian soldiers and that he should take my car to my home.
I then went with the soldiers and they took me to the Zuidwal, alongside of the canal, to where a recovery-truck and another truck were parked and then Andy said this is the car which was standing behind the recovery-truck.
We then got on the recovery-truck and I told them where to take the truck which was to the back-yard of 170 C Zuid Oost Buitensingel. The truck, which I was buying, was towed by the recovery-truck and arriving at the mentioned address the truck was unhitched from the recovery-truck and Andy drove the truck into the back-yard of the above mentioned address. After doing this we all got on the recovery-truck and drove to the bridge on wagenstraat, leaving the recovery-truck parked at the bridge, we walked over to the hotel "Het Wapen van Dordrecht" and entered.
I then said to the soldiers that I would try to sell the truck, the negro then asked me for a payment on the truck, so then I paid Andy 700 guilders and then Andy said that on Saturday 1 st. of September 1945 we would meet in the Polly Bar to finish the bargain if I had sold the truck, so after this agreement we departed.
I then went to see Cor van der Pol of No. 38 Hemmingstraat and asked him if he wanted to buy a car, he then went with me to where the truck was parked and then arriving at this place, we were apprehended by the civilian and Canadian Police

This statement was made on the 2nd. of september 1945

Signed P. de Bruyn

I certify that the above-mentioned translation is true to the text contained in the original

The Interpreter

Statement of Cornelid Zandbergen, Bouwstraat 36, The Hague,

I voluntary state that at about 1400 hrs. on Friday 31 August 45 Franciscus de Bruyn came to my home and that after some time we left and went to a house on Wagenstraat and I went in to deliver a message.
When I came out there were two soldiers talking with de Bruyn, one of the soldiers was a negro, medium built, fairly thin face and the other soldier was fairlie tall, large mouth and fairly thin face and blond hair. After talking with the soldiers for some time de Bruyn said to me that they had brought the car for him.
De Bruyn then asked me if I would take his car (which he had been using) to the Hotel Het Wapen van Dordrecht", I then went to the hotel after a short while de Bruyn and the two soldiers came into the hotal and sat down at a table and de Bruyn ordered some beer.
After doing this, he took a large pile of money out of his pocket and gave it to the soldiers.
He gave them quite a large amount which I noticed to be in bill-notes of 1 and 100 guilder notes.
After receiving the money the soldiers departed.
Later de Bruyn told me that the soldiers were going to return the following day at 1700 hrs. on Saturday 1 September 1945 in the Polly Bar to finish the bargain.
I would recognise these soldiers at any time, if I saw them.

C. Zandbergen

I certify that the above translation is true to the text contained in the original

Signed The Interpreter

COUNTER NUMBER 166200

HOUR 22.30

OPERATOR'S INITIALS [illegible]

RELIEVING OPERATOR [illegible]

Original

Correspondence to be PINNED here.

B-7099 Gnr Healy, F.
11th Cdn A Fd Regt - RCA

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court

On Active Service, this 1st day of JULY, 1941.

Whereas it appears to me, the undersigned, [redacted] Chief Engineer, Cdn Corps.

, on active service, that the persons named in the annexed Schedule being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial: *[redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers [redacted] appointed or detailed hereunder.

*[redacted] —

*(1. [redacted]

*(2. [redacted]

*(3. [redacted]

[redacted]

* Omit if not applicable.

Proceedings checked by me and found to be in order.
A.E. Snow
Maj Gen
12/7/41

President.

Rank.	Name.	Regiment.
Major	C.F. Clingan, M.C.	Cam. H. of O. (MG)

Members.

Rank.	Name.	Regiment.
Capt.	R. BUCKNER	Corps Tps Supply R.C.A.S.C. Cdn
Lieut.	J. C. STEWART	8th Cdn A Fd Regt. RCA

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed C.S.L. Hertzberg Brigadier.
(C.S.L. Hertzberg)
Commanding Chief Engineer, Cdn Corps.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
				Finding and Sentence confirmed C.E.C.C.
B-7099 GNR. HEELY, F. 11th Cdn A Fd Regt R C A	First Charge. A.A. Sec 40 as per Charge Sheet.	Not Guilty	Guilty 56 days detention	

R.B.
J.C.S.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) "No Sir."

(Signed) C.S.L. Hertzberg Brigadier. (Signed) A.A.C. Chingman major
(C.S.L. Hertzberg)
Commanding Chief Engineer, Cdn. Corps. 1st Bn. C.M.P.O. (RC)
Convening Officer (c) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the fourth day of July 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~ A.A.C.
*(4. ~~The officers under instruction~~
were duly sworn. S. Shortland writer A.A.C.

* Omit if not applicable.

Signed this fourth day of July 1941.

A.A.C. Chingman major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 764 M.M.L. 1924.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I direct that the soldier named in the margin be not committed to prison until further order.~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

Signed this seventh day of JULY 1941.

C.S.L. Hertzberg
Confirming Officer. Brigadier, Chief Engineer Canadian Corps.

Promulgated and extracts taken in the case of B 7099 Gnr Heely F

(*a*) (Dated) 8 July 41 (Signed) [illegible]

Promulgated and extracts taken in the case of [illegible] 11th A. Tk. Regt. R.C.

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

25 Jun.,41.

First Charge
Sec. 40
Army Act

The acussed - B7099 - Gnr. Heeley, F.
of the 11 Cdn Army Field Regiment RCA
is charged with :-

WHILE ON ACTIVE SERVICE

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

In that he,

in the Field on 12 Jun 41 was improperly in possession of one battle dress jacket, the property of B7115 - L/Bdr Brittain, F. V., of the 11 Cdn A Fd Regt RCA

C. D. CROWE - Lieut. Col., RCA
o.c., 11 Cdn Army Fd Regt RCA

ELECTED TO BE TRIED BY FIELD GENERAL COURTMARTIAL

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

Reg

Field
This 2 day July 41

Brigadier.
(C.S.L. Hertzberg)
Chief Engineer, Cdn Corps.

Accused declined to object to any member of court or president or challenge

CLAC

President -- Lt. Prosecutor, have you any witnesses?

Prosecutor -- Medical certificate to the effect that the accused is fit to stand trial.
37115 L/Cpl. Smitton, F. V.

Pros., Have you at any time, while with this regiment, lost or had stolen, articles of personnel kit.

Witness Not until a short time ago, May 11, 1941, when my tunic was missing.

Prosecutor On that morning, you did know the tunic was gone?

Witness Yes sir.

Prosecutor Did you report the loss?

Witness Yes sir, to S.S. Rolling.

Prosecutor Do you know if a board was instituted for the missing tunic?

Witness Yes sir, there was a board held.

Prosecutor Were

Witness In what did you find the rest of your kit?

Prosecutor Was there an issue kit inspection?

Witness No sir, just an inspection of tunics.

Prosecutor When did you next see this tunic you identify as yours?

Witness On the morning of the 17th of June.

Prosecutor Where did you see it?

Witness On Gnr. Healey. He was wearing it at that time.

Prosecutor How did you recognize it?

Witness By the pale marks upon it.

Prosecutor Under what circumstances did you inspect the tunic?

Witness Lieut. Lownsbrough asked to inspect Gnr. Healey's kit.

Prosecutor Did he do so?

Witness Yes sir.

Prosecutor Were you present at the time of inspection?

Witness Yes sir, also S.S. Rolling.

Prosecutor When the kit was inspected, did you find the tunic?

Witness It was not found with his kit as he was wearing it at the time, and removed it for inspection when asked to do so.

Prosecutor How do you identify this tunic?

Witness My tunic has a mark on the inside left pocket, it is a small cross in blue indelible ink.

Prosecutor You are a L/Bdr.?

Witness Yes sir. The tunic had a stripe on it also cross hammer & tongs.

Prosecutor Is that the tunic that you found on Gnr. Healey.

CLAC

Witness May I look at it?

Prosecutor — How did you identify it?

Witness — This is the one that was on the tunic before it was stolen and later found on Gnr. Keeley.

Prosecutor — Did you see any other marking?

Witness — The thread where the strips were sewn on, also the artificers badge.

Tunic taken to Board for examination.

Prosecutor — I understand that S.M. Rollins was present at the time that you, in company with Lieut. Loudsbrough searched Keeley's kit and found this tunic on Keeley?

Witness — Yes sir.

Defence — Gnr. Britton, you and Gnr. Keeley lived in the same hut and your beds are fairly close together.

Witness — Yes sir, Mine is the second bed from mine.

Defence — You mention other articles lost.

Witness — Nothing except the tunic and its contents.

Defence — Is it a fact that you have a reputation for being absent minded?

Witness — To a certain extent, yes.

Defence — Then you have left articles around and do not remember what you had done with them?

Witness — It is possible that I have.

Defence — Has it been mentioned to you that you have been absent minded about leaving articles around?

Witness — Yes sir, it has been mentioned.

Defence — Did you see that S.M. Rollins & Lieut Loudsbrough made the inspection?

Witness — Yes sir.

Defence — Where was the tunic when they found it?

Witness — Gnr. Keeley was wearing it.

Defence — Where was he?

Witness — In the hut.

Defence — Wearing the tunic?

Witness — Yes sir.

Defence — The same hut you live in?

Witness — Yes sir.

Defence — Was this the first time you had seen the tunic since it was stolen?

Witness — Yes sir.

Defence — Is it likely that it could have been hidden in Keeley's kit without your noticing it?

Witness — I doubt it very much.

O.K.

Defence — From the 17th of May to the 11th of June you did not know where the tunic was?

Witness — I do not sir.

Defence — I believe that if anybody wishes a uniform or object will be may draw it from the ... stores?

Witness — Yes sir.

Court — This mark here, Sir., are you quite sure that this mark was made by yourself?

Witness — Yes sir.

Court — Someone else, though, you had made the mark, could not have put one on this tunic?

Witness — I am positive that this is my own mark.

Prosecution — In connection with that mark, did you make it for a purpose?

Witness — Yes sir, I have learned since before.

Prosecution — Was you disobeying an order?

Witness — Yes sir.

Prosecution — You could not be liable to write there in front of a whole bar full of men?

Witness — No sir.

Prosecution — The Defence has mentioned your being absent sick. You would not be absent sick enough, after receiving the sentence to stiffy skive off to, to leave it two hours from your ...?

Witness — No sir.

Cross-examination of Witness by Lt. Col. Griffin, D.J.

Prosecutor — You are the Witness, S.S. of A Proof?

Witness — Yes sir.

Prosecutor — L/Bdr. Britton is an A.T.S.. in your troop?

Witness — Yes sir.

Prosecutor — Mr. Britton stated that on the 17th of May, he reported the loss, among other things, of his tunic?

Witness — Yes sir and a search was made for the missing articles.

Prosecutor — He has stated also, that on the morning of the 11th of June, he had reason to believe that the accused, Gnr. Wesley, was wearing that tunic and that an inspection was made of Gnr. Wesley's kit. Were you present at that inspection?

Witness — Yes sir, in company with Lieut. Loughrough, Bdr. Britton and two gunners.

Prosecutor — Bdr. Britton has stated that he identified that tunic by a secret identification mark that he put in it?

Witness — Yes sir. He explained about the mark before we looked at the tunic and the mark was found in the tunic.

Prosecutor — After that, what did you do?

A.T.C.

Witness — I removed the tunic and placed it in the battery office for evidence.

Prosecutor — Did you find any evidence on the tunic showing that a stripe and badge had, at one time, been sewn on the sleeves?

Witness — Yes sir. There were stitches on the inside of both sleeves.

Prosecutor — Could you identify this tunic as the one which you identified on the inspection.

Witness — That is the same mark in the pocket and the same stitches on the inside of the sleeve. I also made a measurement of the stitches against another tunic belonging to Gnr Britton and they came within one quarter of an inch to the marks on this tunic.

Prosecutor — Following the search, you took the tunic to the Battery Office and left it there?

Witness — Yes sir.

Defence — In regard to the tunic, on military parade, you would not wear those stripes?

Witness — No sir, they could not be noticed.

President — Does that complete your witness so far for the Prosecution?

Prosecutor — Yes sir.

R.P. 40 complied with

Sentry, 17899 Gnr. Healey, T., having taken the oath is cross-examined.

Defence — Gnr. Healey, at the time of the search, you were using this tunic?

Witness — Yes sir.

Defence — Can you explain to the Court just how you had this tunic?

Accused — On the morning of the 11th or 12th of June, I had occasion to relieve on the telephone exchange at Cape Sire. When I was getting up. In my haste I just grabbed a tunic off the line by my bed and put it on. Having finished my duty at noon, I was back in the hut when Lieut. Loumbroupis came in and asked to see the tunic that I had on.

Defence — You had to go on duty at 0800 hrs that morning?

Accused — Yes sir.

Defence — How many men slept in the hut.

Accused — About 14.

Defence — Your bed is close to Gnr. Britton's?

Accused — About the second bed from his.

Defence — Anything further you wish to state to the Court?

Accused — No sir.

Prosecutor — Did Gnr. Britton overplace his things around the hut?

Accused — Yes sir. He left his things all over the hut.

Prosecutor anyone else do that?

Witness No sir.

Prosecutor How many battle dress uniforms have you?

Witness Two.

Prosecutor How long have you had them?

Witness The last I got about two months ago.

Prosecutor After you have worn a uniform for a while do you feel the fit?

Witness Not necessarily sir, some of them do quite large.

Prosecutor I could tell immediately if I put on a tunic that was not mine?

Witness I did not notice sir.
Pte. Britton made a search of my kit the night before when I was out.

Prosecutor Are you suggesting to the Court that Pte. Britton placed your kit on your bunk?

Witness No, only that it was examined when I was out of the hut.

Pte. Britton is recalled and again questioned:

Prosecutor When you go into your hut at night and take off your kit, what do you do with it?

Witness Hang up my tunic and trousers.

Prosecutor It has been stated by Hooley that your kit is to be found all over the hut?

Witness No sir.

Prosecutor It has also been stated that you made a search of his belongings the night before the search by Lieut. Townsbrough.

Witness No sir, there was no search. I just looked at his tunic from the outside, I never touched it.

Prosecutor The result of that look being that you reported in the morning that you thought he had your tunic?

Witness Yes sir.

Defence Was that the tunic later found to be yours?

Witness Yes sir.

Defence It was just hanging up in the hut where anyone could see it?

Witness Yes sir.

Defence Close to your bed?

Witness Yes sir, fairly close.

Defence With regards to this matter of leaving things around?

Witness It is just the tools I miss sir, when being called from one job to another.

Defence What is the No. 1 of your gun?

Witness Sgt. Campion.

Defence — Has he ever pointed out to you about leaving articles lying around?

Witness — No sir.

Defence — You stated in your cross-examination that you have a habit of misplacing tools?

Witness — Yes sir, a bit.

Defence — If you do it around the car would you not do it around the hut?

Witness — No sir, it is just when working.

Prosecutor — Do you content that you are absent minded only when working around the car and it is only the tools that you misplace. You have no trouble like that with your personnel kit?

[illegible] trouble with my kit.

[illegible] other witness to refer to. Britton's absent mindedness. But, although I may not [illegible] Britton soliciting is absent minded when working around the car, I do not think it necessary for [illegible] witness box, Sir.

Prosecutor — If you wish, the Court Orderly, Sgt. Mulcahy, knows Cpl. Britton well.

President — I do not think his evidence is necessary.

Prosecutor — [illegible] the Court, in view of the evidence [illegible] prosecution in this Court, if Cpl. Healey not be discharged for the following reasons:

[illegible] connection with the possession of tunic and belonging to him.

It can be stated in the evidence and not denied, that the tunic belongs to L/Cpl. Britton.

It has not been denied that this tunic was found on Cpl. Healey.

The admission of honest mistake has not been proved.

There has been a suggestion that Cpl. Britton may be absent minded. It is much too much to expect any person to believe that a soldier, while he might drop his tools going from one job to another, that he would drop his tunic anywhere or allow some one to hang it up.

I submit that Cpl. Britton, having missed the articles on the 17th May, did all he could in reporting it and that he received information one way or another, that led him to believe that the tunic might be in the hut, that he therefore did the right thing in reporting it to his troop officer.

I also suggest for the consideration of the Court, that despite the shapelessness of a suit of battle dress, that a man having worn one for some time, could very well tell by the fit that a tunic was or was not his own.

But I repeat that the cross-examination of Cpl. Britton as to whether or not he had a tendency towards being absent minded, is not a main point. I suggest that the Court not be swayed by this.

I submit that Healey has not satisfactorily explained the possession of that tunic.

Defence I might point out that this tunic apparently was missed on the 17th of May but the prosecutor has not been able to say as to where it was between the 11th of June and the date it was missed. These men lived together and if he was wearing the tunic all the time, he would have noticed it. He admits himself that the tunic could not have been hidden in his kit without him noticing it.

I submit that the prosecution should prove where the tunic was between these dates. The Bar. states that if it had been in the hut, he would have noticed it.

If a man is absent minded at one thing, he could be with another. It is always possible that a man might throw the tunic on the bed next to his, specially if he is a little absent minded. The Room Orderly, when straightening up in the morning, finding the tunic on one bed, may have hung it up on the opposite side of the bed.

It is quite an easy thing for one man to put on another man's tunic and not notice the difference. If the Court like examine the sleeves where the stripes were sewn on, they would not be noticed closely examined, they would not be noticed.

I submit that the Court should be very cautious in this case as he will be proved as a man who stole articles from his own hut and to do this there could be sufficient evidence brought here to prove this.

I draw your attention to the Manual of Military Law, [illegible] which states as follows:

"If a person is found in possession of [illegible] stolen, there is a strong presumption that he stole them or received them with knowledge that they were stolen. The onus of proving the guilty knowledge always remains upon the prosecution, and upon the prosecution establishing that the accused was in possession of goods recently stolen, a [illegible] conviction may follow, if the explanation offered by the accused is disbelieved by the Court, and which is consistent with innocence, although it may be true, and which is consistent with innocence, although it may not be disbelieved, if its truth, the accused is entitled to be acquitted, however the prosecution has failed to discharge the duty cast upon it of satisfying the Court beyond doubt of the guilt of the accused."

We admit that the tunic was found in his possession, then he have to explain how it got into his possession. The accused gaves reasonable explanation for this, therefore the Court may find him innocent.

A finding of guilty on the evidence here would be a very serious thing. According to Mr. Britton, the Sgt. put on the tunic for the purpose of catching a thief. They do not charge him of theft, however, but with being in improper possession of the tunic. If the man in coin to be proved a thief on this evidence, I would say that it is not a proper Ly.

Prosecutor While I am here in the role of Prosecutor I am not seeking [illegible] convictions. I do not want to see the man carried [illegible] as possibly the man responsible for the articles which disappeared.

Defence I might point out that it certainly was not the action of a guilty man if he took the tunic and the articles in it and then were it in the same hut as the man he took it from and left it hanging openly beside the bed of the man he took it from.

Sgt.

President Perhaps the prosecution or defence could advise us as to the manner of laying out the kit in the rooms.

Prosecution Sgt. Waldrum could probably explain it better.

37062 Sgt. Waldrum, C. F.

Prosecution Sgt. Waldrum, how is the kit laid out?

Witness The kit must be laid out on the bed in an orderly fashion but the uniforms may be hung at the head of the bed.

President Are all the uniforms hung on the wall or are some folded and laid on the bed?

Witness Either way is acceptable but sometimes hang their uniforms on the wall & others fold theirs on the bed.

President When was the last kit inspection held?

Witness [illegible]

[illegible]

Witness It would be possible but it is contrary to rules laid down [illegible]

Court closed to consider finding proposed. C.A.C.

President Do you wish to call character witnesses?

Defence No sir, there has been no evidence here that the accused is not of good character.

Prosecution I have [illegible] Cpl. Healey's brief sheet.

President Mr. Prosecutor, have you any record of previous service of Cpl. Healey?

Prosecution Yes sir, I produce Cpl. Healey's A.F.W. 6, certified as correct.

President Cpl. Healey, do you wish to question the contents of your A.F.W. 6?

Accused No sir.

President Cpl. Healey, do you wish to make any pros-examination?

Accused No sir.

President Cpl. Healey, you will be informed of the findings of the Court in due course.

Certified a correct transcription of the evidence given at the trial of Cpl. Healey, F. on the 4th & 5th of June, 1941.

A.T. Chipman Major

J.M. McCulloch Lt Col Jr Adv

SUMMARY OF EVIDENCE

in the case of No. B7099 Gnr. Heeley, F., 9/15th Field Battery, R.C.A., 11th Army Field Regiment, C.A. Os., taken down by Major K. N. Lander, 11th Army Field Regiment, R.C.A., C.A. Os., at Field Camp, on the 23rd day of June, 1941.

First Witness for the Prosecution

B7115 L/Bdr. Brittain, F. V., 11th Army Field Regiment, R.C.A., C.A. Os., states: I have lost several articles from time to time including, money, pocket book, clothing, Pay Book (Part I and II) and personal belongings. When I woke up on the morning of 17 May 41, I found my tunic, trousers, money, pocket book, Part I and II Pay books, fountain pen and personal papers had been stolen. I reported the loss to Sergt. Campion and to Battery Sergt. Major Gazell, who sent me around with the Orderly Sergeant (L/Sgt. McKeever) to inspect the clothing of each man. We failed to locate any of the missing property, and I heard nothing more about it until the 11th of June, when two of the men said they had seen Gnr. Heeleywearing a tunic which looked as though it had had a stripe on it. I saw a tunic over Heeley's bed, which I examined and recognized as my tunic. I reported this to Troop Sergt. Major Rawlings, who told me to come to the hut whilst Heeley's kit was being inspected. None of my belongings were in his kit, except my tunic, which he was wearing. I told Sergt. Major Rawlings that my tunic had a blue cross on the inside pocket. When Heeley took the tunic off, it had an indelible cross on the inside pocket and there were stitch marks on the sleeve where the stripe had been sewn on and where the crossed hammer and tongs had been sewn on.

The accused declines to cross-examine this witness.

F. V. Brittain .....L/Bdr.
11th Army Field Regiment, R.C.A.,

Second Witness for the Prosecution

B6139 T.S.M. (W.O.II) Rawlings, L. J., 11th Army Field Regiment, R.C.A., C.A. Os., states: On the morning of 17 May 41, L/Bdr. Brittain reported to me that a complete suit of serge battle dress, containing various articles, including money, had been removed from the peg in his hut. I, accompanied by Sergt. Campion, searched the hut and could find no trace of the missing articles. As there had been previous thefts from this hut and as it is so difficult to trace these thefts, I advised my men to keep quiet and watch. The theft was reported to the Battery Office. On the morning of 12 June 41, L/Bdr. Brittain reported to me that he suspected that Gnr. Heeley had in his possession the blouse of his suit. I reported this to Capt. Tate and Lieut. Lownsbrough and Capt. Tate told Lieut. Lownsbrough to accompany me and make a search. Acting on this order I notified Sergt. Campion and ordered two gunners to accompany me to the hut. Lieut. Lownsbrough explained to Gnr. Heeley that there was a suspicion of his having stolen property in his possession and he proposed to search Gnr. Heeleys Kit. The Kit was searched and also articles of clothing hanging on the pegs. Nothing was found corresponding with the stolen property. The blouse that Gnr. Heeley was wearing was then examined and stitches corresponding with the position of a single stripe and an Artificers badge were found on the tunic.

Second Witness for the Prosecution

Gnr. Heeley explained that these stitches were where he had been carrying flags. L/Bdr. Brittain then stated that if the blouse were his, there would be on the inside of an inside pocket a private mark, being a cross in indelible pencil which he had placed there before. This mark was found to be on the garment, which L/Bdr. Brittain identified as his in the presence of Lieut. Lownsbrough, myself, Gnrs. Heeley, Wylie and Olohan. I removed the garment and placed it in Battery Office to be held as evidence pending investigation, and laid a charge against Gnr. Heeley.

The accused declines to cross-examine this witness.

.....T.S.M. (WO II)
11th Army Field Regiment, R.C.A.,

Third Witness for the Prosecution

B6006 Sergt. Campion, W. H., 11th Army Field Regiment, R.C.A., C.A. O., states: A number of thefts have been reported in the hut occupied by my sub-section, L/Bdr. Brittain having lost money on three previous occasions before reporting the loss of his uniform. The loss of his uniform, which contained money and other personal articles was reported to me on the morning of 17 May 41. Along with T.S.M. Rawlings, I inspected the kits in the hut and found no trace of the missing articles. It was reported to me on 12 June 41 that a tunic which L/Bdr. Brittain identified as his, had been found in the possession of Gnr. Heeley.

The accused declines to cross-examine this witness.

.....Sergt.
11th Army Field Regiment, R.C.A.,

The accused reserves his defence.

Rules of procedure 4 (c) (d) and (e) have been complied with.

.....Major, R.C.A.,
11th Army Field Regiment, R.C.A.,

LIST OF WITNESSES

25 Jun.,41

In the case of:

B7099 - Gnr. Heeley, F.

B7115 - L/Bdr. Brittain, E.V.
11th Cdn. A. Fd. Regt. R.C.A.

B6139 -TESM (WOII) Rawlings, L.J.
11th Cdn. A. Fd. Regt. R.C.A.

/sas

LIST OF EXHIBITS

In the case of 25 Jun.,41.

B7099 Gnr. Heeley, F.

One - Battle Dress Blouse

No. B7099 Name Heeley, F. Sqn., Battery or Company: Bty. 11th Cdn. A. Fd. 9th Corps Regt., R.C.A. Date of enlistment: 12.9.39 G.C. Badges: Service or Proficiency Pay: Character

Date of last entry in Company Conduct Sheet: No. and date of last drunk: Period not reckoning towards freedom from extra fine: Sheet No. 3 Signature O.C. Company, etc.:

M.F.M. 6 (A.F.B. 122)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19/5/41	Gnr		Sec. 40 A.A.- Gambling in Hut - 1115 hrs. 19.5.41 during parade hours.	Lieut. W.J. Waddell	3 days C.B.	20.5.41	Maj. R.N. Lender	
Field	1.6.41	"		Sec. 15 (2) A.A. wose failed to appear on defaulters parade at 1800 hrs. 1 Jun 41.	L/Sgt. Gregson, A.	3 days C.B.	5.6.41	Maj. R.N. Lender	

CERTIFIED TRUE COPY

Major R.N. Lender, R.C.A.,
O.C. 9th Field Bty.,
11 Cdn. A. Fd. Regt.,
R.C.A.

C.A.Os.

(P.T.O.)

No. B7099 Name Heeley, F. Sqn., Battery or Company: Bty. 11 Cdn. A. Fd. 9th Corps Regt., R.C.A. Date of enlistment: 12.9.39 G.C. Badges: Service or Proficiency Pay: Character

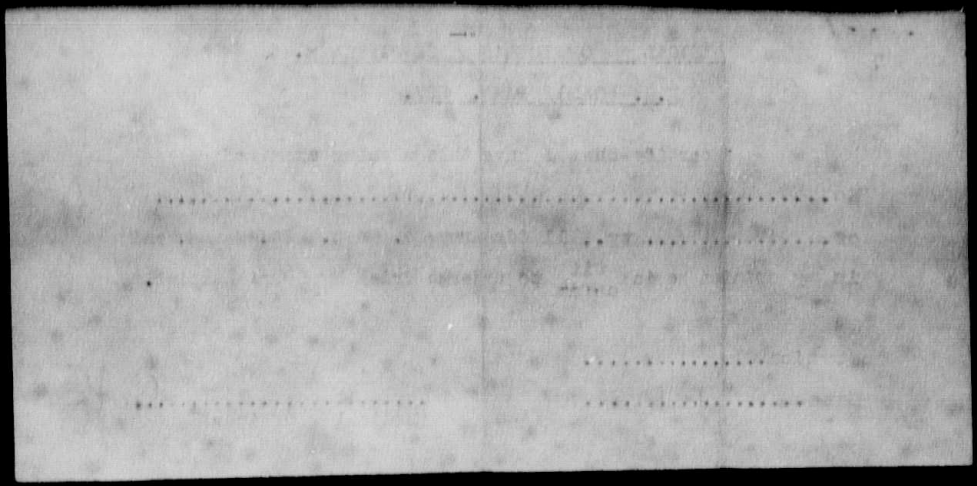
Date of last entry in Company Conduct Sheet: No. and date of last drunk: Period not reckoning towards freedom from extra fine: Sheet No. 2 Signature O.C. Company, etc.:

M.F.M. 6 (A.F.B. 122)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
C.N.E. Toronto	15.11.39	Gnr		Sec. 40 A.A. Conduct etc. Gambling in Barracks.	BQMS Scarr	48 hrs Detn.	17.11.39	Maj. T.M. Medland	
C.N.E. Toronto	17.11.39	"	✓	Sec. A.A. Breeking Arrest & AWL from 1120 hrs 17.11.39 to 1530 hrs. 20.11.39.	Bdr. Logan	72 hrs Detn.	21.11.39	Maj. T.M. Medland	
On 12 Mar 40 this soldier completed six months service and in accordance with K.O. 71 C.A.S.F. (Overseas) previous sheet destroyed.									
Okebempton	17.5.40	"		Sec. 40 A.A. Appearing on parade in a dirty condition.	B.S.M. King	3 days C.B.	17.5.40	Maj. R.N. Lender	
Field	6.9.40	"	✓	A.A. Sec. 15(1) AWL from 1700 hrs 6.9.40 to 2030 hrs 13.9.40 (171 ½ hrs)	BSM Wright Bdr Smith, H. Z.	2 months restricted pay.	14.9.40	Maj. R.N. Lender	Frts. 8 days pay

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29.10.40	Gnr.	"	Sec. 15(1) A.A. AWL from 2359hrs 29.10.40 to 1700 hrs 1.11.40 (65 hrs.)	Sgt Meldrum	14 days C.B. & rec. 3 mos restricted pay	2.11.40	Lt-Col. C.D. Crowe	Forfeits 3 days pay.
Field	19.12.40	"	"	Sec. 15 (1) A.A. AWL from 0630 hrs 20.12.40 to 1900 hrs 26.12.40 (155 ½ hrs.)	Bdr Smith H. Z.	7 days C.B.	27.12.40	Maj. K.N. Lander	Forfeits 7 days pay.
Field	3.2.41	"		Sec 15(2) A.A. Failing to report for roll call at 2100 hrs and found in George Hotel at 2100hrs	L/Sgt. Hayes	5 days C.B.	5.2.41	Capt. G.F. Marriott	
Field	17.2.41	"		was Neglecting to obey a Standing Order in that he was improperly dressed, Sec. 40 A.A. Conduct to the prejudice etc. "arranging to be/pleased on guard without permission, Sec. 15(2) A.A. Failing to appear on parade while a defaulter.	Mrs. L/B Connor Sgt. Grey,	14 days C.B, (3 charges)	20.2.41	Lt.-Col. C.D. Crowe	



148 S. (3rd Cam.)

Hnw. Ideeley, J.

See 198 B. Jur. (N.S.) Cam.

Correspondence to be PINNED here.

Army Form A.6.

B

148 S.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 6th day of NOVEMBER, 19 . 42

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn. Artillery Group, First Cdn. Army, Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[xxx that it is not practicable xxx xxxx xxx xxx x

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-7099 Gunner Frederick HEELEY 9th(Toronto) Field Battery, 11 Cdn A Fd Regt RCA.	First Charge: A.A. Sec 15(1) See charge sheet attached.	Guilty	Guilty	Confirm, find and return to unit on matter dated 10 Nov 42 KH
	Second Charge: A.A. 41 See charge sheet attached.	Not Guilty	Not Guilty.	
	Third Charge: A.A. Sec 41 (Alternative to second charge). See charge sheet attached.	Not Guilty	Guilty except that he did not receive one box of matches. To undergo Six (6) months detention. 10 Nov 42 JMB.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):— No Sir.

(Signed) K.J. Leach Brigadier, Comd. 1 Cdn Arty Gp. (Signed) J.S. Bridges major. HQ. First Cdn Army. R.G. Templeton Lieut Judge Advocate

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the 10th day of November 1942 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. B. Certificate of President as to proceedings.

I also certify that :—

1. The members of the Court a fully Advocate.
2. The witnesses a Shorthand writer.
3. ~~The interpreter) NIL~~
4. ~~The officers under instruction) NIL~~

* Omit if not applicable.

were duly sworn.

Signed this 10th day of November 1942.

J.S. Bridges major.
President of the Court Martial.

R.G. Templeton Lieut Judge Advocate

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. C. Certificate in case of death sentence.

Signed this 10th day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ KH

Signed this 17th day of Nov. 1942.

K.J. Leach
Confirming Officer.
(K.J. Leach) Brigadier,
Comd. 1 Cdn Arty Group. First CdnArmy.

Promulgated and extracts taken in the case of B7099 Gnr Heeley, F.J.,
(a) (Dated) 20 Nov 42 (Signed) Regtl Part One Orders dated 18 November 42 - AFW3011 dated 19 Nov 42
E.E. Grimmett, Capt.-Co., R.C.A.,
C.O. 11th Cdn Army Fd Regt, R.C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

"C"

CHARGE SHEET

The accused, B-7039 Gnr. Frederick Heeley, 9th (Toronto) Field Battery, 11th Canadian Army Field Regiment, R.C.A., a soldier of the Canadian Army Overseas,

is charged with

FIRST CHARGE
A.A. Sec. 15(1)

WHEN ON ACTIVE SERVICE absenting himself without leave

in that he

whilst a defaulter absented himself without leave from 2000 hours on the 1st day of October, 1942, until 0800 hours the 2nd day of October, 1942 (14 hours).

SECOND CHARGE
A.A. Sec. 41

WHEN ON ACTIVE SERVICE committing a Civil offence, that is to say, stealing

in that he

at Builth Wells, Wales, on the 1st day of October, 1942, stole a ten-shilling note, ten flagons of cider value £1-2-10, and one box of matches, the property of E. G. Pugh, licensee of the Plough Hotel, Builth Wells, Wales.

THIRD CHARGE
A.A. Sec. 41
(Alternative to Second Charge.)

WHEN ON ACTIVE SERVICE committing a Civil offence, that is to say, receiving stolen goods,

in that he

at Builth Wells, Wales, on the 1st day of October, 1942, did receive a ten-shilling note, ten flagons of cider value £1-2-10, and one box of matches, the property of E. G. Pugh, licensee of the Plough Hotel, Builth Wells, Wales, knowing the same to have been stolen.

In the Field
20 Oct 42

H. E. Wright Lt.-Col.
Commanding
11th Cdn Army Field Regt, RCA.

To be tried by Field General Court Martial.

In the Field
6 Oct 42

A. E. Leach Brigadier
C.C.R.A.
First Cdn Army

Approved on behalf of the Judge Advocate General

20 Oct 42.

D/J.A.G. Army

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN.) Para. 557.

I certify that I have this morning examined B-7099 Gnr. Heeley, F., 9th (Toronto) Bty, 11 Cdn Army Fd Regt, R.C.A., and in my opinion he is fit to undergo trial by Court Martial.

Station CAMP RECEPTION STATION LLANDRINDOD WELLS

Date 1 ONOV 1942

Medical Officer,

TRIAL OF B7099 GNR. HEELEY, FRED, 11th CDN ARMY FIELD (4)
REGT., R.C.A., HELD AT LLANDRINDOD WELLS ON THE 10th
DAY OF NOVEMBER, 1942.

PRESIDENT

Major A. P. Ardagh, H.Q., First Cdn. Army.

MEMBERS

Capt. D. H. Rosser, P.P.C.L.I.

Lieut E. E. Campbell, 8 Cdn Army Fd Regt, RCA.

The Order Convening the Court, the Charge Sheet and Summary of Evidence are laid before the Court.

The Court satisfy themselves as provided by Rs.P. 22 and 23.

PROSECUTOR - Lieut. R. P. Bingham, 11th Cdn Army Fd Regt RCA.

DEFENDING OFFICER - Lieut. C. A. Ashfield, 11th Cdn Army Fd Regt RCA.

JUDGE ADVOCATE - Lieut. K. G. Morden, H.Q., First Cdn Army.

The Accused is brought before the Court.

The Medical Certificate is laid before the Court, signed by the President, marked "A" and attached to the proceedings.

At 1015 hrs the trial commenced.

The Order convening the Court is read, signed by the President, marked "B" and attached to the proceedings.

The names of the President and Members of the Court are read over in the hearing of the Accused and they personally answer to their names.

Pres. to Accused:

Q Do you object to be tried by me as President or by any of the officers whose names you have heard read over?

A No sir.

The President, members of the Court and Judge Advocate are duly sworn.

Pres. to Accused:

Q Do you object to B12061 L/S. McCulloch, J.P., 11th Cdn Army Fd Regt RCA, acting as shorthand writer?

A No.

B12061 L/Sgt. McCulloch, J.P., 11th Cdn Army Fd Regt, R.C.A. is duly sworn as shorthand writer.

The accused is arraigned upon the charges in the Charge Sheet. The Charge Sheet is signed by the President, marked "C" and attached to the proceedings.

Pres. to Accused:

Q How do you plead to the first charge?

A Guilty, sir.

Q How do you plead to the Second charge?

A Not Guilty, sir.

Q How do you plead to the third charge?
A [illegible] guilty, sir.

With respect to the first charge, R.P. 35 (B) is complied with.

Prosecutor - Opening Address:

The facts are as laid out in the Charge Sheet and we will try and substantiate them. The evidence is purely circumstantial but very strong and there are some small points which are very important. The purpose of our first witness is to establish that the accused was at a certain place at a certain time. I wish to call Police Sgt. Hibbert.

With respect to second and third charges, R.P. 39 (A) are complied with.

FIRST Witness, Sgt. George Alfred Douglas Hibbert, Police Sgt. in the Breconshire Constabulary in charge of the Builth Wells section, for the Prosecution, duly sworn, states:

Cross Examination - Prosecutor:

Q1 Would you tell the Court about any circumstances you know of during the period of 1 - 2 Oct?

A1 At 12.15 on the 2 Oct I was in Market St., Builth Wells in company with W.R. Pritchard. Just below the Globe Hotel, standing on the pavement near a telephone post, I saw three Canadian soldiers. They were standing around a case containing some bottles of Ridlers Cider the case being on the pavement. Some of the soldiers had bottles in their tunics, I counted ten bottles in all. I said to them, 'Hello boys, what have you got here' and a big tall man, who I know now as Gnr. O'Brien said, 'We are having a drink. We bought these from a store.' I asked what store and Heeley replied the store opposite the Starr Supply. O'Brien said, we paid 28 shillings for it. I reckoned this up in my mind and I thought it would be somewhere about the price a person would have to pay for a case of cider and the money on the bottles and the case would be somewhere about that. The one man was very sick on the road and he had his hat down over his face and as soon as we came along he walked away down the road, I had no opportunity of identifying him. O'Brien was very talkative and quite jovial and in his conversation he mentioned to me who his Sgt. was and named him as Sgt. Black.

JA Was the Accused present?
A Yes.

While this conversation was taking place, Heeley was leaning against a telephone on the street, right by us, then he slipped down to the pavement. W.R. Pritchard put his lamp on him and helped him up. I then advised these men to place the bottles back in the case and carry them down to the camp as it would be better for them to take them there than have them on the street. They placed the bottles in the case and Heeley and O'Brien took the case and they went in the direction of the camp. I had received no complaint at all up to that time. At 9 a.m. on the 2 Oct, I received a telephone message from Mr. Pugh, landlord of the Plough Hotel. He mentioned that he had a complaint to make. I went to the Plough Hotel and I examined the premises there. I could find no trace of breaking and entering the premises at all but in the bar I noticed there was 2 scratches across the counter top as if some heavy thing had been dragged across it. Later I went to North Road, Builth Wells where

I saw an officer of the regiment and he pointed Sgt. Black out to me. I had a conversation with Sgt. Black subject to which he handed me certain property, a box of English Glory Matches and 4 Players cigarettes.

JA Individual cigarettes or 4 packages
A Individual cigarettes

I gave him a description of the men I was looking for and who I had seen in possession of the case and ten bottles of cider and we went to see BSM Gazelle and we went to a hut on the left hand side of the middle road of the camp to look for these men but we could not find them. We went out into the town and near Lewises Garrage, I spoke to one man whose name is Frigault. He looked something like the man who was seen but I could not swear to him so he came along with Sgt Gazelle and Sgt Black. We walked up the road into Market St. and near the spot where I had seen these men at 12.15 that morning, I picked up a packet of 5 Woodbine cigarettes which had been tramped flat on the road. We looked in practically all the pubs and places likely to find these men but could not find them and then a parade was arranged for 1.30 p.m. that day, a troop parade. I reported down at the North Road at 1.30. I saw two troops at work on their guns and in the second troop I saw Gnr. Heeley. I went up to him and told him that he was the man I was speaking to and who was in the company of two others with a case of cider in the early hours of the morning. I asked him if he remembered speaking to any policemen. He replied, I have not been speaking to you or any policemen. I then cautioned him and told him that anything he wished to say would be taken down in writing and may be offered as evidence. I asked him what he had in his possession and he handed me a package of English Glory Matches. These were similar ones to the ones that I had a complaint about. I asked him how much money he had and he produced a few coppers. He stated that he had loaned a pound to one chap and ten shilling note and silver to Sgt. Battersby and that he had also loaned a pound note at 7.30 on the first day at the camp to Sgt. Craig. He was then told by S.M. Gazzelle to go where he liked and to work again. I then went to the corner of North Road and sent P.C. Mayne, one of my officers to the Church Hall to fetch W.R. Pritchard. Pritchard came to the corner of North Road and came towards me. When he got to the centre of the road I called out to him "Don't come near me, go and do your work". I think that ends the evidence with regard to Heeley.

JA You recognise Heeley?
A Yes sir.
JA Do you recognise him to-day?
A Yes, there he is there (pointing to Accused).

Q2 I have here a box of matches, are these similer to the ones you took from Gnr. Heeley?
A2 Yes.
Q3 Does this particular box of matches differ from the Old Glory matches being sold now?
A3 There is a marked difference, these are the old kind of boxes and instead of the white fringes it is now a buff colour. These are old stock.
Q4 This was handed to me as a exhibit as taken from Gnr. Heeley and I would like to submit them as Exhibit "D".

JA to Witness
Q5 This is the box of matches you mentioned in your evidence?
A5 That is the box of matches.

Box of matches marked "D", signed by the President and attached to the

proceedings.

Q6 Pros to Witness:
Have you any other evidence to offer?
A6 I took a statement from Sgt. Battersby and as a result of what he told me I went to the Power Station, Builth Wells and recovered a ten shilling note. It was a broken note and I found it had been gummed to-gether. It had been ripped across twice.
Q7 Can you identify this 10 shilling note?
A7 That is the 10 shilling note sir.

Q8 I would like to submit this 10 shilling note as Exhibit E.

Ten shilling note marked "E", signed by the president and attached to the proceedings.

Q9 What time was it when you first saw the accused?
A9 At 12.15 a.m. on 2 Oct.
Q10 On the street in the proximity of the Plough Hotel?
A10 Yes. I might say that when I went up, O'Brien said to the others, Stand around and they won't notice us. They stood with their faces to the wall and the one man got sick.
Q11 In what manner were they standing?
A11 As if they did not want us to see them and as if to hide the case.
Q12 When you interviewed Heeley the following day, you stated that he had told you that he had not seen a Police Officer or been in the particular spot mentioned on the preceding evening?
A12 He did not say anything about the spot, he said he did not know where it was but he told me he had not spoken to me or any other policeman.
Q13 After you had warned him, did he make a statement?
A13 Only what I said sir, that he had loaned his money to Sgt. Battersby and Sgt. Craig and he produced the box of matches. He did say then that he had bought the box of matches in Brecon.

Cross Examination - Defending Officer:

Q14 Just how far from the Plough Hotel were these three men?
A14 About 50 yds below, on the opposite side of the street.
Q15 You say it was nine o'clock the next morning as the time you received the call satating they had a complaint to make?
Q15 Yes, as near as I could say.
Q16 You never had any communication with W.R. Pritchard regarding the description of Heeley, before you sent him down?
A16 Only what he saw himself.
Q17 It was Constable Pritchard who shone the line on the man in the street?
A17 Yes.
Q18 Would you say the men you saw was drunk or incapable?
A18 There was none of them drunk, they had been drinking but I would not say they were drunk.
Q19 Did you give a description to Sgt Black of the men you claimed to be Heeley as well as O'Brien and he could not say who they were from the description?
A19 He said, I know the men you want but we will have to go back to the camp to find them.

Questioned by the Court -

Q20 You said that when you first encountered these men at 12.15 you asked them various questions and that one of them stated they had purchased

the cider for 28 shillings. Was that a voluntary statement or was it mentioned in reply to a question?
A20 They just said it after I asked where they got it from.
Q21 It was absolutely a voluntary statement and not in reply to a question by you or anyone else?
A21 That is right sir.

In the opinion of the Court and the Judge Advocate, it is unnecessary to comply with R.P. 83 (B).

SECOND WITNESS - War Reserve Police Constable Leonard Granville Pritchard, Breconshire Constabulary Builth Wells section, for the Prosecution, duly sworn, states:

Cross Examination - Prosecutor:

Q22 Will you tell the Court what you know about what happened on or about 1 - 2 Oct?
A22 On the 2 Oct at about 12.15 a.m. I was in company with Police Sgt. Hibbert and we were going up Market Street, Builth Wells when we saw three men standing on the left hand side of the road on the pavement leaning against a telephone post around a case of flagons. We approached these men and the Sgt. spoke to them and I put my light on and saw they were flaggons of cider and that the men were under the influence of the drink. They had several flaggons out of the case, some on the street and some flagons in the front of their tunics. The Sgt. asked these men what they were doing and they said they were just having a drink and he asked them where they had got the flagons from and they said they had bought them from a store near the Starr Supply shop and it had cost them 28 shillings. I noticed one of the men who was leaning against the telephone post had slipped to the pavement and I put my light on him and helped him up. We told them the best thing was to collect the flagons and take them down to the camp with them. We did not know anything had been wrong at that time. They put the flagons in the case and took them away. Early in the morning we had a report that the Globe Hotel was broken into. I was notified to meet my Sgt. at a certain place at 1.30 p.m.
Q23 You saw three men with the case of flagons, can you recognise anyone of the men in this room?
A23 Yes, there is one of the men (Pointing to Accused).
Q24 How did you recognise him on the night in question?
A24 He was leaning against the telephone post and I put my light on him. A few minutes later he fell down and I again put my light on him and helped him up.
Q25 Is that the man you saw and helped?
A25 He pointed to the Accused and stated that the Accused was the man he saw and helped up on the evening in question.

Q26 Go on with your story.
A26 Later on in the day, about 1.30, I was told to look around the lines and see if I could identify either of the men I had seen early that morning. I did so and identified the Accused as one of the men I saw early in the morning.
Q27 The man that you selected, is he here?
A27 Yes sir, sitting there, (points to Accused).
Q28 What is his name?
A28 Gnr. Heeley sir.

Q29 Is that all you have to say?
A29 After I picked out my man I was told to search for any of the property. later I found a cider case containing one emply flagon in the sports field which I picked up with another constable, and took to the station.
Q30 Could you identify that case?
A30 Yes sir.

Case Produced.

Q31 Is that the case?
A31 That is the case I found and returned to the station. That case is similar to one I saw with the three men but it was not broken at both ends when I first saw it.
Q32 I would like to enter this as a exhibit

Judge Advocate to Witness
Q33 Howdo you identify that case, it looks like an ordinary case to me. You say it was broken when you first saw it, what are the marks or characteristics?
A33 The case I saw was similar to that but was not broken at the ends but this is the case I found
Q34 Would you say you first saw it in the evening at 12.15 hrs?
A34 Yes.
Q35 That case you saw was not broken then?
A35 No
Q36 Is it the same as when you found it in the field?
A36 That is the case that I found in the field.

Case marked "F", signed by the president ~~and attached to proceedings~~.

Cross Examination - Defending Officer:

Q37 Can you tell me how you were able to identify the accused on that night?
A37 It was very dark but by putting the light in his face and looking at him and later when he fell I again put the light in his face and looked at him and assisted him to his feet.
Q38 For what reason did he fall down?
A38 He was under the influence of drink, leaning against the post and his feet slipped out from under him.
Q39 Possibly because of the steel plates on his shoes?
A39 Yes.
Q40 Is it your opinion that the man was incapable?
A40 I was not making any charge that the man was drunk.
Q41 What indication did you get that there was to be a parade of identification?
A41 At 1 p.m. when I reported in.
Q42 Did you communicate with Sgt. Hibbert?
A42 I did not see Sgt Hibbert between the time I finished my duty until I went down for the inspection.
Q43 When you got to the camp, Sgt. Hibbert did not help you in any way?
A43 No, I was on duty in West St. and I was beckoned by another police officer to appear at 1.30 and I went to walk towards Sgt Hibbert and he said Go on about your work and I walked up the lines until I identified the man. There was no assistance from anyone when I got to the lines.

In the opinion of the Court and the Judge Advocate, it is unnecessary to comply with R&P. 83 (B).

Court Adjourned, 5 minutes.

THIRD WITNESS, Edmond George Pugh, Plough Hotel, Builth Wells, licensee Plough Hotel, Builth Wells, for the Prosecution, duly sworn, states:

CROSS Examination - Prosecutor:

Q44 Will you describe to the Court any facts that you remember of the night of 1 - 2 Oct?

A44 There had been a few Canadian soldiers and some Polar Bear soldiers in my house and about 5 minutes to 10 three Canadian soldiers came in the front bar. They asked for 2 pints of cider and a pint of beer. I served them and after that they wanted one more drink and I said it had just gone ten and I must close the house. They then left the house at about ten past ten or went out of the bar at that time. I stood for a time talking to an old friend of mine in the bar, then went to the front door and wished him good night and barred the door. I then went back to the kitchen and sat down by the fire till about 25 minutes past 11. Before I went to bed, about 11 o'clock, a soldier came to the door and wanted to have a drink. I refused and told him the place was locked up. I then went to bed about 25 minutes past 11 or thereabouts. I heard no sound during the night.

Q45 You said shortly before closing time three Canadian soldiers came in?

A45 Yes

Q46 Can you recognise anyone of them here?

A46 He indicates the Accused and said This man.

Q47 You said that t hey left the bar, did you see them leave the building?

A47 No I did not see them leave, there was no light in the passage and I could not see from where I was.

Plan of Ground Floor, Plough Hotel, Builth Wells produced by the witness, marked "G", signed by the President and attached to the proceedings.

Q48 Could you show the Court on that plan, how anyone wishing to leave or enter you house or go to any part of the house, could do so?

A48 In t hrough the front door or through the door in the kitchen off Brecon Road or around through the back door leading from the stables into the passageway.

Q49 How would they leave?

A49 They could go out the front door or out through the passage and out the back door.

Q50 How would anyone gain access to the cellar?

A50 The door is in the passageway. I lock it but always leave the key in the door as I often have to go down during the course of the evening.

Q51 How would you know if anyone left the bar did leave the hotel?

A51 I would not know unless I was in the passageway to see him go out the front or back door.

Q52 You s aid that you let a friend out the front door and bolted it and then went to bed?

A52 I sat in the kitchen for a while and then went to bed.

Q53 Did you open the door when a person knocked?

A53 No, I asked who it was and he said a Cdn soldier.

Q54 What happened ~~faikax~~ the following day?

A54 As a result of a message I received about ten o'clock on Oct 2 I returned to the hotel. I found the till empty so I went straight to the phone and rang the police up. I reported to the police that I had been robbed. The Sgt came up in about a quarter hours time and I reported the loss.

Q55 What did you losses consist of?

A55 Roughly about £20, 2 silver whiskey measures, 1 silver mug, 1 crate of cider, my wife's handbag, about 500 Woodbine cigarettes in packets of 5, about 150 Players Cigarettes in blue paper packages of 20, a Barclays Bank savings box and part of a dozen boxes of English Glory matches were missing from under the till.
Q56 Where do you purchase your supplies?
A56 David Williams, Brewers.
Q57 What does he supply you?
A57 With everything besides matches and I buy draft cider from the farms.
Q58 What brands of cider?
A58 Ridlers & Bulmers.
Q59 Can you tell me what kind of a case Exhibit F is?
A59 Ridlers case, similar to what we get.
Q60 Are there any other places where it is sold?
A60 There are several other public houses that sell it in Builth Wells.
Q61 What retail stores sell that brand of cider?
A61 Perhaps the Starr Tea Co, I am not sure.

Cross Examination - Defending Officer

Q62 When you went to bed on the night of Oct 1-2 you say the house was entirely locked up. Can you tell me how it is locked?
A62 The front door is locked with a bar which goes right across the door, the rear and side door are the same.
A63 If a person is inside all they have to do is lift the bar to get out?
A63 Yes.
Q64 The next morning you say you got up and went to work, how many doors did you see?
A64 Only the side door.
Q65 Was the bar properly fastened then?
A65 Yes.
Q66 What time was it on the morning 2 Oct that you phone the police?
A66 About 10.30.
Q67 Where do you keep the case cider in your house?
A67 Down under the bar.
Q68 How do you lock the outside of your cellar?
A68 With an iron bar from the inside.
Q69 Did you inspect that bar the morning of the 2 Oct?
A69 Yes, after I came back.
Q70 Was it closed or open?
A70 The bar, instead of being down in the hole, was partly out of one side.
Q71 If people had been in the cellar and gone out, they could not have put the bar back after going out?
A71 No.
Q72 You saw no bars in the house out of place that morning?
A72 When I went down the blackouts were all up, everything was black and and did not see all the doors.
Q73 There was a case of Ridlers cider stolen, from where?
A73 From behind the bar. There was marks on the counter where it had been dragged across the counter.
Q74 You were the last one at the till on that night?
A74 Yes.
Q75 Do you remember a torn 10 shilling note being in there then?
A75 No. There was a lot of 10s notes we had on hand for October Fair day as we do rather a big trade that day.
Q76 You say you had missing from your premises part of a dozen boxes of

over

matches, was it cartons or as Exhibit D?
A76 Like Exhibit D
Q77 Not having anything to do with the matches, you could not recognize them?
A77 No.
Q78 You also gave in your evidence that the till was empty?
A78 All the silver and notes had been taken but they had left about 4s in coppers.
Q79. Have you any means of locking the till?
A79 There is a patent catch underneath.
Q80 Was it hidden?
A80 Yes, it is underneath and you have to put your hand up under the till.
Q81 Was the till forced?
A81 No, the catch had not been forced.
Q82 It was about 11 o'clock when the soldier came to the door, you did not open the door?
A82 No I did not.
Q83 When you said No beer, he said it was a Cdn soldier?
A83 That is right.
Q84 If you bar all doors in the housedo you suppose that the person who robbed your hotel must have been in the hotel before you locked the door?
A84 Yes.
Q85 Did you see any scratches on the top of the ~~front door~~ COUNTER?
A85 Yes.
Q86 Even though something must have been dragged across the bar, you still heard nothing during the night?
A86 Nothing.
Q87 You did not see any doors open in the morning?
A87 No I had just gone out the one door.
Q88 When was the last time you were in your cellar?
A88 That is hard to say, I did not go down that night.
Q89 Did you try the door to see if it was locked?
A89 No.

Re-examination - Prosecutor
Q90 You say there was a knock on the door, did anyone else in the house answer that knock?
A90 No, my wife was there but I answered it.

Questioned by the Court
Q91 Can you point out on the diagram where you sleep?
A91 I sleep immediately above the kitchen with my wife.
Q92 How did you get from the ground floor up to the top?
A92 The stairs run off the passageway.

In the opinion of the Court and the Judge Advocate, it is unnecessary to comply with R.P. 93 (B).

Court Adjourned 1215 hrs until 1400 hrs.
Re-opened.

FOURTH WITNESS - B7009 TBSM (WO II) Black, G. H., 11th Cdn Army Fd Regt, R.C.A., for the Prosecutor, duly sworn, states:

Cross Examination - Prosecutor:

Q93 Will you tell the Court any facts that you know about the night Oct 1?
A93 On the night Oct 1 I was returning to camp in Builth Wells at approximately 2230 hrs. I heard voices and recognised them as men from my own troop. I walked across the road to see what it was about and there I met Gnr. O'Brien, Gnr. Frigault and Gnr Heeley.
Q94 Is anyone here that was in that group that night?
A94 Indicates Accused, Yes Gnr Heeley sir.
Gnr. O'Brien was rapping on the door of a hotel which I have since found was the Plough Hotel, to askfor a drink. While I was talking to Gnr. Frigault and Gnr. Heeley I heard a womens voice answer the knock on the door but could not hear what she was saying. I then told the three of them to return to camp. I returned to camp and visited the hut Gnr Heeley was staying in. I spent about 10 minutes there talking to one of the men. Heeley did not arrive at the hut nor did the other two. I then went to my own quarters, spoke to the Orderly Sgt and turned in.
Q95 What happened on the 2 Oct?
A95 Shortly after our morning troop parade I was approached by Sgt Hibbert and in was in conversation with him for a few minutes. We then went looking for Heeley and O'Brien and Frigault. When we arrived in the camp we went and got S.M. Gazelle. He accompanied us while we were looking for the three men. They were not in camp. We went outside to go into town and on the way we came across Gnr Frigault. We kept him with us and visited all the pubs in the town but the other two could not be found. We also visited the place which had been broken into the previous evening and we then returned to camp. On the 1330 parade the police Sgt. asked permission to attend that parade. After the parade was over he identified Heeley as one of the men he had spoken to the night before. The police Sgt questioned him and he denied seeing the police or seeing or talking to me. Then he was taken outside by the police Sgt. The police Sgt came back with Heeley and informed S.M. Gazelle that he was certain Heeley was the one he was speeking to on the previous night. On t hat information S.M. Gazelle had Heeley placed under close arrest.
Q96 You say that you met three men down near the Plough Hotel?
A96 Yes.
Q97 How much drink was there in evidence?
A97 None that I could see.
Q98 You did not see anything?
A98 No sir.
Q99 There wasn't a case like this in evidence?
A99 No.
Q100 You said you arrived there and O'Brien was attempting to get in the Plough Hotel rapping on the door?
A100 He was rapping on the door.
Q101 For what purpose?
A101 To have a drink.

Cross Examination - Defending Officer:
Q102 When you came up to the Plough Hotel, you say the three men were already there?
A102 No sir, the two men were 25 to 50 yds away from the door which O'Brien was rapping on, across the road and around a corner.
Q103 This is exhibit G. This is Market St., there is the front door, side door and rear door, which door was he at?
A103 At the side door leading into the kitchen.

Q104 That was at 10.30, when was it you last saw them?
A104 About five minutes later.
Q105 You could tell they had been drinking somewhat?
A105 Yes they had been drinking.
Q106 Did you hear or seen anything of their whereabouts after that?
A106 No I was returning to camp. Heeley was insisting on O'Brien returning to camp when I left.
Q107 That was on the night of the first day the 11 Cdn Army Fd Regt arrived in Builth Wells?
A107 Yes.
Q108 What did you know about the possible state of Heeley's finances on the night 29th Sep?
A108 I had occasion to visit one of the rooms in our building at Woldingham to check blackouts and there had been a gambling game which had just broken up and Heeley had very much money in his hand.
Q109 Was there any notes?
A109 Yes and a handful of silver and I took it that he had won it.
Q110 This was on the night 29th Sep, the night before the Battery left for Wales?
A110 Yes sir.

Questioned by the Court -
Q111 You stated in your evidence that the night was very dark?
A111 Quite dark.
Q112 How then, did you identify the tree men?
A112 I know them by voice, I spoke to all three men personally.

In the opinion of the Court and the Judge Advocate, it is unnecessary to comply with R.P. 83 (B).

FIFTH WITNESS Mrs. Dorothy May Pugh, Plough Hotel, Builth Wells, for the Prosecution, duly sworn, states:

Cross Examination - Prosecutor:
Q113 Will you tell the Court, any and all the circumstances that you remember of the evening of 1 Oct?
A113 I was in the bar till about a quarter to ten and left to go for my supper and while I was having my supper in the kitchen, I heard the cellar door b eing tried.
Q114 Would you tell the Court exactly what door that was?
A114 The cellar door in the passageway, it was about ten o'clock.
Q115 Go on please?
A115 Nothing really happened till next morning when I found the till had been robbed.
Q116 You said you were serving in the bar?
A116 I was serving the kitchen customers. My husband was in the front bar.
Q117 How did you serve the customers in the kitchen?
A117 I have to walk through.
Q118 Did they pay you?
A118 The customers in the kitchen paid me.
Q119 What kind of money did they offer in payment?
A119 On the night Oct 1?
Q120 Yes.
A120 I don't really remember with regards to that night. I had been given a broken 10 shilling note a day or so before, we had two or three days takings in the till.

Q121 You say a broken 10s note?
A121 It had been ripped in half and joined to-gether with white gum paper.
Q122 Did you see the note again after the robbery?
A122 Yes, Sgt. Hibbert showed me one that was the same as I had had. It had been gummed to-gether ag in with brown paper whereas it was white paper at first.
Q123 I show you exhibit E. Will you tell the Court if there is any similarity between that and any you have seen before?
A123 I don't think the paper was so wide as this.
Q124 The 10s note you were referring to was torn, will you e xplain to the Court how it was repaired?
A124 With white gum paper.
Q125 How many times was it torn?
A125 Once, first of all.
Q126 When you first saw the note?
A126 Yes.
Q127 You a gain saw the note?
A127 Yes and it had brown paper on it when Sgt Hibbert showed it to me.
Q128 How many torn 10s notes did you have in the till?
A128 I only noticed one but I was terribly busy.
Q129 Going on from the evening of the alleged robbery, will you tell the Court what you saw the next day?
A129 When I came down I found the cellar door, inside the passageway, open and as it was never left open I wondered about it. My husband and children had gone off, my son using the kitchen door and my husband through the back door and a gentlemen came in to ask if I would ring up the police for him and he gave me 2 shillings to pay for the call. I went in to get the change and found the till had been robbed. I went out then and found that the front door onto Market St. was unbarred. I told my little boy to go and tell his Daddy to come home as someone had robbed the till.
Q130 Can you tell the Court in your opinion, how many people had been near the front door up to the time you discovered it unbolted in the morning?
A130 No one had been near it.
Q131 Could you enumerate to the Court the things that were taken?
A131 A package of Players 20s in soft blue wrapper and 1½ dox matches, 2 small silver spirit measures, 1 silver money box, my handbag and 1 case of cider flagons.
Q132 At the time of closing, how many bottles of cider were there in the case?
A132 Ten
Q133 It holds a dozen?
A133 Yes.
Q134 Tell the Court what difference there was between the matches you had behind the bar and the matches supplied to-day?
A134 I have not had any of that kind since.
Q135 What type of box was it, it is similar to the exhibit in front of the Court?
A135 Yes.
Q136 Could you tell the Court the number of places they are generally sold?
A136 I got them from Hilford.
Q137 Any other place in Builth Wells where they are sold?
A137 I could never get any.

Cross Examination - Defending Officer

Q138 You do not recognise this 10s note in any way other than it is torn?
A138 It is very old.
Q139 Could you tell me the difference between the two of these if this one was torn?
A139 No, just the fact that it is torn.
Q140 You cannot say for sure whether there were other torn notes in the till?
A140 I did not notice any and I am sure I would have.
Q141 I will draw a rectangle on this black-board, will you draw a line representing the first tear as you remember it?
A141 Yes, torn close to the centre on the left half.
Q142 You say it had white gum paper on it?
A142 Yes.
Q143 There is a box of matches, exhibit D, can you identify them?
A143 They are the very same matches.
Q144 That does not say that any other pub keeper could not have had these matches or anyone travelling through could not have had them?
A144 I could not say that.
Q145 What time was it on the morning of Oct 2 that you found the till was empty?
A146 After nine.
Q146 You did nothing until your husband came home?
A146 No.
Q147 What time did he get home?
A147 About 10 minutes after I found the till empty.
Q148 About what time would it be when he got home?
A148 About 9.15.
Q149 You say that in the morning, no one in the house having gone out that way, the bar was off the front door?
A149 Yes.
Q150 When were you last in the room that you describe as the cellar?
A150 I have never been in the cellar but the door was open when I came down stairs.
Q151 On the night of the 1st, do you remember any people coming to the door after closing time?
A151 I heard someone but we did not open it.
Q152 Did you answer or your husband?
A152 We both called, it was the kitchen door.
Q153 You left the bar at a quarter to 10 and went to the kitchen to prepare supper, did you notice if that door was shut?
A153 I did not pass it.
Q154 Is there an entrance to the bar through to the kitchen without going into the passageway?
A154 Yes.
Q155 Taking in consideration that when your husband went to bed that night he suposedly locked all the doors the only possible way that a person could have taken anything from your premises was to be inside the house when it was locked?
A155 Yes.
Q156 He must have been in before ten to have stayed in?
A156 We were late in barring up the front door as my husband was talking to a friend of his and the front door was open until this friend left.
Q157 Ordinarily you closed at ten and you don't serve anyone after ten?
A157 That is right.
Q158 Then if the door was open and your husband was in the front bar, if someone came in he must have heard them?
A158 Not necessarily, if someone came in quietly. He had the bar door shut and could not see into the passage.

RE- Examination - Prosecutor

Q159 You have put a line representing a tear on the diagram on the board. You state you saw the note twice. The first time it was torn once, the second time torn twice. Could you show the second tear?
A159 Line put in for second tear, right in centre of diagram.
Q160 Which way are you looking at that note?
A160 So that you can read it.
Q161 In this manner, the first tear to the left and the second in the middle?
A161 I cannot just remember for sure but that is as near as I can r emember.
Q162 Will you describe to the Court the type of cider?
A162 Ridlers.
Q163 It was contained in a case, was it similar to this?
A163 Yes, but not knocked about so much.
Q164 You stated there was ten bottles in it?
A164 Yes.
Q165 Do you know where else this cider is sold?
A165 All the houses belonging to Mr. Williams.
Q166 Do you know what retail stores cider is sold in?
A166 I don't think there are any.

Questioned by the Court -
Q167 Is there an Off License Store in Builth Wells?
A167 No.
Q168 Is there any other means of getting cider in Builth Wells, other than a public house?
A168 No.
Q169 How many public houses in Builth Wells?
A169 About 13.
Q170 How many of the others would sell that cider?
A170 About nine of them.
In the opinion of the Court and J.A. it is unnecessary to compy with R.P. 83 (B).
Court adjourns 5 minutes.
Re-opened.

Court -
During the recess the Court has considered various points that have come up and it is the duty of the Court to see that all the evidence referring to the charge is brought out. In other words, that if either the Prosecutor or the Defending Officer are missing essential points, it is the Courts duty to direct them. Thus, the points which the Court want brought out exhaustively are: Information as to the possible sources of supply of cider of this type in Builth Wells in a retail manner. In other words, apart from consuming cider in a public house by the glass. We feel that the witnesses are available to supply that information. Secondly - Would it be likely for a case of cider to be sold in Builth Wells at a public house, not possessing an Off License, over the bar.

Pros I would like to call Arthur Price to give this information.

SIXTH WITNESS - Mr. Arthur David Price, Locheber, Builth Wells. Brewery Manader, David Williams Co., for the Prosecution, duly sworn states;

Cross Examination - Prosecutor

Pros to Court

There has been no warning given the Accused or Defending Officer as to this witness. Is there any objection to the witness?

Court to Defending Officer

If you wish you may have an adjournment to prepare for this witness.

Defending Officer

The Defence has no objection to this witness and does not require an adjournment.

Q171 Will you tell the Court what you occupation is?
A171 I go around to the houses once every week and take the orders and see that the cases are collected.
Q172 How many David Williams houses are there in Builth Wells?
A172 We have 10 houses in Builth Wells.
Q173 How many houses are there in Builth Wells not supplied by you?
A173 Three, all Hancock houses.
Q174 What houses handle cider?
A174 I supply all our houses with cider.
Q175 What brands do you carry?
A175 Aidlers, Bulmers and Evans.
Q176 How many supply houses carry these brands?
A176 We are the only Brewer except for Hancock who sends supplies from Cardiff
Q177 Do they sell cider?
A177 I don't know.
Q178 How many Off License houses are there in Builth Wells?
A178 Starr Supply and Jenkins the Chemist but I don't think they sell cider.
Q179 Do you supply these houses?
A179 No.
Q180 You do not know of any other Brewer supply that supplies cider to Builth Wells?
A180 No, I don't think there is anyone.

Cross Examination - Defending Officer:

Q181 You say you don't think these two places sell cider?
A181 I don't know.
Q182 What time do these shops sell beer etc?
A182 I beleive from about 9 to 7.
Q183 You only imagine their hours to be 9 to 7?
A183 Yes, that is the time the shops are open.

Cross Examination - Judge Advocate

Q184 I understand that your houses are supplied with three different brands of cider?
A184 Yes.
Q185 You have not any main brand of supply?
A185 No we get our monthly allowance from these different places. We get anywhere from 20 to 36 cases alike that from each firm about every month.
Q186 Do you distribute these to the 9 or 10 houses you have?
A186 Yes.
Q187 I you had a shipment on the 1st Nov of 36 cases, you divide them among the 9 or 10 houses?
A187 Yes
Q188 Would you give one house all Aidlers?
A188 Not unless they asked for it or we had sold out of the other brands.

Q189 It might be Ridlers in each public house at one time?
A189 No, as some houses prefer certain cider.
Q190 What licensee always has Ridlers?
A190 The Plough and several others.
Q191 Do you ever supply them with anything else?
A191 Not unless we are out of Ridlers.
Q192 Some houses always ask for Bulmers?
A192 Yes.
Q193 Could you say how many houses to-day would have Ridlers on hand?
A193 I don't think there are any as we are right out.
Q194 Say on the 1 Oct?
A194 There would not have been a lot.
Q195 Half of them?
A195 Possibly. As I say when we get short we might make them up of different makes. We always send out two cases as a minimum sale, it is a government order that the minum sale be 1½ dozen.

Questioned by the Court -

Q196 I believe there are 12 to 13 public houses in Builth Wells?
A196 Yes.
Q197 Nine belong to you?
A197 Yes.
Q198 Is there any possibility that Ridlers cider would be sold at any of the other public houses not belonging to you?
A198 I cannot say.
Q199 Do any of the public houses in Builth Wells have an Off License?
A199 No, all our houses are Tied.
Q200 No one then, can buy a bottle or two of beer or cider over the counter and take it away with them from any of your houses?
A200 There is nothing to stop them from doing that.
Q201 He can sell a case over the counter?
A201 Yes, he doesn't require an Off License for that.
Q202 Do you sell beer the same way?
A202 Yes you can take beer away in flagons.
Q203 What is an Off License?
A203 It is like the Starr Supply Stores, merely for bottle sales, you cannot consume it on the premises.

Re-Examination - Prosecutor:

Q204 Is the supply of cider in Builth Wells sufficient to warrant the sale of a case?
A204 In normal times yes, but not now in Wartime.

Questioned by the Court -

Q205 During the course of a month, how many cases would you supply Mr. Pugh on an average?
A205 About two cases in the whole month.

Re-Examined - Prosecutor

Q206 During your tour of duty has any house reported to you the loss of a case?
A206 Only the Plough.
Q207 No other reports?
A207 No other reports of anything else anywhere.

Questioned by the Court:

Q208 Do you keep a check on the return of these cases?
A208 Yes.
Q209 During the period immediately after 1 Oct when presumably this case would have been returned to you, was there any shortage in the returning of cases to you from any house in town aside from the Plough?
A209 That is a strange question as they may not have sold out and may have some full bottles still in the case and we always wait until they have a case full of empties before taking the case.
Q210 Someone might buy a case and not return it for three months?
A210 That is right.

In the opinion of the Court and the J.A. it is unnecessary to comply with RP83B

FIRST WITNESS for the Prosecution - Sgt. G.A.D. Hilbert - RECALLED

Cross Examination - Prosecutor

Q211 How many Off License Houses are there in Builth Wells?
A211 Two
Q212 Who are they?
A212 Starr Supply Store and the Chemist shop which only sells wines so actually there is just the one.
Q213 What are the hours of these shops?
A213 From 1130 in the morning till 3 and then from 5.30 until 10.
Q214 Are these the hours they stay open?
A214 No the shops close early, the only way to get anything after the shops close is by ordering it for delivery at a later hour.
Q215 How many places can Ridlers sider be obtained?
A215 From information I have, Ridlers can be bought from 9 out of the 12 public houses in Builth Wells.

Questioned by the Court -

Q216 To your knowledge, is it possible to get cider at the Starr Supply Store?
A216 I wouldn't like to say.
Q217 In your former evidence, you said that the Accused was one of the people who told you that they had bought the case of cider from a store opposite the Starr Supply. What store did you take that to be?
A217 The White Hart public house. That is one of the Williams houses.

In the opinion of the Court and the Judge Advocate, it is unnecessary to comply with R.P. 83 (B).

SIXTH WITNESS for the Prosecution - Mr. A. D. Price - RECALLED

Cross Examination - Prosecutor

Q218 Among other houses in Builth Wells, do you supply the White Hart?
A218 Yes.
Q219 Can you give us the dates of when you supplied the White Hart with cider?
A219 (Witness consults his records)
On the 29th Sept I supplied no cider but picked up 1 doz empty flagons. On the 22nd Sept I picked up a doz flagons and did not supply them with any. Supplied them with 2 doz flagons cider on 15 Sept. I picked up on that date 1 doz and 11 flagons. Supplied them with 2 doz Bulmers cider on 8 Sept.
Q220 From the 8th to end of Sept you supplied them with 4 dozen and picked up 4 dozen empty flagons, less one.
A220 Yes.

Q221 Are these public houses in the habit of keeping a supply of empty flagons on hand?
A221 No I collect all the emply flagons every Tuesday.
Q222 Do you know of any supply of cider in the White Hart on the 29th when you took the last order?
A222 I cannot say as I do not look behind the bar.
Q223 What type of cider is normally supplied to the White Hart?
A223 Bulmers and some Ridlers.

Cross Examination - Defending Officer

Q224 You say on these dates, 22 and 29th you picked up a dozen flagons, does that necessarily mean cider flagons?
A224 Yes as we have not been supplying flagon beer for 8 months or more.
Q225 The fact that you picked up empties on the 22 and 29 and did not leave any only leads to the fact that they must have had some on hand?
A225 Quite possibly.

In the opinion of the Court and the Judge Advocate, it is unnecessary to comply with R.P. 83 (B).

SEVENTH WITNESS B70888 Sgt. Battersby, R., 11th Cdn Army Fd Regt RCA, for the Prosecution, duly sworn, states:

Cross Examination - Prosecution

Q226 Will you tell the Court any facts of interest that you might know of the period 1 & 2 Oct?
A226 On Oct 2 about 1345 hrs I had occasion to borrow a 10s note from Gnr. Heeley.
Q227 Do you see Gnr. Heeley in this Court room?
A227 Yes. Points to Accused.
Q228 After that?
A228 After borrowing the 10s note I went to the Electrical Co in Builth Wells to purchase some electrical fittings to be used for Army Equipment. I also had a 10s note which was given me by Capt. Stoddard, my Bty Capt.
Q229 Were there any identifying marks on the bills?
A229 I never examined the one closely but the one I got from Heeley was torn.
Q230. How do you mean torn?
A230 Torn in half, down the centre of the note.
Q231 Had any attempt been made to repair it?
A231 There was some white substance on one side of the note as if someone had attempted to fix it. I obtained some brown gum paper and stuck it to-gether. When I was straightening it out it tore again making it three pieces.
Q232 This is Exhibit E, can you recognise it?
Q233 This is the note I obtained from Gnr. Heeley as when I put the brown gum paper on it I had nothing to cut it with and just tore it off with my fingers leaving a ragged edge.
Q234 Did you see it again?
A234 Yes in the possession of the Police Sgt just as it is now.
Q235 Where was the original tear on this note?
A235 Right in the centre.
Q236 You tore it again?
A236 Yes on the left side.

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Q237 You are quite certain?
A237 Yes sir.
Q238 You turned that note into the Electrical Supply Co?
A238 Yes.

Cross Examination - Defending Officer

Q239 I have no doubt whatever that when you say you can identify that note but there is one little point. I will draw a rectangle on this blackboard representing the note. Will you draw in a line where the first tear was, also where the second tear that you made, was and number them 1 and 2?
A239 (Draws lines in 1st in centre, second to the left but closer to centre than end)
Q240 What time did you borrow this money?
A240 About 1345 hrs.
Q241 Did he have any other money at that time?
A241 Some silver.
Q242 He quite willingly just said that you could have the money as though it wasn't very hard for him to part with it?
A242 Yes sir.

Cross Examination - Judge Advocate.

Q243 Why did you tear the note?
A243 I did not tear it purposely, it was when trying to straighten it out it tore at the top, again at the bottom and finally right through. The note was torn into two pieces, right in the centre. There was some white substance on it of which I took most of it off. I then turned the note over and stuck it at the centre. As I pulled it out I ripped it.

Diagram made of two drawings of notes, 1 - by Mrs. Pugh, 2 - by Sgt. Battersby, marked H, signed by the president and attached to the proceedings.

In the opinion of the Court and Judge Advocate, it is un necessary to comply with R.P. 83 (B).

FIRST WITNESS - Sgt Hibbert, for Prosecution - RECALLED
with permission of the Court.
CROSS Examination - Prosecutor
Q244 Do you know of any record of illegal sales of liquor in the town of Builth Wells?
A244 I have not known of any illegal sales for the past three years.
Q245 Have you any idea of any illegal sales going on?
A245 No.
Q246 The pub keepers in Builth Wells are law abiding?
A246 Very law abiding.
Defending Officer declines to question Witness.

In the opinion of the Court and Judge Advocate, it is unnecessary to comply with R.P. 83 (B).

Prosecutor - Case is complete.

Pres to Accused

Q You can give evidence yourself if you wish, under Oath or as a statment. If you give evidence under oath you will be liable to cross examination by the Prosecutor and the Court. If you give it as a statment you will not be liable to cross examination. However, it must be understood that a statement under Oath will carry far more weight than otherwise.
Do you wish to give evidence yourself?

A No sir.

Q Do you intend to call any witnesses in your defence?

A Yes.

Q Is he a witness as to character only?

A No.

EIGHTH WITNESS B6722 Gnr. Christie, W. M., 11th Cdn Army Fd Regt, R.C.A., for the Defence, having been duly sworn, states:

Cross Examination - Defending Officer

Q247 Will you tell the Court what you know about the happenings and your own whereabouts on the night Oct 1 from the time the Regt got into Builth Wells until you went home that night?

A247 We did not arrive till late, about 8 o'clock. We were broken off and got cleaned up and down to the pub. There was one pub I was in, not far from the wagon lines. I did not stay there long but went down to White Horse. Reached there about 25 past 9 and stayed there till closing time at 10 o'clock. There were quite a few boys there including Gnr. Heeley. When they said it was time to go I left and went back to the barracks.

Q248 You stayed there from 9.25 to 10?

A249 Yes sir.

Q249 Gnr. Heeley was in there when you went in?

A249 Yes.

Q250 Was he there when the pub closed?

A250 Yes.

Q251 Had he gone out at all while you were there?

A251 No.

Cross Examination - Prosecutor

Q252. Where about is the White Horse?

A252 It is on the main business ection, right beside the White Hart.

Q253 Were you there at 2125 hrs?

A253 Yes.

Q254 You are certain that Heeley was there at 10 o'clock?

A254 Yes. I wasn't drunk, I know him to see him and I was standing right beside him.

Q255 Who was with him?

A255 L/B. Clark, Gnr. Moss, that is all I can remember standing beside him. Then there was Snowden and Graham in the same room.

Q256 You were talking to Gnr Heeley were you?

A256 Yes sir.

Questioned by the Court -

Q257 Have you any knowledge as to where Heeley went afterwards or was he with you at closing time?

A257 No sir, I was not with him, he was still there when I left.

Q258 Did they have any bottles with them?
A258 I don't think they had, I did not see any bottles around at all.
Q259 What was Gnr Heeley drinking?
A259 I imagine it was the same as we had, either bitters or beer.
Q260 How do you know that the name of the pub was the White Horse?
A260 There is the two of them, the White Hart and White Horse very close. We went to the White Hart but it was crowded so then went to the White Horse.
Q261 How do you know it was the White Horse?
A261 We were there a week and I noticed the sign several times.
Q262 Gnr. Christie, do you know where the Plough Hotel is?
A262 No sir.
Q263 Would you recognise the owner or wife of the owner of the White Horse?
A263 A lady served us but I might not recognise her.
Q264 You say you went in several times afterwards?
A264 No I was never in it again but passed it several times.
Q265 You don't know the Plough at all?
A265 No.

Re Examination - Prosecutor

Q266 You say that you had been in there previously, that is the White Hart?
A266 No sir, I looked into the White Hart but did not go in as it was crowded.
Q267 What were you doing in the afternoon?
A267 We did not arrive in Builth Wells till 8 o'clock at night.
Q268 You went down to the White Horse?
A268 No sir, I went to one pub first on the way down.
Q269 Where is it from the White Hart?
A269 It is not on the same street.
Q270 How long were you in there?
A270 Only had one drink, arrived there about 8.30.
Q271 What is you job?
A271 A gun number.
Q272 When you came in did you clean your gun up?
A272 Not that night.
Q273 You did not do anything?
A273 Not when we first arrived.
Q274 What did you do when you dismounted?
A274 They ordered us to our huts and we broke off and had supper then cleaned up and went out.
Q275 In a half hour you parade to your quarters, had supper, got cleaned up and went down to a pub?
A275 Yes, it doesn't take long.

Questioned by the Court -

Q276 Did you see Gnr. O'Brien that night?
A276 I cannot remember seeing him sir.
Q277 Did you see Gnr. Frigault that night?
A277 No sir.

In the opinion of the Court and Judge Advocate, it is not necessary to comply with R.P. 83 (B).

NINTH WITNESS B6165 Gnr. Graham, J., 11th Cdn Army Fd Regt, R.C.A., for the Defence, having been duly sworn, states:

Cross Examination - Defending Officer

Q278 I want you to tell the Court just what you know about the night Oct 1 from the time the 11 Cdn Army Fd Regt got into Builth Wells until you went home that night, all the people you met that night and what you did?

A278 On night Oct 1 Gnr Snowden and I went down to the White Hart hotel at approximately a quarter past seven. We had been there a few minutes when Gnr Heeley came in. We had a drink with him and talked a while. We had a couple ladies to meet so left him but we stayed in the same bar till closing time. We left the pub at about 10 pas 10 and Heeley was there a few minutes before that.

Q279 He left around closing time?

A279 A few minutes after closing time.

Q280 He came in after you went in?

A280 Yes.

Q281 He did not come out while you were there?

A281 Not to my knowledge.

Q282 Did you notice any game in the pub that night?

A282 Yes, a small sized crap game.

Q283 Could you tell who had any money in the gametowards the end?

A283 Not towards the end. They all had money and Heeley was buying a lot of drinks so must have had quite a bit of money.

Q284 You naturally recognised Gnr Heeley, is he in this room at the present time?

A284 Yes - he indicate the Accused.

Q285 Could you give me any reason to suppose that Gnr Heeley was intoxicated by closing time?

A285 I would not say he was as he had just been drinking beer. They had not whiskey in the pub.

Q286 Did you see a crate with bottles in it that night?

A286 No.

Q287 Did you hear or see anything of the whereabouts of Heeley later that night?

A287 No.

Q288 Where did you go when you left?

A288 Snowden and myself went out and straight back to camp.

Cross Examination - Prosecutor

Q289 What time did you get into camp?

A289 About a quarter past 6.

Q290 What did you do then?

A290 We took our things out of the vehicles and we paraded to the billetts. We had supper then had a wash and straight to town.

Q291 When did you make the date?

A291 It was not exactly a date, we more or less picked them up in the pub.

Q292 You r emmined in there with the young ladies?

A292 Yes.

Q293 And then you took them home?

A293 Yes.

Q294 And then went straight home?

A294 Yes.

Questions by the Court -

Q295 Are you in the same troop as Gnr Christie?

A295 No.

Q296 Were your two troops together in the line of marsh coming to Builth Wells?

A296 Our troop was ahead of his troop.
Q29[illegible] Any idea of how far ahead?
A297 It would be approximately 4 vehicles behind.
Q298 You arrived at 6.15?
A298 It was after six.
Q299 Do you know where the Plough Hotel is?
A299 I have never been in it but I think I know where it is.
Q300 Was it dark when you troop arrived?
A300 No sir.
Q301 Whom did you see Gnr Heeley go out with just after closing time?
A301 As far as I know he was by himself.
Q302 You left a few minutes afterwards and went right home?
A302 No sir, when I think of it I took a young lady and I took her home first
Q303 Did the young lady live in the same direction as the camp?
A303 She went in the opposite direction.

In the opinion of the Court and Judge Advocate, it is unnecessary to comply with R.P. 83 (B).

TENTH WITNESS B7124 Gnr. Stanway, A. D., 11th Cdn Army Fd Regt, RCA, for the Defence, duly sworn, states:

Cross Examination - Defending Officer

Q304 Tell the Court what you did after you got to Builth Wells on the night Oct 1, where you went, who you were with etc., until the time you returned to camp?
A304 I arrived at the camp it was just about getting dark. When the truck pulled up I got off and went into a place called Janes Cafe and had something to eat. I then paraded with H.Q. troop, they sent us to our trucks to get our blankets and kit and then back to camp. I made my bed, went and had something to eat and went out to the pub in Builth Wells. Had a few drinks in the one room where there was a piano playing and then I went into another room where I saw Gnr Heeley.
Q305 Do you recognise Gnr Heeley?
A305 Yes - points out accused.
Q306 Go on from there.
A306 I talked to Gnr Heeley for a while then went over to Gnr Graham, spoke to him and went over to Gnr Snowden and talked a few minutes with him. I had a few more drinks then went back to the other room to listen to the piano for a while then came back. There was a small game of dice going on and I played with Gnr Heeley and Gnr Snowden for a while.
Q307 You say Gnr Heeley was in that crap game?
A307 Yes.
Q308 How much money would you say Heeley had?
A308 I would say he had a considerable amount of money by the bills he was holding and he kept ordering up a lot of drinks for the boys.
Q309 What was Gnr Heeley drinking?
A309 I cannot say what kind of beer it was but it was beer.
Q310 From the time you first saw Heeley in the pub until the pub closed, did you see Heely leave?
A310 No.
Q311 He was there right until closing time was he?
A311 Yes.
Q312 Did you see him go out?
A312 I believe I went out before him.

Q313 Did you hear Heeley or anyone mention anything about his whereabouts after closing time?
A313 No sir, I was only talking to him with regard to the game.

Cross Examination - Prosecutor

Q314 What time did that crap game start?
A314 About half way through the evening.
Q315 What time?
A315 I do not know for sure, it must have been late by the time I got my kit put away had supper and cleaned up and wlaked down to the pub.
Q316 How many drinks did you have?
A316 About 3 or 4 halves.
Q317 Did you pick any girls up in the pub?
A317 No.
Q318 You say Snowden was in the crap game, he did not have a girl?
A318 He was talking to a Land Army girl whether he took her home I don't know.
Q319 You were there till after the pub closed?
A319 Yes.
Q320 How long?
A320 About 5 minutes.
Q321 Where was Gnr Heeley when you left?
A321 He was just coming out of one of the rooms when I left.
Q322 Were you playing crap at closing time?
A322 The crap game was over before the pub closed.
Q323 What did you do then?
A323 I was talking to some girls and some of our own boys. Gnr Heeley was standing over by himself in the corner.
Q324 All by himself?
A324 As far as I could see.
Q325 What hotel was this?
A325 The White Horse.
Q326 Do you know where the Plough Hotel is?
A326 Yes.
Q326 You have been there?
A326 Yes.
Q327 When were you called to give evidence as to whether you saw Gnr Heeley?
A327 The first time Capt Macleod called me here in Builth Wells.
Q328 When was that?
A328 I am not sure but think it was the second to last day we were here.
Q329 You remember all these details white clearly?
A329 Yes.
Q330 But you don't know which hotel it was?
A330 The first one, the White Horse.

In the opinion of the Court and Judge Advocate, it is unnecessary to comply with R.P. 83 (B).

ELEVENTH WITNESS D6796 Gnr. Snowden, J., 11th Cdn Army Fd Regt, RCA for the Defence, duly sworn, states:

Cross Examination - Defending Officer

Q331 Tell the Court everything you know about happenings on Oct 1 from the time the Regt arrived in Builth Wells until you returned to camp that evening?

A331 On that night, after arriving in Builth Wells, Gnr. Graham and I went to the White Horse pub and stayed there until closing time. The time that we were there, there was Gnr. Heeley, Gnr. Stanway and some of the other boys there from the other batteries. During the time we were there there was a little crap game and I was in it.
Q332 Is there anyone in the room now who was present at the game?
A332 Yes - indicates Accused.
Q333 Was there much money in the game?
A333 There was quite a bit of money.
Q334 Who seemed to have the most of it?
A334 Gnr. Heeley, as I saw it.
Q335 What form was it in?
A335 It was a lot of bills.
Q336 You were in the pub till it closed?
A336 Yes.
Q337 Did you, at any time, while you were in the pub, see Heeley go out of the pub for any length of time?
A337 I cannot say. The only time I saw him go out was at closing time when the called last call.
Q338 Were there many in the crap game?
A338 There was Gnr Stanway, Heeley and myself and some other chaps that I do not know.
Q339 After you left the pub, where did you go?
A339 I went straight back to camp.
Q340 Do you know where the Plough Hotel is?
A340 Yes.
Q341 Do you know where the White Hart is?
A341 I was in it but I don't know exactly where it is from the White Horse.
Q342 Which pub were you in on this particular morning?
A342 The White Horse.

Cross Examination - Prosecutor

Q343 When were you first called as a witness?
A343 Last Saturday.
Q344 About a month after this happened?
A344 Yes.
Q345 All this happened the first day you got into camp?
A345 Yes.
Q346 You just got in off convoy?
A346 Yes.
Q347 What time did you get in off convoy?
A347 I don't know for sure but I asked a Sgt and I think he said about 6.30, just before we pulled into Builth Wells.
Q348 What time did you have dinner?
A348 I don't remember.
Q349 What time did you go to the pub?
A349 Between 7.30 and 8.
Q350 What time did the crap game start?
A350 After I had been there, perhaps 9 o'clock.
Q351 How long did it last?
A351 Quite a while, it was still going when Last Call for drinks went.
Q352 The Accused was in it all the time?
A352 Yes.
Q353 You say you don't know the White Hart?
A353 I have been in it but don't know exactly where it is.

Q354 Is it near the White Horse?
A354 It is on the same street.

Questioned by the Court -

Q355 You say you know where all these various pubs are, how far is the Plough Hotel from the White Horse?
A355 About ten minutes walk.
Q356 How many minutes from the White Hart?
A356 I am not sure of that sir.
Q357 Did Gnr. Heeley go out of the pub before you did?
A357 Yes, Gnr. Graham and I were the last in the pub.
Q358 Did he go out alone?
A358 I don't just remember sir.
Q359 Did you pass him on the way home?
A359 No sir.

In the opinion of the Court and Judge Advocate, it is unnecessary to comply with R.P. 83 (B).

FIRST WITNESS - Police Sgt. Hibbert, RECALLED

Questioned by the Court

Q360 Would you describe to the Court the relevant positions of the White Horse, White Hart and Plough Hotels giving distances between each?
A360 Yes sir, I can draw a diagram.

Plan of relevant positions of White Horse, White Hart and Plough Inn, drawn by Sgt. Hibbert, marked I, signed by the President and attached to the proceedings.

In the opinion of the Court and Judge Advocate, it is unnecessary to comply with R.P. 83 (B).

FOURTH WITNESS B7009 THSM Black, G. H. - Recalled by Prosecutor

Q361 What time did you see Gnr. Heeley?
A361 Approximately 2230 hrs.
Q362 You say approximately?
A362 Yes.
Q363 Are you sure you saw Gnr Heeley?
A363 Positive sir, I could not be mistaken, I have known the man for a year.
Q364 It was approximately 2230 hrs in the proximity of the Plough Hotel?
A364 Yes sir.

Questioned by the Court -

Q365 Can you show me where, on exhibit I, you saw Gnr Heeley on that night?
A365 Exhibit marked with an X where SM Black saw Gnr Heeley.

In the opinion of the Court and Judge Advocate, it is unnecessary to comply with R.P. 83 (B).

Defending Officer called upon to make closing address:-

We have heard the evidence of both sides put forward now, for the Prosecution and for the Defence and if you will just allow me a few minutes I might just run through the evidence. First the evidence for the Prosecution. The first person called, Sgt. Hibbert, started at the beginning of time

and gave every detail till his evidence finished. He claims he saw three men in the road at Builth Wells, that one of his very competent fellow officers shone a light on one of the men after he had fallen down and next day did pick out the man who he said resembled him. Sgt. Hibbert states that he received a message from one Mr. Pugh, the lisensee of the Plough Hotel at 9 o'clock on the morning of Oct 2. If you will go through the evidence it shows that Mr. Pugh never phoned the police till 10.30 and that his wife states that he came home between 9.10 and 9.20 and phoned. There we have three statements which show a descrepancy of 1½ hrs. You have been given a list of things alleged to be stolen, quite some 500 cigaretts, a grand sum of £20., some silver whiskey measures, a crate of cider and many boxes of matches. The good woman says 1½ dozen boxes and the pub keeper says a dozen but I won't bother with that. When Sgt. Hibbert came around on the morning of Oct 2 on a tour of identification, you will remember from his and others evidence that on being questioned, Gnr. Heeley voluntarily produced a package of matches, some change which he had in his pocket. Now then, if all this stuff was stolen as reputed to have been stolen and the Accused had anything to do with it, you can see that whoever did this job made very smart work ot if and he would not be fool enough to carry around evidence to give him away much less a box of matches with a name on it. If someone can get these matches, why couldn't others get them and there is no evidence given to say that they could not have been procured in Builth Wells or on the way to Builth Wells. The people trying to describe the matches were very much confused, if you will remember it took some time to get two witnesses straight on that one point. Still keeping with the evidence of Sgt Hibbert, there is one other exhibit which he produced having got it from a merchant in Builth Wells, the 10s note. This is just about the most fanciful piece of evidence I have ever seen. From the diagram I submitted it will be seen that the person who allegedly owned the note in the first place says it was torn in one place first, yet the note which Heeley gave Sgt. Battersby was not torn anything like that. It was taken from other notes that he had and it was torn directly in the centre. You have heard that he was in a crap game and you know how notes get crushed up and torn in a crap game or, perhaps the note had been torn for a long time. Sgt. Hibbert goes on to say that he saw three soldiers about 0015 hrs on the 2 Oct. He claims to recognise one, he cannot recognise the third. He states that these three men were grouped around a case of cider and he also stressed the evidence that they were grouped around it as if they did not want to be seen. Now, just what person wants to be seen in the middle of the night on the main street with some drinks around him. Mr. Pugh states that one man whom he claims to recognise as the Accused, came into his pub before closing time and was there until the pub closed. You have also heard that 4 other people gave evidence to the effect that they were with the Accused in a pub 400 yds awa until that pub closed. There must have been a case of mistaken identity on the part of Mr. Pugh because 4 men would not get up and say that if it were not true. So, isn't it reasonable to suppose that Sgt Hibbert and his fellow officer could have made the same error. Mr. Pugh says that 3 soldiers came in and he recognised one to be Heeley, he gave no description of the others, none whatever. He says he stood talking to a friend for some time after which he saw him to the front of the hotel, locked it up and went back to the kitchen and then shortly went to bed. But before going to bed, about 11 o'clock, a soldier came to the door and on being asked said he was a Cdn soldier. Now you have also heard a witness for the Prosecution and again brought back by the Prosecutor, say on both occasions that he saw Gnr Heeley at 1030 that night and at that

time Gnr. O'Brien was at the pub door, yet these other witnesses say that a soldier came to the door at 11. Then he goes on to say that he went to bed and he sleeps above the bar and across to the rear next but one room to it and there is the stairs leading down to the passageway. Is it reasonable to suppose that if there were people in that pub and they stole all these things mentioned, a great deal of noise must have been made forcing the cash register and as the evidence of several people show, a full case of cider was dragged across the counter,,at least the Prosecution presume that it was a case of cider that scratched the top of the bar, is it reasonable to suppose that two people would sleep through all that. Now then, we come to the good man's wife. She states she was in the bar till 9.45 when she went back to the kitchen and it was about that time, between 9.45 and 1000 she heard the cellar door being tried. Mr. Pugh said that he had not been in the cellar all that night. Mrs. Pugh said she never goes in that cellar. There must have been someone in there at that time which was between 9.45 and 10. Now, 4 men say that the Accused was away in another pub at that time. Also, at 1030 S.M. Black was with the Accused and the Accused was not in possession of any cider at 1030, which means that at 1030 the Accused was outside the pub and it closed at 1010. We do not know whether these three soldiers who had been in that pub were still in it when it was locked up or not but it is definitely proved that Gnr. Heeley was not near the pub until 1030. I did, with 2 witnesses of the Defence and 1 of the Prosecution, prove that Gnr. Heeley had all kinds of money in his possession, both in Woldingham and again in Wales in fact he had enough to buy his friends drinks. What man, with all that money, would want to go around stealing a few cigarettes, a case of cider, matches etc. As far as the case of stealing goes, there must be conclusive proof that the man stole things and that those things were in his possession when apprehended. The Accused is charged with stealing a 10s note, 10 flagons of cider, 1 box of matches. As I have already pointed out, the matches could have come from any number of sources, he may have had them on arrival at Builth Wells. Then the 10s note, Heeley had money of his own and I can conclusively prove there that the 10s note that Mrs. Pugh said was stolen, was definitely not the one that Heeley had. For a considerable time this afternoon, we heard a discourse on how you can get cider and where, which lead to nowhere. The fact remains that there are 12 to 13 pubs and 2 Off License places in Builth Wells. Mr. Price tells us cider of the Ridler manufacture is sold to 9 of these pubs, that is 8 besides the Plough. He also admits that there is no record kept of these empty cases. A constable goes to the park and finds the missing cider case but, does he find the man with it? He does not, he just finds the empty case and as I have already pointed out, it is not proof that a man stole it or was even in improper possession because to be in improper possession the constable must have taken the case from the man. Pritchard says that he saw someone he thought to be Heeley with a bottle of cider stuck inside his tunic. If the bottle was inside his tunic, how could he tell it was cider. You have also heard the evidence of Sgt. Black to the effect that Heeley was telling Gnr. O'Brien that he was going to go home. As far as the Defence sees, there is absolutely no case of stealing or of improper possession of stolen goods as they were not found on the man and the box of matches, merely because they were similar to some which had been stolen, does not mean that they were those matches and as I have said before, the men who pulled this job off were too smart to be caught with evidence of that nature on their possession. From the Defences side I can clearly see that the person or persons who did receive or steal these goods was

not one Gnr. Heeley. I ask you, in the cause of justice, to acquit this man.

Prosecutor - Closing Address

The opinions of the Defending Officer were quite interesting but, there has been no evidence brought out by the Defence, with the exception of these 4 friends of the Accused who stated that they saw him there definitely at closing time. That introduced one or two facts. They were shooting crap close to a half hour before closing time until the pub closed. One man said they had some women, the other says they did not. One man says they both had women and then remembers that that was another night. Firstly we have a reliable soldier, a S.M. who made a definite statement. We have secondly the evidence of a pub keeper, an honest man, who said that these men were in the proximity of the Plough Inn up till 1030, without a drink or a case of cider. At 12.15 at night we have a definite legal identification of Heeley as being near the Plough in at 12.15 selected from a group of other men the following day. At the time he was seen at the Plough Inn, he, in company with some others, had a case containing 10 bottles of cider of the brand missing. Now, that is definite evidence that has been sworn to and taken down as evidence. Where did they procure that cider? The Defence have not offered one concrete explantion as to where that cider came from. We have the proof that the cider was in the possession of the Accused, we have nothing whatever to contradict that evidence given by a reliable police officer. Now it is for the Court to decide whether or not that case of cider which was missing from the Plough Inn and the case of cider seen with Gnr Heeley, O'Brien and the other chap were one and the same. I contend that they were the Defence having offered not one scrap of proof to the contrary. Now, in connection with the 10s note Sgt. Battersby claims he got the 10s note from the Accused. There is nothing to prove that he did not. We have got an identification of that 10s note The Defence have put up the argument that this note is not the same one as the one that was stolen from the Plough Inn and the reason for this is on account of the tears. When Sgt. Battersby was showing the Court how he was repairing the note, I asked the Court to pay particular attention as to how he was doing it. He had it face upwards and he smoothed it out then he turned the note over and said there it started to tear the same way and that tear was on the left hand side of the note. Now these identifications of the note, in so far as these two tears were concered, are identically the same and the Defence have offered no proof to the contrary. The Defence here mention a diversion of times. I don't think that the question of time enters into the informing of the police. The police state that they were notified, that fact of notification is co-oberated by the Pughs who state they notified the police. Time does not enter very much as it was a month ago when this happened and these people cannot be expected to remember minute details. The goods taken, we have a long list given by the Pughs, were matches, cigarettes, meesures, handbag and cider. The Accused produces a torn note that is identical with the note taken from the Plough Hotel. He produces, voluntarily, a box of matches which were identical to the boxes taken from the Plough Hotel. He was seen in possession of a case of cider, as the evidence brought out that he picked up one end of the case, which was identical to the one stolen from the Plough Hotel. The Defence state that Heeley had a lot of money, he was shooting crap, he has produced 4 people who claim Heeley was buying drinks yet when Heeley was arrested, he did not have 10s in his possession. Now these vast sums of money he was supposed to have was not in his possession when he was arrested that can be proven by

Court by asking for his belongings. In so far as the cash register is concerned I would suggest that the Court go and look at the Plough Hotel. It is a drawer, held in place by a wooden block, and would not have to be forced. We do know then that at approximately 1030 that Heeley had no cider. We do know that at 12.15 he was in possession of 10 bottles or part of it, in company with two other men. We do know that the Plough Hotel was robbed. We do know that amongst the stuff stolen was a 10s note identifiable by a tear and a box of matches. We know that Heeley produced a 10s note and an identical box of matches and there is one important point to be brought out and that is that the Defending Officer dare not put the Accused on the stand, either to make a statement or to make a statement under Oath.

Judge Advocate sums up -

Now, at the outset, I would like to emphasize the fact that the facts are for the members of the Court alone and if I do make any observation on the facts of this case, they may or should be disregarded by the members of the Court. I am only here to assist the Court on questions of law. The second point I would like to make is that the Court must decide this case on the evidence before them, that is, evidence that has been introduced here by the witnesses. They, of course, being officers, can take notice of certain other facts such as rank in the army, duties and matters of that nature but in this case none of that arises. We have to consider two civil offences so the Court should limit themselves to the facts produced before them. Now it is a cardinal principle, a fundamental principle of English Law that a man is assumed innocent until he is proven to be guilty, the onus of proof is on the Prosecution. The Guilt of the Accused must be established beyond reasonable doubt and unless it is so established, he is entitled to be acquitted. Now, reasonable doubt is not just any doubt, a whim or caprice or some hypothetical state of circumstances what might or might not have occured, it must be a reasonable one which you generally would act upon in ordinary affairs of life. I think you know what I mean by that, if you have reasonable doubt of this case the Accused must be acquitted. Now, taking up the charges, we have 2 charges, one of stealing and the other of receiving. These charges are an alternative. In other words the Accused can be convicted on only one of them. Now stealing is defined; a person steals who, without the consent of the owner, fraudulenty, without claim of right made in good faith, takes or carries away anything capable of being stolen with the intention at the time of such taking permanently to deprive the owner thereof. Receiving; everyone who receives any property, knowing it to have been stolen, is a receiver. In both these charges the intention of the mental attitude of the Accused is made. As we all know, every day we are in possession of other peoples property. They have borrowed it but we lack the intention to deprive the owner of it permanently. Now it is not necessary to have direct evidence in cases of theft and receiving. By direct evidence I mean it is not necessary to produce witnesses who actually saw the things being stolen or received. We have what is know in law as the Doctrine of Recent Possession. That is, if a person is found in possession of goods recently stolen, there is a strong presumption that he either stole or received them with the knowledge that they were stolen. Whether it is stealing or receiving depends upon the time. To give an example, if goods were stolen and in a few minutes were found in a persons possession, you might say there was a strong presumption of theft but if it was three days later it would more likely be receiving so that it depends upon the circumstances whether or not it is stealing or receiving.

Now from the fact of recent possession, the Court can infer the necessary intention to support theft or receiving. You do not need to prove what was going on in the man's mind if you find him in possession of stolen property you may assume that he has either stolen or received it. There is a prima facie fact in being in possession which the Accused must explain. If he gives a reasonable explanation or an explanation that leaves some doubt he is entitled to an acquital. He does not have to prove that he is innocent. It strikes me in this particular case that the real issue is whether the accused was in possession of these stolen goods. That is, it is not a case in which it is admitted that he was in possession of the goods and he is trying to explain the possession away so that is the crux as I see it but as I say, the facts are really up to the Court. Was the accused in possession of stolen property on that evening? The possible finds are Guilty on one charge, not guilty of the other. Not guilty of both charges and in addition the Court may make a special finding, that is, if they are satisfied that let us say a box of matches was stolen but not the cider or the note they may find the accused guilty as charged but that he is not guilty of the cider and note. I just point that out that the court have that right, there are three or four possible ways. I wish to emphasise again that the onus is upon the prosecutor and you gentlemen must satisfy yourselves beyond reasonable doubt that the accused is guilty before you find him guilty. Is there any question that you would like me to deal with in the question of law?

Court is closed for consideration of findings.

Court is re-opened. Accused is brought before the Court

Findings - Not guilty of second charge.

Summary of Evidence is ready by the President signed and marked "J" and attached to the proceedings.

President to Accused -

Q Do you wish to give any evidence yourself as to character or call any witnesses as to character?

A No sir.

President to Prosecutor

Q Have you any evidence to produce as to the character and service of the Accused?

A Yes sir.

PROSECUTOR - duly sworn, states.

I wish to submit this certified true copy of the MFM 6 of the Accused and also A.F.B. 296, record of service extracted from the Regimental Books

Q Do these documents relate to the Accused?

A Yes sir.

Q Have you compared the contents of these with the Regimental Books?

A Yes sir.

Q Are they true extracts from the regimental books, and is the statement of entries in the conduct sheet a fair and true summary of these entries?

A Yes sir.

Defending Officer declines to Cross Examine the witness.

In the opinion of the Court and Judge Advocate, it is unnecessary to comply with R.P. 83 (B).

Defending Officer - Plea of Mitigation -

What I have to say is very short and to the point. Gnr. Heeley has served close onto 40 days in Detention awaiting trial. He has been dragged around with the battery and put into detention at every place we have gone to. I don't need to tell you that 40 days in detention awaiting trial is harder than 80 days ~~doing~~ a sentence. I am asking you to take this into account on any sentence that you might pass. Gnr. Heeley enlisted in the 9th Battery in September 12, 1939 and has served continuously with the unit ever since. At home he was working for the Tubing and Moulding Co. Ltd., as a metal polisher and buffer which is a skilled job and he earned 32 to 35 dollars a week. He also has a junior matriculation, is married and has 2 children. The last time he heard from his wife or children was about 2 years ago. He is estranged from his wife but is still assigning $20.00 a month. He has been over here nearly three years of which time he has not heard from his wife for 2 years.

The Court is closed for consideration of sentence.

(A. P. Ardagh) Major,
H.Q., 1st Cdn Army.

President.

SUMMARY OF EVIDENCE IN THE CASE OF B7099 Gnr. Heeley, F. 9th (Toronto) Field Battery, 11th Cdn. A. Fd. Regt., R.C.A.

FIRST WITNESS

Police Sergeant Hibbert G.A.D., Builth Wells district having been duly sworn states:

"J"

At 0915 hours 2 October 1942, I received information by telephone from Edmond George Pugh, licensee of the Plough Hotel, Market Street, Builth Wells, that he had missed articles from his premises sometime between 2300 hrs 1 Oct 42 and 0915 hrs 2 Oct 42. (Schedule of articles missed is attached).

I visited the Plough Hotel and after making an examination of the premises I could find no evidence of breaking in or out of the premises. I noticed marks on the bar counter as if some heavy article had been dragged across it. I remembered that on the previous night at 0015 hrs (night of 1 - 2 Oct 42) I was in company with W.R. # 5 Pritchard in Market Street, Builth Wells, about 50 yards below the hotel. I had seen three Canadian soldiers standing on the pavement around a case of flagon bottles of Riddlers Cider. The one man was leaning against the telephone post and had a flagon bottle in each hand. That man I have since identified as Gnr. Heeley. The other man, a tall dark man, powerfully built, broad shoulders, black hair brushed back over the head, was standing drinking from one of the flagons. The other man was sick on the side of the street and I have not been able to recognize him. I said to them "Hello boys, what have you got there?" and the tall dark man replied, "We have some drinks." I then noticed that they had ten flagons of Riddlers Cider and Heeley stood with his one foot on the case. I asked where they got the cider from and Heeley replied "We bought them from a store down the street opposite the Star Supply." The tall dark man said, "We paid 28 shillings for them," which is the approximate value of a case of such cider. I advised them to go on to camp then and Heeley and the tall dark man, carrying the case of cider between them, went on down the street. The third man had by this time disappeared. During the course of some talk I had with the tall dark man, he told me his sergeant was Sgt. Black. I then continued my inquiries along North road and found Sgt. Black who was pointed out to me by an officer. I told Sgt. Black that certain things were missing from the Plough Hotel and he handed me four players cigarettes and a box of England's Glory matches. I accompanied Sgt. Black to the camp where we spoke to B.S.M. Gazell and in company with him we made a search for the men I had seen the night before. I attended a parade at 1335 hrs and I picked out Gnr. Heeley as the man I had seen with the other two with his foot on the case of cider at 0015 hrs the night before. I spoke to him and told him that I recognized him as the man I had seen in that position the previous night and asked him if he remembered speaking to me. Heeley replied, "No, I have never seen you before and I was speaking to no policeman." He went on to say that he did not have any cider. I then cautioned him and told him that I would like him to produce any articles he had on his person and he produced a box of "England's Glory" matches (Exhibit "A"), old style, white label. I asked him if he had any money and he said he had only some coppers, which he showed me, but stated he had loaned a pound to Sgt. Battersby made up of a 10 shilling note and the rest silver. He also told me he had bought the matches in Brecon on the way up to camp the previous night.

I then had W.R. # 5 Pritchard look the men over and

FIRST WITNESS (contd.)

after passing the men at work twice he picked Gnr. Heeley as being one of the three men in Market Street the night before.

While looking for the men around town and passing the spot where I had seen the three soldiers drinking the cider Sgt. Black noticed a Woodbine Cigarette package on the road, it had been trodden flat and contained 5 Woodbine cigarettes when I picked it up. (Exhibit "B").

An empty flagon bottle of Riddlers cider and case were later brought to the station by W.R. # 5 Pritchard.

I interviewed Sgt. Battersby and in consequence of what he told me I recovered a patched ten shilling note (Exhibit "C") from Mr. Williams, store keeper Electric Power Station, Builth Wells

(signed) G.A.D. Hibbert, Police Sgt.
.....
Police Sergeant, Builth Wells.

The Accused in cross-examining the witness asked - "Did you go and speak to W.R. # 5 Pritchard before he came down the line of guns on his identification tour?"

Answer - "No, not until afterwards, I shouted for him to go on down the line first and see if he could see the man he wanted."

SECOND WITNESS

War Reserve Constable #5 Pritchard, L.C., Builth Wells District, having been duly sworn states:

At 0015 hrs. on the night of Oct. 1 - 2nd in company with Sgt. Hibbert in Market Street, Builth Wells some little distance below the Plough Hotel on the pavement by a telephone post there were 3 soldiers. One was leaning against the post and had his foot on a case and had flagon bottles in his hands. A tall, powerful built soldier was standing at the other end of the case. Sgt. Hibbert spoke to them and asked them what they had. The tall man said, "sure we have some drinks" and Sgt. Hibbert asked them where they had it from which they told him. The man leaning against the post tried to explain where he had it from, a place opposite the Star, and then I told him that that was the White Hart Hotel. Then the tall soldier started a conversation with the Sergeant and while this was on the third soldier was sick down the street.

The soldiers, one, the tall dark one, and the other, the one who had been leaning up against the post picked up the case of flagons up and walked off down the street towards the camp.

About 1330 hrs I was stationed at West Street facing Church Street by Sgt. Hibbert and told to stay there until called. Shortly afterwards P.C. May came to the end of North Road and beckoned me to come forward which I did. On coming into North Road I went towards Sgt. Hibbert who told me to go about my work of recognising my man. I walked up North Road looking right and left then back down, and went back up to where Sgt. Hibbert and an Officer were standing. Sgt. Hibbert asked me if I recognised any of the men I had seen early in the morning in Market Street and I said "Yes" and pointed out to the man I now know as Gnr. Healey to be the man leaning against the post with his foot on the case.

SECOND WITNESS (contd.)

After that on my way to the camp I was given instructions to search the area for an empty case and flagon bottles. Later in the evening in company with P.C. May I found an empty case with one empty flagon, inside a gateway in a playing field near the second entrance to the Camp, in Broadway, which I picked up and took to the station. It was a Riddley's case and flagon bottle.

(signed) Leonard G. Pritchard,
.....
W.R.#5, Builth Wells Police District

The Accused in cross-examining the witness asked - "Was it not very dark the night of October 1 - 2, and how could you ever recognize anybody on a dark night?"
Answer - "I turned a flashlight on you when you were leaning against the post so I had no trouble in knowing you the next day as the man leaning against the post."

THIRD WITNESS

B7009 Sgt. Black, G.H., 9th (Toronto) Field Battery, 11th Cdn. Army Field Regiment, R.C.A., Canadian Army (Overseas), having been duly sworn states:

I was approached by a police officer on the 2nd Oct. 42 at about 1030 hours. He was looking for me. He told me that my name had been used quite often in a conversation the previous night by a person who he suspected of entering a Public house after hours. With the description of the men which he gave to me and of parts of the conversation that he repeated to me I immediately knew who he was refering to but it was not to Gnr. Heeley.

On the night of Oct. 1st - 2nd at approximately 2230 hrs. I met Gnr. Heeley in company with Gnrs. O'Brien and Frigault in town. Gnr. O'Brien asked me if I would like a drink and I asked him where he could get one this time of night. He told me of a place he knew where he could get it after hours. It was a public house a few yards away. Gnr. O'Brien knocked on the side door and was answered by a woman. The woman would not open the door to him and I told them we had better return to camp as we would not get a drink there. I left them then and returned to camp.

(signed) G.H. Black.
.....Sgt.,
9th (Toronto) Field Battery,
11th Cdn. A. Fd. Regt., R.C.A.

The Accused declines to cross-examine this witness.

FOURTH WITNESS

B7088 Sgt. Battersby, R.J., 9th (Toronto) Field Battery, 11th Cdn. Army Field Regiment, R.C.A., Canadian Army (Overseas), having been duly sworn states:

At approximately 1345 hrs on Oct 2nd/42 I received a ten shilling note (Bank of England) from Gnr. Healey which was torn in half. While trying to fix it with gummed paper it tore the second time. I spent this note at the Electric Power Company, Builth Wells on gun stores.

FOURTH WITNESS
(contd.)

(signed) R.J. Battersby
.....Sgt.,
9th (Toronto) Field Battery,
11th Cdn. A. Fd. Regt., R.C.A.

The Accused in cross-examining the witness asked - "When I gave you the note it was in two pieces was it not?"
Answer - "Yes"
Question - "Had it been fixed with anything before?"
Answer - "Yes, some white paper was on it and apparently someone had tried to patch it."

Sgt. Battersby was shown the note held as Exhibit "C") and identified it as the 10 shilling note referred to above.

FIFTH WITNESS

Williams, Geo., storeman for the Electrical Power Company, Builth Wells, having been duly sworn, states:

Two soldiers, a Sergeant, one of them, came into my store about dinner time on Friday Oct 2/42 and wanted to purchase some electrical fittings which I was able to supply them. A ten shilling note was tendered by the Sergeant in part payment of the bill. This note was torn and patched together by brown paper and I identify it as Exhibit "C" as held by the Army in this case. I later ascertained and now identify the Sergeant who tendered this note to me as Sergeant Battersby of the 9th Field Battery, RCA.

(signed) G. Williams
.....
Storeman, Electric Power Co.,
Builth Wells, Wales.

The accused declines to cross-examine this witness.

SIXTH WITNESS

Pugh, E.G., Licensee of the Plough Hotel, Builth Wells, Wales, having been duly sworn states:

There were quite a number of troops in my hotel the night of Oct 1st - 2nd, Canadian and English Polar Bears. About 2155 hrs three Canadians soldiers came into the front bar and asked for two pints of cider and a pint of beer. I served them and by the time they had finished it had gone time for closing. The biggest of the men asked for more but I refused as it had gone time for closing. At 2215 they left the bar and I ~~started~~ stayed in the bar talking to a friend and then after a few minutes I wished my friend good-bye. I then went and bolted the side door and the back door. I then sent my son to bolt the front door and went back into the bar and washed the remaining glasses up. I went back into the kitchen and sat down and talked to my wife for awhile. Some time later a knock was sounded on my side door. My wife shouted out "We are closed", and the person went away. About 2325 hrs, we decided to go to bed. I went around to see if the doors were all locked safely, which they were. I heard no noises during the night in the house.

I got up about 0750 hrs the next morning, had breakfast in the kitchen, and went out through the back door to my work.

Somewhere around 0900 hrs, I received a message from my wife saying the till had been robbed. I went home, saw my wife, and went into the bar, look-

SIXTH WITNESS (Contd)

ed in the till and found it empty except for a few coppers. It had contained, the night before, some fifteen to twenty pounds. I then called the Police Sergeant and told him of my loss and then he asked me if I had lost a case of cider. I said "I don't know but I will go and look in the bar", which I did, and found a case of Riddlers Cider of flagon bottles missing. I then called the sergeant on the phone and told him the cider was missing. He then told me that he had seen three Canadian soldiers outside my place with a case of cider and that he would be around in a few minutes. While waiting for him to come up, I looked around the bar to see if anything else was missing and discovered I had lost about 400 Woodbine cigarettes in packages of fives, also 1 carton of Players cigarettes in 20's with blue paper wrapping, and some other articles which I gave a list of to the Police Sergeant. At dinner time when I went home my wife told me that about a dozen and a half of England's Glory matches were missing. These are of the old xxyix stock with a white paper label on them. I identify a box of matches held by the Army as exhibit "A" as being the same kind as what were stolen from me. I also identify Woodbine cigarettes held as exhibit "B" as being the same kind as were stolen from me.

(signed) E.G. Pugh
Licensee, Plough Hotel,
Builth Wells, Wales.

The accused in cross-examining the witness asked -
"Why should any reference be made to three Canadian soldiers being in your pub at 2155 hours and can you identify me as being one of them?"
Answer - "Yes, you were one of them. It was almost closing time and I remembered these three as the pub was nearly empty at the time."
Question - "Is it not true that when you walked down the street the other day to see some soldiers at work on the guns, you came back and told the Police Sergeant that there was no one there you knew, even though I was standing on the street at the time?"
Answer - "This is right but you were with the Sergeant at the time and I was referring only to the ones working on the guns. You had been called off them by this time."
Question - "You could not identify me that day, could you?"
Answer - "Yes, I could identify you that day, but I wasn't asked to."

SEVENTH WITNESS

Pugh, Mrs. Dorothy May - wife of E.G. Pugh, Plough Hotel, Builth Wells, having been duly sworn states -

I left the bar at about a quarter to ten on Thursday night Oct 1/42 and went into the kitchen. While I was having my supper I heard the cellar door being tried, I thought it was my husband as I had left him in the bar. The next morning when I came down I found the cellar door open and the bar off the front door, there was no other means of looking the front door besides the bar. About 0915 hours I went to get some change from the till for a friend and I discovered it empty except for a few coppers. I then sent a message to my husband to tell him the till had been robbed and that certain other articles were missing and he informed the police.

In the till had been a ten shilling note which had been torn somewhere about the middle but a bit towards one side and had been repaired with white gummed paper. This note was among those stolen. I have examined the

SEVENTH WITNESS (contd.)

note held by the Army as exhibit "C" and it is exactly the same as the one in the till only it is now torn across the middle and repaired with brown paper. I recognize it as it is somewhat dirty and crumpled.

(signed) Dorothy M. Pugh
.....
Dorothy M. Pugh,
Wife of E.G. Pugh, Plough Hotel,
Builth Wells, Wales.

The Accused in cross-examining the witness asked -

"At what time did you hear the cellar door being tried?"

Answer - "It was while I was having supper, sometime between a quarter to ten and ten o'clock."

Question - "Would that be the door into the cellar from the outside or the outside door of the pub?"

Answer - "It was the cellar door being tried and there is only one cellar door, which leads from the passage-way down into the cellar."

Question - "In other words, someone must have been in the cellar when the Pub closed as there was no sign of breaking into the Pub and then they must have gone out by unbarring the door."

Answer -"Yes, that is the only way I can see."

EIGTH WITNESS

H.E. Wright, Lieut.-Col., R.C.A., 11th Cdn. Army Field Regiment, R.C.A., having been duly sworn states -

I am Commanding Officer of the 11th Army Field Regt., R.C.A. On Sunday 4th of October 1942 Gnr. Heeley was paraded before me charged with a civilian offence in connection with loss of money and other articles alleged to have been stolen from the Plough Hotel, Builth Wells. During the course of my examination of witness and accused, the question of his being in possession of a box of matches was brought up. On questioning, the accused stated that the matches had been purchased in Brecon on the first of October by the accused during the time the regimental convoy was halted there. The accused described the place of purchase as being a small confectionery store on the Main street and that the proprietor from whom he purchased the matches was a man of medium height, about 35 years of age, dark hair and clean shaven. In order to co-oberate the accused's statement. I instructed Capt. Macleod, 9th Bty. to take the accused to Brecon, point out the shop and find out whether or not the proprietor recalled having served any Canadian soldiers on the day in question.

(signed) H.E. Wright
.....
H.E. Wright, Lieut.-Col., R.C.A.
Comd. 11th Cdn. A. Fd. Regt., R.C.A.

The accused declined to cross-examine the witness.

NINETH WITNESS

B7031 WO II Gazell, H.J., B.S.M. 9th (Toronto) Field Bty., 11th Cdn. A. Fd. Regt., R.C.A., having been duly sworn states -

On the morning of October 5th, 1942 I was asked by Capt. Macleod to go along with him as a witness in the case of Gnr. Heeley as far as the identification of a box of matches that Gnr. Heeley was supposed to have purchased in Brecon. When I confronted Gnr. Heeley

NINETH WITNESS

at the Police Station at Builth Wells I heard him deny the fact that he had purchased the said box of matches in Brecon. He stated that he had been given them by someone in our unit.

(signed) W.J. Gazell
B7031 WO II Gazell, W.J.
B.S.M. 9th (Toronto) Fd. Bty.,
11th Cdn A Fd Regt., R.C.A.

The Accused declines to cross-examine the witness.

TENTH WITNESS

B6006 Sgt. Campion, W.H., 9th (Toronto) Field Bty., 11th Cdn. A. Fd. Regt., R.C.A., having been duly sworn states -

I am a Sergeant in the 9th Field Bty., R.C.A. and on the night of October 1 I was the Battery Orderly Sergeant. There were a number of men confined to camp, Gnr. Heeley being one of them. It was my duty to see if they were in camp and Gnr. Heeley did not report to me at any time during the evening. I looked through the huts and made enquiries but I could not locate him. I reported to the B.S.M. the next morning that Gnr. Heeley had been absent from Defaulters the night before at 20.00 hours.

(signed) W.H. Campion
B6006 Sgt. Campion, W.H.
9th (Toronto) Field Bty.,
11th Cdn A Fd Regt., RCA.

ELEVENTH WITNESS

B7009 WO II Black, G.H., 9th (Toronto) Field Bty., 11th Cdn. A. Fd. Regt., R.C.A., having been duly sworn states -

I am a Sergeant Major in the 9th Field Bty., R.C.A. At 0800 hrs I called the roll at troop parade and Gnr. Heeley was present and answered his name.

(Signed) G.H. Black
B7009 WO II Black, G.H.
9th (Toronto) Field Bty.,
11th Cdn A Fd Regt., RCA.

The accused declines to cross-examine the witness.

The evidence in this summary was taken in the presence of accused.

The Accused declines to give any evidence or call any Witness on his own behalf.

Certified that Rules of Procedure 4 (c)(d)(e)(f)(g)(h) have been complied with.

Taken before me this 4th day of October, 1942.

(signed) (J.N.C. Macleod), Capt., RCA.
9th Field Battery,
11th Cdn. Army Field Regt., RCA.

APPENDIX "A"

SCHEDULE OF ARTICLES REPORTED MISSING FROM PLOUGH HOTEL, BUILTH WELLS

£15 to £20 in £1 and 10s notes.
£2 in 1 shilling, 2 shilling and half-crown pieces.
10 flagons of cider, value - £1-2-10.
2 silver whiskey measures, value unknown.
10 packages Players' cigarettes (20's) value £1
80 packages Woodbines cigarettes (5's) value £1-10-0
Metal bank collection box - value 5 shillings.
One dozen boxes of matches, value - 1s. 6d.
Ladies Blue Leather Handbag containing loose clothing coupons and two silk change purses, value - £5-0-0.

LIST OF WITNESSES in the case of B7099 Gnr. HeelwyF., 9th Field Battery, 11th Cdn Army Field Regt., RCA.

FOR THE PROSECUTION

1st Witness: Police Sergeant Hibbert, G.A.R., Builth Wells District.
2nd Witness: W.R. Constable #5 Prichard, L.G., Builth Wells District.
3rd Witness: B7009 WO II Black, G.H., 9 Fd Bty, 11 Cdn A Fd Regt RCA.
4th Witness: B7088 Sgt. Battersby, R.J., 9 Fd Bty, 11 Cdn A Fd Regt RCA.
5th Witness: Geo. Williams, Electrical Power Co., Builth Wells, Wales.
6th Witness: E.G. Pugh, Plough Hotel, Builth Wells, Wales.
7th Witness: Mrs. D.M. Pugh, Plough Hotel, Builth Wells, Wales.
8th Witness: Lt-Col. H.E. Wright, RCA, 11 Cdn A Fd Regt RCA.
9th Witness: B7031 WO II Gazell, H.J. 9 Fd Bty, 11 Cdn A Fd Regt RCA.
10th Witness: B6006 Sgt. Campion, W.H., 9 Fd Bty, 11 Cdn A Fd Regt RCA.

FOR THE DEFENCE.

NIL.

LIST OF EXHIBITS in the case of B7099 Gnr. Heeley F., 9th Field Battery, 11th Cdn Army Field Regt., RCA.

Exhibit "A" - One Box of "England's Glory" Matches, old style.
Exhibit "B" - One trampled pkg of Five Woodbine Cigarettes.
Exhibit "C" - One damaged ten shilling note.

~~Certified True Copy of M.F.H.C~~

Appendix "A" - Schedule of articles reported missing from Plough Hotel, Builth Wells.

Summary of Evidence in the case of B 7099 Gnr. Healey F., 9th Field Battery, 11th Army Field Regt., R.C.A.

First Witness Police Sgt Hibbert G.D.D., Builth Wells district having been duly sworn states.

At 0915 hours 2nd Oct 1942, I received information by telephone from Edmond George Pugh, licensee of the "Plough Hotel" market street Builth Wells, that he had ~~lost~~ missed articles from his premises sometime between ~~between~~ the 2300 hrs on 1st Oct and 0915 hrs. 2nd Oct. 1942. (Schedule of articles missed is attached).

I visited the Plough Hotel and after making an examination of the premises I could find no evidence of breaking in or out of the premises. I noticed marks on the bar counter as if some heavy article had been dragged across it. I remembered that on the previous night at 0015 (night of 1st Oct - 2nd Oct), I was in company with W.R. #5 Pritchard in Market street, Builth Wells, about 50 yds. below the hotel, I had seen 3 Canadian soldiers standing on the pavement around a case of flagon bottles of Riddlers Cider. The one man was leaning against the telephone post and had a flagon bottle in each hand. That man I have since identified as Gnr. Healey. The other man, a tall dark man powerfully built, broad shoulders, black hair brushed back over the head, was standing drinking from one of the flagons. The other man was sick on the side of the street and I have not been able to recognise him. I said to them "Hello

(over)

boys what have you got here." and the tall dark man replied, "we have some drinks." I then noticed that they had ten flagons of Riddlers Cider and Heeley stood with his one foot on the case. I asked where they got the cider from and Heeley replied that we bought them from a store down the street opposite the Star Supply". The tall dark man said "we paid 28 shillings for them" which is the approximate value of a case of such cider. I advised them to go on to camp then and Heeley and the tall dark man, carrying the case of cider between them, went on down the street. The third man had by this time disappeared. During the course of some talk I had with the tall dark man, he told me his sergeant was Sgt Black. I then continued my inquiries along both road and found Sgt Black who was pointed out to me by an officer. I told Sgt Black that certain things were missing from the Plough Hotel and he handed me four players cigarettes and a box of Englands Glory matches. I accompanied Sgt Black to the camp where we spoke to B.S.M. Tagell and in company with him we made a search for the men I had seen the night before. ~~On identification~~ I attended a parade at 1335 hrs and I picked out Gnr. Heeley as the man I had seen with the other two with his foot on the case of cider at 0015 hrs the night before. I spoke to him and told him that I recognised him as the man I had seen on that position the previous night and asked him if he remembered speaking to me. He replied "no"

"I have never seen you before and I was speaking to no policeman". He went on to say that he did not have any cider. I then cautioned him and told him that I would like him to produce any articles he had on his person and he produced a box of "Englands Glory" matches (exhibit A). old style (white label). I asked him if he had any money and he said he had only some coppers, which he showed me, but stated he had loaned a friend the Sgt. Battersby made up of a 10 shilling note and the rest silver. He also told me he had bought the matches in Brecon on the way up to the camp the previous night.

I then had W.R. #5 Pritchard look the men over and after passing the men at work twice he picked Pte Hurley as being one of the three men in Market street the night before.

While looking for the men around town and passing the spot where I had seen the three soldiers drinking the cider Sgt. Black noticed a Woodbine Cigarette package on the road, it had been trodden flat and contained 5 Woodbine cigarettes when I picked it up. (Exhibit "B").

An empty flagon bottle of Ruddles cider and can was later brought to the station by W.R. #5 Pritchard.

I interviewed Sgt. Battersby and in consequence of what he told me I received a patched ten shilling note. (Exhibit "C"). from Mrs. Williams, store keeper Electric Power station Builth Wells.

Exhibit Blue pergt Battersby Builth Wells over)

The Accused in cross-examining the witness asked 'Did you go and speak to W.R. Pritchard before he came down the line of guns on his identification tour."
Answer No not until afterwards, I shouted for him to go on down the line first and see if he could see the man he wanted.

Second Witness War Reserve constable #5. Pritchard R. G. Builth Wells district, being duly sworn states;
At 2015 hrs. on the night of Oct 1st 2nd in company with Sgt Hibbert in Market Street Builth Wells some little distance below the Plough Hotel on the pavement by a telephone post there were 3 soldiers. One was leaning against the post and had his foot on a case and had flagon bottles in his hands. A tall powerful built soldier was standing at the other end of the case. Sgt Hibbert spoke to them and asked them what they had. The tall man said, "sure we have some drinks" and Sgt Hibbert asked them where they had it from which they told him. The man leaning against the post tried to explain where he had it from, a place opposite the Star, and then I told him that that was the White Hart Hotel. Then the tall soldier started a conversation with the ~~soldier~~ assistant and while this was on the third soldier was sick down the street.
The soldiers, one, the tall dark one

and the other the one who had been leaning up against the post picked the case of flagons up and walked off down the street towards the camp.

About 1330 hrs I was stationed at West street facing Church street by Sgt Hibbert and told to stay there until called. Shortly afterwards P.C. May came to the end of North road and beckoned me to come forward which I did. On coming into North road I went towards Sgt Hibbert who told me to go about my work & recognising my man. I walked up North road looking right and left then back down and went back up to where Sgt Hibbert and an officer were standing. Sgt Hibbert asked me if I recognised any of the men I had seen early in the morning in Market street and I said 'yes' and pointed out to the man I now know as Inr. Hurley to be the man leaning against the post with his foot on the case.

After that on my way to the camp I was given instructions to search the area for an empty case and flagon bottles. Later in the evening in company with P.C. May I found an empty case with one empty flagon inside a gateway on a playing field near the second entrance to the camp, in Broadway which I picked up and took to the station. It was a Ridleys case and flagon bottle.

Cross examined by Pte Ford W.R.S. Bullin Walls Street Dudley

The Accused in cross examining the witness asked. "Was it not very dark the night of 26th 2

(over)

and how could you ever recognise anybody on a dark night.

Answer. I turned a flashlight on you when you were leaning against the post so I had no trouble in knowing you the next day as the man leaning against the post.

Third Witness B7009 Sgt Black G.H. 9th Field Battery, 11th Can Army Field Regt R.C.A. having been duly sworn states

I was approached by a police officer on the 2nd Oct at about 10.30 hours. He was looking for me. He told me that my name had been used quite often in a conversation the previous night by a person who he suspected of entering a public house after hours. With the description of the man which he gave to me and of parts of the conversation that he repeated to me I immediately knew who he was refering to but it was not to gunner Heeley.

On the night of Oct 1st 2nd at approximately 22.30 hrs I met Gnr Heeley in company with Gnrs. O'Brien, and Frigault in town. Gnr O'Brien asked me if I would like a drink and I asked him where he could get one this time of night. He told me of a place he knew where he could get it after hours. It was a public house a few yards away. Gnr O'Brien knocked on the side door and was answered by a women. The women would not open the door to him and I told them we had better return to camp so we would not get a drink there

I left them then and returned to camp.

L.W. Black Sgt.
9th Field Battery. 11th Can
Army Field Regt.

The Accused declines to cross-examine this witness.

Fourth Witness. B7088 Sgt Battersby R.J. 9th Field Battery, 11th Can Army Field Regt. R.C.A having been duly sworn states.

At approximately 1345 hrs on Oct 2/45 I received a ten shilling note (Bank of England) from Pte. Hurley which was torn in half. While trying to fix it with gumed paper it tore the second time. I spent this note at the Electric Power Company Built Well on gun stores.

R.J. Battersby Sgt.
9th Field Battery 11th Can Army
Field Regt. R.C.A.

The Accused on cross-examining the witness asked;

When I gave you the note it was in two pieces was it not.
Answer: Yes
Had it been fixed with anything before.
Answer: Yes some white paper was on it and apparently someone had tried to patch it.

Sgt. Battersby was shown the note held as exhibit "C" and identified it as the 10 shilling note referred to above.

P 8

Fifth Witness Williams. Geo. E. storeman for the electrical power company Builth Wells, having been duly sworn states.

Two soldiers, a sergeant one of them, came into my store about dinner time on Friday Oct 2/41 and wanted to purchase some electrical fittings which I was able to supply them. A ten shilling note was tendered by the Sergeant in part payment of the bill. This note was torn and patched together by brown paper and I identify it as Exhibit "C" as held by the Army in this case. I later ascertained and now identify the sergeant who tendered this note to me as Sergeant Battersby of the 9th Field Battery R.C.A.

G E Williams
Storeman. Electric Power
Co. Builth Wells, Wales.

The accused declines to cross-examine this witness.

(over)

~~Sixth~~ First Witness Pugh C. J. Licensee of the Plough Hotel, Builth Wells. Wales. having been duly sworn states.

There were quite a number of troops in my hotel the night of Oct/ 1st 2nd Canadian and English Polar Bears. About 21.55 hrs three Canadian soldiers came into the front bar and asked for two pints of cider and a pint of beer. I served them and by the time they had finished it had gone time for closing. The biggest of the men asked for more but I refused as it had gone time for closing. At 22.15 they left the bar and I stood in the bar talking to a friend and then after a few minutes I wished my friend good-bye. I then went and bolted the side door and back door. I then sent my son to bolt the front door and went back into the ~~door~~ bar and washed the remaining glasses up. I went back into the kitchen and sat down and talked to my wife for awhile. Some time later a knock was sounded on my side door by a person went away. About 23.25 hrs we decided to go to bed. I went around to see if the doors were all locked safely which they were. I heard no noises during the night in the house.

I got up about 07.50 hrs the next morning had breakfast in the kitchen and went out through the back door to my work. Somewhere

around 0900 hrs. I received a message from my wife saying the till had been robbed. I went home, saw my wife and went into the bar. looked in the till and found it empty except for a few coppers. It had contained the night before some fifteen to twenty pounds. I then call the police sergeant and told him of my loss and then he asked me if I had lost a case of cider. I said "I don't know but I will go and look in the bar". which I did and found a case of Ridders Cider of flagon bottles missing. I then call the sergeant on the phone and told him the cider was missing. He then told me that he saw three Canadian soldiers outside my place with a case of cider and that he would be around in a few minutes. While waiting for him to come up I looked around the bar to see if anything else was missing and discovered I had lost about 400 Woodbine cigarettes in packages of fives also one carton of Players cigarettes in 20's with blue paper wrapping and some other article which I gave a list of to the police sergeant. At dinner time when I went home my wife told me that about a dozen and a half of Englands Glory matches were missing. These are of the old style with a white paper label on them. I identify a box of matches held by the Army as exhibit "A" as being the very same kind as what was stolen from me. I also identify Woodbine cigarettes held as exhibit "B" as being the same kind

over

as were stolen from me.

E Hugh

Licensee, Plough Hotel, Builth Wells, Wales.

The accused in cross-examining the witness asked.

Why should any reference be made to three Canadian soldiers being in your pub at 21.55 hours and can you identify me as being one of them.

Answer. Yes, you were one of them. It was almost closing time and I remembered these three as the pub was nearly empty at the time.

Question Is it not true that when you walked down the street the other day to see some soldiers at work on the guns, you came back and told the police sergeant that there was no one there you knew, even though I was standing on the street at the time.

Answer. This is right but you were with the sergeant at the time and I was referring only to the ones working on the guns. You had been called off them by this time.

Question You could not identify me that day could you.

Answer Yes I could identify you that day but I wasn't asked to.

Seventh Witness - Pugh - Mrs Dorothy Mrag. - wife of E. G. Pugh, Plough Hotel, Bunild Wells. having been duly sworn states

I left the bar at about a quarter to ten on Thursday night Oct 1/42 and went into the kitchen. While I was having my supper I heard the cellar door being tried. I thought it was my husband as I had left him in the bar. The next morning when I came down I found the cellar door open and the bar off the front door, there was no other means of locking the front door beside the bar. About 0715 hours I went to get some change from the till for a friend and I discovered it empty except for a few coppers. I then sent a message to my husband to tell him the till had been robbed and that certain other articles were missing and he informed the police.

In the till had been a ten shilling note which had been torn somewhere about the middle but a bit towards one side and had been repaired with white gummed paper. This note was among those stolen. I have examined the note held by the Army as exhibit "C" and it is exactly the same as the one in the till only it is more torn across the middle and repaired with brown

paper. I recognize it as it is somewhat dirty and crumpled.

Dorothy R. Pugh

Wife of E. G. Pugh. Plough Hotel, Builth Wells. Wales.

The Accused on cross-examining the witness asked at what time did you hear the cellar door being tried.

Answer It was while I was having supper, sometime between a quarter to ten and ten o'clock.

Question Would that be the door into the cellar from the outside or the outside door of the pub.

Answer It was the cellar door being tried and there is only one cellar door, which leads from the passageway down into the cellar.

Question In other words, someone must have been in the cellar when the pub closed as there was no ~~no~~ sign of breaking into the pub and then they must have gone out by unbarring the door.

Answer Yes, that is the only way I can see.

Eighth Witness Wright H.C. Lt-Col. 11th Army Field Regt R.C.A. having been duly sworn states:

I am Commanding Officer of the 11th Army Field Regt. R.C.A. On Sunday 11th of October Gnr Hurley was paraded before me charged with a civilian offence in connection with loss of money and other articles alleged to have been stolen from the Plough Hotel, Builth Wells. During the course of my examination of witness and accused, the question of his being in possession of a box of matches was brought up. On questioning, the accused stated that the matches had been purchased in Brecon on the first of October by the accused during the time the regimental convoy was halted there. The accused described the place of purchase as being a small confectionery store on the main street and that the proprietor from whom he purchased the matches was a man of medium height, about 35 years of age, dark hair and clean shaven. In order to corborate the accused's statement, I instructed Capt. Macleod, 9th Bty, to take the accused to Brecon, point out the shop and find out whether or not the proprietor recalled having served any Canadian soldiers on the day in question.

H C Wright Lt-Col
11th Army Field Regt R.C.A.

The accused declined to cross examine the witness

Nineth Witness B7031 Gazell H. J. - Battery Sergeant Major of the 9th Field Battery, R.C.A., after having been duly sworn state.

On the morning of October 5th/42 I was asked by Capt Macleod to go along with him as a witness in the case of Gnr. Heeley as far as the identification of a box of matches that Gnr. Heeley was supposed to have purchased in Brecon. When I confronted Gnr Heeley at the police station at Builth Wells I heard him deny the fact that he had purchased the said box of matches in Brecon. He stated that he had been given them by someone in our unit.

H. J. Gazell
B.S.M.
9th Field Battery R.C.A.

The accused declines to cross examine the witness

Tenth Witness B6006 Campion W.H. Sergeant 9th Field Battery R.C.A. having been duly sworn states

I am a sergeant in the Nineth Field Battery R.C.A. and on the night of October 1st I was the Battery Orderly Sergeant. There were a number of men confined to camp, Gnr. Heeley being one of them. It was my duty to see if they were in camp and Gnr Heeley did not report to me at any time during the evening. I looked thru the huts and made enquiries but I couldn't locate him. I reported to the B.S.M. the next morning that Gnr. Heeley had been absent from defaulters the night before at 20.00 hrs.

C.W. H Campion Sergeant
9th Field Battery R.C.A.

The accused declines to cross examine the witness

11th witness D7009. Black. G.H. Troop Sergeant Major having been duly sworn states.

I am a Sergeant Major in the 9th Field Battery R.C.A. At 08.30 hours 2nd Oct 42 I called the roll at troop parade and Gnr Hurley was present and answered his name.

G.H. Black.
Tp Sgt. Major
9th Field Battery R.C.A.

The Accused declines to cross examine the witness.

The evidence on this summary was taken in the presence of the accused.

The Accused declines to give any evidence or call any witness on his own behalf.

Certified that R of P. 41 (c) (d) (e) (f) (g) & (h) have been complied with.

Taken before me this 4th day of October 1942.

J.R. Graham Capt R.C.A.
9th Field Battery
11th Army Field Regt.

Exhibit "E"

E

10 shilling B/E note #A35D243889.
sent by Gnr. Healey T to
Sgt Battersby.

THE SALVATION ARMY

with the
Canadian Active Service Forces





"D"

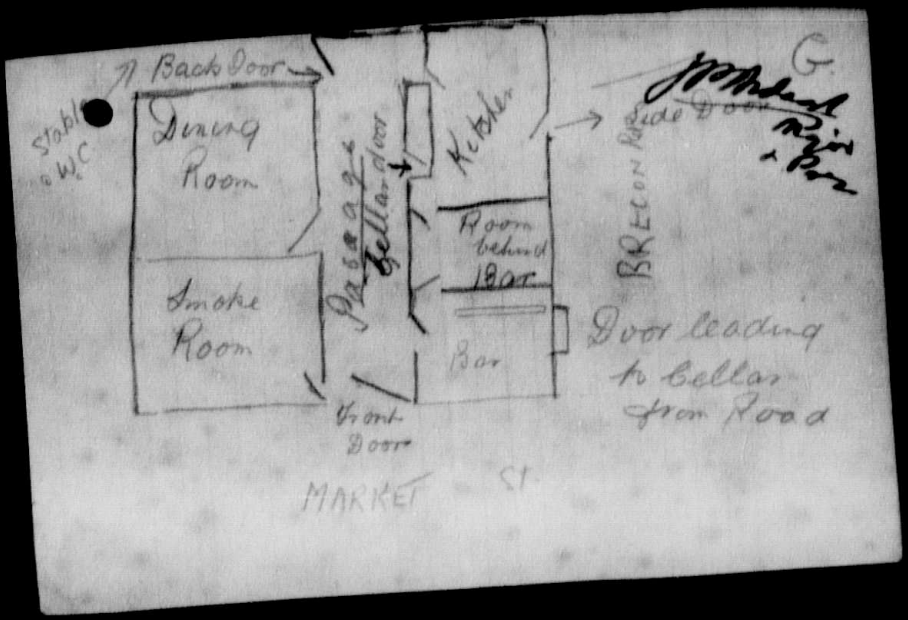
One box of matches

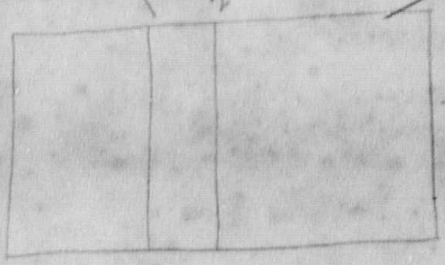
original retained
by OSI Field Representative
16 Jan. London Unit
Jr. Op. Advocate

"F"

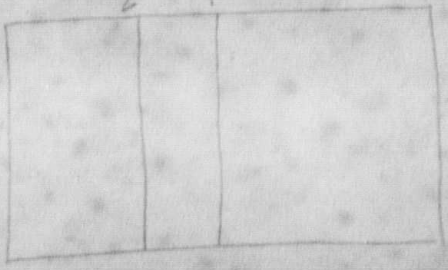
Major
& Pres

One wooden case
containing one empty bottle
of Riddlers Cider.


Stable & W.C
Back Door
Dining Room
Smoke Room
Passage
Cellar door
Kitchen
Room behind Bar
Bar
Front Door
MARKET ST
BRECON ROAD
Side Door
Door leading to Cellar from Road



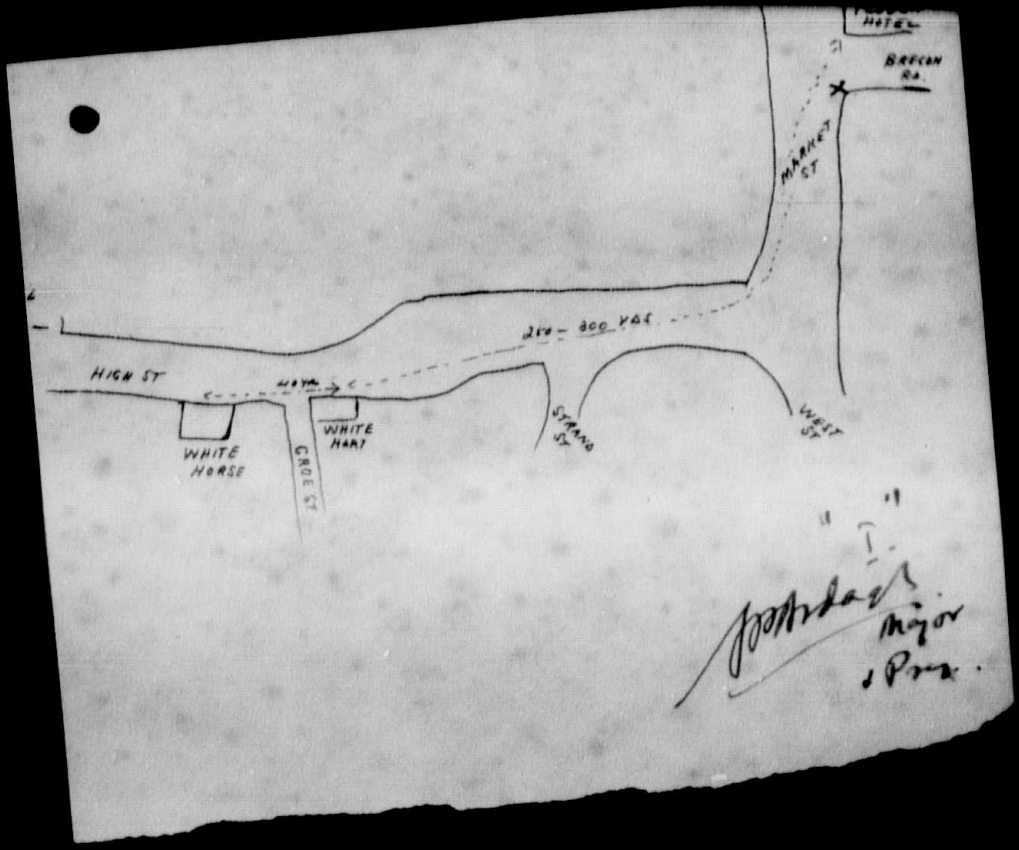
Mrs. Rush



Sgt. Battersby

Diagram of Tears in Ten Shilling Note.

Exhibit H


HOTEL
BRECON Rd.
MARKET ST
200 - 300 YDS
HIGH ST
WHITE HORSE
GRIDE ST
WHITE HART
STRAND ST
WEST ST
Major
J Pres.

"L" Army Form B.296.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED.

B7099 Gnr. Heeley, F., 9th Field Battery, 11th Cdn Army Field Regt., RCA.

(1) The following is a fair and true summary of the entries in the regimental and battery conduct sheets of the accused, exclusive of convictions by a court-martial or a civil court, and in cases in which trial has been dispensed with:-

	Within last 12 months	Since enlistment
Sec 40 AA	0 times	4 times
Sec 15(1)AA	6 times	11 times
Sec 15(2)AA	1 times	4 times
Sec 11 AA	1 times	3 times

(2) Number of instances of gallantry or distinguished conduct: Nil

(3) The accused is under sentence at the present time.

(4) The accused has been in confinement, awaiting trial on the present charges, for 7 days in close arrest.

(5) The present age of the accused, according to his attestation papers, is 27 years 10 months.

(6) The date of his attestation, specified in his attestation papers, is 12 Sep 39.

(7) The accused is not entitled to deferred pay or gratuity in respect to service.

(8) The accused is not entitled to any military decoration or military award.

SCHEDULE of convictions by a court-martial or civil court of summary awards under section 47 of the Army Act in which trial has been dispensed with of accused,

B7099 Gnr. Heeley F., of the 11th Cdn Army Field Regt., RCA, was on the 4 Jul 41 awarded 56 days Detn by FGCM for an offence under Sec.40 AA.

I hereby certify the foregoing schedule of convictions and dispensations with trial is a true extract from regimental books in my custody.

Signed this 7 day of October, 1942.

(G.A. ROGERS), Major, RCA,
Comd 9 Field Battery,
11 Cdn Army Field Regt., RCA.

No. B7099 Name HEELEY, F. Sqn., Battery, or Company 9 Bty. Corps 11th Cdn A Fd Regt., R.C.A. Date of enlistment 12.9.39 G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc.

M.F.M. 6 (A.F.B. 122)

Place	Date of offence	Rank	Cases of Drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	12.6.41	Gnr.		Was Guilty of conduct to the prejudice etc. In that he, was improperly in the possession of a battle dress jacket. Sec. 40 A.A.	L/B Brittain BSM Rawlings	56 days Detn	4-Jul-41	F.G.C.M.	56 days pay FRI
				Confirmed by C.E. Cdn. Corps, 7 Jul 41.					
Released from Detention Barracks WHITLEY on Aug 9, 1941 sentence having expired. Remission earned under Rules for Detention Barracks and Military Prisons. - 10 days.									
Field	30 Aug	Gnr.		Sec 15(1) AA- was A/L from 2300 hrs 30 Aug 41 to 1000 hrs 31 Aug 41 (11 hrs)	Sgt Stuart Bdr Furniss BSM Rawlings	7 days C.B.	1-Sep-41	Capt E.C. Tate	Fts 1 day pay
Field	22.9.41	Gnr.		Sec 11 AA- Not obeying standing Orders-not wearing discs, identity or carrying 1st Field dressing.	BSM Dockus	7 days C.B.	22.9.41	Major E.N. Lander	

(P.T.O.)

CERTIFIED TRUE COPY "K" [illegible] Major

No. B7099 Name HEELEY, F. Sqn., Battery, or Company 9 Bty. Corps 11th Cdn A Fd Regt., R.C.A. Date of enlistment 12.9.39 G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc.

M.F.M. 6 (A.F.B. 122)

Place	Date of offence	Rank	Cases of Drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
C.N.E. Toronto		Gnr.		Sec 40 AA CONDUCT TO THE PREJUDICE etc. - Gambling in Barracks	B.S.M. Scarr	48 hrs Detn.	17.11.39	Major T.M. Medland	
" " " "	17.11.39	"		Sec 15 AA Breaking arrest and A/L from 1120 hrs 17.11.39 until 1530 hrs. 20.11.39.	Bdr Logan	72 hrs Detn.	21.11.39	Major T.M. Medland	
On 12 Mar 40 this soldier completed six months service and in accordance with RO previous sheet destroyed.						71 C.A.S.F. (Overseas)			
Okebampton	17.5.40	Gnr.		Sec 40 A.A. - Appearing on parade in a dirty condition.	B.S.M. King	3 days C.B.	17.5.40	Major E.N. Lander	
Donstead	6.9.40	"		A.A. Sec 15 (1) A/L from 1700 hrs 6.9.40 until 2030 hrs 13.9.40 (171 hrs 30 mins)	BSM Wright Bdr Smith, R.E.	2 months restricted pay.	14.9.40	Major E.N. Lander	Fts. 3 days pay
Newlands	29.10.40	"		Sec 15 (1) A.A. A/L from 2359 hrs 29.10.40 until 1700 hrs 1.11.40 (65 hrs.)	Sgt. Meldrum	14 days C.B. & 3 mo. restricted pay.	2.11.40	Lt.-Col. H.D.	Ft 3 days pay.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishments awarded	Date of award or if under suspending with trial	By whom awarded	Remarks
Field	14.10.41	Gnr.		Sec 11AA-Not obeying Bty Orders 3055/41, failing to parade on Click parade.	Sgt. Campion	4 days C.B.	16.10.41	Major K.N. Lander	
Field	1.11.41	Gnr.		Sec 15(1)AA-woas AWL from 0800 hrs 2 Nov 41 to 0945 hrs 3.11.41 (25 hrs 45 mins)	Sgt. Black, Bdr Johnston	5 days C.B.	3 Nov 41	Major K.N. Lander	Fts 2 days pay.
Field	8.11.41	Gnr.		Sec 15 (2)AA-woas while C.B. fail ing to appear for defaulters parade 1800 hrs 8-Nov-41.	L/Sgt. Gregson, A.	7 days C.B.	12.11.41	Major K.N. Lander	
Field	15.11.41	Gnr.		woas and while confined to camp, AWL from 1300 hrs 15.11.41 until 0015 hrs 23.11.41 (179 hrs 15 min	Sgt. Black Bdr Johnston	8 days F.P. Fts 8 days pay	24.11.41	Lt.-Col. A.B. Harris	Fts. 8 days pay.
Field	18.3.42	Gnr.		Sec. 15(1) A.A. woas AWL from 2300 hrs 18.3.42 until 2230 hrs 21.3.42 (47½ hrs)	NOII Rawlings Bdr Chennell	14 days C.B.	23.3.42	Major G.A. Rogers	Fts. 2 days pay.
Field	1.4.42	Gnr.		woas and while a defaulter AWL from 2300 hrs 1.4.42 until 2230 hrs 6.4.42 (4 days 23 hrs) Sec 15AA (Under close arrest from 2230 hrs 6.4.42)	NOII Rawlings Gnr Cheeseman	28 days Detn	19.4.42	Lt.-Col. H.E. Wright	Fts 5 days pay FHI 149 (AWL) 28 days pay for Detn.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishments awarded	Date of award or if under suspending with trial	By whom awarded	Remarks
Newlands	19.12.40	Gnr.		Sec 15 (1) AA - AWL from 0630 hrs 20.12.40 to 1900 hrs 26.12.40 (155 hrs 30 mins)	Bdr. Smith H.E.	7 days C.B.	27.12.40	Major K.N. Lander	Fts. 7 days pay.
Field	3.2.41	Gnr.		Sec 15 (2) AA - Failing to report for Roll Call at 2100 hrs and found in George Hotel at 2100 hrs	L/Sgt. Boyes	5 days C.B.	5.2.41	Capt. G.P. Marriott	
Field	17.2.41	Gnr.		M.O.A.S. NEGLECTING TO OBEY A STANDING ORDER, in that he, was improperly dressed.	Military Police				
				Sec 40 AA - CONDUCT TO PREJUDICE etc. arranging to be placed on Guard without permission.	L/Bdr. Connor	14 days C.B. (3 charges)	20.2.41	Lt.-Col. C.D. Crowe	
				Sec 15 (2) AA - Failing to appear on parade while a defaulter.	Sgt. Grey, W.				
Field	19.5.41	Gnr.		Sec 40 AA - Gambling in Hut 1115 hrs 19.5.41 - During parade hours.	Lieut. WJ Wadell	3 days C.B.	20.5.41	Major K.N. Lander	
Field	1.6.41	Gnr.		Sec 15(2)AA-woas failed to appear on Defaulters parade at 1800 hrs 1 Jun 41.	L/Sgt. Gregson A.	3 days C.B.	6.6.41	Major K.N. Lander	

No. B7099 Name REELEY, F. Sqn., Battery or Company 9 Bty Corps 11th Cdn. A.Fd. Regt., R.C.A. Date of enlistment 12.9.39 G.C. Badges Service or Proficiency Pay Character

MFM 6 (A F B 122) 500M—8/39 (1939) H.Q. 1772-43-18

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 4 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7.5.42	Gnr.		was AWL from 2300 hrs 7.5.42 until 2300 hrs 13.5.42 (6 days) Sec 15 (1) AA.	TBSM Rawlings Sgt Galbraith	28 days Detn.	19.5.42	Lt.-Col. A.E. Wright	Fts 6 days pay for AWL-FRI149 Fts 28 days pay for Detn.
Field	25.9.42	Gnr.		was AWL from 1330 hrs 25.9.42 to 1000 hrs 26.9.42 (2 days 20 hrs 30 mins) Sec 15 (1) A.A.	Sgt. Goad Sgt. Black	7 days F.P. with forfeitures.	28.9.42	Major F.T. McIntosh	Fts 3 days pay FRI 149(1)(a)

CERTIFIED TRUE COPY OF ENTRIES IN THE REGIMENTAL BOOKS IN MY CUSTODY

(G.A. ROGERS), Major, RCA, Comd. 9th Field Bty., RCA.

(P.T.O.)

DDD-2 (Case #3)

GNR HEELEY F

See B-193 for 1st case
S-198 - 2nd

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B7099 GNR Frederick HEELEY 13 Fd Regt RCA

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st CHARGE AA 15(b)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MAML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) .....

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on AF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 20 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on AF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

One year detention and to pay cost of apprehension in the amount of $1-5-6

(Sgd) ..... Judge-Advocate, if any. 31 Jan 44 Date awarded. (Sgd) ..... President (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MAML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 758-761, KR Con 562-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the Court.

~~I withhold confirmation of the finding(s) and sentence(s) for the following reason(s):~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) W.S. Griffin Lt Col A/CRA 3 Can Inf Div

Date 3 Feb 44 Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B7099 Gnr Frederick Heeley	4 February 1944	J C Dale Capt. AJAG

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ADAA-2

FIELD GENERAL COURT-MARTIAL (CRAGS (In lieu of AFA3) 40/P & S/1608 (2864))

Convened by Order of BRIG P.A.S. TODD Comd CRA 3 Can Inf Div dated 29 JAN 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B7099	Gnr	FREDERICK	HEELEY	13 Fd Regt RCA

PROCEEDINGS REVIEWED

Date 1 Feb 44

REVIEWING OFFICER, JAG BRANCH

AJAG

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 31 JAN 44 AT CDN ARMY

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Can ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet[s] attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 47 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans ~~.....~~

~~The interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	A.B. REID	19 Fd Regt RCA
Member	CAPT	J.M. BARCLAY	14 Fd Regt RCA
Member	LIEUT	W.E.D. GRAY	3 ATk Regt RCA
~~Judge-Advocate~~			
Prosecutor	CAPT	G.C. HANGILLE	13 Fd Regt RCA.
Defending Offr	LIEUT	W.M. RAINSBERRY	13 Fd Regt RCA.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
Q. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ~~..... before arraignment makes(s) (has) (has not) pleaded~~ (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(b), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 128, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addressment made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to this para. Record in all cases and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. ~~The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form .....~~

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers~~ the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on FIRST charge(s). ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. ~~On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.~~(1)
(*1. RP 38(3). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex 'A', initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Three Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 155. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (c), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans NO
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 'B' and Ex 'C' respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 2. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes through my defending officer.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 118. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 300, 330, 563-566. Overseas RD 309, 2323. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 300, 330, 563-566. Overseas RD 309, 2323. RP 48

CHARGE SHEET

The accused No. B 7099 Gunner Frederick Heeley, 78 Canadian Field Battery, 13 Canadian Field Regiment, R.C.A. a soldier of on Active Service with the Canadian Army (Overseas) is charged with:-

FIRST CHARGE

Sec 15 (1) Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

In the field absented himself without leave from 2230 hours 1 Jan 44 until apprenhended by the Provost at GUILDFORD, at about 1030 hrs 12 Jan 44, thereby incurring Cost of Apprenhension of £1-5-6 (one pound 5 shillings and six pence)

Absence 11 days 12 hrs.

(F. le P. T. Clifford) Lieut. Col.
Comd 13 Canadian Field Regiment, R.C.A.

In the field,
22 Jan 44.

To be tried by F.G.C.M.

In the field,
29 Jan 44

(P.A.S. Todd) Brigadier
C.R.A. 3 Cdn Inf Div

MEDICAL OFFICERS CERTIFICATE
K.R. (Can) Para 827.

I certify that I have thisday examined

7099 Gnr HEELEY Fredrick and in my opinion
Number Rank Name
is fit to undergo trial by court martial.

Date Jan 31/44

Medical Officers (Unit) 1 Can Para Fd Amb

FIELD GENERAL COURT-MARTIAL

CFA35 (In lieu of AFA3)
40-Pads/1697 (2668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 328, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B7099	Gunner		Frederick	HEELEY	19 Fd Regt RCA

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 29 Jan 44 endorsed by me, (or by an offr of my staff for me)" To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. Data suitable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have checked hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	A.B FERNIE	19 Fd Regt RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J.M. BARCLAY	14 Fd Regt RCA
Lieut	N.E.D. GRAY	3 ATk Regt RCA

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	G.A. PATTERSON	19 Fd Regt RCA
[illegible]	[illegible]	[illegible]

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(P.A.S. Todd)

Date 29 Jan 44

Commanding G.R.A. 3 Cdn Inf Div

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Ex "A"

SUMMARY OF EVIDENCE

Summary of evidence in the case of:- B 7099 Gunner Frederick Heeley, 78 Canadian Field Battery, 13 Canadian Field Regiment, R.C.A. a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

Lieut Col F. le P. T. Clifford, Officer Commanding, 13 Canadian Field Regiment, R.C.A. directs that all evidence be taken on oath.

1st Witness:

M43451 L/Bdr McQuillin, W.A., 78 Field Battery, 13 Canadian Field Regiment, R.C.A. having been duly sworn states:-

I am Bdr of the sub-section to which Gnr Heeley, F. belongs and when I called the roll at tattoo 1 Jan 44 Gnr Heeley, F. was absent from his quarters. I marked him on my tattoo report as being unaccounted for and reported to my No. 1, L/Sgt Hopkins, E.A. the next day. He remained absent and I did not see him between 1 Jan 44 and 10 Jan 44 when I went on leave. I next saw him after I returned 19 Jan 44 at Orderly Room on the 20 Jan 44. I took the tattoo roll call at 2230 hrs. 1 Jan 44. W.A. McQuillin

The accused declined to cross examine the witness.

Signature of witness W.A. McQuillin
(W.A. McQuillin)

2nd Witness

K24070 L/Sgt Hopkins, E.A., 78 Field Battery, 13 Canadian Field Regiment, R.C.A. having been duly sworn states:-

I am No. 1 of the sub-section, BHQ Tp, 78 Fd Bty, R.C.A. to which Gnr Heeley, F. belongs. He was reported to me as being absent from his quarters as of 2230 hrs 1 Jan 44, by L/Bdr McQuillin. His absence was also reported on the tattoo report which I saw. Gnr Heeley, F. has been absent from all Battery parades since 1 Jan 44.

The accused declined to cross examine the witness.

Signature of Witness E.A. Hopkins
(E.A. Hopkins)

3rd Witness

L26264 Bdr Hadley, J.A., 44 Field Battery, 13 Canadian Field Regiment, R.C.A. having been duly sworn states:-

I was Bdr of the guard for the duty battery on 14 Jan 44 and was instructed to go to BOURNEMOUTH CENTRAL STATION to take charge of a prisoner returning under escort. Gnr Heeley, F. was turned over to me by a member of the Provost Corps at about 1700 hrs on 14 Jan 44. I brought Gnr Heeley to R.H.Q., 13 Cdn Fd Regt R.C.A. and then turned him over to the 78 Fd Bty Guard Room.

The accused declined to cross examine the witness:

Signature of Witness J.A. Hadley
(J.A. Hadley)

4 & 5 Witnesses

U 1543 Sgt Gould, W.R. & A56056 L/Cpl Massell, C.B., 9 Cdn Provost Coy.

A written statement of these witnesses evidence, purporting to be signed by them, has been read to the accused and is incl in the summary (attached as exhibit "A") having regard to the expense involved the attendance of this witnesses cannot, in my opinion, be readily procured.

The accused does not demand the attendance of these witnesses for cross-examination.

(J.C. Dale) Capt. (Adjt)
Officer taking Summary.

B 7099 Gunner Frederick Heeley, 78 Canadian Field Battery, 13 Canadian Field Regiment, RCA was asked:-

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be used in evidence".

The accused declined to make a statement.

I hereby certify that Rule of Procedure 4 has been complied with.

Taken before me in the presence of the accused in the field this 22 day of January 1944.

(J.C. Dale) Capt.
Adjt 13 Cdn Field Regiment, R.C.A.

Further Summary of Evidence in the case of;- B 7099 Gunner Frederick Heeley, 78 Canadian Field Battery, 13 Canadian Field Regiment, R.C.A. a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

Lieut. Col. F le P. T. Clifford, Officer Commanding, 13 Canadian Field Regiment, R.C.A. directs that all evidence be taken on oath.

1st Witness

Captain J.C. Dale, R.H.Q. 13 Cdn Fd Regiment, R.C.A. having been duly sworn states:-

I am Captain J.C. Dale, Adjutant, 13 Canadian Field Regt,, R.C.A. acting in such capacity there came to me in the course of the mail the following documents which I present in evidence - Exhibit "A" which is a Certificate in accordance with P.C. 2797, signed by Captain F.A. Love, stating that the accused was arrested at GUILDFORD at 1030 hrs on 12 Jan 44 and at time of arrest was wearing Military uniform. I also produce as evidence, marked exhibit "B" expence Voucher, signed by Capt Smith, No. 6 Area Provost Coy, itemizing the expence occurred in apprehenion and returning the accused soldier to his unit in the amount of £1-5-6.

The accused declined to cross examine the witness.

Signature of Witness J.C. Dale
(J.C. Dale)

B 7099 Gunner Frederick Heeley, 78th Canadian Field Battery, 13 Canadian Field Regiment, R.C.A. was asked:-

"Do you wish to make any statement or to give any ee evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be used in evidence."

The accused declined to make a statement.

I hereby certify that Rule of Procedure 4 has been complied with.

Taken before me in the presence of the accused in the field this 28 day of January 1944.

(G.C. Camille) Capt.
Officer taking summary.

"A"

SCHEDULE "A"

Certificate in Accordance with P.C. 2737 of 10 Apr 42

I Certify that No. B-7099 Rank. Gnr. Name. Heely, F.

Unit 13th. Field Reg(t. RCA was arrested at. Guildford (place)

at. 1030 hours on. 12 Jan 44 (date) and that at the time of his arrest he was wearing (military uniform) or (XXXXXXXXXXXXXXXX)

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of His Majesty's Forces or the Officer, war net-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Cdn Army, into whose custody the above named person was taken or arrest.

ORDERLY ROOM
JAN 12 1944
No. 9 PROVOST COY.

Capt.,
F.A. Love,
Officer Commanding,
No. 9 Cdn. Provost Coy.

Expense Voucher Re—: Ref. K.R. & O. (Can) 539

Reg. No. B 7099 Rank Gnr. Name Kelly, J. Unit 13 Fd. Regt, R.C.A.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount £	s	d
13 Jan. 44.	Escorts return fare from LONDON To Bournemouth W.		12	0
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Bournemouth W.		8	6
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £	1	5	6

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
4(P & S/4453(3287))

No B7099 Name Heeley F. | Sqn, Battery, or Company | Corps RCA | Date of enlistment 12.9.39 | GC Badges Nil | Service or Proficiency Pay N/A | Character

Date of last entry in Company Conduct Sheet 22.6.41 | No and date of last drunk Nil | Period not reckoning towards freedom from extra fine N/A | Sheet No TWO | Signature OC Company, etc

MFM 6 AFB 122 (FB 122) 40/PAS/136 (3438)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30 Aug 41	Gnr.		Sec. 15 (1) AA WOAS AWL from 2300 Hours 20 Aug 41 to 1000 hrs 31 Aug 41 (11 hrs)	Sgt. Stuart Bdr. Furniss BSM Rawlings	7 days C.B.	1 Sep 41	Capt. E.C. Tate	Frts. 1 days Pay
Field	22 Sep 41	Gnr.		Sec.11 AA. Not obeying standing orders-not wearing discs identity or carrying first field dressing	BSM Beckus	7 days C.B.	22 Sep41	Major. K.N. Lander	
Field	14 Oct 41	Gnr.		Sec.11AA Not obeying Hty. Order 3055/41 failing to parade on sick parade.	Sgt. Campion	4 days C.B.	15.10.41	Major. K.N. Lander	
Field	1 Nov 41			Sec. 15 (1) AA WOAS AWL from 0800 hrs 2 Nov 41 to 0945 hrs 3 Nov 41 (25hrs.45 mins)	Sgt. Black G.H. Bdr. Johnstone J.	5 days C.B.	3 Nov 41	Major. K.N. Lander	Frts. 2 days Pay
Field	8 Nov 41			Sec.15(2)AA WOAS while C.B. failing to appear for defaulters parade	L/Sgt. Gregson A. 1800 hrs. 8 Nov 41	7 days C.B.	12.11.41	Major. K.N. Lander	

(P70)

CERTIFIED TRUE COPY AS AT 22 Jan 44 ... Major, R.C.A.

Exhibit C

No B7099 Name Heeley F. | Sqn, Battery, or Company | Corps RCA | Date of enlistment 12 Sep 39 | GC Badges | Service or Proficiency Pay N/A | Character

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No One | Signature OC Company, etc

MFM 6 AFB 122 (FB 122) 40/PAS/136 (3438)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17.5.40	Gnr.		Sec.40AA- Appearing on Parade in a dirty condition	BSM King	3 days C.B.	17.5.40	Major, K.N. Lander	
Field	6.9.40	Gnr.		A.A.Sec.15(1) AWL from 1700 hrs 6.9.40 to 2030 hrs 13.9.40 (171 hrs 30 mins)	BSM Wright Bdr. Smith H.E.	2 months restricted pay	14.9.40	Major K.N. Lander	Forfs. 8 days Pay
Field	29.10.40	Gnr.		Sec.15(1)AA. AWL from 2359 hrs. 29.10.40 to 1700 hrs 1.11.40 (65 hours)	Sgt. Meldrum L.F.	14 days C.B. and 3 mos res. pay	8.11.40	Lieut.Col. C.A.Crowe	Forfs. 3 days Pay
Field	19.12.40	Gnr.		Sec.15(1)AA AWL from 0030 hrs. 20.12.40 to 1900 hrs 26.12.40 (155 hrs. 30 mins)	Bdr. Smith H.E.	7 days C.B.	27.12.40	Major.K.N. Lander	Forfs. 7 days Pay
Field	3.2.41	Gnr.		Sec.15 (2) A.A. failing to report for roll call at 2100 hrs. and found in George Hotel at 2100 hrs	L/Sgt. Boyes	5 days C.B.	5.2.41	Capt. G.P. Marriot	

(P70)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15.11.41	Gnr.		WOAS and while confined to camp, AWL from 1300 hrs. 15.11.41 until 0015 hrs. 23.11.41(179 hrs. 15 mins)Sec 15(1) AA	Sgt.Black Bdr. Johnston	8 days F.P. Fts. 8 days Pay	24.11.41	G. Harris Lt. Col.	
Field	18.5.42	Gnr.		WOAS AWL from 2300 hrs. 18 Mar 42 until 2230 hrs. 21 Mar 42 (47½hrs)	WOII Rawlings Bdr. Chennell	14 days C.B.	23.5.42	Major. G.A. Rogers	Fts. 2 days pay
Field	1.4.42	Gnr.		WOAS & while defaulter AWL 2300 hrs. 1.4.42 until 2230 hrs. 6.4.42 (4 days 23½ hrs)Sec 15AA (under close arrest from 2230 hrs 6.4.42)	TBSM Rawlings L/B Cheeseman	28 days detn.	8.4.42	T.L Keen Major	Fts. 5 days Pay FR&I 149(AWL) 28 days pay for detn.
Field	7.5.42	Gnr.		WOAS AWL from 2300 hrs 7.5.42 until 2300 hrs. 13.5.42.(Absent 6 days)Sec.15(1)AA	TBSM Rawlings Sgt. Gailbraith	28 days detn.	19.5.42	H.E. Weytt Lt. Col.	Fts. 6 days pay fo AWL FR&I 149 Fts. 28 days pay fo detn.
Field	25.9.42	Gnr.		WOAS AWL from 1330 hrs. 25.9.42 to 1000 hrs. 28.9.42 (2 days 20 hrs. 30 mins) Sec. 15 (1) AA.	Sgt. Goad Sgt. Black	7 days F.P. with Forfs	28.9.42	Major. F.T. McIntosh	Forfs. 3 days pay FR&I 149 (1) (a)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17.2.41	Gnr		W.O.A.S. Neglecting to obey a standing order in that he was improperly dressed . Sec.40 AA- Conduct to the Prejd- "Arranging to be replaced on Guard Without Permission" Sec.15(2)AA-Failing to appear on parade while a defaulter	Military Police L/Bdr. Connor Sgt. Gray W.	14 days C.B.	20.2.41	Lt. Col. C.D. Crowe	
Field	19.5.41	Gnr.		Sec.40AA-Gambling in Hut-1115 19.5.41- during parade hours.	Lieut. W.J. Madell	3 days C.B.	20.5.41	Major, K.N. Lander	
Field	1.6.41			Sec.15(2)AA WOAS Failed to Appear on Defaulters Parade at 1800 Hours 1 Jun 41	L/Sgt.Gregson A.	3 days C.B.	6.6.41	Major K.N. Lander	
Field	22.6.41	Gnr.		WOAS Conduct to the prejudice etc., in that he, was improperly in the possession of a battle dress jacket. Sec.40 (AA)	L/Bdr.Brittain TBSM Rawlings	56 days Detention	4 Jul 41	FGCM	56 days pay under FR&I

Confirmed by C.E. Can Corps 7 Jul 41

No B7099 Name HEELEY F. | Sqn, Battery, or Company | Corps RCA | Date of enlistment 12.9.39 | GC Badges | Four | Service or Proficiency Pay | N/A | MFM 6 (FB 122) 40/PAS/136 (1428)

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No Four | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 Sep 43	Gnr.		(1) WOAS AWL from 1800 hrs 1 Sep 43 until 1630 hrs. 11 Sep 43 (Absent 9 days 22 hrs. 30 mins.) AA Sec 15 (1) (2) WOAS An act to the prejudice, etc. AA Sec 40. In close arrest 2 days 7 hrs 20 mins	Bdr. McFadden Bdr. Densmore Documentary BSM Collard Documentary	28 days F.P. 28 days pay Cost of Apprehension £0-11-3	14 Sep 43	G.T. Inch Lieut. Col.	Total Ftre. 41 days pay
Field	21 Nov 43	Gnr.		Sec. 15 (1) AA AWL from 0630 hrs 21 Nov 43 until 2120 hrs. 22 Nov 43 (Absent 1 day 14 hrs. 50 mins.)	Sgt. Hoskins Gnr. Cartwright	11 days F.P. Forf. of 11 days pay	24 Nov 43	Major G.F. Mainnis	Auto. Forf. of 2 days pay Forf. of 3 days while in close arrest. Total 16 days pay.

(PTO)

No B7099 Name Heeley F. | Sqn, Battery, or Company | Corps RCA | Date of enlistment 12.9.39 | GC Badges | Service or Proficiency Pay N/A | MFM 6 (FB 122) 40/PAS/136 (1428)

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No Three | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1.10.42	Gnr.		1. WOAS AWL from 2000 hrs. 1.10.42 to 0800 hrs. 2.10.42. Sec.15 AA 2 WOAS committing a civil offence stealing. Sec. 41 AA 3. WOAS committing a civil offence receiving stolen goods.	Police SM Black SM Gazell Civil-EC Pugh	6 mths detn. Guilty of 1st and 3rd. Not guilty of 2nd	10 Nov 42	FGCM	Fts. 1 days Pay FRI-AWL Fts. 40 days pay close arr Fts. 150 days pay-detention Total-191 da

Sentence confirmed by Comd 1 Cdn Arty Gp, First Cdn Army with remission of one months detention

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified True Copy					

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Jul 43	Gnr.		(1) WOAS AWL from 1200 hrs 28 Jul 43 until 1130 hrs 4 Aug 43 (Absent 6 days 23 hrs 30 mins) AA Sec. 15 (1)	L/B Rice L/S Serres Documentary	21 days F.P. 21 days pay	11 Aug 43	G.T.Inch Lt. Col.	Total Forf. 56 days pay
	4 Aug 43	Gnr.		(2) WOAS An act to the prejudice, etc. A.A. Sec 40.	Documentary				
	4 Aug 43	Gnr.		(3) WOAS Resisting an escort whose duty it was to detain him, etc. A.A. Sec. 10 (3)	Documentary				
				In close arrest from 1130 hrs. 4 Aug 43 to 2359 hrs. 10 Aug 43 (6 days 12 hrs. 30 mins)					

Exhibit "B"

M.F.B. 355
22M—5-41 (579-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
R 7099	Gunner	Healey, F	13 Cdn Fd Regt, RCA

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with,

	Within last 12 months		Since enlistment or appointment	
For Sec 15 (1)	three	times	Sec 15 (1)	fourteen times
For Sec 40	two	times	Sec 15 (2)	four times
For Sec 10 (3)	one	times	Sec 40	one six times
For		times	Sec 11	two
			Sec 10 (3)	one times

Number of instances of gallantry or distinguished conduct Nil

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial ~~or a summary award under the Air Force Act~~ Section 47 of the Army Act and dispensations with trial under ~~Air Force Act~~ are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for~~ beginning on the ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and ~~20~~ days in military custody, making a total of ~~20~~ days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ is 30 yrs, 1 mo.

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 12 Sep 39

7. The service which the accused is allowed to reckon towards discharge is 4 yrs, 4 mos.

8. The accused is entitled to reckon 3 yrs 6 mos service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to ~~wear the~~ decoration, or ~~the~~ reward ~~specified in~~ military military ~~Note any air force decoration or reward~~

~~If the accused is a warrant officer, the accused is to be~~ Air Force ~~borne on the establishment~~ the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated N/A, and in his regiment (or corps), the rank of dated N/A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A Date of promotion.

In the rank of N/A years.

In the rank of N/A years.

In the rank of N/A years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

W.F.F.S.

Of convictions by a court-martial or by civil court, or summary awards under Section 43 of the Army Act or number of cases in which trial has been dispensed with at unit.

Number R 7099 Rank Gnr Duty

Name Healey, F of 13 Cdn Fd Regt, RCA Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
FGCM	Field 1 Oct 42	Sec 15 (1) Sec 41	6 mos detn	1 mos detn
FGCM	Field 22 Jun 41	Sec 40 A.A.	56 Days Detn	NIL

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this twenty-second day of January 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

31 Jan 44.

Plea In Mitigation of Sentence On:
B 7099 Gnr Heeley, F., 78 Fd Bty,
13 Canadian Field Regiment, R.C.A.

The accused joined the army early in September 1939.

He is married in Canada and has had domestic trouble. At present he has a legal separation from his wife. There are two children; now under care of the Children's Aid Society. He provides for them by monthly assignment. Worried about his two children, this man has grown morose.

He has not found his place in the army and would like to be examined by an SPO to determine just where he fits into the picture. This man wants to fight. He needs an active outlet for his pent-up feelings. I would strongly suggest to the Court that a letter be sent to the SPO at No.1 CARU to the effect that an interview be arranged when Heeley returns there after serving sentence.

I humbly petition the Court to take the above facts into consideration when determining the length of Sentence.

W.M. Ransberry

(W.M. Ransberry) Lieut,
Defending Officer.

I, the undersigned, hereby request the convening officer to appoint Capt Kelly, No. 1 C.A.R.U., to defend me, if and when I am tried by F.G.C.M.

F. Heeley

(F. Heeley)

III-58 (Can #4)

GNR HEELEY F

See B-143 for 1st Can

" S-1480 "2nd"

"DDD-2 "3rd"

RECORDED AT CMHQ GNP 403160 22-2-44

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AF B22) AG/P AG B-1908 (3864)

Convened by Order of Brig R O G Morton dated 24 Mar 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B/7099	Gnr	Frederick	HEELEY,	13 Cdn Fd Regt, RCA

PROCEEDINGS REVIEWED 27 Apr 44

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS REVIEWED 18 Apr 44 Date

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 28 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnm ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53; RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 5. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1415 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to as interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No. Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A G GOLDIE	12 Cdn Fd Regt, RCA
Member	Capt	C E Morris	13 Cdn Fd Regt, RCA
Member	Lieut	R S Harris	4 Cdn LAA Regt, RCA
Judge-Advocate			
Prosecutor	Lieut.	G H Watson	13 Cdn Fd Regt RCA
Defending Offr	Lieut.	F. Davis	13 Cdn Fd Regt RCA

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If then a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and fn 3 were not followed. See D1 p 2.)

A8. The accused B/7099 Gnr Frederick HEELEY before arraignment make(s) (are) ~~no~~ plea ~~of~~ [redacted].(1)

(1. If a special plea is made for separate trial on one or more charges (RP 53(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references to fns to Ref cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 34, 112. See para 4 of Instrs p 2. When more than one Charge Sheet see RP 52; when accused directed to be tried separately see RP 71(C), and see separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B/7099 Gnr Frederick Healey, 13 Cdn Fd Regt, RCA

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Charge	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for One year. beginning on (date) 31 Jan 44(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or MF B296.)

Time in confinement awaiting present trial—a total of 23 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or MF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: One year imprisonment to be discharged with ignominy. To be committed to the Glasgow Prison. To forfeit his service. To undergo hard labour.

(Sgd) Judge-Advocate, if any. 28 Mar 44. Date awarded. (Sgd) A G Goldie Major President. (RP 49, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 66(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be entered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 (fn 1.))

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to [illegible] or detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.)

(Sgd) H.D.G. Morton Brig

Date 31 March 1944 Commanding 4 Div Comd & Cdn Div Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
B 7099 Gnr Heeley, Frederick	9 Apr 44	[signature] Lt Col.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No. Sir. (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete where or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character 1(1)
Ans No. Sir.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex M and Ex N respectively.(3)
(1. MFD 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment 1(1) Ans Yes Sir. (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 120. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 64(1b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No. B 7099 Gunner Frederick Heeley, 78 Canadian Field Battery, 13 Canadian Field Regiment, R.C.A. a soldier on active service with the Canadian Army (Overseas) is charged with:-

1st Charge
Section 15(1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the field, when in close arrest, escaped and absented himself without leave from 2005 hrs, 11 Feb 44 until he surrendered himself to the RTO at Central Station SOUTHAMPTON at 2030 hrs, 4 Mar 44.

Absent 22 days 25 mins.

(F. le P.T. Clifford) Lt-Col,
Comd, 13 Cdn Fd Regt, R.C.A.

In the Field
18 Mar 44

To be Tried by F.G.C.M.

(R.O.G. Morton) Brigadier,
A/Comd, 3 Cdn Inf Div.
24 Mar 44.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA83) 40/PAM/1697 (2nd Ed)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
B-7099	Gnr.		Fredrick	HEELEY	13 Fd Regt RCA

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(x) named above as the accused, being subject to military law, has (xxx) committed the offence(x) set forth in the Charge Sheet(x) attached and on (date) 24 Mar 44 endorsed by me, xx xx xxxxxxxx xxxxxxx " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(x) should be tried by an ordinary General Court-Martial ; (xxxxxxx xxxx xxxxxxx xx xxxxxxx xxx xxxxxxxx xx x xxxxxx xxxxx xxx.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(x), and to consist of the Offrs appointed or detailed hereunder.

xx x xx xxxx xxxxxx xx xxxxxxx xxxxx xx xxxxxxx x xxxxx xxxxxxxx xxxxx xxxx
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	A.G. GOLDIE	12 Fd Regt RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt.	C.E. MORRIS	13 Fd Regt RCA
Lieut.	R.S. HARRIS	4 Lt AA Regt RCA

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut.	R.F. OMEROD	14 Fd Regt RCA

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

R.O.G. Morton (Signed personally, RP 105 fn 2.)
(R.O.G. Morton)
Brigadier. (Rank.)

Date 24 Mar 44

Commanding A/Comd. 3 Cdn Inf Div.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

A.G. Goldie Fd.

MEDICAL OFFICERS CERTIFICATE
K.R.(Can) Para 589.

I certify that I have this day examined

B7099 Gnr HEELEY Frederick and in my opinion he
Number Rank Name
is fit to undergo trial by court martial.

Date. March 28/44

G.S. Griffith Capt. #13 Can. F. Hosp
Medical Officers (Unit. Regt R.C.A

Asst. Adjt. Major
Pres.

Exhibit B.

PLEA IN MITIGATION OF SENTENCE.

Mr. President, Members of the Court,

The accused has pleaded guilty to the charge of absenting himself without leave and technically he is guilty of absenting himself without leave, ~~when~~ when in close arrest. However I wish to elaborate on the circumstances and conditions of his confinement.

The accused had a considerable amount of money in his possession which had been sent to him by friends in this country by means of a money order.

I wish also to add to the summary of evidence by outlining the actual commencement of the absence without leave. The accused was allowed to wash his clothes in the washroom. There is no mention of the fact that once in the washroom, there was no guard between him and freedom. So the accused just opened the door and walke down the street.

This man had just commenced serving a years term and I support that the combination of money in his pocket, no hindrance to his leaving and the alternative of one years detention was a temptation too great for him to resist.

Regulations are made for the prisoner's protection as well as the support of authority and I contend that if regulations had been enforced, the accused would not be on trial to-day for the charge of absenting himself without leave whilst in close arrest.

Therefore in considering sentence ~~may~~ this court ~~should~~ take into consideration ~~the~~ three points.

(a) The fact that the accused was allowed to receive a consid rable amount of money.

(b) The laxness shown in his confinement

and (c) The effect of the combination of the above points on the mind of a man who is just commencing a years detention.

The temptation I believe would be far too great for many of us present even in the court this afternoon.

a.f.h.

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 APR.42

I CERTIFY THAT NO. B-7099 NAME Gnr. HEELY F.

UNIT: 78th Bty, 13 Cdn Fd Regt, R.C.A.

was arrested at SOUTHAMPTON, Hants. at 2100 hrs. 4 Mar 1944

and at the time of his arrest he was wearing Military Uniform.

Signature of Provost Marshal, Assistant Provost Marshal, the Commanding Officer, N.C.O. i.c.O.C. in charge of the Detachment of the Cdn. Provost Corps, Cdn. Army, into whose custody the above named person was taken at time of arrest.

H19018.

No.4 Cdn. Provost Company
Cdn. Provost Corps

CHARGE

Your attention is called to Section 12 of the Army Act

13th Fld. Regt., R.C.A.

Regiment
Battery
Squadron
Troop or
Company

78th Bty.

CHARGE against No. B-7099 Rank Gnr.

Name HEELY, F.

Place SOUTHAMPTON Date of Offence 4 Mar 44

OFFENCE W.C.A.S. Absent without leave.

Names of Witnesses —

H-19018 Cpl. Bennett G.H.V.
B-64999 Pte. Didine T.
#4 Cdn. Provost Company.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment

Awarded

By whom Awarded

Adjutant.

F.I.O.

Statement of **EVIDENCE** in the Case of

B-7099 Gnr. HEELY F.
78 Bty, 13 Fd. Regt., R.C.A., 3 Cdn Inf Div.

Sir:

1. At approx 2055 hrs, 4 Mar 44, while on duty at St. Mary's Police Stn, SOUTHAMPTON, I received a call from R.T.O. Central Stn., SOUTHAMPTON, that a Cdn soldier A.W.L. had surrendered himself to them. Accompanied by Pte. Didine, I proceeded to Central Stn and took the soldier into custody at 2115 hrs, 4 Mar 44.

2. The soldier was identified from his pay book as B-7099 Gnr. HEELY F. of the m/n unit. He informed me that he was approx 4 weeks absent from his Unit, and desired to be returned. His Unit was informed and we escorted him to Civic Centre Police Stn, pending arrival of escort.

3. Certificate of arrest and statement of surrender were obtained from 1914945 L/Cpl. KELLY T., R.T.O.'s office, and these were left with the Civil Police to be handed to escort on arrival.

.....Cpl.
~~H-15010~~ Cpl. Bement, G.M.V.
#4 Cdn. Provost Company.

I have read over and corroborate the above Statement.

.....Pte.
B-64939 Pte. Didine, T.
#4 Cdn. Provost Company.

Cf. Complaint Cards R.C.A.

I certify that No B 7099, Gnr Healy of the 13th Cdn Field Regt R.C.A. gave himself up to me at 2030 hours on 4/3/44 and at the time of arrest was wearing military uniform. Gnr Healy said that he was absent without leave and wished to surrender himself into military custody and be returned to his unit. I telephoned Et Marys Police Station and Cpl Bernard arrived and took A/T soldier into custody.

S/Sgt Kelly L.
1914945
R.T.O. Southampton
22/3/44

R.

O/C.

15 Mar 44

I, the undersigned, hereby request the convening officer to appoint an officer to defend me, if and when, I am tried by Field General Court Martial.

Signature of Accused F. Heeley

(F. Heeley)

Exhibit A

SUMMARY OF EVIDENCE

Summary of evidence in the case of:- B 7099 Gunner Frederick Heeley, 78 Canadian Field Battery, 13 Canadian Field Regiment, R.C.A. a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

Lieut Col. F le P.T. Clifford, Officer Commanding, 13 Canadian Field Regiment, R.C.A. directs that all evidence be taken on oath.

1st Witness:
M43424 Gnr. Schultz, L.E., 78 Fd Bty, 13 Cdn Fd Regt. R.C.A. having been duly sworn states:-

I was guard commander on 11 Feb 44 and had Gnr. Heeley in my custody. At 2005 hrs, 11 Feb 44 Gnr Heeley escaped. I immediatley reported same to the Bty = Duty Sgt for that date.

The accused declined to cross examine the witness.

Signature of Witness L E Schultz
(L.E. Schultz)

2nd Witness:
M29100 Gnr Williske, S., 78 Fd Bty, 13 Cdn Fd Regt., R.C.A having been duly sworn states:-

On 11 Feb 44 at 2005 hrs I was in charge of Gnr. Heeley. He went to wash his clothes and from the washroom he escaped.

The accused declined to cross examine the witness.

Signature of Witness S Williske
(S. Williske)

3rd Witness:
M43490 BSM MacRae, D., 78 Fd Bty, 13 Cdn Fd Regt., R.C.A. having been duly sworn states:-

At approximately 2005 hrs on 11 Feb 44 the Bty Orderly Sgt reported to me that Gnr. Heeley had escaped. He has not been present on any parades nor did I see him from 2005 hrs 11 Feb 44 until 1130 hrs 5 Mar 44.

The accused declined to cross examine the witness.

Signature of Witness D MacRae
(D MacRae)

C.

4th Witness

H19018 Cpl Bement, G.H.V., 4 Cdn Provost Coy, Canadian Provost Corps.

A written statement of this witness' evidence, purporting to be signed by him, has been read to the accused and is included in this summary (att as exhibit "A"), having regard to the loss of time involved, the attendance of this witness cannot, in my opinion, be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

C.R. Compston

(C.R. Compston) Capt. RCA
Offr detailed to take the summary.

I do not require the attendance of this witness for the purpose of cross-examination.

Signature of accused F. Heeley
(F. Heeley)

5th Witness

1914945 L/Cpl Kelly, T., R.T.O. Office SOUTHAMPTON Central Station.

A written statement of this witness' evidence, purporting to be signed by him, has been read to the accused and is included in this summary (att as exhibit "B"), having regard to the loss of time involved, the attendance of this witness cannot, in my opinion, be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

C.R. Compston

(C.R. Compston) Capt. RCA
Offr detailed to take the summary.

I do not require the attendance of this witness for the purpose of cross-examination.

Signature of accused F. Heeley
(F. Heeley)

.....3/

B 7099 Gunner Frederick Heeley, 78 Canadian Field Battery, 13 Canadian Field Regiment, R.C.A. was asked:-

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be used in evidence".

The accused declined to make a statement.

I hereby certify that Rules of Procedure 4 has been complied with.

Taken before me in the presence of the accused in the field this 22nd day of March 1944.

C R Compston

(C.R. Compston) Capt. RCA
Offr detailed to take summary.

No B7099 Name HEELEY F. | Sqn, Battery, or Company | Corps RCA | Date of enlistment 12.9.39 | GC Badges Nil | Service or Proficiency Pay N/A | MFM 6 AFB 122 (PAS/136 (3438))

Date of last entry in Company Conduct Sheet 22.6.41 | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No Two | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30 Aug Gnr			Sec.15(1) AA w.o.a.s. AWL from 2300 hrs 30 Aug 41 to 1000 hrs 31 Aug 41 (11 hrs)	Sgt. Stuart Bdr. Furniss BSM Rawlings	7 days C.B.	1 Sep 41	Capt. E.C. Tate	Fts. 1 days pay
Field	22 Sep 41			Sec.11 AA Not obeying standing Orders- not wearing Discs Identity or carrying first field dressing	BSM Bockus	7 days C.B.	22 Sep 41	Major K.N. Launder	
Field	14 Oct 41			Sec 11AA Not obeying Bty Order 3055/41 failing to parade on sick parade	Sgt.Campion	4 days C.B.	16 Oct 41	Major K.N. Launder	
Field	1 Nov 41			Sec.15 (1) AA WOAS AWL from 0800 hrs 2 Nov 41 to 0945 hrs 3 Nov 41	Sgt. Black G.H. Bdr. Johnston J.	5 days C.B.	3 Nov 41	Major. K.N. Launder	Fts. 2 days pay
Field	8 Nov 41			Sec 15(2) AA WOAS while C.B. failing to appear for defaulters parade 1600 hrs 8 Nov 41	L/Sgt.Gregson A.	7 days C.B.	12.11.41	Major K.N. Launder	

(PTO)

Exhibit N.

No B 7099 Name Heeley F. | Sqn, Battery, or Company | Corps R.C.A. | Date of enlistment 12-9-39 | GC Badges | Service or Proficiency Pay N/A | MFM 6 AFB 122 (PAS/136 (3438))

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17-11-40	Gnr		Sec 40 AA Appearing on Parade in a dirty condition.	BSM King	3 Days C.B.	17-5-40	Major K.N.	LAUNDER
Field	6-9-40	Gnr		AA Sec 15 (1) AWL from 1700 hrs 6-9-40 to 2030 hrs 13-9-40 (171 hrs 30 mins)	BSM Wright Bdr Smith, H.E.	2 months restricted pay	14-9-40	Lander Major K.N.	Fts 6 days pay
Field	29-10-40	Gnr		Sec 15 (1) AA AWL from 2359 hrs 29-10-40 to 1700 hrs 1-11-40 (65 hrs)	Sgt Meldrum	14 days C.B.& Nov 3 mon Res pay	2-11-40	Lt-Col C.D. Crowe	Fts 3 days pay
Field	19-12-40	Gnr		Sec 15 (1) AA AWL from 0630 hrs 20-12-40 to 1900 hrs 26-12-40 (155 hrs 30 mins)	Bdr Smith H.E.	7 days C.B.	27-12-40	Major K.N. Lander	Fts 7 days pay
Field	3-2-41	Gnr		Sec 15 (2) AA Failing to report for Roll Call at 1200 hrs and Found in George Hotel at 1200 hrs	L/Sgt Boyes	5 Days C.B.	5-2-41	Capt G.P. Marriott	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15.11.41			WOAS and while confined to camp AWL from 1300 Hrs. 15.11.41 until 0015 hrs. 23.11.41(179 hrs 15 mins) Sec 15 (1) AA	Sgt. Black Bdr. Johnston	8 days F.P. Fts. 8 days Pay	24.11.41		Fts. 8 days Pay
Field	18.5.42	Gnr		WOAS AWL from 2300 hrs 18 Mar 42 until 2230 hrs 21 Mar 42 (47½ hrs)	WOII Rawlings Bdr Glennell	14 days C.B.	23.5.42	Major G.A. Rogers	Fts. 2 days Pay
Field	1.4.42	Gnr.		WOAS and while a defaulter AWL from 2300 hrs 1.4.42 until 2230 hrs 6.4.42 (4 days 23½ hrs) Sec 15 AA (Under close arrest from 2230 hrs 6.4.42)	TBSM Rawlings L/Bdr. Cheeseman	28 days Detention	8.4.42	T.I. Keen Major	Fts 5 days pay FR&I 149 (AWL) 28 days pay for detn.
Field	7.5.42	Gnr		WOAS AWL from 2300 hrs 7.5.42 until 2300 hrs 13.5.42 (Absent 6 days) Sec 15 (1) AA	TBSM Rawlings Sgt. Gailbraith	28 days Detention	19.5.42	H.E. Wyatt Lt. Col.	Fts. 6 days pay & AWL FR&I 149 Fts 28 days for detn.
Field	25.9.42	Gnr		WOAS AWL from 1330 hrs 25.9.42 to 1000 hrs 28.9.42 (2 days 20 hrs 30 mins) Sec 15 (1) AA	Sgt. Goad Sgt. Black	7 days FP with forfs	28.9.42	Maj. F.T. Macintosh	Fts. 3 days pay FR&I 149(1)(a)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17-2-41	Gnr		WOAS Neglecting to obey a Standing Order in that he was improperly Dressed. Sec 40 AA Conduct to Prejudice & "Arranging to be Replaced on Guard without permission" Sec 15 (2) AA Failinf to appear on Parade while a defaulter	Mil Police L/Bdr Connor Sgt Gray W.	14 days CB 3 Charges	20-2-41	Lt/Col C.D. Crowe	
Field	19-5-41	Gnr		Sec 40 AA Gambling in hut 1115 hrs 19-5-41 During Parade Hrs.	Lt W.J. Wade	13 days C.B.	20-5-41	Major E.B. Lender	
Field	1-6-41	Gnr		Sec 15 (2) AA WOAS Failed to appear on Defaulters Parade at 1600 hrs 1 June 41	L/Sgt Gregson A.	3 Days C.B.	6-6-41	Major E.B. Lender	
Field	12-6-41	Gnr		WOAS Conduct to the prejudice etc in that he, was improperly in the possession of a Battle Dress Jacket Sec 40 AA Confirmed by C.E. Cdn Corps 7 July 41	L/Bdr Brittain TBSM Hewlings	56 days detention	4 Jul 41	F.G.C.M.	56 days pay under F.R.& I

MFM 6 (AFB 122) 40/FAS/136 (5438)

No B7099 Name HEELEY F. | Sqn, Battery, or Company | Corps RCA | Date of enlistment 12.9.39 | GC Badges N11 | Service or Proficiency Pay N/A | Character

Date of last entry in Company Conduct Sheet: N/A | No and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No Four | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1.Sep 43			(1) WOAS AWL from 1800 hrs 1 Sep 43until 1630 hrs 11 Sep 43 (Absent 9 days 22 hrs 30 mins) AA Sec 15 (1) In close arrest 2 days 7 hrs 29 mins	Bdr. McFadden Bdr Densmore Documentary SSM Collard Documentary	28 days F.F. 28 days Pay Cost of Apprehension 0-11-3	14 Sep 43	(G.T. Inch) Lt. Col.	Total Frtre. 41 days pay
Field	21.Nov 43	Gnr.		Sec. 15 (1) AA AWL from 0630 hrs 21 Nov 43 until 2120 hrs 22Nov 43 (absent 1 day 14 hrs 50 mins)	Sgt.Hoskins Gnr. Cartwright	forf. of 11 dys pay	24 Nov 43	Major G.F. Rainnie	Auto.Forf. of 2 days pay. Forf. of 3 days while in close arrest Total 16 days pay

(P10)

MFM 6 (AFB 122) 40/FAS/136 (5438)

No B7099 Name Heeley F. | Sqn, Battery, or Company | Corps RCA | Date of enlistment 12-9-39 | GC Badges | Service or Proficiency Pay N/A | Character

Date of last entry in Company Conduct Sheet: N/A | No and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No 3 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1-10-42	Gnr		1. WOAS AWL from 2000 hrs 1-10-42 to 0800 hrs 2-10-42 Sec 15 AA 2. WOAS Committing a civil offence , stealing Sec 41 AA 3. WOAS committing a civil offence receiving stolen goods.	Police SM Black SM Gazell Civil SC Pugh	6 months Detn Guilty of 1st & 3rd Not Guilty of 2nd	10 Nov 42	F.G.C.M.	Fts 1 dy pay - AWL Fts 40 days pay close arrest. Fts 150 days pay in detn. Total 191

Sentence confirmed by Comd 1 Cdn Arty Gp. First Cdn Army with remission of one months detention

(P10)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 Jan 44	Gnr		Sec 15 (1) AA AWL From 2230 hrs 1 Jan 44 until spp at 1030 hrs 12 Jan 44 (ABSENT 11 days 12 hrs)	Bdr Carter Documentary	One Years Detention	31 Jan 44	F.G.C.M.	Forfs 396 days pay & £ 1-5-6 cost of spp.

"Certified a true copy from regimental books in my custody"

Brigade Major

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28/7-4/8 43	Gnr		1. WOAS AWL from 1200 hrs 28 Jul 43 until 1130 hrs 4 Aug 43 (Absent 6 days 23 hrs 30 mins) AA Sec 15 (1)	1/Bdr Rice 1/Sgt Serres Documentary	21 days F.P. 21 days pay	11 Aug 43	(G.T. Inch) Lt-Col	Total Forfs 35 days pay
	4 Aug 43	Gnr		2. WOAS an Act to the prejudice etc. AA Sec 40	Documentary				
	4 Aug 43	Gnr		3. WOAS Resisting an escort whose duty it was to detain him, etc. AA Sec 10 (3)	Documentary				
				In close arrest from 1130 hrs 4 Aug 43 to 2359 hrs 10 Aug 43 (6 days 12 hrs 30 mins)					

Ex Exhibit "M"

M.F.R. 355
12M—8-40 (6435-6)
H.Q. 1772-39-620

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B 7099	Gunner	Frederick Heeley	13 Cdn Fd Regt RCA

1. The following is a fair and true summary of the entries in the Regimental ~~Service and Conduct~~ Conduct Sheets ~~or Casualty Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	Sec 15 A.A.	4 times	Sec 15 A.A.	19 times
For	Sec 40 A.A.	1 times	Sec 11 A.A. / Sec 40 A.A.	3 / 5 times
For	Sec 10 A.A.	1 times	Sec 41 A.A.	1 times
For		times	Sec 10 A.A.	1 times

Number of instances of gallantry or distinguished conduct Nil

~~Particulars of the recorded cases of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

~~Particulars of the accused's~~ convictions by a court-martial or a civil court of summary awards under ~~Air Force Act~~ A.A. Section 47 of the Army Act and dispensations with trial under ~~A.F.~~ A.A. 73 are set out in the Schedule annexed to this statement.

3. ~~The accused is not under sentence at the present time~~

or

The accused at the present time is under sentence for One Year beginning on the 21st day of January 1944

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 23 days in military custody, making a total of 23 days in custody, of which 20 days were spent in hospital.

5. The present age of the accused according to his record of service is 29 yrs 3 months

6. ~~The date of his enrolment specified in his record of service is~~ ~~attached paper~~ ~~attached paper~~

7. The service which the accused is allowed to reckon towards discharge is 4 yrs 6 months

8. The accused is entitled to reckon 4 yrs 6 mons service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to wear the~~ ~~military~~ ~~is in possession of or entitled to wear any air force decoration or air force~~ ~~military~~

10. ~~He was granted a commission~~ The accused before he was made a ~~warrant~~ officer ~~has held~~ ~~as an acting~~ ~~rank~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated , and in his regiment (or corps), the rank of dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number B 7099 Rank Gunner Name Frederick Heeley of 13 Canadian Field Regiment RCA

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Forfeiture Remitted
1. F.G.C.M.	Field 4 Jul 41	WOAS Conduct to the prejudice, etc etc. in that he was improperly in the possession of a Battle Dress Jacket. Sec 40 AA	56 days Detention	Nil
2. F.G.C.M.	Field 10 Nov 42	1. WOAS AWL from 2000 hrs 2-10-42 to 0800 hrs 2-10-42. Sec 15 AA 2. WOAS Committing a civil offence, stealing. Sec 41 A.A. 3. WOAS committing a civil offence, receiving stolen goods.	6 Months Detn. Guilty of 1st & 3rd Not Guilty of 2nd	one month
3. F.G.C.M.	Field 31 Jan 44	WOAS AWL from 2230 hrs 1 Jan 44 until app at 1030 hrs 12 Jan 44 (Absent 11 days 12 hrs) Sec 15 A.A.	One Years Detention	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1st day of March 44

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

B. 7048 Gnr. Neuves R.
11 R. Ot. Regt. R.C.H.

Correspondence to be PINNED here.

No.B.7048 Gnr. Hewes R.
11 Cdn. A. Fd. Regt. RCA.

Original
55R

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

On Active Service, this 15th. day of AUGUST, 19 41

A.
Order convening the Court

Whereas it appears to me, the undersigned, an officer in Command of Corps Royal Artillery,

, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ✓ *and that it is not practicable to delay the trial for reasons more superior qualified officer ✓

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

✓ [I am unable to appoint

*(1. Three officers to form the Court)

*(2. A duly qualified Officer as President

*(3. Three Officers having more than one year's service) ✓

✓ for the following reasons, namely:—] ✓

A
S.V. Walker
Major

* Omit where Convening Officer is a Commanding Officer or is of rank

✓ not

Rank.	President. Name.	Regiment.
Major.	S.V. Walker	1 Med. Regt. RCA.
	Members.	
Rank.	Name.	Regiment.
Capt.	G.H. Holmes.	4th. C.C.S. RCAMC.
Lieut.	M.B. Bell.	R.C.A.S.C.
Judge Advocate	Major A.W. Embury	J.A. Cdn. Corps.

*Signed J.H. Roberts (J.H.Roberts) Brigadier
Commanding Corps Royal Artillery.
Convening Officer.

[illegible] personally [illegible] Officer [illegible] to [illegible] at the [illegible] all [illegible] in [illegible] Court to [illegible]

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
No.B.7048 Gnr. HEWES R. 11 Cdn. A.Fd. Regt. R.C.A.	First Charge A.A. Sec.41.	not Guilty	Not guilty	Confirmed, but remit- three (3) months of
	(In the Alternative) Second Charge A.A. Sec.41	not Guilty	Not guilty	imprisonment with hard labour
	(In the Alternative) Third Charge A.A.Sec.41.	not Guilty	Guilty	J.H.Roberts Brigadier
	Fourth Charge A.A.Sec.40.	not Guilty	Not Guilty.	
	(As per charge Sheet attached)			

Three (3) months imprisonment with hard labour.

Signed in 16 Duke This 19th day of August 1941

E Wpoulker major
Aubrey
major DJA
Judge Advocate.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A).):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No.

(Signed) J.H.Roberts Brigadier
Commanding Corps Royal Artillery.
Convening Officer (*c*)

(Signed) E Wpoulker
Major.
President.
Aubrey.
major DJA Judge Advocate

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 19th day of August 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The interpreter~~ Judge Advocate.
4. ~~The officers under instruction~~

were duly sworn.

* Omit if not applicable.

Signed this 19th day of August 1941.

E Wpoulker
President of the Court Martial.
Aubrey major DJA
Judge Advocate

C. Certificate in case of death sentences.

* See footnote (y) on page 764 M.M.L. 1920.

~~I certify that the terms of Article 570 (a) (viii) have been complied with.~~

~~Signed this day of 19XX.~~

~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison until further order.~~)

J.H.Roberts

Signed this 22nd day of August 1941.

J.H.Roberts BRIGADIER
Confirming Officer.

Promulgated and extracts taken in the case of B7048 Gnr. Hewes R.

(*a*) (Dated) 23 Aug 41 (Signed) [illegible] Capt.
A/C. 11th A. Fd. Regt. R.C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

First Charge - Sec. 41 Army Act

The accused No. B7048 - Gnr. Hewes, R., a soldier of the 11th Canadian Army Field Regiment R.C.A., C.A.O/s, is charged with -

WHILST ON ACTIVE SERVICE

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, STEALING

In that he,

In the field, between the first day of February 1941 and the thirty-first day of March 1941 stole a quanity of razor blades, the property of the Young Men's Christian Association, contrary to the statute in such case made and provided.

Second Charge - Sec.41 Army Act (alternative)

WHILST ON ACTIVE SERVICE

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, RECEIVING STOLEN GOODS

In that he,

In the field between the first day of February 1941 and the thirty-first day of March 1941 did receive a quantity of razor blades the property of the Young Men's Christian Association, knowing the same to have been stolen, contrary to the statute in such case made and provided.

Third Charge - Sec. 41 Army Act (alternative)

WHILST ON ACTIVE SERVICE

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, CONSPIRACY TO COMMIT AN OFFENCE,

In that he,

In the field did conspire with one, Gnr. Thomas Johnston - No. B21036, of the 11th Canadian Army Field Regiment R.C.A., C.A.O/s, to commit a civil offence, that is to say, steal a quantity of razor blades, the property of the Young Men's Christian Association, contrary to the statute in such case made and provided.

Fourth Charge - Sec. 40 Army Act

WHILST ON ACTIVE SERVICE

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

In that he,

In the field, on or about the 17th day of May 1941, was improperly in possession of a revolver, serial No. J2273, public property.

Geo H. Edwards

GEO. H. EDWARDS, Major, R.C.A.,
cmdg., 11 Cdn Army Fd Regt RCA

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

...
Reg

BRIG.
A.A.G., C.C.R.A., Cdn Corps.

Proceedings of a FIELD GENERAL COURT MARTIAL
in the case of B.7048 - Gnr HEWES, R.
11 Cdn A Fd Regt, R.C.A.

Court as per convening order assembles.

In addition following officers under instruction:-

Lieutenant G.H. Southam 11 Cdn A Fd Regt, RCA
Lieutenant J.V. Howitt 11 Cdn A Fd Regt, RCA

Court satisfy themselves as per R.P. 22 & 23.

Convening Order etc. laid before Court.

The accused is paraded.

Does not object to be tried by the President or any of the members.

President, members, Judge Advocate & members under instruction are duly sworn.

The accused is arraigned upon each charge and pleads as per page 2 of A.F.A.3.

Prosecuting Officer Lt. J.E. Clement 11 A Fd Regt
Defending Officer Lt. W.E. Bird 11 A Fd Regt

1st Witness Prosecution

B.21036 - Gnr Johnston, T., 11 Cdn A Fd Regt, RCA sworn states:-

Identified as above.

Gnr Hewes suggested to me that we steal some razor blades from the Y.M.C.A. He said he could dispose of them. We went to the Y.M.C.A. to see where they were. Later on the same night we went and took some, during business hours. We got the razor blades by lifting them from the case near the counter. The accused said he knew where he could sell them so we took them to a store at Clindon Cross Roads and turned them over to the man behind the counter who gave us some money for them. On the first occasion he gave us 16 shillings for practically a full carton of 20 packages of blades. When we came out of the store we split the money evenly between us.
We were not together all the time between when we stole the blades and the time we sold them but hid the blades in the bush over night, but we were together all the time until we split the money.
This took place around the first of March.
The same thing took place on several different occasions and I did the stealing or every occasion except when the accused stole the blades.
The blades always were sold when I stole them.
On one occasion that the accused stole them I was on duty but the accused gave me some money afterwards.
When I was stealing the blades the accused screened me from observation and was to ask a certain question which would warn me. On one occasion I screened the accused in a similar manner while he stole the blades.
Here in the room (the hut where we live) the accused took a revolver from an empty bed and stated to me "If I can get rid of this I can make £2-0-0 or £3-0-0."
This happened after one had been reported to be stolen.

On cross-examination states:-

I am sure that it was around 1 March but I am not sure within 2 weeks.
I am quite definite about the thefts. Each package there was from 12 to 20 packages.
The accused and I were pretty close friends but I dont think the accused likes me.
The date of the accasion of the revolver might have been in February but we were wearing great coats.
I have not been promised any reward for giving this evidence.
I changed my mind about and broke away from the accused because I found out he was stealing cigarettes from our own men.
The accused and I were both going around with the same young lady and I dismissed the young lady from my mind for reasons of my own. She then took up with the accused.

On Re-Examination states:-

I dont mind pilfering from a counter but I dont like breaking and entering. I dont mind stealing from a civilian but I dont like stealing from our own men.

Cross-Examined further:-

Blades stolen were Gillet and Glomer blades. I got some from home too and sometimes put them in to make up.
I recognize the 2nd witness - Sawyer.

R.P. 83 (B) complied with.

2nd Witness
Prosecution

Sydney Herbert Sawyer of West Clandon, Surrey - sworn states:-

I recognize first witness, Johnson, and the accused.
I saw them both in my shop and on two occasions they came into my shop together.
On the first occasion the accused said he had blades received from home and I bought them giving them the regular wholesale price for them.
I got Gillet blades on one occasion. We pay a shilling and sell for 1/3d for a package of 5.
I am not sure how many packets there were the first time.
The accused came alone the first time and afterwards they always came together.
All the blades I bought were made in England but I thought they came from Canada because the accused told me so.

On Cross-Examination states:-

Most of the blades were Gillet blades and I identify the wrapper now presented to me.

I am not sure when the first occasion was but it was early in the year possibly February or March.

C.P. 83 (B) Complied with.

Third Witness
Prosecution

B.7168 - L/Bdr Klemmer, G., 11 Cdn A Fd Regt, RCA, sworn, states:-

I was gathering wood one day at 0630 hrs behind 29th Bty lines and I saw a man up in a tree.
I followed him to an open place and saw it was the accused. I went to Bdr Trueman from the hut and went back to the tree, climbed the tree and found the revolver.
I asked Sgt-Major Dempster to check the number of it.
The revolver was in a gas bag and was numbered J2273.
We then gave it to Capt Bruce and left it with him.
I was on guard that morning but I cant remember what day it was.
I know accused and the above happened about the time he went on leave.

Cross-Examination states:-

I am not sure of the date. It was this year and about 3 months ago.
I was not leaving my post. I could have to see what was up the tree.
Trueman and I did not go to Capt Bruce the Auxiliary Officer of this regiment and offer to sell a .380 revolver to him but we gave to his assistant to see if he wanted to buy it.
After we found out it didnt belong to the regiment we were willing to sell it, notwithstanding, the fact that it was Government property.

R.P. 83 (B) Complied with.

Fourth Witness
Prosecution

B.12168 - G.Q.M.S. Dawson, R.W., 11 Cdn A Fd Regt, RCA, sworn, states:-

The accused is not issued with a revolver.
The revolver in question is not on charge to our battery. I myself did not check as to the regiment.

R.P. 83 (B) Complied with.

Case for the Prosecution is Closed.

R.P. 40 is complied with.

Accused declines to give evidence and to call witnesses as to the facts and states that he does not intend to call witnesses as to character unless he is convicted.

Prosecutor addresses the Court and hands in his written address and notes marked "E" and signed by the President.

Defending Officer addresses the Court marked "F" and signed by the President.

Judge Advocate instructs Court as to the danger of accepting a conviction upon the uncorroborated testimony of an accomplice.
Also as to findings upon alternative charges.
Also that the accused must be found guilty beyond a reasonable doubt.

(Court Opens)

Accused advised of charges on which is found not guilty.

Prosecuting Officer Sworn.

Puts in "G" and swears that it applies to the accused and is a true copy of entries.

Accused declines to address the Court.

Court adjourns to consider sentence and sentence the accused as per A.F.A. 3.

PROSECUTION SUBMITS:-

Evidence of Johnston, T., points to definite scheme to steal. Plan arranged between Hewes & Johnston and both took part in carrying it out one helping the other. Supports 1st charge or in alternative 3rd charge. Evidence of Johnaton that he stole blades and gave them to Hewes supports 2nd charge if court throws out first. Receiving knowing them to have been stolen, going to shop together, taking money and dividing, bears out evidence of conspiracy and plan. Execution of plan makes Hewes a principal man who plans, is equally guilty with man who executes the plan.

No reason shown by defence to consider Sawyer as anything but a shop keeper taken in by a plausible story. Sawyer a typical small shopkeeper whose books are likely haphazard, did not note blades as such but at end of day made note of all pd out.
Couborates Johnston's evidence.

4th Charge - Hewes should never have had a revolver. Seen with one in hut. Probability of leaving it in tree when one reported stolen and collecting later for disposal.

DEFENCE SUBMITS:-

Must decide cases on evidence adduced and only that evidence.

Excluding A.M.S. Dawson and storekeeper, Sawyer and the witnesses for the prosecution are people who can not be believed, namely self confessed thieves or would be sellers of Govt property and self confessed people who are not adverse to lying if it suits their purpose.

If storekeeper is an accompolice then there is no corroboration for Gnr Johnston.

No proof adduced that anyone actually had property complained of, the razor blades, stolen from them. Hence one of the essential elements of theff or receiving or conspiracy is missing.

Bdr Klemmer did not identify accused as person up tree except at a distance with his back turned and he was not vague in all his statements. Bdr Klemmer admitted he tried to sell revolver, Govt property, to Capt Bruce. Hence he a would be thief tries to make someone else out as a thief.

Motive for Gnr Johnston ellott on accused jealousy over girl Muriel Williams at Hancocks.

Pages three.

Proceedings of 7 R.C.H.

B 7045 Gnr. Lewis R.
11th Can A Tn Bty. R.C.A.

Court as per convening order assembles.

Per accustion following officers sworn interpreters

Lt. P.H. Southam 11th Can A Tn Bty R.C.A.
Lt J.D. Howitt "

Court satisfy themselves as per R.R. 22 & 23.

Convening order &c. read before court.

The accused is paraded

does not object to be tried by the prosecutor or any of the members.

Prosecutor, members, judge advocate & members under instruction are duly sworn.

The accused is arraigned upon each charge and pleads, as per

Para 2 of A.F.A.S.
Prosecuting Officer Lt J.E. Clement 11th Can A Tn Bty R.C.A.
Defending Officer Lt W.E. Baird " 8th Can Army Tn Bty R.C.A.

First witness for prosecution

B 21036 Gnr. Johnston T 11th Can Army Tn Bty R.C.A.

sworn states:—

Identified as above.

Gnr. Lewis suggested to me that we steal some cigars from the Y.M.C.A. He said he could get plenty of them. We went to the Y.M.C.A. to see when they were. Later we went & took some. In the same night we went & took some, during hours time. We got the cigars by lifting them from the cans near the

counter.

Q. ~~Answer by~~ The accused said he knew where he could sell them so we took them to a store at Clondon cross roads and turned them over to the man behind the counter who gave us some money for them. On the first occasion he gave us 16 shillings for practically a full carton of 20 packages of blades. When we came out of the shop we split the money evenly between us but we were not together all the time between when we stole the blades & the time we sold them but hid the blades in the bank over night but we were together all the time until we split the money.

This took place around the first of March.

Q. ~~The same thing~~ This took place on several different occasions & I left the stealing on every occasion except one when the accused stole the blades.

Q. The blades always were sold when I stole them.

Q. On the occasion that the accused stole them I was on duty but the accused gave me some money afterwards.

Q. When I was stealing the blades the accused ~~screened~~ me from observation & was to ask a certain question which ~~was~~ warn me. ~~He also~~ On one occasion I screened the accused in a similar manner while he stole some blades.

One in the room (the last when we were) the accused took a revolver from the empty bed & stated to me "If I can get rid of this I can make £2 or £3". This Q. happened after we had been ~~stolen~~ reported to the police

Cr Cross Examination states :-

I am sure that it was around 1 hours but I am not sure within 2 weeks.

I am quite definite about the dates. Each package there were from 12 to 20 packages.

The accused & I were pretty close friends but I don't think he owned bikes now.

Re. Dates of the occasion of the robbery ~~I can't remember~~ might have been in February but we were wearing great coats

Q. ~~How long~~
Q. ~~Have you been promised any reward~~
I have not been promised any reward for giving this evidence & have any now
Q. Re Q
A. I changed my mind about ~~the~~ the accused because I found out he was stealing cigarettes from our own men.

The accused and I were both going around with the same young lady & I discovered the young lady from my mouth for reasons of my own. She then took up with the accused.

Cr Re-Examination states

Q. I don't mind pilfering from a counter but I don't like breaking & entering.
I don't mind stealing from a civilian but I don't like stealing from our own men.

Cross Examination further.

Blades shavers Bikes & Gloves blades.
I got some from two & sometimes put them in to make up.
Recognize the 2nd witness Sawyer.

RP 83(B) complied with.

Against Herbert

Sydney Herbert Sawyer of West Clandon, Surrey:-
sworn states:-

I recognise prisoner Johnson & the accused.

I saw them both in my shop. On two occasions they came into my shop together.

Q. "They said" On the first occasion the accused said he had
A. stated
received four bone ~~pipes~~ & I bought them giving them
the regular wholesale price for them.

I got Bibby blades on one occasion but pay a
shilling & sell for 1/3 for a package of 5.

I am not sure how many packets there were the
first time.

Q. ~~They came~~

The accused came alone the first time & afterwards
they always came together.

As the blades I bought were made in England but I think
they came from Canada because the accused told me so.

Cr. Cross Examination states:-

Q. Knowing the blades were Bibby blades & I knowing
A. the wrapper now produced to me.

(Said marked

D1) I am not sure when the first occasion was but
it was early in the year possibly February or March.

RP 83(B) Complied with.

Third witness for prosecution

B 7163 L/Bdr. Klemmer G. came and sworn

states

I was getting wood one day at 1630 hrs behind 29th Bty lines and I saw a man up in a tree I followed this line to an open place & saw it was the accused. I went to Lieut. Freeman part to him & went back to the tree climbed the tree & found the number [illegible] I went back to the tree & took down the number to check the number of the number was in a gas bag & was number 52273. I then gave it to Capt Bruce & left it with him.

I was on guard that morning but I can't remember what day it was

I knew accused & the above happened about the time he went on leave

Cross Examined states

I am not sure of the date. It was this year & to about 3 months ago.

I was not leaving my post. I could have gone down to see what was up there

I did not go Freeman Bruce & I went to Capt Bruce the number of this regiment & offer to sell the number to him but we gave to his assistant to see if he wanted to buy it

After we found out it didn't belong to the regiment we were willing to sell it notwithstanding the fact that it was government property

RP 83 (B) Complied with

Sworn witness for prosecution

B 12168 BQMS Lawson RA 11th Coy A Tpt Regt RCA

Sworn states -

Q. The accused is not accused with a murder. The murder in question is not on charges to our battery ~~[illegible]~~ myself am not clear as to the regiment

RP 83 (B).

Case for the prosecution is closed.

R.P. 40 is complied with

Accused declines to give evidence & to call witness as to the facts & states that he does not intend to call witnesses as to character unless he is convicted

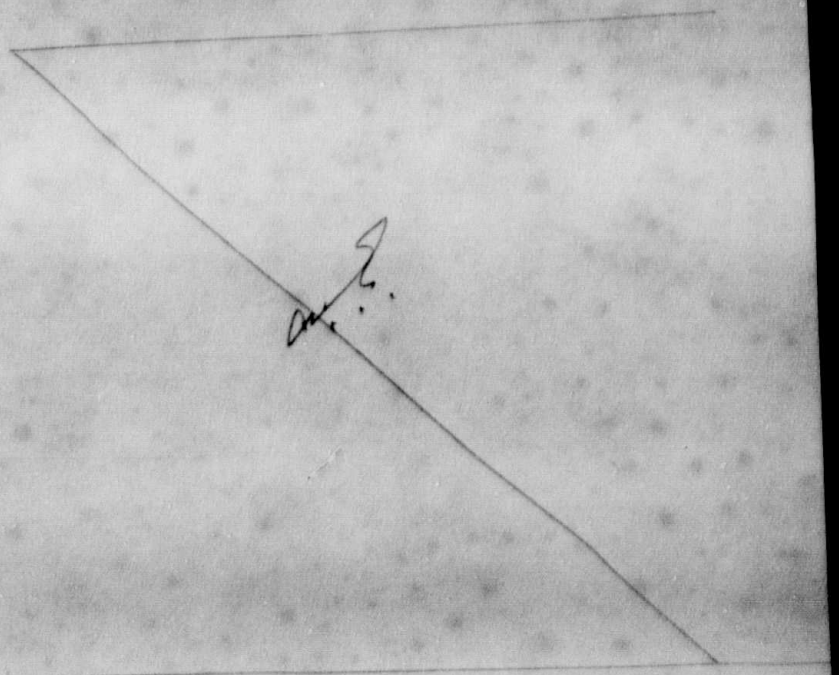
Prosecutor addresses the court & hands in his written address and notes marked "E" & signed by the president

Depending appeal adherence document marked "F" & signed by the president.

Judge delivers instructs court as to the danger of convicting upon the uncorroborated testimony of an accomplice.

Also as to findings upon alternative charges.

Also that the accused must be found guilty beyond a reasonable doubt.



Court opens

Accused of admitted charges on which is found not guilty.

Prosecuting officer sworn

Puts in "G" & swears that it applies to the accused & is a true copy of entries

Accused. declines to address the court.

Court adjourns to consider sentence & sentence the accused as per AFA. 3

11th Canadian Army Field Regt. R.C.A.

Medical Certificate

This is to certify that No. B 70 48 GNR HENES R

of the 11th Cdn. A. Fd. Regt. RCA has been medically examined, is found free from vermin and disease, and fit to undergo [redacted].

Trial by Court Martial

Date 19-8-44

Lt R Lucey Major RCAMC
..... M.O.
11th Cdn Army Field Regt RCA

W Walker
Major

Re Lewis L.

Crosscutem - submits -
1 Evidence of Johnston 2 points to definite scheme to
steal Plan arranged between Lewis & Johnston
and each took part in carrying it out & helping
Hedges
supports 1st charge or in alternate 3rd charge
Evidence of Johnston that he stole blades & gave
them to Lewis supports 2nd charge of
can't throw out first. Becoming [illegible]
Going to shop together - taking money &
finding keys not evidence of conspiracy
a plan. Execution of plan makes Lewis a principal
Non-entry plans is equally guilty with
one who executes the plan

submit
Accys atypical small shopkeeper whose
books are fairly kept and. Did not note
blades as sold but at end of day made
note of all pds out.
Remembers Johnston's evidence " "

4th charge - Keys should never have had a
readable. Seen with one (does not prove)
[redacted] is but probability
of leaving it on tree when one reports stolen
& obtaining late for disposal.

Reasons Lewis by defence to consider, No
stamps or anything but a shopkeeper taken in by
a dovetail story

Jno Case Jas Howes

1. Must decide cases on evidence adduced and only that evidence.
2. Excluding D.M.S. Hanson and storekeeper Sawyer the witnesses for the prosecution are people who can not be believed namely self confessed thieves or would be sellers of govt property and self confessed people who are not adverse to lying if it suits their purposes.
3. If storekeeper is an accomplice then there is no corroboration for Jno. Johnston.
4. No proof adduced that anyone actually had property complained of by the negro blades, stolen from them. Hence one of the essential elements of theft or receiving or conspiracy is missing.
5. Bdr. Klemmer did not identify accused as person up tree except at a distance with his back turned and he was not vague in all his statements.

Bdr. Klemmer admitted he tried to sell revolver, govt property, to Capt Bruce. Hence he could be thief tries to make someone else out as a thief.

6. motive for Jno. Johnston alleged accused jealousy over govt maid Williams & Howard.

W C Bird Lt.
Defence Counsel for accused Jno. Howes.

"F"
Middleton
Major

SUMMARY OF EVIDENCE
In the case of -
B7048 - Gnr. Hewes, R.

First Witness - for the prosecution

B21036 - Gnr. Johnston, T., 11th Cdn. Army Fd. Regt. RCA having been duly warned states -

Some time between the first February 1941 and thirty-first March 1941, I with Gnr. Hewes, agreed to steal seom razor blades from the YMCA. Hewes and I met there one day during that time and while he acted as a screen and lookout for me, I stole some razor blades in accordance with the plan he suggested to me. That evening we went to a civilian storekeeper near the Clandon Cross-roads. Hewes asked him if he would like to buy some razor blades. He said "yes". On this occasion, I passed the storekeeper the blades. He gave me approximately 16 shillings. I gave 8 shillings to Hewes just outside the shop. Hewes and I were together all during the talk with the storekeeper. On other occasions we sold him blades and split the money. On one occasion I gave the blades to Hewes to sell and he gave me 4/6 as my share of the proceeds. On this last occasion, I stole the blades according to Hewes' and my plan, while Hewes acted as screen and lookout.

I saw Hewes with a revolver hidden under a palliase in Hut D4 (now Q13) on the day a revolver was reported stolen.

On one other occasion, Hewes stole blades from the YMCA while I acted as a screen and lookout. This was done one day when we met in the YMCA and decided just then how we could do it.

I received around 4 or 5 shillings as my share of the money realized when they were sold. Gnr. Hewes gave this money to me next day. We stole razor blades on 4 or 5 occasions from the YMCA and sold them.

T Johnston

B21036 - Gnr. Johnston, T.,
11 Cdn Army Field Regt RCA

THE ACCUSED DECLINES TO QUESTION THIS WITNESS

Second Witness - for the prosecution

Sydney Herbert Sawyer of West Clandon, Surrey, shopkeeper, having been duly warned states -

I own a shop near the West Clandon Station. I bought razor blades from a soldier one time and from two soldiers on two or three occasions at my shop. I did not know their names. On one occasion only one soldier solde the blades to me; on other occasions there were two to whom I paid money for blades. They told me they had the blades given to them or sent to them from Canada. The two soldiers that I bought blades from are present in this room now and I can identify them. When I gave them the money, either one or the other it was, they remarked one time that they were going to give it to the boys becuase it wasn't all theirs.

S H Sawyer

Sydney Herbert Sawyer, shopkeeper,
West Clandon, Surrey.

THE ACCUSED DECLINES TO QUESTION THIS WITNESS.

...
Reg

LIST OF WITNESSES
In the case of
B7048 - Gnr. Hewes, R.

B21036 - Gnr. Johnston, T.,
11th Cdn. Army Fd Regt RCA

Sydney Herbert Sawyer, shopkeeper
West Clandon, Surrey.

B7168 - L/Bdr. Klemmer, G.,
11th Cdn. Army Fd Regt RCA

B12168 - BQMS Dawson, R. W.,
11th Cdn. Army Fd Regt RCA

...
Reg

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

No. B7048, Gnr. Hewes,R.,11 Cdn. Army Field Regt., R.C.A.

(1) The following is a fair and true summary of the entries in the regimental and battery conduct sheets of the accused, exclusive of convictions by a court martial or a civil court, and of cases in which trial has been dispensed with:-

	Within last 12 months	Since Enlistment
For: AA Sec.40	4 times	6 times
For: AA Sec.15(1)	3 times	3 times
For: AA Sec.15(2)	1 times	1 times
For: AA Sec.15(3)	2 times	2 times
For: AA Sec.11	3 times	3 times

(2) No of instances of gallantry of distinguished conduct:nil.

(3) The accused is not under sentence at the present time.

(4) The accused has been in confinement, awaiting trial on the present charges, for 5 days in close arrest.

(5) The present age of the accused according to his attestation paper is 27 years.

(6) The date of his attestation specified in his attestation papers is 8/9/39.

(7) The accused is not entitled to deferred pay or gratuity in respect of service.

(8) The accused is entitled to no military decoration or military reward.

I hereby certify the foregoing schedule of convictions and dispensations with trial is a true extract from regimental books in my custody.

Signed this 5th day of August, 1941.

(C.K.ROSEBRUGH)MAJOR,R.C.A.
O.C. 29th Field Battery,
11 C.A.F.R., R.C.A., C.A.(Os).

No. B7048 Name HEWES, R | Sqn., Battery, or Company: 29th | Corps: 11 C.A.F.R. | Date of enlistment: 8.9.39. | G.C. Badges: | Service or Proficiency Pay: | MFM 6 (A F B 122)

Date of last entry in Company Conduct Sheet: | No. and date of last drunk: | Period not reckoning towards freedom from extra fine: | Sheet No. 3 | Signature O.C. Company, etc.: | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Newlands	18.2.41	Gnr		WOAS- beyond the limits of a Regtl Order- in Guildford on afternoon AA sec 15(3)	L/Bdr. Keley	7 days C.B.	21.2.41.	Capt. Fleury	
"	18.2.41.	Gnr.		Sec 40AA improperly dressed while in Guildford	L/Bdr. Keley	7 days C.B.	21.2.4.	Capt. Fleury	
"	23.2.41.	Gnr.		Failing to appear at a place of parade while a defaulter. AA sec 1502	L/S. Arnold	3 days C.B.	25.2.41.	Major Rosebrugh	
Field	17.6.41.	Gnr		CONDUCT TO THE PREJUDICE etc. AA sec 40.	L/S. Jackson Gnr. Higginbotham	14 days C.B.	21.6.41.	L/Colorowe	
Field	10.7.41.	Gnr		CONDUCT TO THE PREJUDICE etc failed to obey a standing order. AA sec 40	L/S. DawsonR.	3 days C.B.	11.7.41.	Major Rosebrugh	

(P.T.O.)

11 C.A.F.R.

No. B7048 Name HEWES, R. | Sqn., Battery, or Company: 29th | Corps: R.C.A. | Date of enlistment: 8.9.39. | G.C. Badges: | Service or Proficiency Pay: | MFM 6 (A F B 122)

Date of last entry in Company Conduct Sheet: | No. and date of last drunk: | Period not reckoning towards freedom from extra fine: | Sheet No. 2 | Signature O.C. Company, etc.: | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Toronto	15/11	Gnr.		Sec 40AA CONDUCT TO THE PREJUD &c Gambling IN barracks.	L/CPL SCARR	48 hrs Det.	17.11.39	Major M.T. Medland	forfeit 2 days pay.
On 8 May.40 this soldier completed six months service and the above entry was transferred from previous sheet which was then destroyed.									
Borden	28.4.	Gnr.		Sec 15(1) AA A.W.L. 2200 hrs.28.4.40. to 0900 hrs. 29.4.40.	L/Bdr. Campbell	3 days C.B.	1.5.40.	Major A.N. Lander	forfeits 1 days pay.
Northhampton	2.6.	Gnr.		Sec 11AA -Neglecting to obey Orders - Transporting unauthorized M.C. on M.V. Vehicle- A.W.L. from convoy to ride vehicle and on arrival at destination in defiance of orders, did ride tandem on M.C. which had been condemned by Civil Police.	RSM King L/S. Montgomery	5 extra guards	3.6.40.	Major Lander	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

THIS IS A CERTIFIED TRUE COPY

C.A. Roseburgh

(C.A. ROSEBURGH) MAJOR, R.C.A.
O.C. 29th Field Battery, R.C.A.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24.6.	Gnr.		Sec 40AA Conduct to the prejudice etc. -Improper possession public property	L/Bdr.Simmonds Gnr.Klemmer " Robinson " Malcom	14 days C.B.	28.6.40	L/Col.Crowe	
Banstead	8.9.	Gnr.		Sec.15(1)AA AWL 1700 hrs.8.9.40. to 0600 hrs. 11.9.40.(54Hrs.		Restricted pay		Major Lander	Fts.3 days pay
Aldershot	29.9	Gnr.		Sec15(1)AA AWL 2359 hrs 29.9.40. to 1330 hrs 11.10.40.(277½hrs)	BSM Dempster BSM DEmpster	1 month	12.9.40 16.10.40	Major Lander	
Newlands	30.11.40			sOAS -AWL-(2hrs 15 min)	L/Bdr.Pkeley Bdr. Collins	14 days Detention 3 days C.B.	3.2.40.	Capt.Fleury	Fts.12 days pay
"	13.1.41.	Gnr		Wound in YMCA canteen contrary to Regtl Order #1260 AA SEC 15(3)	BSM Wright	3 days C.B.	17.1.41.	Major Edwards	
Field	25.1.41.	Gnr.		Conduct to the prejudice etc- consuming liquor on requisitioned property Sec 40	Gnr. Bard	7 days C.B.	10.2.41.	L/Col.Crowe	

4G-66

Pete. Hefler. DC

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15(2)	Guilty	Guilty	
2nd	AA 40		Withdrawn by prosecutor R.P.350	
3rd				
4th				
5th				
6th				

(Note : As to findings for other offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and, NOTE p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~nil~~ beginning on (date) Nil (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ... days, of which ... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be imprisoned with hard labour for two years and to be discharged with ignominy from H's Majesty's Service

(Sgd) ... Judge-Advocate, if any. 25 Oct 44 Date awarded. (Sgd) E.P. Lee Major President. (RP 45, 50) President

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(7). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53B, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

CONFIRMED

I direct that the accused be not committed to prison or detention barracks until further orders.(1) Augs.

(1. AA 57A. Delete if not used.)

Date ... (Sgd) "A.W.Beament" (A.W.Beament) Brigad'er Commanding Officer i/c Canadian Section GHQ 1 Echelon 28 Oct 44

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G 2177 Pte David Creighton Hefler	4 Nov 44	"A.Green Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

No illegalities or irregularities such as would warrant withholding confirmation.

D.J.A. Cdn. Sec. G.H.Q. 21 Army Gp

RECORDED AT CMHQ IN AB 160 4666

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40-P-R/S/1608 (4630)

4/388

Convened by Order of Brig A.W. Beament Comd OIC Cdn Sec GHQ 1 Ech 21 A Gp dated 21 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
62127	Pte	Daniel Craynton	HEFLER	Calgary Highlanders att. #21 Cdn Gen Hosp

D.J.A. Cdn. Sec. G.H.Q. 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) France on (date(s)) 25 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order; CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1545 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the Offr.~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to ... as Interpreter ? Ans ... The Interpreter is sworn.(1) Do you object to ... as shorthand writer ? Ans ... The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 108, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	E.P. Lee	Gen List Cdn Sec GHQ 1 Ech 21 A Gp
Member	Major	M.L. Troy	Alq Regt att Cdn Sec GHQ 1 Ech 21 A Gp
Member	Capt	F.A.Baillargeon	Gen List att Cdn Sec GHQ 1 Ech 21 A Gp
Judge-Advocate			
Prosecutor	Lt Col	JWG Thompson	HQ 2 Cdn Corps
Defending Offr	Capt	H.G.D. Hungerford	R A SC Cdn Sec GHQ 1 Ech 21 A Gp

Questions by President : Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans Yes (1)

(1. RP 24, 27, 109. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros is lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See DI p 3.)

A8. The accused ... before arraignment make(s) (no) ... plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to Rule cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

~~Each charge withdrawn by Prosecution see Part 1 page 4 CFA 96~~

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. A148

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (ii); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(D), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. *No I do not* (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) changes his (their) plea(s) to ..... Part 5 of the Schedule is amended accordingly.~~ EPL

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) now changed the President records finding(s) of Guilty in Part 1 of the Schedule.(1) EPL

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex *A*, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)

(1. *RP 37(A) (ii).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans..... Do you intend to call witnesses on your behalf ? Ans....., Are they witnesses as to character only ? Ans.....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 3.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF AFB. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (c), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans *Yes but I want to give evidence on oath myself* EPL

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces ~~Statement(s) as to Character and Particulars of Service~~(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex *C* ~~and Ex ..... respectively~~.(3) EPL

(1. *MFB 225 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the ~~Statement(s)~~ and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans *Yes by my defending officer* (2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 809, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see inserts on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

JRB

CHARGE SHEET

The accused, No. G.2127 Pte David Griffiths Mefler, Calgary Highlanders, attached No.21 Can Gen Hospital, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 18(2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

in that he

In the Field on 29 Sep 44 while with his regiment in the line by discharging his rifle wilfully injured himself by shooting himself through the left foot with intent thereby to render himself unfit for service.

SECOND CHARGE
Army Act
Sec 40
(Alternative)

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field on 29 Sep 44 while with his regiment in the line so negligently handled his rifle as to shoot himself through the left foot thereby rendering himself unfit for service.

In the Field,
16 Oct 44.

"H.M. Cameron"
(H.M. Cameron) Colonel,
OC No 21 Can Gen Hospital.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field,
17 Oct 44.

(A.W. Beament) Brigadier,
OIC
Can Sec GHQ 1 Can 21 A Gp.

Trial 25 Oct 44.
Guilty, 1st Charge

E P Lee
Major
Pres

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(6).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G 2127	Pte	David Creighton	HEFLER	Calg Hghrs att 21 Cdn Gen Hospital

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on 21 Oct 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I ~~am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	E.P. Lee		Gen List Cdn Sec GHQ 1 Ech 21 A Gp

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Major	M.L. Troy		Alg Regt att Cdn Sec GHQ 1 Ech 21 A Gp
Capt	F.A. Ballargeon		Gen List att Cdn Sec GHQ 1 Ech 21 A Gp

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in France (Country.) "A.W.Beament" (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 21 Oct 44 Commanding Cdn Sec GHQ 1 Ech 21 A Gp Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (AFA86 (1st Revn of AFA8) 10/P & E/1607 (401))

Approved
"D.W.Howard Capt
ADJA

I certify that I have today examined No G 2127 Pte Hefler, D.
Unit Calgary Highlanders and he is fit to undergo trial by court martial

??????????Maj
Medical officer

In the Field
25 Oct 44

E 1 Accused Sworn states

I was born Fieldon New Brunswick 14 Oct 1924. I went to Grade VII in Public School. I left school at the age of 14 years. I then went to work in a shoe factory I was working at this when I joined up. I was assistant shipper for which I was paid $19.00 per week.

I enlisted in the army 2 Oct 1943. I volunteered. I did basic advanced training in Canada. I had battle training under fire in Canada I considered myself well trained for action. At the time this happened my own father is dead. He died when I was three. My mother remarried when I was seven but has been living under separation for four years. My borther and I have supported mother during this period. She is solely dependant on our support. I was afraid that if we were both ????? in action my mother would lack support. I feel ashamed of myself. If I got the chance I would like to go back with the Calgarys. I have a twin brother there. I have "A" category medically. I have never had any offences registered against me in the army. I have seen my mistake.

E J Hefler

E 3 C 2127 Pte David C Hefler Calgary Highlanders att 21 Cdn Gen Hospital

Plea in Mitigation by the Defending Officer

This accused is 19 yrs of age. He has a twin brother serving with the same Regiment. He has lived all his life in New Brunswick. His own father is dead and his mother is presently living under separation from her second husband.

He has been worried about his mother ever since he left Canada, as she is dependant on he and his brother for her support.

This is the thing that was most forward in his mind at the time this incident occurred.

I think the court are impressed with the way this boy has given his evidence one can see his only concern is to restore his honour. I ask that he be given a chance to do so. It seems to me that he is to be admired for his stand in this regard.

I ask the court to recommend a suspension herein.

Mesniers ??????? W.D. Hungerford Captain
chatel, France Defence counsel
25.10.44 Battle Exhaustion case.

E P Lee
Maj
Pres

A E P Lee
Mc Lee

SUMMARY OF EVIDENCE

Summary of Evidence in the case of G.2127 Pte Hefler, D.C., Calg Highrs, att to No.21 Cdn Gen Hospital, charged with, when on active service wilfully injuring himself with intent thereby to render himself unfit for service (AA Sec 18(2)), alternative, when on active service neglect to the prejudice of good order and military discipline (AA Sec 40).

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS Major M.T. Kobrinsky, No.21 Cdn Gen Hospital, RCAMC, sworn, states:

I am Major M.T. Kobrinsky, med offr at 21 Cdn Gen Hosp. Pte Hefler is at present a patient under my care at the hospital. Review of the med documents reveal that he sustained a through and through perforating GSW of his left foot in the region of the web between the second and third toe. Healing at present is not complete. In my opinion he requires further convalescence for approximately three weeks. In all likelihood there will be no change in his present 'L' grade. The injury would have been caused by a weapon held in the man's own hands.

The accused declines to cross-examine this witness.

M T Kobrinsky
Witness.

SECOND WITNESS W.20154 Sgt Gatehouse, W.M., S.I.S., Cdn Provost Corps, att No.21 Cdn Gen Hospital, sworn, states:

On 6 Oct 44, in company with L/Cpl Wheaton, G., I interviewed the accused, whom I recognize, at 21 Cdn Gen Hospital. We identified ourselves to him and told him we were enquiring into the circumstances surrounding an injury sustained by him in the left foot. He was cautioned that he need not say anything unless he wished to do so but whatever he did say would be taken down in writing and may be given in evidence. He understood the caution and signed it and he made a voluntary statement. This statement was read over to him and he read it over himself after which he signed it. There were no threats, promises or coercions of any kind held out to the accused to obtain the statement. He was not under arrest at the time.

The accused declines to cross-examine this witness.

W H Gatehouse
Witness.

The statement referred to in the evidence of the above witness is attached hereto as Exhibit 'A'.

The accused is cautioned as follows:

Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you do say or any evidence you give will be taken down in writing and may be given in evidence.

"No, there is nothing I have to say now".

The accused does not call any witnesses.

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

J B Bone Lt

In the Field,
17 Oct 44.

Officer detailed to take the Summary of Evidence.

STATEMENT OF G-21257 Pte. HEFLER D.C., Calgary Highrs., 2 Div., 8 Pltn. Coy. taken at No. 21 Canadian General Hospital, 6 October 44

I have been warned that I am not obl ged to say any thing, but if I do it will be taken down in writing and may be used in evidence. To show that I underatnad this caution I sign my name here.

(Sgd) Davidm HEFLER

I am David HEFLER, age 19 years. I volunteered for active service just before my 19 birthday. I enlisted at the Depot Fredricton N.B. I then went to No.70 Infantry Training Centre in Fredricton where I caught up to my brother who had enlisted two weeks earlier. From here we went to UTOPIA for two months advance training. He and I applied for and received a shoemaker's course with my brother. The course was for three months and after it was over we returned to Utopia. We spent about a week or so and were granted 14 days embarkation leave. We waited a few days efore sailing and arrived in U.K. about the first week in July. I was stationed with 4 C.I.R.U. for about a month then to Aldershot for about two weeks after which we were sent to Franwe with reinforcements to C.B.R.G. I left here two weeks later being posted to the Calgary High s. who were in a position near Dunkirk. We went into action the day I arrived. We were in a support position for two days. We were under fire nearly all the time. I was nervous and excited but it did not worry me too much. From here we went into an assault. We went over the Albert Canal and took a town on th other side. This was the hottest action I had ever been in. The casaulties were heavy, about half of our section were casualties. I worried about my brother in the other section. I waited until aftet the action to enquire about him. He was alright. About two and a half days after this assault, I was in a slit trench with four other fellows. This was a new sector in a field near a town. I don't know the name of it. At about 1130 hours, 29 Sept. 44, we were awakened by some prisoners passing. They got out of the trench to watch them. I had my rifle in my right hand as I was cleaning mud and dust from it with a toothbrush. I had been sitting on the outside of the trench with my rifle across my knees. I stood up to get a better view of the prisoners still holding my rifle. My section leader, a L/Cpl called "Scotty" was by my right side. The rest of the section were right behind me. We were all looking at the prisoners who were passing. I am sure I had both my hands on the rifle. The prisoners passed beyond us. The fellows started to settle down. L/Cpl Scotty was still standing about four feet from me. I went to sit down, my finger was still around the trigger. As I lowered myself the rifle went off hitting me between the second and third toe of the left foot, just where the toe joins the foot. The bullet came out on the underside a little forward of where it entered. Before this occurred we had been warned for further action. We didn't quite know what to expect and I didn't want t see any more of it. I knew that I had seen enough of it, so I rested the rifle on my left knee and pointed the rifle at my left foot. I pulled the rigger and shot myself through the toes of the left foot. I wanted to do everything I could for Mother. My brother was worried about it too. We talked it over between the two of us. Unbeknown to him I figured this was the best way for one of us to get back to look after mother. I did not rea lize how serious it was for me to do this. I only want another chance to get back and re-instate myself. I am a C class shoemaker and am willing to work at my trade at any time.

I have read the above statement and have had it read over to me. There have been no promises of reward threats or inducements. This is the truth.

(Sgd) David HEFLER

Statement taken by U-2815 Sgt. GATEHOUSE, SIB.
Witnessed: G-7050 L/Cp, WHEATON S.

MFM 6
(AFB 122)
40/PAS/136 (3438)

No 62127 Name HEFLER DC | Sqn, Battery or Company | Corps CIC(Cal Highrs) | Date of enlistment 20 Oct 43 | Service or Proficiency Pay | Character

Company Conduct Sheet
Date of last entry in | No and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Charges

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Certified to be a true extract from the regimental books and documents in my custody.
12 Oct 1944 E Stewart Patterson Lt
Officer i/c Records X3
Cdn Sec GHQ 2 Ech 21 A Gp

(PTO)

This is exhibit 1 referred to in the summary of evidence in the case of B 2127 Otto Kaffka DC taken before me this 17 th day of October 1944

"J B Bonnett"

Officer taking summary

HY62

Lpr. Hoffman, J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C120578 Pte Heffernan, J., 4 PLDG.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 12(1)(a)	not guilty	not guilty of desertion but guilty of being AWL	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 30 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: Imprisonment, with hard labour, for a term of eighteen months.

10 Feb 45

(Sgd) ..... (Sgd) S/Lodwig major.
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence of the Court.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) ..... Lieut-Brig.

Date 12 Feb 45 Commanding 12 Can Inf Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C120578 Lpl James Heffernan	14 Feb 45	Jn W. Cdn Police, o.c. 4 PLDG.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 44-62

RECEIVED 31 MAR 1945 AGCH

CFA96 (In lieu of AF A96)
40/P & B/1808 (A96)

FIELD GENERAL COURT-MARTIAL

Convened by Brig. J.S.H. Lind Comd 12 Can Inf Bde dated 5 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C120578	Pte	JAMES	HEFFERNAN	4 PLDG.

PROCEEDINGS REVIEWED
Capt
DAVIDER, JAG BRANCH C.M.H.Q.
26 Apr 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 9-10 Feb 45

25 hours 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs as how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 96, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1410 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(2) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(1)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 16, MML p 741.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.V. Lodwig	West R (m)
Member	Capt	R.H. Jakes	Lan & Bm Scot R.
Member	Lieut	F.W. Trowell	12 Cdn Int Bde
~~Judge-Advocate~~			
Prosecutor	Capt	J.W. Williams	4 PLDG.
Defending Offr	Lieut	H.A. Lockhart	4 PLDG.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused C120578 Pte Heffernan J. before arraignment make(s) (no) ~~(a)~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is closed and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc., see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part n/a used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex.....initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the Trade charge(s)(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the Trade charge(s), ~~and allowed on the charge(s), and that, accordingly, the trial~~ will proceed on the former, ~~but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. YES. Do you intend to call witnesses on your behalf ?
Ans. NO. Are they witnesses as to character only ? Ans.
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the Trade charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed (by~~
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copies~~ copy of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 1 and Ex 2 respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. NO.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas MO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

6

CHARGE SHEET

The accused C 120578 Tpr James HEFFERNAN
4th Princess Louise Dragoon Guards, a soldier
of the Canadian Army Overseas, is charged with:-

First Charge
Army Act
Sec 12(1)(a)

When on Active Service, DESERTING HIS MAJESTY'S SERVICE

in that he

in the Field after having been warned that his unit would shortly proceed into action, with intent to avoid such action, absented himself without leave from the unit lines of the 4th P.L.D.G. from 0700 hours the 27th of December until he surrendered himself to the Military Police in Florence at 1545 hours 10 January 1945.

In the field
5 Feb 45

(C. PETCH) Lt-Col.,
Commanding Officer
4th Princess Louise Dragoon Guards.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

5 Feb 45

(J S H Lind) Brig,
Comd 12 Cdn Inf Bde

A

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3) 40/P&R/1697 (2nd Ed)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 181, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C120578	Trooper		James	HEFFERNAN	4 PLDG

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (date) 5 Feb 45 endorsed by me, ~~(or by my predecessor in my stead for any time)~~ to be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E. V. Ardagh	Westmr R (M)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by CO Lan & Ren Scot R	
Capt or Lt	to be detailed by CO 12 Cdn Inf Bde Wksp RCEME	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	to be detailed by CO Lan & Ren Scot R	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

(J S H Lind) (Signed personally, RP 105 fn 2.)

Brig (Rank.)

Date 5 Feb 45

Commanding 12 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use at trial.)

MEDICAL OFFICERS CERTIFICATE

I have this morning examined the accused C 120578 Tpr Heffernan, J.

and find him F.L. (Fit)

to undergo trial by F.G.C.M.

In the field
9 Feb 45

(L.J. CALVERT) Capt.,
RMO., 4th Princess Louise Dragoon Guards.

FIRST WITNESS FOR THE PROSECUTION.

P 21365, SSM Henry AM having been duly sworn, states:

I am P21365, SSM Henry AM, and I was SSM of ~~HQ~~ BSqn, HPLDG.

Q. - On 27 Dec 44, was Spr Heffernan a member of your sqn?

A - Yes.

Q - Is Spr Heffernan in this court?

A - Yes. (Pointing him out).

Q - Will you tell the court what happened on the morning of 27 Dec 44?

A. - At approx 0800 hrs, the 2i/c Sqt. of 11 Pr, Sgt Stewart, reported to me that the accused was absent from roll call at 0700 hrs.

Q. - How long was the accused marked absent?

A - From that morning until reported as being in hospital. I present to the Court a certificate of surrender in accordance with Sec 163 (1)(b) of the Army Act, purporting to be signed by Capt ~~xx~~ Harper CO, 507 Provost Coy, CMP, Florence. This document refers to the accused.

Q- Prior to the morning of the 27th Dec 44, what was the general knowledge throughout the coys of future ops of the Regt? And, if there was any general knowledge, what was it the result of?

A- If was general knowledge in the coys that we would — Question not allowed by the court. — evidence "General knowledge" is admissable.

Cross-examination by the Defence —

Q- Prior to 0800 hrs 27 Dec 44, was the accused warned for a ~~move~~ a unit move into the line or otherwise?

A- Not to my knowledge.

SECOND WITNESS for the ~~DEFENCE~~ PROSECUTION

K 53311, Sgt. Stewart AH, having been duly sworn, states:

I am, K 53311, Sgt Stewart, AH; I was Pl Sgt of 11 Pl, B Sqn, 4 PLDG on 27 Dec 44.

Q- Was Spr Kefferman a member of the Pl at that time?

A- Yes.

Q- Is Spr Kefferman in the room?

A- Yes. (Pointing him out)

Q - Will you tell the court what happened on the morning of the 27 Dec 44?

A - At approx 0700 hrs, I made a roll call of 11 Pfc and found the accused absent.

Q. - When did you next see the accused.

A. - at Bd. Room parade under escort of the Provost.

Cross-examination by the Defense

Q - Was the accused warned prior to 0700 hrs 27 Dec 44 of any impending move?

A. - Not to my knowledge.

Question by the Court.

Q. - Approx. how long after his going absent did you next see him in the Orderly room?

A. - Around 30 days.

The court is closed to consider submissions.
Court reopened 0945 hrs 10 Feb 45.

FIRST WITNESS for the Defence

C 120578 Pfc Heffernan J. having been duly sworn states:

I am C 120578 Pfc Heffernan, On the morning of 26 Dec 44 I was assigned to dig latrine holes after which I went to a barber shop. I then went at a Vino vendor after having a few drinks, I went AWL.

Cross-examination by the Prosecution

Q - At the time you went A.W.L., what did you think the Reg't was going to do?

A - I thought we were finished.

Q - Did you attend a talk given by the Brig. & the Reg't just as it was coming out of the line?

A - Yes.

Q - What did he say?

A - I cannot recall. He was glad with the job we had done.

Questions by the Defence.

Q - ~~After the Brig.~~ What was your impression after the Brigs talk?

A - ~~I knew~~ That we would be back in the line before Xmas, if we were going back.

Q - Did the Brig. make any mention of going back into the line?

A - Not that I recall.

Q - Did Col. Platek speak to "B" Sqn on Xmas day?

A - No

Q - Did any body tell you that you were going back into the line?

A - No.

Q - Did you hear the ROC speak?
A - No.
Q - What did you do in Florence?
A - I gave myself up to the Provost.
Q - How long have you been in the army?
A - Two years come 18 or 19th this month.
Q - Had you any friends arrive?
A - No, I have had no arrivals.

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Exhibit A.

Certificate under Section 163 (i) (j) Army Act

I CAPTAIN. H.D.PARKER Certify that No 3 [illegible] Rank PTE.

Name [illegible] of the 4 Bn. PRINCESS LOUISE DRAGOON GUARDS

surrendered himself to No [illegible] Rank SGT. Name [illegible]

at FLORENCE on the 10 Jan 45 at about 1545 hrs as a

deserter/absentee without leave.

COMMANDING 507 PROVOST COY. CMP

(Commanding Officer of the person or portion of His Majesty's Forces to whom surrender was made).

FA.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C 120578	Tpr	Heffernan, J.	4th P.L.D.G.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	* Within last 12 months.	*Since Enlistment.
For	WHP NIL times	WHP NIL times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Number of entries for gallantry or distinguished conduct.~~

or

There are no entries in the conduct sheets of the accused.

WHP The accused has not been previously convicted, *or*

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

WHP The accused is not under sentence at the present time, ~~*or* The accused at the present time is under sentence for~~ N/A ~~beginning on the day of~~ N/A

WHP The accused has been in confinement, awaiting trial on the present charges, for ~~days in civil custody, and~~ 2930 days in military custody, making a total of 2930 days, of which nil days were spent in hospital.

WHP The present age of the accused according to his ~~record of service~~ attestation is 27 Years

WHP The date of his ~~record of service~~ attestation specified in his ~~record of service~~ attestation is 19 Feb 43

WHP ~~The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~ N/A

WHP ~~The accused is entitled to deferred pay or gratuity in respect of~~ N/A ~~service~~

WHP ~~The accused is entitled to reckon~~ N/A ~~service for the purpose of determining his pension, etc.~~

WHP ~~The accused has been granted or is in possession of~~ The accused is in possession of ~~or is entitled to~~ (*state any military decoration or reward*)). CVSM & Clasp

WHP (*If the accused is a warrant officer.*) ~~The accused before he was made a warrant officer last held the regimental rank of~~ N/A

WHP (*In the case of an officer.*) The accused holds in the army, the rank of N/A dated and in his regiment (or corps or department) the rank of N/A dated

(*12254*) Wt.31708/1877 10,000 3/43 A.& E.W.Ltd. Gp.676
(*14481*) Wt.12827/491 M.2000 4/43

Exhibit A.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C 120578 Rank Pte Name Heffernan, J. of 4th P.L.D.G. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charge upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the disposing authority	Punishment remitted
			KIL	

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

In the rank of , years, Date of Promotion,

In the rank of , years

In the rank of , years.

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 5th day of Feb 1945

Lt Colonel Comdg 6 Gds Armd Del Regt

No. 12057 Name Heffernan, J | Sqn, Battery, or Company | Corps CIC | Date of enlistment 19.2.43 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (5428)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No one | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Blood donar 20 April 44					

Certified true copy as taken from records in my possession. 3 February 45

(W.H. [illegible]) Capt.,
Adjt., 4th Princess Louise Dragoon Guards.,
Officer having Custody of original.

(FTO)

SUMMARY OF EVIDENCE

Summary of Evidence in the case of C 120578 Tpr James HEFFERNAN 4th Princess Louise Dragoon Guards, Canadian Army Overseas.

By direction of the Commanding Officer, evidence is taken on Oath.

First Witness
for the prosecution

P 21365 S.S.M. Henry, A.M. 4th P.L.D.G. having been duly sworn states:-

I am and was at all times material hereto P 21365 SSM Henry, A.M. On the 27th December 1944 I was SSM of "B" Sqn 4thP.L.D.G. Tpr Heffernan whom I recognize as the accused was a member of "B" Sqn at that time. At about 0800 hours 27th of Dec 44 the troop Sgt., 11 troop, Sgt Stewart reported to me that Tpr Heffernan was absent from roll call at 0700 hours that morning. Tpr Heffernan continued to be marked absent from roll until he was reported as being in Regimental Detention.

To my knowledge the Sqn was not officially warned for a move from the rest area we were in at that time, although the G.O.C. 5 Cdn Divhad given an informal talk to the Sqn on the 26th Dec 44 at approx 1100 hours that the regiment would be going back in the line in a holding role within a day or two. There was no roll call made of the Sqn for that spech due to the fact that it had been gathered together on short notice. However from that time on it was general knowledge throughout the Sqn that there was a move pending.

I present to the court a certificate in accordance with Sec 163 (i)(j) of the Army Act purporting to be signed by Capt., Harger, H.D., C.O. 507 Provost Coy., C.M.P, Florence. This document refers to the accused man.

The accused declines to cross examine this witness.

.....A.M. Henry.....
A.M. Henry SSM

The Certificate referred to by the witness, produced, read over to the accused, marked exhibit "A", signed by me and attached hereto.

(J.W. WILLIAMS) Capt;
4th Princess Louise Dragoon Guards.

Second Witness
for the prosecution

K 53311 Sgt Stewart, A.L. 4th P.L.D.G. having been duly sworn states:-

I am and was at all times material hereto K 53311 Sgt Stewart, A.L. On the 27th Dec 44 I was troop Sgt of 11 troop "B" Sqn 4th P.L.D.G. Tpr Heffernan whom I recognize as the accused was a member of 11 troop at that time. On the morning of the 27th Dec 44 at 0700 hours I checked the roll of 11 troop and found Tpr Heffernan absent. I reported this to the Sqn Orderly Room. I did not see Tpr Heffernan again until 1330 hours 27th Jan 45 at Sqn Orderly Room parade.

On the 26th Dec 44 at approx 1100 hours the G.O.C. 5 Cdn Div gave an informal talk to the Sqn .

Second Witness cont'd
for the prosecution

On the 26th Dec 44 at approx 1100 hours the G.O.C. 5 Cdn Div gave an informal talk to the Sqn. The troop roll was not called for this speech. The G.O.C. stated that we were going back in the line within a day or two. At approx noon of the same day I heard the Sqn was on 24 hours notice and I passed this information to those members of the troop I could find. I can't say whether Tpr Heffernan was one of them. However as a result of all this it was general knowledge throughout the Sqn that a move was pending. I had not seen Tpr Heffernan to my knowledge since the 25th Dec 44.

The accused Declines to Cross examine this witness.

A.L. Stewart
A.L. Stewart Sgt

Third Witness
for the prosecution

F 41652 Cpl Saulnier, D.J. 4th P.L.D.G. having been duly sworn states:-

I am and was at all times material hereto F 41652 Cpl Saulnier, D.J. On the 27th Dec 44 I was 6 section Cpl 11 troop "B" Sqn 4th P.L.D.G. Tpr Hefferman whom I recognize as the accused was a member of 6 section at that time. I discovered Tpr Heffernan to be absent when I was informed by Sgt Stewart that he had failed to answer roll call at 0700 hours that morning. I did not see the accused until this morning. If he had returned to the troop I would have known about it.

At 0900 hours 26th Dec 44 I saw Tpr Hefferman whilst making a list of his defficiencies. I attended the talk at 1100 hours given by the G.O.C. but do not recall seeing the accused there. In fact, I did not see Tpr Heffernan that day. From the G.O.C's talk I gathered the unit would be going back into the line in a short while.

The accused declines to cross examine this witness.

D.J. Saulnier
D.J. Saulnier Cpl

The accused having been duly warned as follows:-

"Do you wish to make any statement or give evidence on Oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writingand may be given in evidence",

declines to make any statement or to give evidence.

Certified that R.P. 4(c) (d) (e) & (f) have been complied with.

This summary of evidence consisting of two (2) pages was taken down by me in writing in the presence and hearing of the accused.

(J.W. WILLIAMS) Capt.,
4th Princess Louise Dragoon Guards.
Officer taking this Summary.

In the field
2 Feb 45

LIST OF WITNESSES

For the Prosecution

P 21365	SSM	Henry, A.M.	4th P.L.D.G.
K 53311	Sgt	Stewart, A.L.	4th P.L.D.G.
P 41692	Cpl	Saulnier, D.J.	4th P.L.D.G.

For the Defence

Nil

List of Exhibits

1. Certificate of Apprehension.

Prosecuting Officer

Capt J. W. Williams 4th P.L.D.G.

Defending Officer

Lieut Lockhart 4th P.L.D.G.

~~I (name) (rank) do (object) (desire) by the (convening officer) to (represent) (me) (at) my trial.~~

I desire to have the a/m Officer to represent me at my trial.

In the field
4 Feb 45

J. Hefferman Tpr

56-91

Rfm. Heggart, 1.b.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : C-33239 Rfn Stewart Carol HEGGART QOR of C, CIC att 1 Cdn Disciplinary Centr

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Not. : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 403 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

~~To suffer forfeiture of pay for 60 days~~

To forfeit all ordinary pay for a period of 60 days.

(Sgd) ..... Judge-Advocate, if any. 5 Mar 45 Date awarded. (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) G.S.Gostling

Date 7 Mar 45 (G.S.N. Gostling), Brigadier, Commanding 2 Cdn Base Rft Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C33239 Rfn Heggart, S C	7 Mar 45	Attard Lt-Col.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

CR# 141
d/7 Mar 45

RECORDED AT CMHQ IN AD 160 32-47

FIELD GENERAL COURT-MARTIAL

CFAAO (In lieu of AFAS) 40/P & R/Tech (6/44) 4/38B

Convened by Order of Brigadier G.S.N. Gostling, ED Comd 2 CBRG dated 1 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-33239	Rfn	Stewart Carol	HEGGART	QOR of C att 1 Cdn Disciplinary Centre

PROCEEDINGS REVIEWED 16 Apr 45 [illegible] REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 2 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 25/40

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 46, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1140 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. ~~President to accused : Do you object to ..... as interpreter ? Ans .....~~

The Interpreter is sworn.(1) ~~Do you object to ..... as shorthand writer ? Ans .....~~ The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	D.C. Shaw R C A C	13 C B R Bn.
Member	Capt.	J.G. Bokchaud 616.	13 C B R. Bn.
Member	Lieut	J.L.A. Gauthier 616.	10 C B R. Bn.
Judge-Advocate			
Prosecutor	Lieut.	N.G. Page 616.	10 C B R. Bn.
Defending Offr	Lieut.	J.W.R. Hulbert. Rde Chaud	10 C B R. Bn.

Questions by President : Is the Prosecutor a lawyer ? Ans No. Is the Defending Offr a lawyer ? Ans No. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused C-33239 Rfn Stewart Carol HEGGART before arraignment make(s) (no) (a) plea ..... (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 25/F

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG VA # Pte.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning accused see RP* 39(*B*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he [they] change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1. 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*). *RP* 45, 120(*A*). 2. *AA* 54(3). *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans ..... (1)
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans ..... (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything there or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*a*). *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182. *RP* 46-50, 69, 118, 119(*A*). *KR Con* 304, 330, 562-566. *Overseas RO* 309, 2323. *MML p* 80, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5). *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused C-33239 Rfn Stewart Carol HEGGART, QOR of C, CIC, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE
in that he
In the Field, absented himself without leave from 0600 hrs 23 Jan 45 until surrendering at GHENT, Belgium, at 2315 hrs 12 Feb 45.
(Absent 20 days 17 hrs 15 minutes)

In the Field
18 Feb 45

(A O Hood) Lt col
OC 1 Cdn Disciplinary Centre

To be tried by Field General Court-Martial

In the Field
1 MAR [redacted] 45

(G S N Gostling) Brigadier
Comd
2 Cdn Base Rft Gp

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-33239	Rfn		Stewart Carol	HEGGART	QOR of C att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 1 Mar 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	O.C. Shaw	RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by C.O. 13 CBR Bn	13 CBR Bn
Lieutenant	to be detailed by C.O. 10 CBR Bn	10 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM *(Country.)*

Date 1 Mar 45

(Signed personally. RP 105 fn 2.)

(C.S.N. Goetling)

Brigadier *(Rank.)*

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In Lieu of AFA 2) 40/P&S/1567 (6143)

(See overleaf for oaths and notes for use on trial.)

6

MEDICAL OFFICERS CERTIFICATE

(KR(Gen) Para 527)
(C.M.O. CL 173)

I certify that I have this day examined C 22112 P (No.)
PTE. (Rank) HEGGART. S.C. (Name) and in my opinion he is

fit to undergo trial by Court-Martial.
~~unfit~~

Station L.G.O.1 S.C.C.

Date. 2/10/45

Capt (Rank)
(Unit) A Div Coy

2. March. 1945.

Gentlemen of the court.

The accused. Pte. Hayport. a soldier who has served three years in the army with only one minor offence on his MFM-6. which is a very good record, for any men in the world.

He his only 21 years old. and his only other on going A.W.L. was to see his brother who was in hospital at the time. As soon as he had achieved his purpose he surrendered himself.

He his very anxious to go back to his unit. and his also ready to serve his sentence which he never realize. to have well learned.

2. Examination by the Court.

Q. Married or single?

A. Single.

Q. How old are you?

A. 21.

Q. When did you last see your brother?

A. One year.

Ex A

Summary of Evidence in the case of C-33239 Rfn Stewart Carol HEGGART, QOR of C, CIC, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave.

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 11 dated 11 Feb 45.

Exhibit "B" - Certificate of apprehension dated 12 Feb 45.

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4(C) (D) (E) (F) and (G) have been complied with.

(W D Hungerford) Capt
Officer detailed to take Summary of Evidence.

Dated in the Field
28 Feb 45.

PART II ORDER EXTRACT FORM

TO: Officer Commanding,
1 CDN DISCIPLINARY CENTRE,
Canadian Army Overseas.

99/20/ QOR/1 (A.5c)

20 FEB 19 45

EXTRACTS FROM: UNIT THE QUEEN'S OWN RIFLES OF CANADA

Part II Order No. 11 dated 11 FEB 45

ABSENT WITHOUT LEAVE

(a) AWL from 0600 hrs 23 JAN 45 Still absent 0600 hrs 31 JAN 45 (8th day).
C33239 Rfn HEGGART S C

Certified to be a true extract from the regimental books and documents in my custody.

Officer IC Records
Cdn Sec GHQ 2 Ech 21 A Gp

~~[illegible]~~ This is Exhibit A

Originating Clerk's Initials

for Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70

CERTIFICATE UNDER ARMY ACT SECTION 163 (1) (a)

Certified that No. C.43239 Rank Rfm. Name. H.E.R.HART. 5. Gf.
the R.R.R.C. Car. Regt, surrendered to No. 11.2460
Rank. Rfm. Name. R.ROOKS. R.A. of the R.R.R.C. Car.
2.C.R.R.C. 10.RK. at ARAPAHO BARRACKS at 23.15 hrs, on the 12th
day of FEB. 45 as an absentee without leave.

He was wearing Military Uniform at time of his Surrender.
Arrest.

Place ARAPAHO BARRACKS

Date 13.FEB.45

(J. RELOIL) Lt-Col.,
O. C., 10 C.R.R.Bn.

This is
Exhibit "A"
to the Affidavit of
[illegible]

ARMY FORM B.200 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C33239	Rfn	HEGGART, Stewart Carol	G.O.R. o/c

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL See #2 ..... 1 times.

For ..... times.

For ..... times.

For ..... times.

Record of Conduct in Canada Not Available

Date of first entry in Field Conduct Sheet 26 Aug 44

Date of last entry in Field Conduct Sheet 26 Aug 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for .....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 16 days in military custody, *i.e.*, ——— days in open arrest, 16 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 21 yrs 6 mths.

6. The date of his ~~attestation enlisting up for military service~~ is 7 Jan 42

7. The service which the accused is allowed to reckon is .....

†State the military decorations (if any) held by accused.

8. The accused is in possession of† CVSM & Clasp.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27855) W1.24939/3404 £6,000 7/44 A.& E.W.Ltd. Gp.498 Forms/B.200(War)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 28 day of Feb 45

Admin. Offr.

1 Can Disciplinary Centre

LIST OF WITNESSES

N/A

LIST OF EXHIBITS

Certified true copy of Extract from Pt II Order No 11 dated 11 Feb 45.	"A"
Certificate of apprehension dated 12 Feb 45	"B"

I, C-33239 Rfn HEGGART, S C, hereby certify that I have received one copy of Charge Sheet and one copy of Summary of Evidence free of charge on 28 Feb 45.

S C Heggart

C-33239 Rfn HEGGART S C

4B-33.
Pte Heide, H.

8

68

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st ... s. 18(2)	NOT GUILTY	NOT GUILTY	
2nd ... s. 40(AA)	NOT GUILTY	NOT GUILTY	Noted "RWP"
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lass of kit see RP 44 fn 6.)

At present under sentence for ... beginning on (date) ... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which 6 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : "NIL"

(Sgd) ... 2 Oct 44 (Sgd) "R.Potte Maj"
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding ...

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) ...
Date ... Commanding ... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

COPY FOR COPY

Spare copy 473-53

(D.N. Orlat) Capt.
Can Sec GHQ 2 Kch AAI

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA3) 40-P.A.S./1606 (2804)

Convened by Order of T G Gibson Comd 2 Cdn Inf Bde dated 1 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-69390	Private	Milton	HEIK	LER

Proceedings Reviewed
15 Oct 44 "R P Taylor Major"
JA
Cdn Sec GHQ 2 Kch AAI

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 2 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fmn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 16, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1415 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to be~~ as interpreter ? Ans "Nil"
~~The Interpreter is sworn.(1) Do you object to~~ as shorthand writer ? Ans "Nil"
~~The shorthand writer is sworn.(1)~~ "RWP"
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ? Ans "No Sir" (2) "RWP"
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	A/Major	R W Potte	PPCLI
Member	Capt	R C H Cowell	PPCLI
Member	Lieut	W E Marvin	Govt of C "RWP"
Judge-Advocate	N/A	"RWP"	
Prosecutor	Lieut	L E Toplin	LER
Defending Offr	Lieut	W Semple	LER

Questions by President : Is the Prosecutor a lawyer ? Ans "No" Is the Defending Offr a lawyer ? Ans "No" "RWP"
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 3.)

A8. The accused K-69390 Pte Milton HEIK LER before arraignment make(s) (no) plea (s).(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 38), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A8s to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D "RWP"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 78, 82 ; *questioning of accused see RP* 90, 87(*C*), 92(*D*), *and of witnesses see RP* 87(*C*) ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes an (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty of the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*). 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. I wish to give evidence myself. Do you intend to call witnesses on your behalf ?
Ans. Yes, six witnesses. Are they witnesses as to character only ? Ans. NO SIR (5)
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s) in any of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s) is (are) subject to confirmation, will be promulgated later (1) Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (c), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E, below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(*1. MFB 355 or MFB 296. 2. MFB 355. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to answer on such anything there or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 629, 1323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 44(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 50. As to release from arrest on Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"RWP"

C H A R G E S H E E T

THE ACCUSED K69390 Private HEIDE, J., of The Loyal Edmonton Regiment, a soldier of the Canadian Army Overseas, MY is charged with:

When On Active Service

First Charge
Sec 15(2)
Army Act.

WILFULLY MAIMING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

in that he

in the field, at approx 1730 hours 26 Sep 44 by discharging a Barretta pistol wilfully maimed himself by shooting himself through the palm of his left hand, with intent thereby to render himself unfit for service.

When On Active Service

Second Charge
Alternative
Sec 40
Army Act.

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, at approx 1730 hours 26 Sep 44, did negligently handle a Barretta pistol causing it to discharge and wound him in the palm of his left hand.

In the Field
Date 29 Sept 44

"JRStone"
(J R Stone) Major
T/Comd 1 Edmn R.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
Date 1 Oct 44

"T G Gibson"
(T G Gibson) Brig
Comd 2 Cdn Inf Bde

"B/P"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-69390	Private		Milton	REIDY	L E H

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 28 Sep 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reasons of a superior qualified offr.) "TGG"

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
A/Major	W T Potts	PPCLI

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	H G M Carwell	PPCLI
Lt	W E Marvin	Seaf of C

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	W Roberts	Seaf of C

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
	Nil	

On Active Service in the Fd

in ITALY (Country.)

"T G Gibson" (Signed personally. RP 105 fn 2.) Brig (Rank.)

Date 1 Oct 44

Commanding 2 Canadian Infantry Brigade Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAES (To Take Place of AFA) 40/P to B/1997 (4611)

(See overleaf for oaths and notes for use on trial.)

MEDICAL CERTIFICATE
(KR (can) para 557)

This is to certify that I have this date examined No K69390 Rank Private Name HEIDE, H. of the Loyal Edmonton Regiment and in my opinion he is fit to stand trial by F.G.C.M.

In the Field
Date 2 Oct 44

"J.Russell.Capt.RCAMC"..
(Medical Officer i/c)

"RWP"

First Witness for Prosecution:

L28258 Pte Allan A.A. of the Loyal Edmonton Regiment having been duly sworn states:

1st question by Prosecution:
Do you recognize the accused to be K69390 Pte Hiede, H.?
Answer:
Yes Sir, I do.

2nd question by Prosecution:
Will you give the court your evidence?

I am L28258 Pte. Allan, A.A. and on 26 Sep 44 at approximately 1730 hrs I was returning from supper when I heard a shot. As I Stepped in the hall-way I saw the accused K69390 Pte Hiede H, stepping towards the hall-way holding his left hand. I could see he was bleeding so I called for a stretcher-bearer. Then I started to roll up the accused's sleeve. Then D139265 Cpl Royea R entered, he had a quick look, and applied a bandage. "JWP"

3rd question by Prosecution:
Did you see a Italian pistol lying around?
Answer:
Yes Sir, about three minutes later.

4th Question by Prosecution:
Would you recognize the pistol, if you were shown it.
Answer:
Yes Sir.

5th question by Prosecution:
Is this the pistol, which I produce as exhibit "A"
Answer:
Yes Sir.

6th question by Prosecution:
Can you tell the court in what condition you saw the pistol?
Answer:
When I saw the pistol, it was lying on a table with the magazine out of it and cleaning material around it. "JWP"

7th question by Prosecution:
Did the accused say anything to you at all?
Answer:
I do not remember, Sir.

Prosecution Rests.
Cross-examination:

1st question:
Did you not see the body-looking pin on the table also?
Answer:
I did not notice it.

Question by Court:

1st question:
Did you examine the pistol?
Answer:
No Sir.

2nd question:
Did you examine the wound.
Answer: "JWP"

No Sir, I only looked at it and saw it covered with blood and helped to bandage it.

3rd question:
Where there any other articles on the table?
Answer:
Yes, Sir, but I do not know what they were.

R.P. 83 (3) complied with.

Second Witness for Prosecution:

D139265 Cpl. Noyes R. of "A" Coy of the Loyal Edmonton Regiment having been duly sworn states:

1st question by Prosecution:
Do you recognize the accused to be K69390 Pte. Miede, H.?
Answer:
Yes Sir.

[illegible] tell the court what happened.

I am D139265 Cpl Noyes R. and I was making my bed when I heard a shot and went to the doorway and found the accused K69390 Pte Miede H. in the hall.

"HWP"

---

holding his left hand which was bleeding. I then got my First Field Dressing and bandaged his hand. I then led him into his room and then the Coy Commander, Capt F.G. Wright came in.

2nd question by Prosecution:
Was Pte Miede H. alone in the hall when you found him?
Answer:
No Sir, Pte Allan A.A. was rolling up the accused's sleeve.

3rd question by Prosecution:
Did you examine the wound?
Answer:
No Sir.

4th question by Prosecution:
Did the accused Pte Miede H. say anything in your presence?
Answer:
Yes Sir, he said "I was just going to clean it."

5th Question by Prosecution:

"HWP"

Did you see anything on the table in Pte Miede H.'s room.
Answer:
Yes, Sir, I saw a pistol.

6th question by Prosecution:
Is this the Pistol?
Answer:
I couldn't be sure Sir, but it was similar to that one.

Prosecution Rests:
Cross-examination:

1st question:
What condition was the pistol in when you saw it?
Answer:
The magazine was out and also the body-locking pin and cleaning materials on the table.
Question by Court:
What did you observe while bandaging the wound.

"HWP"

A bullet hole through the centre of the hand, slanting toward the wrist and no powder burns.

R.P. 83 (B) complied with

Third Witness for Prosecution:

Capt. Grosaman A.A. Medical Officer formerly attached to #5 Canadian C.C.S. having been duly sworn states:

1st Question by Prosecution:
Do you recognize the accused to be K69390 Pte Hiede H.

Answer:
Yes I do.

2nd Question by Prosecution:
Did you dress a wound for K69390 Pte Hiede H. at 2300 hrs on 26 Sep 44.

Answer:
Yes I did.

Will you describe the wound to the court?

I examined the accused K69390 Pte Hiede H. on the night of his admission to No 5 C.C.S. and found a wound on the lower surface of his left palm as well

"EXP"

as another wound on the upper part of the back of the left hand. Both wounds were very small and pin point in nature and there was no evidence of powder burns about the wounds, possibly due to the blood clotting about the wound margins and which might have washed these burns if they had been there. There was no active bleeding. His dressing was re-adjusted and an X-ray was ordered and taken the following morning and a comminuted fracture was noticed at the base of the fourth left metacarpole bone. A cast was then applied by the surgeon Major Campbell, RCAMC and the accused was then put in a ward for further convalescence. At no time was he in shock nor did he surfer any pain.

Prosecution Rests:
Cross-examination:

1st Question:
From the appearance of the wound, would you say the shot came from a short or long range.

Answer:

"EXP"

Yes, the appearance of the wound proves it was fired at close range, but from which side of the hand I do not know.

R.P. 83 (B) Complied with

Prosecution Rests:

First Witness for Defence:

The accused K69390 Pte Hiede H. of the Loyal Edmonton Regiment having been duly sworn states:

I am K69390 Pte Hiede H. and on the 26 Sep 44 at approximately 1725 hrs. I decided to clean my pistol - Baretta Semi Automatic. First I took the holster out of my small pack and removed the weapon. It was getting dard so I knew I would have to hurry. I removed the magazine and then the body-locking pin, then I started to slide the pistol grip off when it stuck. I tried to work it loose at that time the gun went off sticking me in the left hand. I removed the weapon. the hallway where I met L28250 Pte Allan A.A. Then I walked into

I was holding the pistol by the grip in my right hand and the sliding portion in my left hand.

I had the pistol about a week before the accident and had cleaned it once about three days before. After cleaning it this first time I left five rounds.

"EXP"

in the magazine and nothing in the breech. I have never fired the weapon and I cannot understand how it happened to be loaded.

1st Question by Defence:
Have you ever had an accident before?
Answer:
No Sir.

Cross-examination:

1st Question:
You know the proper action of proving a weapon, remove the magazine and examining for a round in the breech. Do you not?
Answer:
Yes Sir.

2nd Question:
After removing the Magazine, did you examine the weapon for a round in the breech.
Answer:
No Sir.

Question by Court.

"AWP"

1st Question:
When working with the pistol, was it necessary to have your left hand over the muzzle?
Answer:
I cannot answer that, as I did not realize I had my hand over the muzzle.

2nd Question:
Is it possible to leave a round in the chamber and remove the magazine if all rounds are first in the magazine and the action not operated?
Answer:
No it is not possible, Sir.

R.P. 83 (B) complied with

Second Witness for Defence:

M11226 Sgt Milnes J.A. "A" Coy of the Loyal Edmonton Regiment having been duly sworn states:
"I am M11226 Sgt Milnes J.A. The accused K69390 Pte Hiede H. has been in my platoon since 24 May 44. On my entry to the room I saw the pistol lying on the table, the magazine and body-locking pin out and some cleaning materials also lying on the table.

"AWP"

Out of action the accused K69390 Pte Hiede H. is very neat and tiddy and takes good care of his kit and is very willing. In action his is cool and calm, has good knowledge of his weapons and can be relied upon to carry out to the best of his ability and task to which he is assigned.

1st Question by Defence.
Did you go to the hospital with the accused?
Answer:
Yes.

2nd Question by Defence:
Did he say anything in your presence.
Answer:
Yes, in the RAP he said, "I suppose this will result in the boys loosing all their weapons," and seemed quite concerned about it.

Prosecution declined to cross-examine.

R.P. 83 (B) complied with.
Defence Closing Address:
I would like to consider first of all the first charge.

"AWP"

I submit that there has not been one bit of evidence brought out that can even suggest that the accused wilfully injured himself. We have evidence that the accused was actually in the process of cleaning his pistol - he had it partly stripped and the cleaning materials at hand. Furthermore, the nature of the wound as discribed by the Medical Officer who examined him suggests immediately that it is such an injury as would be incurred while attempting to strip the pistol. What must certainly influence all our opinions is the testimony of Sgt Milnes. From his statements we can only draw one conclusion. That Pte Hiede just isn't that type of soldier. Why, his first thought and regret was his fear that because of what had occured the other boys would suffer.

So we have no evidence to support such a charge and more than enought ot disprove it.

Regarding the second charge, that of neglect, we know from the evidence brought out that the accused was in the act of cleaning his pistol, his first thought, as a trained soldier, was to observe safety precautions and so he removed the magazine. He omitted one safety precaution however, and that in the words of the charge is turned neglect. I would like to refer the

"ROY"

court to page 459 of M.M.L. where the term neglect is explained. I quote "Neglect to be punishable must be wilful and not merely the result of forgetfulness or error in judgement."

Being in a hurry as he stated, Pte Hiede forgot to examine the weapon more closely. Or we can put it down to error of judgement - he had cleaned the pistol not long before, left it clear, and no one had fired it since, and so, quite unconciously, he judged that it would still be clear.

Gentlemen, it is the sort of thing that could happen to the oldest and best trained soldier in the British Army. There is no accounting for it - just one of those things that happen and if we were to spend the remainder of the war on nothing else but safety precautions there would still be such accidents. One just can't term it neglect.

And so in the light of these facts which I have just briefly outlined, I ask the Court to find Pte Hiede "NOT GUILTY" of both charges.

"ROY"

Prosecution Closing Address:

The evidence brought forward has proved the accused shot himself. He himself admits some whether he did it with intent to maim himself is for the Court to decide. I would like to point out however that the accused was negligent in handling the pistol by the fact that he did not examine the breech before proceeding to strip the weapon. This act alone is a crime because he may just as well of injured another soldier instead of himself. As it is, he has cost the Army a well trained soldier by being neglectful. In my opinion the accused should be found guilty.

"ROY"

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A.18(2)	Not Guilty	Not Guilty	Noted
2nd	A.A.40(Amnd)	Not Guilty.	Not Guilty	
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~.....~~ beginning on (date) .....

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which 6 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

~~Sentence Awarded by the Court~~ :

(Sgd) ..... Judge-Advocate, if any. 20 Oct 44. Date awarded. (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date .....

Commanding .....

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 30 OCT 1944 JAG Branch C.M.H.Q.

RECORDED AT CMHQ IN AD 100. 413-33

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40. P.A. St. (1938) (2864)

Convened by T G Gibson Comd 2 Cdn Inf Bde dated 1 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-69390	Private		Hilton	HEIDE	LER

31 OCT 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd (country) ITALY on (date(s)) 20 OCT 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is [not] amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 1. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [not] brought before the Court. At 1415 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : ~~Have you objection to~~ ~~as Interpreter ? Ans~~

~~The Interpreter is sworn.(1) Do you object to~~ ~~as shorthand writer ? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	A/Major	R.W. Potts	P.P.C.L.I.
Member	CAPT	R.G.M. Cammell	P.P.C.L.I.
Member	Lieut	W.E Marvin	See D.A.C.
Judge-Advocate	N.A.		
Prosecutor	Lieut	L.E. Toplin	L.E.R.
Defending Offr	Lieut.	W. Remple.	L.E.R.

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No

(1. RP 26, 27, 109, 111. Lists of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1.)

A8. The accused K-69390 Pte Hilton HEIDE L.ER. before arraignment make(s) (no) plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is [not] arraigned (separately) on all charges in the charge sheet.(1) The accused does [not] object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate sheets of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court [continued with] ~~continued at~~ the Notes on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you should be sentenced, you will not be advised to change your plea and you will be given an opportunity later to prove your statements on sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 37(B) fn 5 para 3; MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 37(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by those of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No. (1)
(1. *If "yes", see RP 39(A) for [illegible]. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (has no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is reopened, and the President announces that the submission is disallowed on the ..... charge(s) and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty of the latter charge(s).(3)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. I wish to give evidence Do you intend to call witnesses on your behalf ? Ans. Yes sir Are they witnesses as to character only ? Ans. No Sir
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

~~15. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans. .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(d) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 355 or MFB 296.* 2. *MFM 6.* 3. *If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. .....(2)
(1. *RP 37(C), 44(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas AO 309, 2322, MML p 60, 757-758. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

THE ACCUSED K69390 Private HEIDE, H., of The Loyal Edmonton Regiment, a soldier of the Canadian Army Overseas, CMF is Charged With:

When On Active Service

First Charge
Sec 15(2)
Army Act.

WILFULLY MAIMING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE.

in that he

in the field, at approx 1730 hours 26 Sep 44 by discharging a Barretta pistol wilfully maimed himself by shooting himself through the palm of his left hand, thereby to render himself unfit for service. WITH INTENT

When On Active Service

Second Charge
Alternative
Sec 40
Army Act.

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE.

in that he

in the field, at approx 1730 hours 26 Sep 44, did negligently handle a Barretta pistol causing it to discharge and wound him in the palm of his left hand.

(J.R.Stone) Major
T/Comd L Edmn R.

In the Field
Date 27 Sep 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(T.G.Gibson) Brig
Comd 2 Cdn Inf Bde

In the Field
Date 1 Oct 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-69390	Private		Hilton	HEIDE	L E R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 1 Oct 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reasons of a tactical or~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~I am unable to appoint to this Court, (1) a Br Offr as President, (2) the Senior Offr~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~I do not appoint a Judge-Advocate to this Court, there not being one~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

A/Major (Rank.)	R W Potts (Must be named. RP 106.)	PPCLI (Unit.)

MEMBERS.

Capt	R G M Gammell	PPCLI
Lt (Rank.)	W.E. Mervin (Named or detailed. RP 106.)	Seaf of C (Unit.)

WAITING MEMBER.

Lt (Rank.)	W Roberts (Named or detailed, if any. RP 106.)	Seaf of C (Unit.)

JUDGE-ADVOCATE.

(Rank.)	Nil (Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY (Country.)

(Signed personally. RP 105 fn 2.)

Brig (Rank.)

Date 1 Oct 44

Commanding 2nd Canadian Infantry Brigade

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CF A66 (To Dest of AZA3) 40/F & S/1647 1-4/31.

(See overleaf for oaths and notes for use on trial.)

MEDICAL CERTIFICATE
(KR (can) para 557)

This is to certify that I have this date examined No K69390, Rank Private Name HEIDE, H. of The Loyal Edmonton Regiment and in my opinion he is fit/~~unfit~~ to stand trial by F.G.C.M.

(Medical Officer i/c)

In the Field
Date 20-7-44.

First Witness for Prosecution:
L28258 Pte. Allan A.A. of the Royal Edmonton Regiment having been duly sworn states:-

1st. Question by Prosecution:
Do you recognize the accused to be K69390 Pte. Hiebe H.?

Answer:
Yes Sir, I do.

2nd. Question by Prosecution:
Will you give the court your evidence?

I am L28258 Pte. Allan A.A. and on 26 Sept 44 at approximately 1730 hrs I was returning ~~to~~ from supper when I heard a shot. As I stepped in the hall-way I saw the accused K69390 Pte. Hiebe H. stepping towards the hall-way holding his left hand. I could see he was bleeding so I called for a stretcher-bearer. Then I started to roll up the accused's sleeve. Then D139265 Cpl. Royea R. entered, he had a quick look, and applied a bandage.

RAA

2nd Question by Prosecution:
Did you see a Italian pistol lying around?

Answer:
Yes Sir, about three minutes later.

4th Question by Prosecution:
Would you recognize the pistol, if you were shown it?

Answer:-
Yes Sir.

6th Question by Prosecution:
Is this the pistol, which I produce as exhibit "A"

Answer:
Yes Sir.

6th Question by Prosecution:
Can you tell the court in what condition you saw the pistol?

Answer:
When I saw the pistol, it was lying on a table with the magazine out of it and cleaning material around it.

RLW

7th Question by Prosecution:
Did the accused say anything to you at all?

Answer:
I do not remember, Sir.

Prosecution Rests.

Cross-examination.

1st. Question:
Did you not see the body-locking pin on the table also?

Answer:
I did not notice it.

Question by court:

1st Question:
Did you examine the pistol?

Answer:
No. Sir.

2nd Question:
Did you examine the wound.

Answer:

RWS

No Sir, I only looked at it and saw it covered with blood and helped to bandage it.

3rd Question:
Where there any other articles on the table?

Answer:
Yes Sir, but I do not know what they were.

R.P. 83(B) COMPLIED WITH.

Second Witness for Prosecution:
D139265 Cpl. Royea R. of "A" Coy of the Royal Edmonton Regiment having been duly sworn states:

1st. Question by Prosecution:
Do you recognize the accused to be K69390 Pte. Hiede H.?

Answer.
Yes Sir.

Will you tell the court what happened.

I am D139265 Cpl. Royea R. and I was making my bed when I heard a shot and went to the doorway and found the accused. K69390 Pte. Hiede H. in the hall,

RWD

holding his left hand which was bleeding. I then got my First Field Dressing and bandaged his hand. I then led him ~~down to~~ into his room and then the Coy. Commander, Capt. P.C. Wright came in.

2nd. Question by Prosecution:
Was Pte. Hilde H. alone in the hall when you found him?

Answer:
No Sir, Pte Allan A.A. was rolling up the accused's sleeve.

3rd. Question by Prosecution.
Did you examine the wound?

Answer:
No Sir.

4th Question by Prosecution:-
Did the accused Pte. Hilde H. say anything in your presence?

Answer:
Yes Sir, he said "I was just going to clean it."

5th Question by Prosecution:

PCW

Did you see any thing on the table in Pte. Hilde H.'s room.

Answer:

Yes Sir, I saw a pistol.

6th Question by Prosecution:

Is this the pistol?

Answer:

I couldn't be sure Sir, but it was similar to that one.

Prosecution Rests:

Cross-examination:

1st Question:

What condition was the pistol in when you saw it?

Answer:

The magazine was out and also the body-locking pin and cleaning materials on the table.

Question by Court:

What did you observe while bandaging the wound.

RCW

Answer:
a bullet hole through the centre of the hand, slanting toward the wrist and no powder burns.
R.P. 83(B) COMPLIED WITH

Third Witness for Prosecution.
~~I am~~ Capt. Grossman A.A. Medical Offier formerly attached to #5 Canadian C.C.S. having been duly sworn states as follows:
1st Question by Prosecution:
Do you recognize the accused to be K69390 Pte Hiebe H.

Answer:
Yes I do.

2nd Question by Prosecution:
Did you dress a wound for K69390 Pte. Hiebe H. at 2300 hrs on 26 Sep 44.

Answer:
Yes I did.

Will you describe the wound to the court.

I examined the accused K69390 Pte Hiebe H. on the night of his admission to No. 5. C.C.S. and found a wound on the lower surface of his left palm as well

Pte

as another wound on the upper part of the back of the left hand. Both wounds were very small and pin point in nature and there was no evidence of powder burns about the wounds, possibly due to the blood clotting about the wound margins and which might have masked these burns if they had been there. There was no active bleeding. His dressing was re-adjusted and an X-ray was ordered and taken the following morning and a communited fracture was noted at the base of the fourth left metacarple bone. A cast was then applied by the surgeon Major Campbell, R.C.A.M.C. and the accused was then put in a ward for further convalesince. At no time was he in shock nor did he suffer any pain.

Prosecution Rests:

Cross-examination:

1st. Question:

From the appearance of the wound, would you say the shot came from a short or long range.

Answer:

Yes, the appearance of the wound proves it was fired at close range, but from which side of the hand I do not know.

R.P. 83(B) COMPLIED WITH

Prosecution Rests:

First Witness for Defence:

The accused K69390 Pte Hilde H. of the Loyal Edmonton Regiment having been duly sworn states:

I am K69390 Pte Hilde H. and on the 26 Sep. 44 at approximately 1725 hrs. I decided to clean my pistol - Beretta Semi Automatic. First I took the holster out of my small pack and removed the weapon. It was getting dark so I knew I would have to hurry. I removed the magazine and then the body-locking-pin, then I started to slide the pistol grip off when it stuck. I tried to work it loose at that time the gun went off striking me in the left hand. Then I walked into the hallway where I met L28258 Pte. Allan A.A.

I was holding the pistol by the grip in my right hand and the sliding portion in my left hand.

I have had the pistal about a week before the accident and had cleaned it once about three days before. After cleaning it this first time I left five rounds

PCW.

in the magazine and nothing in the breech. I have never fired the weapon & I cannot understand how it happened to be loaded.

1st. Question by Defense:
Have you ever had an accident before?

Answer:
No Sir.

Cross-examination:
1st. Question:
You know the proper action of proving a weapon, remove the magazine and examining for a round in the breech. Do you not?

Answer:
Yes Sir.

2nd Question:
After removing the magazine, did you examine the weapon for a round in the breech.

Answer:
No Sir.

Question by Court.

RWP

1st. Question:

When working with the pistol, was it necessary to have your left hand over the muzzle?

Answer:

I cannot answer that, as I did not realize I had my hand over the muzzle.

2nd. Question:

Is it possible to leave a round in the chamber & remove the magazine if all rounds are first in the magazine and the action not operated?

Answer:

No it is not possible, Sir.

R.P. 83(B) COMPLIED WITH

Second Witness for Defence:

M11226 Sgt. Milnes J. A. "A" Coy of the Loyal Edmonton Regiment having been duly sworn states:

Name M11226 Sgt. Milnes J. A.

The accused K69390 Pte Wade H. has been in my platoon since 24 May 44. On my entry to the room I saw the pistol lying on the table, the magazine and body-locking pin out and some cleaning materials also lying on the table.

PCMP

Out of action the accused K 69390 Pte. Hield H. is very neat & tidy and takes good care of his kit and is very willing. In action his is cool and calm, has good knowledge of his weapons and can be relied upon to carry out to the best of his ability any task to which he is assigned.

1st Question by Defence:
Did you go to the hospital with the accused?

Answer:
Yes.

2nd. Question by Defence:
Did he say anything in your presence.

Answer:
Yes, in the R.A.P. he said, "I suppose this will result in the boys loosing all their weapons," and seemed quite concerned about it.

Prosecution declines to cross-examine.
R.P. 83(B) COMPLIED WITH

Defence Closing Address:
I would like to consider first of all the first charge.

R.W.P.

I submit that there has not been one bit of evidence brought out that can even suggest that the accused wilfully injured himself. We have evidence that the accused was actually in the process of cleaning his pistol - he had it partly stripped and the cleaning materials at hand. Furthermore, the nature of the wound as discribed by the Medical Officer who examined him suggests immediately that it is such an injury as would be incurred while attempting to strip the pistol. What must utainly influence all our opinions is the testimony of Lt. Milner. From his statements we can only draw one conclusion. That Pte. Hide just isn't that type of soldier. Why, his first thought and right was his fear that because of what had occured the other boys would suffer.

So we have no evidence to support such a charge and more than enough to disprove it.

Regarding the second charge, that of neglect, We know from the evidence brought out that the accused was in the act of cleaning his pistol. His first thought, as a trained soldier, was to observe safety precautions and so he removed the magazine. He omitted one safety precaution however, and that in the words of the charge is termed neglect. I would like to refer the

P.W.P.

court to page 459 of M.M.L. where the term neglect is explained. I quote "Neglect- to be punishable must be wilful and not merely the result of forgetfulness or error in judgement."

Being in a hurry as he stated, Pte Hicks forgot to examine the weapon more closely. Or we can put it down to error of judgement- he had cleaned the pistol not long before, left it clear, and no one had fired it since, and so, quite unconciously, he judged that it would still be clear.

Gentlemen, it is the sort of thing that could happen to the oldest and best trained soldier in the British Army. There is no accounting for it - just one of those things that happen and if we were to spend the remainder of the war on nothing else but safety precautions there would still be such accidents. One just can't term it neglect.

And so in the light of these facts which I have just briefly outlined, I ask the Court to find Pte Hicks "Not Guilty" of both charges.

RWP

Prosecution Closing Address:

The evidence brought forward has proved the accused shot himself. He himself admits same whether he did it with intent to maim himself is for the Court to decide. I would like to point out however that the accused was negligent in handling the pistol by the fact that he did not examine the breech before proceeding to strip the weapon. This act alone is a crime because he may just ~~to~~ as well of ~~to~~ injured another soldier instead of himself. As it is, he has cost the army a well trained soldier by being neglectful. In my opinion the accused should be found guilty.

R.C.M.P.

SUMMARY OF EVIDENCE in the case of K69390 Private HEIDE, H, A Coy, The Loyal Edmonton Regiment, a soldier of the Canadian Army Overseas, C.M.F.

By Order of the Commanding Officer, the evidence is taken on oath.

First Witness

D139265 Cpl Royea, R., A Coy, The Loyal Edmonton Regiment, having been duly sworn states:/

"I am D139265 Cpl Royea, R., A Coy, The Loyal Edmn R". On the 26 Sep 44, at approx 1730 hours, I xxx was making my bed when I heard a shot, I opened the door and found Pte Heide and Pte Allen, A.A. in the hallway, Pte Heide was holding his left hand which was bleeding. I bandaged his hand with a field dressing, and then took him to his room. The only statement I heard Pte Heide make was, "I was just starting to clean it".

The accused declines to cross examine this witness.

signed (R Royea) Cpl

Second Witness

L28258 Pte Allen, A.A., A Coy, The Loyal Edmn R., having been duly sworn states:-

"I am L28258 Pte Allen, A.A., A Coy, The Loyal Edmn R". The 26 Sep 44, at approx 1930 hrs, I returned to my room from supper. I was on my way out again when I heard a shot and then saw Pte Heide stepping out of his room holding his left hand. I saw the hand was bleeding so I called for a stretcher bearer and then started to roll up his sleeve. Cpl Royea then came and put a field dressing on his hand. I saw what I thought was a German pistol lying on the table with a magazine beside it, cleaning material was on the table.

The accused declines to cross examine this witness.

signed (A.A.Allen) Pte.

Third Witness

Capt A.A. Grossman, R.C.A.M.C., 5 C.C.S., having been duly sworn states:-

"I am Capt A.A. Grossman, RCAMC, att'd to 5 C.C.S.". Pte Heide was first seen by me about 2300 hrs 26 Sep 44. He was in the ward and I examined him and obtained the history that a bullet fired from a pistol (Barretta) had penetrated the left hand. The T&T wound was noticed and a small penetrating wound on the dorsum of his hand and a slightly larger wound on the palm surface of the hand. The wounds were clean and there was no actual bleeding at this time. He was given T.T. and was started on a course of Pencilin and an X-Ray was taken. He was quite comfortable at the time. The X-Ray revealed that a comminuted compound fracture of the fourth left metacarpal bone.

RWP

Third Witness Cont'd

This case was then treated by Major Campbell, RC.A.M.C. who applied a cast.

The accused was cautioned as follows:-

"Do you wish to make any statment, or to give evidence on oath?, you are not obliged to say anything or to give evidence unless you wish to do, but whatever you say or any evidence you give willbe taken down in writing and may be given in evidence.

The accused makes a statement as follows:-

I am K69390 Pte Heide, H., A Coy, The Loyal Edmonton Regiment". At approx 1730 hrs 26 Sep 44 I decided to clean my pistol, a Barretta semi-automatic. I took the holster from my small pack and removed the pistol. I then removed the magazine and next the safety catch locking pin. Then I started to slide off the pistol grip, but it stuck. While I was trying to work it loose the pistol went off striking me in the left hand. I dropped the pistol and walked into the hall where I met Pte Allen, A.A. who called for a stretcher bearer. Cpl Royea came and bandaged my hand. I do not remember how I was holding the pistol, but I am sure I did not leave a round in the breach. I was alone in the room at the time.

Signed (H Heide) Pte.

I certify that the foregoing Summary of Evidence consisting of three handwritten pages was taken down by me in the presence of the accused on the 27 Sep 44 and that Rules of Procedure, 4 (c)(d) (e)(f)&(g) have been complied with.

In the Field
28 Sep 44

(L.E.Taplin) Lieut.
Officer Taking Summary

Summary of Evidence in the case of
#69390 Pte HEIDE H. a Coy 1st Royal
Canadian Regt. a soldier of the Canadian Army
O.M.F.

By order of the Commanding Officer the
evidence was taken on oath

1st Witness

D139265 Sgt Royea R. A Coy 1st Royal
Edmonton Regt. having been duly sworn states.

I am D139265 Sgt Royea R. A Coy 1st Royal Edmonton
Regt. On 26 Sept 44 at approximately 1730 hrs I
was making my bed with Edgard a shot I
opened the door & found Pte Heide H + Pte Allen AA
in the hallway. Pte Heide was holding his left
hand which was bleeding. I bandaged his hand
with a field dressing + then took him to hospital
The only statement I had Pte Heide made was
"I was just starting to clean it."

The accused declines to cross examine the
witness

R. Royea Sgt.

2nd Witness

L26258 Pte Allen A A A Coy 1st Royal
Edmonton Regt having been duly sworn states
I am L26258 Pte Allen A A A Coy 1st Royal
Edmonton Regt. On the 26 Sept 44 at approx 1730 hrs I
returned to my room from supper. I was in my room

3rd Witness (cont'd)

and again when I heard a shot & saw the Indian stepping out of his room holding his left hand. Edwards hand was bleeding & calling for a Surgeon began & the latter to roll up his sleeve, left Kaya this room & put on a bandage for his hand. I then went into Edwards room & saw a Colts pistol lying on the table with cartridge & empty shell. Hearing material was taken on the table

I have accepted dictation by me & witnessed the execution

O. A. Allen. Pte.

3rd Witness

Capt A. A. Allen R.C.M.P. sworn
I am by duly sworn state
I am Capt A. A. Allen R.C.M.P. and I am
the person who visited by me about
2 p.m. 26 Sept 14. I was in the guard
room and I examined him & obtained the history
that a bullet had passed through (illegible)
left wrist. The left hand I (illegible)
was noticed a gunshot penetrating wound on
the dorsum of the hand & a slightly larger
wound on the palmar surface of the hand
The wounds were clean cut & there was no
bleeding at the time. He was in Pte. & was
dressed & a clean dressing was
taken.

(over)

Capt

The accused was cautioned as follows:
You can wish to make any statement or to give evidence on oath. You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing & may be given in evidence.

The accused makes a statement as follows:

On 26/9/44 Pte Neide N. Coy Pte Lloyd Adm Coy Regt. at approx 1730 hrs 26 Sept 44 I decided to clean my pistol, a Colts semi automatic. I took the pistol from my small pack & removed the pistol. I then removed the magazine & took the safety catch locking pin. Then I tried to slide off the pistol grip but it stuck. While I was trying to work it, loose the pistol went off shooting me in the left foot. I dropped the pistol & walked out to the hall where Pte Allen A. who is called for a stretcher. Cpl Kaya came & bandaged my foot. I do not remember when I was holding the pistol but I am sure that I did not leave a round in the breech. I was alone in the room at the time.

N. Neide Pte

I certify that the foregoing summary of evidence consists of three hundred and forty two typewritten folios and contains a true record of the evidence given by me on the inquiry into the accused on 27 Sept 44 at Base Reception Camp 4 COEF 43 Base Sub Area which has been compiled from my notes taken at the time.

Lt
Officer taking Summary

38

LIST OF WITNESSES
PROSECUTION

First Witness Prosecution	D139265 Cpl Royea, R. A Coy, The Loyal Edmonton Reg't
Second Witness Prosecution	L28258 Pte Allen, A.E. A Coy, The Loyal Edmonton Reg't
Third Witness Prosecution	Capt A.A. Grossman RCAMC, att'd to 5 C.C.S. Cdn Army, C.M.F.

RCWP

I wish to have Lieut W. Semple The Loyal Edmonton Regt as my defending officer.

D. Heide Pte.

RCWP

JJ-122

L/CPL HEIGHES R.

B.95672 L/Cpl Rae Heighes,
C.Prov.C., 9 Provost Coy.

JJ 122

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this TWENTY-SECOND day of JUNE, 19, FORTY-THREE

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~and that it is not practicable to delay the trial for the convening of a superior qualified officer;~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* ~~I am unable to appoint~~

*~~Three Officers~~ to form the Court;

*~~A Field Officer~~ as President ~~in the following terms, namely:~~

*Omit if not applicable.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
LT-COL.	D.L. REDMAN, V.D.	H.Q. C.R.U.

Members.

Rank.	Name.	Regiment.
A MAJOR	FROM	2 CIRU
A CAPTAIN	FROM	2 CIRU
	WAITING MEMBER	
A LIEUT.	FROM	2 CIRU

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (G.H. ROBERTS) Maj-Gen.,
Commanding Cdn Rft Units.
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.95672 L/Cpl Rae Heighes, C Prov C., 9 Provost Coy.	FIRST CHARGE Sec 40 A.A.	Not Guilty	Guilty	
	SECOND CHARGE Sec 40 A.A.	Not Guilty	Guilty Sentence – To forfeit all ordinary pay for a period of Forty Five (45) days 3rd July 1943 WM	Confirmed. J.H.R.
	See Charge Sheet Attached.			

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on a separate sheet if necessary*) :— Answer – no

(Signed) J.H. Roberts (J.M. ROBERTS) Maj-Gen., *Commanding* Cdn Rft Units. *Convening Officer* (d)

(Signed) [illegible] *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 3rd day of July 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

*Omit if not applicable.

*(3. The Interpreter)

*(4. The officers under instruction)

were duly sworn.

Signed this 3rd day of July 1943

[illegible]
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 702 of M.M.L. 1929

*I certify that the terms of *A.C.I. 370 of 1918 have been complied with.

Signed this ____ day of ____ 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 6 day of July 1943.

J.H. ROBERTS, Maj-Gen.,
Confirming Officer (Seal)

Promulgated and extracts taken in the case of

(a) (Dated) 8 July 43 (Signed) J Robertson CAPT. COMDG. No. 9 PROVOST COY.

Promulgated and extracts taken in the case of

(Dated) ____ (Signed) ____

Promulgated and extracts taken in the case of

(Dated) ____ (Signed) ____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23673) W1.44179/850 50,000 2-43 A.& E.W.Ltd. Gp.698

CHARGE SHEET

The accused, B 95627 L/Cpl. Meighes, Ree, Canadian Provost Corps, on strength of No. 9 Provost Coy., a soldier of the Canadian Army is charged with:

FIRST CHARGE: Sec. 40 A.A.

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE, contrary to Sec. 40 A.A.

in that he

at Milford Surrey at 1800 hours on 15 Jun 43 became unfit for duty by reason of previous indulgence in alcolholic stimulants.

SECOND CHARGE: Sec. 40 A.A.

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE, contrary to Sec. 40 A.A.

in that he

at Milford Surrey, at 1800 hours on 15 Jun 43 did appear on parade in an untidy and dirty condition.

T. Robottom.
(T. Robottom, Capt.)
O.C. 9 Provost Coy.

17 June 43.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

J.H. Roberts
(J.H. ROBERTS) Maj-Gen.,
Comd
CANADIAN REINFORCEMENT UNITS.

In the Field,
22 Jun 43.

MEDICAL INSPECTION

3 Jul 43

B-95672 L/Cpl. Heighes, R.

I hereby certify that I have examined the m/n on this morning ~~this date~~ and have found him free from diseases, and physically fit to undergo trial by Field General Court Martial.

A.A. Johnson Capt.
Medical Officer

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT
ON THE 3rd DAY OF July 9 Cay 1943

B95627 The accused Lt/Capt Higgs R.A.C. .....Unit. 6 Cdn Provost Corps.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lt Col D.L. Ledoux V.D. Unit HQ. C.R.U.

Members. Maj J.V. Love .....Unit 2 C.I.R.U.

Capt B.T. Brown .....Unit. 2 C.I.R.U.

The officers under instruction are duly sworn:-

.....Unit.....

.....Unit.....

Prosecutor Lieut J.D.T. Monsarrat .Unit 6 Cdn Provost Corps.

Defending Officer Capt J. Major .Unit. 6 C.I.R.U.

The charge sheet is signed by the President and the accused is arraigned.
~~The accused pleads guilty to the charge(s) and R.P. 35(B)~~ is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
(b) Calls witnesses as to character.
(c) Calls witnesses in mitigation of punishment.
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Proceedings follow in longhand.

Trial of B 95627 L/Cpl Heighes R. 9 Can Prov Coy

The accused when arraigned pled not guilty to each of the charges.
The President asked the questions under R.P. 39(A) answers - no is recorded.

1st witness for the Prosecution
Capt T. Robertson. 9 Can Prov Coy being duly sworn states

I am O.C. 9 Can Prov Coy. I was duty officer on 15th June 1943 and I inspected the evening Duty Details at 18-00 hrs. I came to parade at 17-50 hrs I noticed that the parade had not fallen in. Men were standing around in small groups. I noticed the accused with one group about 20 yds away. His tunic was unbuttoned. His cap was on back of head. He was behaving in a boisterous manner, talking loudly and pushing other men around. At this time Sgt Russell the Orderly Sgt called the parade and the men detailed for duty fell in. The accused did not fall in at the same time as the others. I did not think at this moment that he had been detailed for duty. At this moment I had instructed the Orderly Sgt to see me for the R.S.M. because it appeared to me that several members of the Coy had been drinking. When I next looked at the parade I saw that the accused had fallen in on the blank file in the rear rank. I noticed him because he was pushing the man on his right L/Cpl Fillmore. The R.S.M. appeared and told him to come with me on the inspection. We commenced at Sgt Russell's end of the ranks. When I got to the centre rank I saw the accused

speaking to L/Cpl Fillmore when I got to the accused on my tour I noticed that his boots were very dirty and covered with dried mud, his anklets were dirty and not recently blancoed. His tunic was buttoned up on the front unlawfully & on me his breath smelled of beer or liquor, his face was flushed and he was not standing steadily at attention. It was obvious to me that he had been drinking and that he was unfit to perform his duties. I therefore instructed the R.S.M. to have him placed under close arrest. I have served in R.C.M.P. from 1933 to 1940 continuously and since then with R. Prov. C. I have had much experience with drunks and with men unfit for duty by reason of previous drinking. I sign the Pt I orders in this unit. The duties for any day are published on the previous day giving 24 hrs notice.

Cross Examined by Sgt Pudsey Officer

The ground the men must use to go from billets to parade ground is partly dirt, partly cinders, and partly paving on a fine day a soldier might get dust on his shoes not enough. There were about 40 men on this parade only two the accused and L/Cpl Fillmore had dusty boots. The men can obtain beer at the Club House. I don't know about hard liquor I don't think they can get that. I read from our log dray per duty Tuesday 15 June 43 "weather fair and warm". For the 2 previous days the duty states "weather fair and warm with showers 4 P.M. In spots thunder storms not for long time after rain but it is possible for a man to drink his own way and not get muddy."

2nd witness for Prosecution
L-22753 R.S.M. Hollon G. being duly sworn states

I am R.S.M. of this Coy. On evening of 15 June at 1800 I accompanied Capt Robertson on the inspection when I arrived the parade had fallen in and was awaiting inspection. The accused was not on parade but was on just as I came up. He went to the Order Room next I Sgt Fillmore. When I got near the accused I noticed he was unsteady on his feet, his tunic was not buttoned up, his boots were extremely dirty, he was wearing his cap on parade. I smelled beer on his breath I thought he had been drinking and was not in fit condition to do his work. His duty would be that most to strict soldiers for breaches of discipline. He got 24 hrs notice of duty as published at Coy Orders. There were between 30 and 40 men on this parade. I noticed only 2 men who were untidy, the accused and L/Cpl Fillmore. We have a blanco table outside the ablution room. I have been 2½ yrs with the Can Prov. Corps. I think a Provost should not take a drink for at least 6 hours before going on duty particularly if his duties

Cross Exam by D. Off. C. to Pte

Men are not warned for duty except by the orders unless a man is away. The orders are posted on board in the mess dining room. Optimum hour to study them the orders are issued there on all of same new duty given the long when so amended they are put up again. The orders are usually posted at noon for the following days duties. In my knowledge the accused was not fit to perform guard duty. There are no separate orders about blancoing except that the equipment must be kept clean.

Re Exam by Prosecutor

(Prosecutor produced to witness the duty roster for 15th June 1916.)

Identifies this as the duty roster for that day. It was prepared from long orders. (Marked Ex 1 by the Court)

Cross Examd by Def. Off'r

On 15th prisoner marched "late station" go on duty with the others and work with them but they stay and continue to work longer after the others are through work.

3rd witness for Prosecution

2 22624 Sgt Russell R. 9 Prov Coy being duly sworn states

I was on Orderly Sgt on 15th June. I called the 1800 hr parade for roll call and inspection. I went with Lieut Robertson and the R.S.M. on the inspection. On examining the accused I noticed that his boots were dirty with mud; his tunic was pinned up

Trial of B.95627 L/Cpl Hughes R. 9 Edn Prov Coy.
His gaiters were loose, one was gaping
His uniform had not been changed. I
smelt alcohol on his breath. He was
swearing. He was talking to Fillmore
I concluded he had been drinking.
I only noticed that the accused and Fillmore
were dirty. all the others were in good
order. The dressing officer produced Duty Roster
book which shows that Cpl O'Brien left for hospital
Cross Exam by L/Cpl O'Brien at 10.30 hrs 15th June
L/Cpl O'Brien was on parade at 2pm in my opinion
the accused were not fit for duty.

End of case for Prosecution

The President advised the accused under
Note 2. R.P 40
The accused said he did intend to give
evidence & make a statement
1st witness for Defence
B63301 L/Cpl Cochambault J. 6 C.I.R.A being
duly sworn states

The accused was handed over to me in the
guard room of 6 C.I.R.A. by Edn Provost at
about 1620 hrs 15th June under arrest. In my
opinion he was not drunk. In my opinion
he was fit to perform his duties. I am a
member of the R.P. of 6 C.I.R.A.

2nd witness for Defence
H5-90298 Pte Harold Thorkelsson C Prov
being duly sworn states

On 15th June L/Cpl Hughes was wearing
my tunic. It had just come from the
cleaners and I loaned it to him. We are
both the same size

Cross exam by the Prosecutor
It was my duty off. I had 2 beers in
the club probably twice in the afternoon
Sgt Russell put me under arrest at
1645 hrs that day. Between 1610 and 1615

hour. Lt McCaffrey advised me to go
away from the vicinity of the Parade
Ground.

3rd witness for defence.
L66215 L/Cpl Langford E. C Pro C being
duly sworn states

Just before 1600 hrs 15th June I was
talking to the accused and as far as I
could see there was nothing wrong
with him, nothing out of the way. He was
quite neatly dressed

Cross Exam by Prosecutor

His battle-dress appeared to be pressed
his hat was on normally. I am quite
sure that his boots were quite clean
his gaiters were clean. I had been
to Ordnance that afternoon.

4th witness for defence
K92457 Cpl Sutherland D.W. C Pro C
being duly sworn states.

I was on duty 15th June I wore the
belt and gaiters of the accused. I got
them from the accused on the afternoon
of 16 June at about 1500 hrs on his return
from close arrest they were clean. I put
them washed in my kit bag. I now
produce them

(The court agreed that the belt and
gaiters were clean and in good order)

Cross Examined by Prosecutor

There are no marks on this web to connect
them with the accused.

5th witness for defence
K98016 Cpl Fisher J. C Pro C being
duly sworn states

I saw the accused when he was arrested
at about 1605 hrs. In my opinion there

I could see nothing wrong with him.

Cross examined by Def. Offr

I was about 30 ft from accused when I saw
him. I didn't notice the condition of his
eyelids.

6th witness for ~~accused~~ defence
L55211 L/Cpl Brownlee K B C Pro C being
duly sworn states

I talked to accused between 1720 and
1800 hrs. I found him to be sober. His
battle dress properly pressed. His
gaiters had on khaki-sand. Several of
our men have cases of this kind of khaki.

I spoke to accused before parade on
15 June. I saw no sign of drinking.

The President stated the Court would
hear all witnesses the defence wished
to call. The Defending Officer stated he
would call 23 more witnesses who
would swear that the accused was
sober and properly dressed but that
after consulting the accused they felt
they had called enough and would
not call any more. The President said
that he was giving no advice that
matter must be decided by the defence
but that the Court was willing to hear
all the witnesses the defence wished
to call.

7th witness for defence - Character
2/Lt Morrison J.A.F. C Pro C (the
prosecutor) being duly sworn states

I have been in contact with the accused
in line of duty since the 16 Sept. I have
found him to be a good worker and dependable
as far as my dealings with him were
concerned. I never personally found him unfit

for duty or duty.

8th witness for defence - Charlotte L 22753 K S m Tottenham by Stall under Oath says.

I have known accused for about one year. I have never had occasion to find fault with the work of the accused except this present case. I have used him to prepare duties requiring special attention

The Defending officer addresses the Court
The Prosecutor addressed the Court
The Court is closed to consider its finding The Court reopens.
The Prosecutor hands in 7 B.35-5 and last copy of m 7 m 6 respecting the accused R.A. 46 [B] complied with.
The Defending officer in mitigation said that the accused had only one offence & has a W.Z in 3 yrs service. He referred to the excellent character evidence given and to the difficulty of a man as to his condition ~~between~~ during the last war. He has been in the Prov. Corps almost 2 years. The charge was while he was with the Tank Corps. He is well trained.

C.A.O. R.O. 3262 is complied with
The Court is closed to consider its sentence

DUTIES FOR TUESDA Y June 15 19[illegible].

"A" SECTION	GUILDFORD Bowering Hooks Belyea Pollan	GODALMING Degrow Hollege Laflanime	LATE STATION Heighs McGowan	BUSSES Benvie Colbran HASELMERE Miller Russell Karasivich
"F" SECTION	FARNHA M Cantin Lalois Reay McKenzie	ALTON Fisher Fillmore Brownlee Langford	BORDON Tarr MacDonald	PETERSFIELD D'Entremont O'Brien
"E" SECTION	M.T. GUARD Golling Mansell Hendy Holmes Kinsman	BORDON POINT Roper Mayes Bryan	DAY DUTIES Hoglund Johnstone Gauthier	RESP. CHECKXX To be supplied by night section
"D" SECTION	KITCHEN Laverio.. Yaremicki Bucy LeBuffe	SGTS MESS & QTS Self SANITARY Fritz	ORD RUNNER Wolliston DAY FIREMAN Smith	GEN FATIGUES Hertzog Creib Thiessen Cook
"H" SECTION	LONDON ESCORT Duncan Farrow Hill Lennon	STAND TO Cranmer Lywood Mockford Melrose Corcoran Morash	ORD SGT Russell ORD CPL Hangle	EXCUSED XXXXX DUTY Ewing, D.
"B" SECTION	OFF DUTY	"C" SECTION	TRAINING	

M.T. DRIVERS

STAND TO	Kinsman & Campbell
GUILDFORD	Martin
GUILDFORD	Barkhouse
FARNHA M	Sangster
DAY DUTIES	Allen
HASELMERE	Fife

EX I

W O Hoglund
Crd. Sgt. No. 9 Provost Coy.

Summary of evidence in the case of Regtl No B 95627 L/Cpl Heighes R taken before Lieut L.R. Tourney this 16th day of June 1943.

By direction of Commanding Officer this Summary is taken on oath.

First Witness.

~~Statement of evidence of~~ Capt. T. Robottom E. O.C. No 9 Provost Coy. having been duly sworn states:-

At approximately 1750 hours on 15 June 1943, I, as orderly officer, went to inspect the evening duty details. I reached the parade ground just befor the parade fell in. A group of men of this Coy were standing around waiting to go on parade. I noticed L/Cpl Heighes in this group. He was behaving in a boisterous manner, his tunic was undone, and he appeared to have been drinking. I instructed the orderly Sgt, Sgt. Russel Regtl No , to send for the R.S.Mr. and the Cpl. of the Guard. Whil a runner was looking for the R.S.Mr, Sgt Russel called the parade, and the men detailed for duty fell in. At this time R.S.Mr Dalton appeared, and I instructed him to accompany me on the inspection.

As her I was inspecting the centre rank I noticed L/Cpl Heighes moving his arms and apparently speaking to the man on his right.

RM

L/Cpl Heighes was in the rear rank, and when I reached him I saw that he presented a very untidy appearance and that his boots were very dirty and muddy. It was obvious to me that L/Cpl Heighes had been drinking and that he was in no condition to go on duty. I then instructed R.S.M. Dalton to have L/Cpl Heighes placed under arrest

Evidence of Capt L Robotton

J. Robotton, Capt.
No. 9 Prov. Coy.

accused refuses to cross-examine the witness

Statement.

Evidence of L-22753 Dalton G. R.S.M. No 9 Provost Coy having been duly sworn states.

At Approximately 1800 hours 15 June 1943 Sgt Russel informed me, that Capt Robotton orderly Officer of the day, wished me to accompany him on his inspection of rpsn for duty. On arriving at L/Cpl Heighes he was in the rear rank Capt Robotton ordered me to place L/Cpl Heighes under arrest for being unfit for duty and appearing on parade in an untidy and dirty condition. L/Cpl Heighes's condition was, in my opinion, unsuitable to carry out Provost duties. He had obviously been drinking his appearance was

MY

generaly untidy and his boots dirty.
In removing this man from duty, I had to replace him with L/Cpl Duncan.
L/Cpl Heighes had received twenty four hours warning for duty through dealy posting of duty Roster
I handed L/Cpl Heighes over to Cpl Galling Cpl of the Guard

the solicitor

Accused refuses to cross-examine the witness

Statement

Evidence of 422624 Sgt Russell R. Jo of Provost Sy.
having been duly sworn states

I was orderly Sgt 15 June 1943 at 1800 hours I called the parade for the town patrols. Capt Robertson sent me for the R.S.Mn and the Cpl. of the Guard. I fell in the parade and then went in search of the R.S.Mn. On returning with the R.S.Mn, Capt Robertson accompanied by the R.S.Mn and myself proceeded to inspect the parade. Upon arriving at L/Cpl Heighes who was in the rear rank, he was found to be wearing dirty boots and gaiters his battle dress was untidy. RM

Capt Robotton ordered L/cpl Heighes to be placed under close arrest. He appeared to have been drinking.

L/cpl Heighes was detailed for duty twenty-four hours before the time of parade through the normal daily posting of the duty roster on the notice board.

J Russell

Accused refuses to cross-examine the witness.

Statement.

Evidence of Cpl. 2552 01. Gallong. P.J. No 4 Provost Coy. having been duly sworn states

On 15 June 1943 I was Commander of the Guard No 4 Provost Coy. At approximately 1820 hours R.S.M. Galton ordered me to keep L/cpl Heighes under close arrest. At 1830 hours R.S.M. Galton ordered me to take L/cpl Heighes to No 6 C.I.R.U. Guard room which I did. L/cpl Heighes appeared to have been drinking.

P J Gallong

Accused refuses to cross-examine the witness

Warning as set out on page 617 para 41(c) Rules of Procedure has been read over to the accused.

Accused declines to make a statement.

W W Wilson Maj

I certify that I have complied with the Rules of Procedure. Section 4 (c) (d) (e) (f) and (g)

Taken down at No 9 Provost Coy in the presence of and within the hearing of the accused on the 16th day of June in the year 1943 A.D.

16 June 43.

L/Cpl Fanning Lnt.
9 Provost Coy.

SUMMARY OF EVIDENCE

in the case of B 95627 L/Cpl. Heighes, R., No. 9 Provost Coy taken before Lieut. L. M. Fourney this 16th day of June, 1943.

By direction of the Commanding Officer this Summary is taken on oath.

FIRST WITNESS: Statement of Capt. T. Robottom, O.C. 9 Provost Coy, having been duly sworn, states:

"At approximately 1750 hours on 15 Jun 43, I, as Orderly Officer, went to inspect the evening duty details. I reached the parade ground just before the parade fell in. A group of men of this Coy were standing around waiting to go on parade. I noticed L/Cpl. Heighes in this group. He was behaving in a boisterous manner, his tunic was undone, and he appeared to have been drinking. I instructed the Orderly Sgt., L22624 Sgt. Russell, R., to send for the R.S.M. and the Cpl. of the Guard. While a runner was looking for the R.S.M., Sgt. Russell called the parade, and the men detailed for duty fell in. At this time, R.S.M. Golton appeared, and I instructed him to accompany me on the inspection.

When I was inspecting the centre rank I noticed L/Cpl. Heighes moving his arms and apparently speaking to the man on his right. L/Cpl. Heighes was in the rear rank, and when I reached him I saw that he presented a very untidy appearance and that his boots were very dirty and muddy. It was obvious to me that L/Cpl. Heighes had been drinking and that he was in no condition to go on duty. I then instructed R.S.M. Golton to have L/Cpl. Heighes placed under arrest."

(Signed) T. Robottom, Capt.
No. 9 Provost Coy.

The accused refuses to cross-examine the witness.

2nd WITNESS: Evidence of L 22753 R.S.M.Golton, G.S., No. 9 Provost Coy having been duly sworn states:

"At approximately 1800 hours 15 Jun 43 Sgt. Russell informed me that Capt. Robottom, Orderly Officer of the day, wished me to accompany him on his inspection of men for duty. On arriving, [illegible] at the parade, L/Cpl. Heighes was in the rear rank. Capt. Robottom ordered me to place L/Cpl. Heighes under arrest for being unfit for duty and appearing on parade in an untidy and dirty condition. L/Cpl. Heighes' condition was, in my opinion, unsuitable to carry out Provost duties. He had obviously been drinking, his appearance was generally untidy and his boots were dirty. In removing this man from duty I had to replace him with L 55217 L/Cpl. Duncan, H.E. L/Cpl. Heighes had received 24 hours warning for duty through daily posting of duty roster. I handed L/Cpl. Heighes over to Cpl. Golling, Cpl. of the guard."

(Signed) Geo. Golton

Accused refuses to cross-examine the witness.

3rd WITNESS: Evidence of L 22624 Sgt. Russell, R., No. 9 Provost Coy having been duly sworn states:

"I was Orderly Sgt on 15 Jun 43. At 1800 hours I called the parade for the town patrols. Capt. Robottom sent me for the R.S.M. and the Cpl. of the Guard. I fell in the parade and then went in search of the R.S.M. On returning with the R.S.M., Capt. Robottom accompanied by the R.S.M. and myself proceeded to inspect the parade. Upon arriving at L/Cpl. Heighes who was in the rear rank, he was found to be wearing dirty boots and gaiters, his battle dress was untidy.

(To Page 2)

Statement of Sgt. Russell continued:

Capt. Robottom ordered L/Cpl. Heighes to be placed under arrest. He appeared to have been drinking. L/Cpl. Heighes was detailed for duty 24 hours before the time of parade through the normal daily posting of the duty roster on the notice board."

(Signed) R. Russell.

Accused refuses to cross-examine the witness.

4th WITNESS: Evidence of L 55201 Cpl. Golling, P.J., No. 9 Provost Coy having been duly sworn states:

"On 15 Jun 43 I was Commander of the Guard, No. 9 Provost Coy. At approximately 1820 hours R.S.M. Golton ordered me to keep L/Cpl. Heighes under close arrest. At 1830 hours R.S.M. Golton ordered me to take L/Cpl. Heighes to No. 6 C.I.R.U. Guard room which I did. L/Cpl. Heighes appeared to have been drinking.

(Signed) P.J. Golling.

Accused refuses to cross-examine the witness.

Warning as set out on page 617 para 4(e) Rules of Procedure have been read over to the accused.

Accused declines to make a statement.

I certify that I have complied with the Rules of Procedure, Section 4 (c) (d) (e) and (g).

Taken down at No. 9 Provost Coy in the presence of and within the hearing of the accused on the 16th day of June in the year 1943, A.D.

16 Jun 43

L.M. Fourney, Lieut.
No. 9 Provost Coy.

No. B95627 Name HEIGHES, R. Sqn., Battery, or Company 9 Corps Cdn.Provost Date of enlistment 22-7-40 G.C. Badges

Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 30/10/40 No. and date of last drunk Nil. Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. F.A.Love, Lt. Character

M.F.M. 6 (A.F.W. 3197) 17SM-7-41-(123-30) H.Q. 1752-33-1668

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Sheet destroyed 10 Nov 42, last entry 30-11-40, Nil cases drunkenness									
Field	9-2-42	Pte.		A.A. Sec 15 (1) A.W.L. from Tatto 9-2-42 to Rev. 10-2-42. Absent: 8 hrs. 30 min.)	Cpl. Longson	7 days' C.B.	10-2-42	Lt.Hunter	Forf.1 day's pay, F.R.& I.

CERTIFIED TRUE COPY - 16 JUN 43.

J Robottom. Capt.,

T.Robottom,
O.C., No.9 Provost Coy.

P.T.O.

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B.95627	L/Cpl.	HEIGHES, R.	No. 9 Company, Cdn Provost Corps.

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.W.L.	1 times	A.W.L.	1 times
For		times		times
For		times		times
For		times		times

or,

2. The accused has not been previously convicted

or,

3. The accused is not under sentence at the present time.

or,

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and Seventeen days in military custody, making a total of Seventeen days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 28 yrs. 8 mos.

6. The date of his attestation specified in his attestation paper 22 July 40

7. The service which the accused is allowed to reckon towards discharge is 2 yrs. 10 mos. 24 days

2 yrs. 10 mos. 24 days

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration or reward.

10.

11. [illegible]

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

19 August 1942 Date of promotion.

In the rank of L/Cpl. 10 mos.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, Air Force and of cases in which trial has been dispensed with of accused, Number B.95627 Rank L/Cpl. Unit

Name HEIGHES, R. of No. 9 Cdn Provost Company Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
N/A	N/A	N/A	N/A	N/A

J. Robottom.
(T. Robottom) Captain,
O.C. No. 9 Cdn Provost Coy.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 3 RD day of July 1943.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

REQUEST FOR COUNSEL

I hereby respectfully request that an officer be assigned to defand me in my F.G.C.M., if and when it takes place.
If possible I would like Capt. T.A. Smith of 2nd Echelon to defend me.

B 95627 L/Cpl. Heighes, R.
No. 9 Provost Coy.

L/Cpl. R. Heighes

Y-110
GHR HEIGHT A

D-106929, Gnr. Height, A.
3 C.A.R.U.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this SIXTEENTH day of FEBRUARY, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "C" GROUP, CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY, OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial to a superior authority~~.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~I do not think it~~

*~~I appoint Officers to form the Court~~

*~~I appoint Field Officers as President~~

~~for the following reasons, namely~~

*Omit if not applicable.

4 Feb 43

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
LT-COL.	D.L. REDMAN	Calg. Highrs.

Members.

Rank.	Name.	Regiment.
CAPTAIN	B.W.S. WOOD, RCA	3 C.A.R.U.
LIEUT.	J.H. MITCHELL, RCA	2 C.A.R.U.
LIEUT.	G.C. HARRIS, RCA (Waiting Member)	2 C.A.R.U.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier,
Commanding "C" Group, Cdn. Reinf. Units.
Convening Officer.

SCHEDULE

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-106929 Gnr. HEIGHT, Albert (R.C.A.) 3 C.A.R.U.	FIRST CHARGE A.A. Sec. 15(1)		Guilty Sentence To undergo Detention Period of ~~Ninety (90)~~ Sixty (60) Days. 17th Feb 1943	Confirmed [illegible]
	See Charge Sheet Attached.			

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [signature] Brigadier. (Signed) _____
Commanding "C" Gp Cdn Reinf Units.
Convening Officer (a) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 17th day of February 1943 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses
~~3. The Interpreter~~
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 17th day of February 1943

[signature]
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (i) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this _____ day of _____ 19 _____

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further order.~~)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 18th day of February 1943.

[signature]
Confirming Officer. Brigadier, Commanding "C" Gp Cdn Reinforcement Units.

Promulgated and extracts taken in the case of D106929 Gnr Height, Albert

(a) (Dated) Daily Order 41 - 19 Feb 43 (Signed) [signature] Lieut. R.C.A. Asst. Records Officer 3 C.A.R.U.

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(20704) W1-47500/245 25,000 2-42 S.A.B.S.W.Ltd. Gp.A/88
(21795) W1-13600/1348 40,000 7-42

CHARGE SHEET Elects Trial.

D106929.

The accused, Gunner Albert HEIGHT, a soldier of the Canadian Army Overseas on the strength of No. 3 Canadian Artillery Reinforcement Unit, is charged with:-

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

1st Charge
Army Act
Sec. 15(1)

while at Huron Camp, No.3 Canadian Artillery Reinforcement Unit, absented himself without leave from 0830 hrs., 22 Jan.1943, until 0100 hrs., 11 Feb.43.

(Absent 19 days, 16 hours and 30 minutes.)

(B.R. ~~KER~~) COL., R.C.A.,
COMMANDING OFFICER,
NO. 3 CDN ARTY REINF UNIT,
CANADIAN ARMY, ENGLAND.

Huron Camp,
Bramshott, Hants.,
15 Feb.43.

To be tried by Field General Court Martial

Brigadier,
Commanding 7Cdn Group, Cdn. Reinf. Units,
(Convening Officer)

Bordon, Hants.,
16 Feb 43.

NO. 3 CANADIAN ARTILLERY REINFORCEMENT UNIT
CANADIAN ARMY (OVERSEAS)

I certify that No. D-106929 Gunner HEIGHT, A., No. 3 C.A.R.U. was examined by me this day and is *fit* to undergo trial by Field General Court Martial.

17-3-43
Date.

T Dalrymple Capt
Signature of Medical Officer.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Superior Camp Ludchott Hants
ON THE 17th DAY OF February 1943.

The accused D.196929 Gnr. Height...R.....Unit. 3 C.A.R.A.....

The order convening the Court and Charge Sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 & 23.

The accused is brought before the Court.

The Medical Certificate is presented to the Court.

The order convening the Court is read by the President and the accused having been asked, stated that he had no objection to the President or any member of the Court.

The Court is duly sworn.

The following constitute the Court:-

President. Lt. Colonel Robinson..... Unit. Calg. Highrs....

Members. Captain. R.W.S. Woods..... Unit. 3 C.A.R.A.....

Lieut. F.C.L. Twitchett..... Unit. 2 C.A.R.A.....

The Officers under instruction are duly sworn:-

23 W/ ~~Lieutenant~~ Lieut..... Unit. 2 C.A.R.A.....

..... Unit.....

..... Unit.....

Prosecutor. Capt. R.L. Mawer..... Unit. 3 C.A.R.A.....

Defending Officer. Lieut. D. Lash..... Unit. 3 C.A.R.A.....

The charge sheet is signed by the President and the accused is arraigned.

The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.

The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B)

The Summary of Evidence is read.

The Prosecutor is sworn and produces AFB 355 AFB [redacted] and MFM 6.

The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment
(b) Calls witnesses as to character
(c) Calls witnesses in mitigation of punishment
(d) Addresses the Court by His Defending Officer

THE COURT IS CLOSED TO CONSIDER THE SENTENCE.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE AND ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER.

The accused filed a written statement which was read to court by his Defending Officer and which is attached.

(Summary of Evidence)

The Defense Offered in Mitigation says
I interviewed the M.O. at 3 C A R's about
this mans health. He said in effect that
as his condition had not deteriorated
since his last board there was no
justification for a re-board and that
accused was not getting any worse
here. The accused's belief that he should
be boarded together with the M.O.
represents to grand reboard greatly
discounted the accused and this caused
him to go A.W.L. This man served in the
Merchant Marine for 15 years until he
was discharged in July 1940 and
joined the army. This fact as well as his
condition of health both mental and
physical should be considered by
the Court.

The Court is adjourned to consider its
Sentence.

William W. [illegible]

"Keep in touch with the folks at home"

THE SALVATION ARMY

ON ACTIVE SERVICE
with the
CANADIAN FORCES

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here. Then he told me that we were going to give me an Release so that he could look [illegible] as I would be of any use overseas in this climate. My medical papers were made out & mailed to me. I have & signed them. Then he asked me if they were satisfactory & I replied they were but however I never went in front of the Board & was sent back to No 3 C.R.D. to wait for the return of my medical papers. When they arrived & found out that I had been put down to C2. Then as here I stand today I am but in No 3 C.R.D. with no hope of ever getting away from it so that Discharge is as far as my health goes I am not in the least any better I have been

[illegible]

"Keep in touch with the folks at home"

THE SALVATION ARMY

ON ACTIVE SERVICE
with the
CANADIAN FORCES

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But here is an explanation towards my conduct some think I am down. Was just to be a nuisance but believe me that is not my future & myself really think I take a reason. When War broke out I was in the Merchant Marine on an Oil Tanker well & stayed on that ship until July 8th 1940 the reason I am not out there today is because of my health & was discharged after being discharged from the Merchant Marine & myself to join the Navy but was rejected for the same thing later on & my Wife decided that I should try the Army & never thought for one minute that I would be taken as I was. & they would take me but

to the Hospital again since then which was in Mid Summer it was a different M.O. this time I spoke to him as usual telling what really was the matter with me well he told me that it was Chronic Bronchitis then I asked him if it could be cured which he answered no that I would always have it then told him that it was not a very nice thing for me to take knowing there was no cure for it then after he had told me that I asked him if I was in that condition why not do something to send me back home that they could do nothing for me his answer was you can still carry on over there well what could I do I just had to leave at that. Now at the present time I am still getting treatment in fact I have been getting it for

I thought at a Base Hospital but somehow or other I was classed as U. fit for service in the Army in Canada I was quite content I knew I was not to healthy but still I could stand it. Any how I stayed on in Calgary for almost 12 months then came the time for me to come over seas well I did not mind that but it so happened that no sooner I came over here I started to cough, at first I did not take much notice of it I reported to the M.O. just for a cold. Then after one month in No. 3 C.C.R.U. I was sent out to keep Troops on the Field in the meantime while I was there my cough got worse I was only there a little over 1 month before I was sent to Hospital in Hospital the M.O. told me that I had Chronic Bronchitis & that there was no place for me over

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this court Martial knowing that I may get more than I was given to get, but I felt that I would like to get my case before higher Authorities now this is all I have to say I have it complete in your hands.

Signed
J Wilfrid Knight

My

"Keep in touch with the folks at home"

THE SALVATION ARMY

ON ACTIVE SERVICE
with the
CANADIAN FORCES

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[illegible] you now but believe me when I tell you it is not done me any good everybody I happen to see just to ~~not~~ give me an argument about my charging & anything so much. I don't blame them they have there ideas I try to tell them that I can not help it but what is the use you may think by what I have wrote down that I am looking for sympathy no I ask none all I ask for is a square deal I admit I went Absent but in a way I think myself I am not Complete to blame while in this Condition my mind is crazy not my own at all I get an idea into my head I just cant seem to forget it My wife in Canada was begged of me not

of 37 yards. I myself am not

SUMMARY OF EVIDENCE IN THE CASE OF
D-106929, GUNNER, A. HEIGHT,
ADMINISTRATIVE WING, NO. 3 C.A.R.U.

The Commanding Officer directs that the evidence be taken on oath.

1st Witness for Prosecution

M-36300, Bdr. Enns, J.G., "F" Battery, No. 3 C.A.R.U., having been duly sworn states:-

"I am, M-36300 Bdr. Enns, J.G., No.3 C.A.R.U. P.T. Instructor, ONTARIO Camp and in charge of the gymnasium. The accused is orderly in the gymnasium On the morning of 22 Jan.43 I walked through the gymnasium and found no fires lit, I reported him then to Sgt. Peck as absent, he was not present in the gymnasium. The next I saw him he was up for Office on 11 Feb.43. He did not report to me in the meantime."

Bdr Enns J.G.

The accused declines to cross examine the witness.

2nd Witness for Prosecution

L-101523, A/Bdr., Poole, G.L., "H" Battery, "C" Troop, No. 3 C.A.R.U., having been duly sworn states:-

"I am, L-101523, A/Bdr. Poole, G.L., "H" Bty., "C" Troop, No.3 C.A.R.U. I was N.C.O. in charge of guard on the night of 10-11 Feb.43. Gnr. Height reported sober and properly dressed at 0130 hours, Feb. 11th. I took from him Paybook, few letters, keys and gloves. I placed him under arrest and placed him in the cells."

G.L. Poole

The accused declines to cross examine the witness.

3rd Witness for Prosecution

D-119502, L/Sgt. Tracy-Gould, A.P., Administrative Wing, No. 3 C.A.R.U. having been duly sworn states:-

"I am, D-119502, L/Sgt. Tracy-Gould, A.P., Orderly Room Sgt., Administrative Wing, No. 3 C.A.R.U."

"I produce as evidence extract from No.3 C.A.R.U. Part II Order No.19, dated 25 Jan.43 which reads as follows:- "Absent without leave from 0830 hrs., 22 Jan.43 and still absent, a period of over 24 hours, D-106929, Gnr. HEIGHT A."", which is marked "A" and attached hereto.

A.P. Tracy-Gould

The accused declines to cross examine the witness.

The accused having been cautioned in accordance with R.P. 4 (e) declines to make any statement.

I certify that the foregoing Summary of Evidence consisting of two (2) pages was taken down before me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), and (f) have been complied with.

W.G. Hanson Major

(W.G. Hanson M.C.)Major, R.C.A.

Huron Camp,
Bramshott, Hants.,
15 Feb.43.

Administrative Wing
No. 3 C.A.R.U.

11 Feb. 43.

"A"

ABSENT WITHOUT LEAVE:

(a) Absent without leave from 0830 hrs., 22 Jan. 43, and still absent a period over 24 hours.
D 106929 Gnr. HEIGHT A.

The above is a certified true extract from No. 3 C.A.R.U. Part II Order No. 19, dated 25 Jan. 43.

(W.G. HANSON, M.C.) MAJOR, R.C.A.,
O.C., ADMIN. WING,
NO. 3 C.A.R.U.

No. 3 C.A.H.U.

Commanding Officer,
No. #3 C.A.H.U.

F.G.C.M.

1. It is respectfully requested that an officer be appointed to defend me at my forthcoming trial by Field General Court Martial.

A. Bright
D-106929 Gnr. (Bright A.)

M.F.M. 6
(A.F.B. 124)
17331-7-41 (1512-20) 4
H.Q. 1772-20-1052

No. D-106929 Name HEIGHT Albert | Sqn., Battery, or Company | Corps R.C.A. | Date of enlistment 26 July 1940 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Montreal	12Aug40	Pte		Conduct to the prejudice of good order and Military Discipline.	Documentary	168 hrs detn	13Aug.40	O.C.	
Petawawa	10-7-41	Gnr		Overstaying leave from 0700 hrs. 10-7-41 until 0600 hrs. 11-7-41 Absent 23 hours.	Sgt. Embury	Admonished	11-7-41	Major W.J. Finney	Ffts 1 days pay FRAI
Petawawa	6-8-41	Gnr		Absent without leave from 0100 hrs., 6-8-41 until 2130 hrs., (absent 4 dys, 20hrs 30 min.)	Sgt. Embury	7 days C.B.	13-8-41	(W.J.Finney) Major RCA.	Ffts 5 dys pay FRAI.
Field	2-1-42	Gnr.		A.W.L., 1200 hrs 2-1-42 until 2150 hrs. 4-1-42. 2 dys. 11 hrs 50 min.	Sgt. McLeod	7 days C.B.	5-1-42	A.C. Mc. Williams Lt.	Ffts 3 days pay

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18 May 42	Gnr.		A.W.L. from 2230 hrs. 18 May 42 to 2100 hrs. 19 May 42 (22 hrs. 30 min.) A.A. Sec. 15(1)	Sgt. Peck	7 days C.B.	20 May 42	(W.G. Hamson) Major	Ffts 1 days pay FRI 149(1)(a)
Field	14 Jun 42	Gnr		AWL. Absent 4 days 20 min. A.A. Sec. 15(1)	Sgt. Peck Sgt. Lamarre	14 days pay FRI 149 (2)	20 Jun. 42	Col. W.E. Huckvale	Ffts 5 days pay FRI 149 (1)(a)
Field	28 Sep 42	Gnr		AWL from 2215 hrs., 28 Sep. 42 to 1040 hrs., 27 Oct. 42. Absent 28 days, 12 hrs., 25 minutes. A.A. Sec. 15(1) Found in Guildford without a pass. A.A. Sec. 11		28 days F.P. and 28 days pay under FRI 149 (2)	28 Oct. 42.	Col. W.E. Huckvale.	Ffts 29 days pay under FRI 149(1)(a). Total fft. of pay 57 days.

Certified a true copy asof 12 Feb. 43.

W.G. Hamson Major

(W.G. HAMSON, M.C.) MAJOR, R.C.A.,
O.C., ADMIN. WING,
NO. 3 C.A.R.U.

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-106929	Gunner	HEIGHT, Albert	No.3 C.A.R.U.

1. The following is a fair and true summary of the entries in the Regimental ~~Casualty and Conduct~~ Conduct sheets ~~of Company~~ conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

Completion of 6 mos service.

	Within last 12 months	Since enlistment or appointment
For	A.A. Sec. 15(1) Five(5) times	A.A. Sec.15(1) Five (5) times
For	times	times
For	times	times
For	times	times

~~Nature of misconduct, gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused~~

~~Nature of duties and circumstances. The entries for misconduct may be stated separately.~~

2. ~~The accused has been previously convicted~~

~~or~~

~~Previous convictions by a court-martial or a civil court, or summary awards under Section 47 of the Air Force Act / Army Act and dispensations with trial under A.A. 75 are set out in the schedule hereto.~~

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and 1 days in military custody, making a total of 1 days in custody, of which 0 days were spent in hospital. as of 12 Feb. 43

5. The present age of the accused according to his ~~record of service~~ attestation paper is 36 yrs. 165 days as of 17 Feb. 43.

6. The date of his ~~attestation~~ specified in his ~~record of service~~ attestation paper

7. The service which the accused is allowed to reckon towards discharge is 2 yrs. 171 days as of 17 Feb. 43

8. The accused is entitled to reckon 2 yrs 171 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to ~~State any military decoration or reward.~~

10. ~~The accused is a warrant officer / The accused before he was made a warrant officer last held the regimental rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

dated , and in this regiment (or corps) the rank of

dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number D-106929 Rank Gunner Unit

Name WRIGHT, Albert of No.3 Can Arty Reinf Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NIL.		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12 th day of February, 1943.

A.M. Parker. Capt
Adj. 3 C.A.R.C. CA(O)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.



5 H-130

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L-27830 PTE. L/CPL ARTHUR HEIN

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 1	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence RIP~~ beginning on (date) ..... (1).

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of N/A days, of which N/A days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for sixty days.

22 Nov 45.

(Sgd) ..... (Sgd) Lt Col Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding.

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 758-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Questions after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding of the court but mitigate the sentence to [illegible] to undergo detention for a period of thirty days, and [illegible]

I direct that [illegible] be released from detention hereunto until further ordered.(1)

(1. AA 57A. Delete if not used.)

Date 27 Nov 45 (Sgd) ..... Brigadier.
Commanding. COMD. ARMY TROOPS AREA. FIRST CDN. ARMY
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 29 Dec 1945 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160 5 A-130

FIELD GENERAL COURT-MARTIAL (CPA96 (In lieu of A.F.B. 137/40/P.A.B./1698 (2604))

Convened by Order of Brig J. G. Spragge Comd A Tps Area dated 16 Nov 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-27830	Pte L/Cpl.	Arthur	Hein	7 Can. Ind. Coy. A.S.C.

PROCEEDINGS REVIEWED
27 Nov 45 L J Brody Maj
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 22 Nov 45.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 38/139.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn(1). Do you object to ..... as shorthand writer? Ans .....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR.	F.M. NASH.	16 Cdn. Svce. Corps.
Member	CAPT.	A.E. HARRISON.	Cdn. Army Leave Centre
Member	LIEUT.	G.Y. GOSSELIN	8 Cdn. Mobile Laundry & Bath.
Judge-Advocate			
Prosecutor	LIEUT.	G.H. MACDONALD.	7 Cdn. Prov. Coy.
Defending Offr	CAPT.	J.D.F. MORRISON	1 Cdn. S.I.S.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused do L-27830 Pte L/Cpl Arthur Hein before arraignment make(s) (~~and file~~) plea(s) of Guilty.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 111.5), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by any of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ! Ans No (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty on charge(s). The accused is (not) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex "1", initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2 (1).
(1. RP 37(A) (2).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, and thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s) and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ! Ans ..... Do you intend to call witnesses on your behalf ! Ans ..... Are they witnesses as to character only ! Ans .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CP A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Has the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(2) (b), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier of having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Can 328, 330, 563-566, Overseas RD XIV, 1323, MML p 66, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

1

1 Amd.

MEDICAL OFFICER'S CERTIFICATE
K.R. (CAN) PARA 557

I CERTIFY THAT I HAVE THIS MORNING EXAMINED L27830 L/Cpl HEIN Arthur

7 Cdn Pro Coy AND IN MY OPINION HE IS FIT TO UNDERGO TRIAL BY

COURT MARTIAL.

STATION:- FIELD

DATE:- 22 Nov 45

SGD A.V.R. Govan Capt.
(MEDICAL OFFICER)

FIELD GENERAL COURT-MARTIAL

CFA 95 (In lieu of AFAF)
40/PAM/1697 (2003)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 103(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-27830	Pte	L/Cpl	Arthur	HEIN	7 Cdn Pro Coy CPC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 15 NOV 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	F M NASH	16 Cdn Spec Emp Coy

MEMBERS.

Capt to be detailed by ADMS A Tps Area

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lieut	to be detailed by OC First Cdn Army Leave Centre	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut	to be detailed by OC First Cdn Army Leave Centre	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland (Country.)

Date 16 Nov 45

(Signed personally, RP 105(B), 7.)
(J G Spry)
Brig (Rank.)
Commanding A Tps Area, First Cdn Army
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused, L27830 L/Cpl HEIN Arthur, No. 7 Cdn Provost Company, Canadian Provost Corps, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
AA Sec 40

WHEN ON ACTIVE SERVICE

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field in Holland at approximately 1330 hrs 19 Oct 45 so negligently handled a pistol as to cause it to be discharged, thereby injuring F55286 L/Cpl McLEOD MJ, No. 7 Cdn Provost Company.

.....Capt
(HN MacKitchie)Commanding,
No. 7 Cdn Provost Company,
Cdn Forces in the Netherlands.

In the Field
12 Nov 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(J G Sprague) Brig
Comd A Tps Area, First Cdn Army

In the Field
16 Nov 45

fmk.

Character Evidence -
From Capt H. N. MacKichie Officer Commanding
7 Cdn Provost Coy.

Q:1 How long have you been commanding 7 Cdn Provost Coy?
A - Since Aug 23 1945 to the present time
Q2: Were you with 7 Cdn Provost Coy prior to your taking command?
A:- Yes I was, as 2 ic of the Coy from 21 March 1944 to the 10 Aug 45
Q3:- Have you known the accused while you were with the Coy?
A:- Yes I have known the accused.
Q4:- While you were with the Coy have you found the conduct of the accused to be satisfactory?
A:- The conduct and deportment of the accused has been most satisfactory and his services have left nothing to be desired in the performance of his duties. He is conscientious and a hard ~~worker~~ and reliable worker. I consider him one of the best members of the Coy.

22 Nov 1945

PLEA FOR MITIGATION OF SENTENCE

L-27830 L/Cpl Hein, A., the accused is charged with Negligence in that he (read charge) and awaits the clemency of the court. While this charge can be considered as serious there are several reasons why, in my opinion that the court should take a very lenient attitude towards the accused. This soldier was born in Canada of German parents and fought against a country connected in blood only to him.

Firstly the previous record of the accused is most excellent and theres is no entry of a crime on the MFM b of the accused. His previous conduct sheet was destroyed because of 2 years good conduct. Some might say that it is undetected crime and that may cause some amusement, but a man's future is at stake and to treat the matter lightly on the basis of assumptions or stock phrases common enough in the army but otherwise unproven is to deprive a man of any of the advantages of his good service and of his previous efforts to be a good soldier.

I submit that the incident was an accident and serious enough as the charge is ~~him~~ cold words in black and white give no indication of what the attendant circumstances are, and certainly, give no indication why an accused person should not be given the benefit of any and every doubt. L/Cpl Hein the accused is a man whose previous record has been faultless. It will be noted in the Summary of Evidence that the evidence of the injured man MacLeod discloses that he attaches no blame to Hein who was, if not his best friend, one of his best friends. Such being the case, and it is known that Hein and MacLeod were friends I leave it to the imagination of the court to consider how the accused felt and how he feels now after having wounded his friend.

I say that the man Hein has been tortured mentally to such an extent that a physical punishment for exemplary reasons will serve no useful purpose at this time and will only serve to ~~damn~~ a man whose previous conduct has been excellent, whose efforts to be a good soldier show on his conduct sheet in the form of a complete blank from the time he joined the army.

I submit to the court that the same thing might have happened to any member of the court, or to one, or to anyone, in the same manner, and all that should be considered in the findings. The Golden Rule in my opinion has a particular application here, " Do on to others as you would have them do onto you". When the court makes a decision it isto be hoped that they have asked themselves the question"Am I being fair to this man?" Am I prepared to make a finding under the circumstances which will stand in the way of this man in the future when he has returned to civilian life? The whole matter must be considered on the facts as they are (which are not denied) and the facts as they will be after a finding is made.

It is called to the attention of the court that the accused has been named on a repat draft for Canada dated 24 Nov 45which is tomorrow, a reward for service and good conduct, the first step towards rehabilitation and a normal life in Canada. I do not think that any punishment based on reasons of example will serve any useful purpose. Instead a good man may be ruined, if not actually, at least in his own mind if he is deprived of his privilege to return to Canada when his turn comes. In Canada a man's army record will be under scrutiny and upon that may depend in a large part the opportunities offered to a soldier in order to acclimate himself to civilian life. The question now is whether or not underthe circumstances the court will deprive L/Cpl Hein of his opportunity to return to Canada on draft, adminster one of the minor punishments or dismiss the case. That is the prerogative of the court and no presumptions are made otherwise, but in the use of the prerogative it is felt imperative that the points brought out should be most closely examined and considered from the point of view of justice in the long run to the accused, for, after all, he is the one who is to answer to any finding.

I would like to point out thatthe services of Hein in this Company have been considered excellent. His conduct has been exemplary and with the exception of this one accident has nothing to answer to in the way of army offences.

It is his first offence and it is hoped that being his first offence that it will be punished as first offences are i.e. lightly. Were we still in operations the incident could be no more serious but L/Cpl Hein is on the threshold of his first step to return to Canada, the war is over and upon the court rests the responsibility of deciding in his favour or not. Will he be deprived so soon of what is his future, what is his birthright? I trust the court will find the means to say "well done, thou good and faithful servant, well done.", and to send him back to his, and mine and your heritage, which he in his way contributed his services to preserve. The accused is anxious to return to employment which awaits him in Canada.

J.D.F. Munson, Capt.

1 CON S.I.S.

Ex "A"

SUMMARY OF EVIDENCE

Summary of evidence in the case of L-27830 L/Cpl HEIN, A., No. 7 Cdn Provost Company., First Cdn Army Troops. Charged with Negligence in that He did fail to prove a pistol thereby causing injuries to F-55286 L/Cpl MacLeod, M.J., No. 7 Cdn Provost Company, by discharging the pistol.
(AA Sec 40)

By direction of the Commanding Officer the evidence is taken on oath.

First witness

B-139576 L/Cpl Meskey, B.G., No. 7 Cdn Provost Company.,having being duly sworn states:-

I am B-139576 L/Cpl Meskey, B.G., a member of No.7 Cdn Pro Coy., at approximately 1300 hrs 19 Oct 45, I went to L/Cpl Hamelins room where I sat on his bed and talked to him, L/Cpls MacLeod, Hein and Horton came in the room. A few minutes later MacLeod and Horton decided to go to their own quarters and change clothes as they were going to town with L/Cpl Hein. After they had gone L/Cpl Hein started to dress, he opened his barrack box and took a pistol from the box which was lying on the top and showed it to L/Cpl Hamelin and myself when L/Cpl MacLeod and Horton entered the room. L/Cpl Hein turned to talk to MacLeod. During this time L/Cpl Hamelin and I were engaged in a conversation when all of a sudden I heard a shot and saw L/Cpl MacLeod fall to the floor holding his side. L/Cpl Hamelin and I immediately left the room to get a doctor. I had to attend a Court Martial so I did not return to the room

Q1 Were you on duty at the time of the accident?
A1 No.
Q2 What kind of a pistol was it?
A2 Smith and Wesson 38m.
Q3 What was Hein doing with the pistol?
A3 Showing it to us.
Q4 Was Hein sober at the time of the accident?
A4 Yes sir.
Q5Did Hein prove the pistol?
A5 No.
Q6 Did you touch the pistol?
A6 No sir.
Q7 Do you know if there were any hard feelings between MacLeod and Hein?
A7 No, not to my knowledge they have always been the best of friends.
Q8 How long have you known both Hein and MacLeod?
A8 I have known Hein for eight (8) months and MacLeod for the past two years.

Accused declines to cross examine the witness.

B.G. Meskey
.....L/Cpl
(B-139576 L/Cpl Meskey, B.G.)

Second witness

C-53938 L/Cpl Horton, H.E., No. 7 Cdn Provost Company having being duly sworn states:-

I am C-53938 L/Cpl Horton, H.E., of No. 7 Cdn Provost Company.,

(Continued on Overleaf)

At approximately 1230 hrs 19 Oct 45 I accompanied L/Cpl Hein to his room where we had a drink of gin, while we were in the room L/Cpl MacLeod came in and we talked for about a half hour, and then L/Cpl MacLeod and myself left Hein's room. About forty minutes later I was returning to Hein's room when I noticed Mac Leod entering the room just in front of me, when I entered the doorway MacLeod was talking to L/Cpl Hein, I saw a gun flash and MacLeod fell to the floor. I immediately sent L/Cpl Maskey for a doctor and L/Cpl Hein assisted me in getting MacLeod up on L/Cpl Hamelin's bed. I stayed with and talked to L/Cpl MacLeod until the ambulance arrived.

Q1 Were you on duty at the time of the accident?
A1 No sir.
Q2 Did you see Hein take the gun from his barrack box?
A2 No sir.
Q3 What kind of a pistol was it?
A3 38 Smith & Wesson
Q4 Did you see Hein fire the pistol or did you only hear the the shot?
A4 I only heard the shot.
Q5 Do you know what Hein was doing with the pistol?
A5 He was showingthe pistol around.
Q6 Had L/Cpl Hein been drinking?
A6 We did have a drink at approx 1230 hrs.
Q7 What did you ask MacLeod or say to him when he was on the bed?
A7 I told him he was not hurt bad and would be OK and that we had called a doctor.
Q8 Did MacLeod say anything?
A8 All he said was, "I am short of breath" and that L/Cpl Hein was not to blame.
Q9 How long have you known L/Cpl Hein and MacLeod?
A9 Since 1943 I have known L/Cpl MacLeod and have known Hein since 1940.
Q10 Are L/Cpls MacLeod and Hein intimate friends?
A10 Yes sir.
Q11 How long have you known them to be friends?
A11 Two years sir.

Accused declines to cross examine the witness.

H. E. Horton .....L/Cpl
(C-53938 L/Cpl Horton, H.E.)

Third witness

D-137885 L/Cpl Hamelin, R., of No. 7 Cdn Provost Company having been duly sworn states:-

I am D-137885 L/Cpl Hamelin, R., of No. 7 Cdn Provost Coy., at approximately 1300 hrs I went to my room which I shared with L/Cpl Hein. L/Cpl Horton was sitting in the room when I came in, L/Cpl Hein came in directly behind me, and L/Cpl MacLeod behind L/Cpl Hein. A couple of minutes later L/Cpl Maskey came in and sat on my bed and we carried on a conversation. After a few minutes MacLeod and Horton said they were going to their quarters to change their clothes as they were going to town that afternoon and left immediately. I was talking with L/Cpl Maskey for about a half hour while Hein was getting dressed to go with MacLeod and Horton. While he was dressing for some reason he opened his barrack box and came across a pistol which he took out to show us, while he was showing it to us L/Cpl MacLeod entered the room with L/Cpl Horton immediately behind him. L/Cpl Hein turned around and started to talk with MacLeod Horton was just in the doorway

(Continued on Page 3)

and I was talking to L/Cpl Meskey, I heard a shot turned about and saw L/Cpl MacLeod falling to the floor holding his side, realizing he had been hurt I immediately went for a doctor. I came back to the room and MacLeod was lying on my bed, we opened his shirt collar and the window as MacLeod was asking for more air.

Q1 Were you on duty at the time of the accident?
A1 No.
Q2 What kind of a pistol was it?
A2 38 Smith & Wesson
Q3 Did Hein prove the weapon?
A3 No sir.
Q4 What was Hein doing with the pistol?
A4 Showing it to us.
Q5 Was Hein sober at the time of the accident?
A5 Yes sir.
Q6 Did you touch the pistol?
A6 No sir.
Q7 Are MacLeod and Hein close friends?
A7 Yes.
Q8 How long have they been friends?
A8 I have known them both since I came to the company a year ago
Q9 Did MacLeod make any remarks about the accident?
A9 Not unless he did so unless while I was out for a doctor.
Q10 Have you seen the pistol before and how long ago?
A10 Yes I saw it about two months ago.
Q11 Was it loaded then?
A11 I don't know.
Q12 Have you seen Hein (ever) loading the pistol?
A12 No sir.
Q13 Would it be possible for anyone besides you and Hein to enter your room and load the pistol?
A13 Yes sir our room is not generally locked.
Q14 Is the barrack box locked?
A14 No
Q15 Are you sure Meskey came in behind MacLeod and Horton at 1300 hrs?
A15 I can't say for sure as so many fellows were coming and going at the same time.

Accused declines to cross examine the witness.

(sgd) R Hamelin .....L/Cpl
(D-137885 L/Cpl Hamelin, R.)

Fourth witness

Lt R.T. White No. 7 Cdn Provost Company, having been duly sworn states:-

I am Lt R.T. white of No. 7 Cdn Provost Company Amsterdam. At approximately 1335 hrs 19 Oct 45, I was informed in the Officers Mess by Sjt Vince that someone had been injured with a weapon. I immediately proceeded to the scene of the accident where I found L/Cpl MacLeod lying on a bed. I at once realized that MacLeod was the man who had been injured and upon closer examination I discovered that he had a G.S.W. in his right side. I inquired as to what happened and was told by the persons in the room that L/Cpl Hein was showing his pistol to his friends when it accidentally discharged. I told the Orderly Sergeant to take statements from the persons in the room at the time of the accident, and called Capt. J.N. Morrison of No. 2 SIS to send a responsible investigator to our HQ to investigate the case. In the meantime L/Cpl MacLeod was evacuated to 12 F.D.S. by ambulance where he would be given medical treatment.

(Continued on Page 4)

Q1 Did you have any conversation with MacLeod?
A1 Yes
Q2 What did he say?
A2 He insisted that this was an accident and L/Cpl Hein was his best friend, and he was not to blame.
Q3 How long was it before medical aid arrived?
A3 Approximately fifteen minutes.
Q4 Where was MacLeod when you found him?
A4 Laying on the bed in L/Cpl Heins room where the accident occurred.
Q5 Did you see any evidence of persons drinking in the room?
A5 No
Q6 Was anybody drunk in the room?
A6 No.

Accused declines to cross examine the witness.

(Sgd) R.T. White

Fifth witness

F-55286 L/Cpl MacLeod, M.J., No. 7 Cdn Provost Company having been duly sworn states:-

I am F-55286 L/Cpl MacLeod, M.J., a member of No. 7 Cdn Provost Company Amsterdam. At approximately 1230 hrs 19 Oct 45, I accompanied L/Cpl Hein to his room we both left in a couple of minutes and about five minutes later I returned to Hein's room and found L/Cpl Horton, and Hein in the room, we sat down and talked for about half an hour, when L/Cpl Hein and myself went outside to the lavatory when we came in again L/Cpl Meskey and Hamelin were sitting on Hamelin's bed talking immediately L/Cpl Horton and myself left Hein's room to get dressed in our rooms. Approximately 1335 hrs when I returned to L/Cpl Hein's room I saw L/Cpls Hein, Hamelin and Meskey, L/Cpl Hein was standing with his left side to me, I noticed that he had a pistol in his hand, I spoke to him and he turned about to face me as he turned I heard a pistol shot and a few seconds later felt a pain on my right side and I lay down on the floor of Hein's room. L/Cpl Hein assisted by L/Cpl Horton put me on a bed.

Q1 Were you on duty at the time of the accident?
A1 No.
Q2 Did you touch the gun?
A2 No.
Q3 Did you and L/Cpl Hein have any bad feeling towards each other?
A3 We have never had a cross word since we have known each other.
Q4 How long have you known L/Cpl Hein?
A4 Since 21 Dec 1943 we were in the same section together for about ten months.
Q5 When you entered the room did you notice any signs of persons drinking?
A5 No
Q6 Was any one drunk?
A6 Nobody was under the influence of liquor.
Q7 Was L/Cpl Hein drunk?
A7 No.
Q8 Have you ever seen the pistol before the day you were hurt?
A8 No.

Accused declines to cross examine the witness.

(sgd) M.J. MacLeod

Fifth witness

M-55329 CSM Hancock, H.R., No. 2 SIS having been duly sworn states:-

I am M-55329 CSM Hancock, H.R., No 2 SIS Amsterdam. At about 1350 hrs 19 Oct 1945 this office was notified that one of No. 7 Cdn Pro Coy personnel had been wounded by a gun and it was requested that we investigate the matter. I immediately proceeded to No. 7 Pro Coy HQ, and I learned that Reg No. F-55286 L/Cpl MacLeod, M.J., was the person who had been wounded by a weapon fired by L-27830 L/Cpl Hein, A., of No. 7 Cdn Provost

(Continued on Page 5)

Company. After interviewing personnel who were present when the shooting occurred, I was of the opinion that the shooting was purely accidental, and no further action was necessary as far as this office was concerned. L/Cpl Hein handed to me a 38 Smith & Wesson revolver as well as 1 Cart. case and 2 live rounds of 38 ammunition. This weapon is the one which had been used in the shooting. I later turned the pistol over to Lt Wightman of No. 7 Cdn Provost Company for custody.

Q1 was the weapon loaded when passed to you?
A1 No it was empty.

Accused declines to cross examine the witness.

H.R. Hancock
.....CsM
(M-53329 CsM Hancock,H.R.)

Sixth witness
For Prosecution

Capt. N.G. Pritchett of No 12 FDS Amsterdam having been duly sworn states:-

I am Capt. N.G. Pritchett of No 12 FDS Amsterdam Holland. On 19 Oct 1945, L/Cpl MacLeod was admitted to the hospital. He was suffering from a chest wound which had all the appearances of a bullet wound. I palpated the bullet just under the skin at the back of the chest.

Q1 was the wound in your estimation a bullet wound?
A1 It was a typical bullet wound.

Accused declines to cross examine the witness.

.....Capt.
(N.G. Pritchett)

First witness
For defence

The accused was cautioned as follows:-

Do you wish to make any statement to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given as evidence.

A I wish to make a statement.
Q On Oath or not on oath?
A On oath.

The accused having been duly sworn states:-

At approx 1315 hrs 19 Oct 45 I walked into my room, L/Cpl Hamelin and Meskey were sitting on Hamelins bed. I started talking with them, and started to change my clothes as I was going up town with L/Cpl MacLeod and L/Cpl Horton. I pulled my barrack box out to get some shoe polish and noticed my pistol laying in the box, took it out and was showing it to L/Cpl Meskey and L/Cpl Hamelin when L/Cpl MacLeod entered the room and said something to me about going up town, I turned to speak to him and as I did the pistol went off, L/Cpl MacLeod fell to the floor holding his right side, with the assistance of L/Cpl Horton we placed him on the bed, and while we were waiting for the MO I sat on the bed all the time talking to him and I opened his shirt to find he had been hit in the right side. when the ambulance arrived I accompanied L/Cpl MacLeod to 12 FDS.

A. H. Hein...L/Cpl
(L-27830 L/Cpl Hein,A)

(Conte on Overleaf)

NO 7 CDN PROVOST COMPANY
CANADIAN FORCES IN THE NETHERLANDS

Field
12 Nov 45

RE: APPLICATION FOR FGCM
Reg. No. L-27830 L/CPL HEIN, A.,
No. 7 Cdn Provost Company.,
First Cdn Army Troops

LIST OF WITNESSES FOR THE PROSECUTION

B-139576 L/Cpl Meskey, B.G., No. 7 Cdn Pro Coy

C-53938 L/Cpl Horton, H.E., No. 7 Cdn Pro Coy

D-137885 L/Cpl Hamelin,R., No. 7 Cdn Pro Coy

Lieut R.T. White., No. 7 Cdn Pro Coy

M-53329 CSM Hancock, H.R., No 2 SIS

Capt N.G. Pritchard.,No 12 FDS

LIST OF WITNESSES FOR THE DEFENCE

Reg. No. L-27830 L/Cpl Hein, A., No. 7 Cdn Pro Coy

I hereby acknowledge receipt of one copy of all the statements and evidence taken at a Summary of Evidence considering charges against me on 19 Oct 1945.

A. Hein
.....L/Cpl
(L-27830 L/Cpl Hein, A.)

The accused having been requested to name an officer to defend him at his trial stated he wished an officer to be named to defend him.

A. Hein
.....L/Cpl
(L-27830 L/Cpl Hein, A.)

Exh I

Summary of Evidence

Summary of Evidence in the case of L 27030 L/Cpl Hein, A. No 1 Can Provost Coy. 1st Canadian Army Troops. Charged with negligence in that he did fail to prove a pistol thereby causing injury to 55286 L/Cpl McLeod, W.J. of No 1 Can Provost Coy. by discharging the pistol. (NN Sec 40)

By direction of the Commanding Officer this Evidence is taken on oath

1st Witness B139376 L/Cpl Whaley B.G. No 1 Can Prov Coy having been duly sworn states:

2nd B139376 L/Cpl Whaley B.G. a member of No 1 Can Prov Coy. at approximately 1300 hrs on the 19th I went to L/Cpl Hamilton's room, where I sat on his bed and talked to him, L/Cpls McLeod Hein and Horton were also in the room a few minutes later McLeod and Horton decided to go to their own quarters and change clothes as they were going to town with L/Cpl Hein. After they had gone L/Cpl Hein started to clean the pistol he had taken from the box which was lying on the bed and showed it to L/Cpl Hamilton and myself. A few L/Cpls McLeod and Horton entered the room L/Cpl Hein leaned to talk to McLeod. during the time L/Cpl Hamilton & I were engaged in a conversation all of a sudden I heard a shot and saw L/Cpl McLeod fall to the floor holding his side. L/Cpl Hamilton and I immediately left the room to get an M.O. and as I had to attend a Court Martial, I did not return to the room.

Page 2

Q 1. Were you on duty at the time of the accident?
A 1. No.
Q 2. What kind of a pistol was it?
A 2. Smith and Wesson 38 m/m
Q 3. What was Hein doing with the pistol?
A 3. Just showing it to us.
Q 4. Was Hein sober at the time of the accident?
A 4. Yes, Sir!
Q 5. Did Hein have the pistol?
A 5. No.
Q 6. Did you touch the pistol?
A 6. No, Sir!
Q 7. Do you know of there ever any hard feelings between Pfc Lord and Hein?
A 7. No, not to my knowledge they have always been the best of friends.
Q 8. How long have you known both Hein & Pfc Lord?
A 8. I have known Hein for eight (8) months and Pfc Lord for the past two years.

Accused declines to have Counsel this time.

1/Lt Wesley Jr
B134976 1/1 Mich. Inf, CO

Page 3

2d Witness:

C 5 3936 1/Sgt Hunter, H E, Hq & Hq Co 1st Bn Engr Cav having been duly sworn states:

Pvt C 5 3936 1/Sgt Hunter H.E. of Hq & Hq Co 1st Bn Engr Cav, at approximately 1330 hrs 19 Jul 1945 accompanied 1/Sgt Hein to his room where we had a drink of gin. While we were in the room Pfc Lord came in and we talked for about a half hour, and then 1/Sgt Pfc Lord and myself left Hein's room. About forty minutes later I was returning to Hein's room when I noticed Pfc Lord coming out of the room just in front of me & Hein got in the doorway. Pfc Lord was talking to 1/Sgt Hein I saw a gun flash and Pfc Lord fell to the floor. I immediately sent 1/Sgt Worley for a doctor and 1/Sgt Hein assisted me in getting Pfc Lord up on 1/Sgt Hunter's bed. I stayed with and talked to 1/Sgt Pfc Lord until the ambulance arrived.

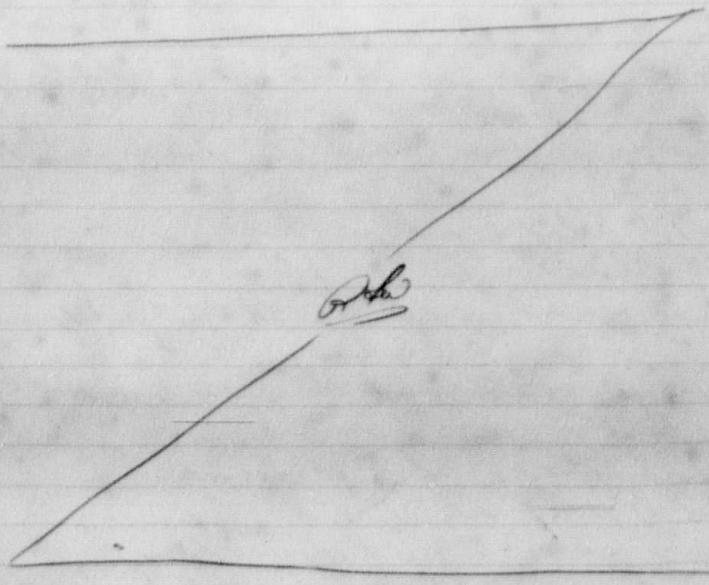
Q 1. Were you on duty at the time of the accident?
A 1. No, Sir!
Q 2. Did you see Hein take the gun from his holster?
A 2. No, Sir.
Q 3. What kind of a pistol was it?
A 3. 38 Smith & Wesson
Q 4. Did you see Hein fire the pistol, and did you hear the shot?
A 4. I only heard the shot.
Q 5. Do you know what Hein was doing with the pistol?
A 5. He was showing the pistol around.
Q 6. Had 1/Sgt Hein been drinking?
A 6. He had had a few drinks, about 1200 hours.
Q 7. Is that just you and Pfc Lord & Hein when it was in the [illegible]

PTO

A 1 I told her he was not hurt bad and would be OK and that we had called for a Doctor.
Q 8 Did Mrs Reed say anything
A 8 did he and was, "I am afraid of Reed" and that Lyell Horton was not to Blame
Q 9 How long have you known Lyell Horton + Mrs Reed
A 9 Since 1943 I have known Lyell Horton and have known them since 1940 four years ago now
Q 10 Is Lyell Horton Mrs Reed + them intimate friends
A 10 Yes Sir.
Q 11 How long have you known them to be friends
A 11 Two years Sir

Accused declines to cross examine the witness

C-3243 Lyell Horton, Pvt.



Page 5

3rd witness: D137885 L/Cpl Hamilton R No 4 Cdo Provl Cay. having been duly sworn states:

I am D137885 L/Cpl Hamilton R of No 4 Cdo Provl Cay. At approximately 1300 hrs I was in my room when I saw L/Cpl Hen. L/Cpl Horton was sitting in the room when I came in, L/Cpl Hen came in directly behind me and L/Cpl Mc had directly behind L/Cpl Hen. A couple of minutes later L/Cpl Whitby came in and sat on my bed and we carried on in conversation

After a few minutes Mc had and Horton said they were going to the negatives quarters to change their clothes as they were going up town that afternoon and left immediately. I was talking with L/Cpl Whitby for about a half hour when Hen was getting dressed to go with Mc had. Horton, while he was dressing for some reason he opened his bag and took out a pistol which he took out to show to us. While he was showing it to us L/Cpl Mc had entered the room with L/Cpl Horton immediately behind him. L/Cpl Hen turned around and started to talk with Mc had. Horton was just in the doorway and I was talking to L/Cpl Whitby. I heard a shot turned about and saw L/Cpl Mc had falling to the floor holding his side, realizing he had been hurt I immediately went for Cpl Mc. I came back to the room and Mc had was lying on my bed, we opened his shirt collar and the wonder as Mc had was asking for me.

Q. Did he see you immediately at the time of the accident

A. No.

Q. At that time of the pistol was it?

A. 38 Smith & Wesson

Q 3 Did Hein draw the weapon
A 3 No Sir
Q 4 What was Hein doing with the pistol?
A 4 Showing it to us
Q 5 Is as Hein sober at the time of the accident
A 5 Yes Sir
Q 6 Did you touch the pistol
A 6 No Sir
Q 7 Are W/O Ford - Hein close friends? How long have they been friends
A 7 Yes they are I have known them both since I came to the Coy a year ago.
Q 8 Did W/O Ford make any remarks about the accident?
A 8 Not unless he did so while I was not present
Q 9 Have you seen the pistol before and how long ago
A 9 yes I saw it about two months ago
Q 10 Is as it looked then
A 10 I don't know sir
Q 11 Have you ever seen Hein playing with or loading the (pistol)
A 11 No Sir
Q 12 Is it possible for anyone besides you and Hein to enter your room and play around with the pistol without
A 12 Yes Sir! our room is not generally not locked
Q 13 Is the barrack not locked -
A 13 No Sir
Q 14 Do you mean to say that you left the barracks
A 14 I left my room as so many fellows are coming and going the time

accused declines to cross examine the witness.

R. Hamelin

R-137165 L/Cpl Hamelin, R

Page 1.

Lt R.T. White No 7 Cdn Provost Coy having been duly sworn states: I am the R.T. table of No 7 Cdn Inv Coy. O'dom. at approximately 1335 hrs 19 Oct 1945. I was informed in the Officers Mess by Lt Vere that someone had been injured with a weapon. I immediately proceeded to the scene of the accident where I found H/Cpl McLeod lying on a bed. I at once realized McLeod was the man who had been injured and upon close examination I observed he had a S.A.W. in his right ankle. I enquired as to what had happened, and was told by the persons in the room that H/Cpl Horn was showing his pistol to his friends when it accidentally discharged.

I told the lady present to take statements from the persons in the room at the time of the accident, and called Capt J M. Morrison of #2 SIB to send a representative investigate to see H/Q to investigate the case.

In the meantime H/Cpl McLeod was evacuated to #12 F.D.S. by ambulance where he would be given medical assistance.

Q 1. Did you have any conversation with McLeod
A. Yes
Q 2. What did he say?
A 2 He insisted that he was an accident and H/Cpl Horn was his best friends and he was not to blame
Q 3 How long was it before medical aid arrived
A 3 Approximately Fifteen Minutes
Q 4 Where was McLeod when you found him
A 4 Laying on the bed in H/Cpl Horns room where the accident occurred
Q 5. Did you see any evidence of persons leaving the room
A 5. No
Q 6 Was any body drunk in the room?
A 1 No

Accused declines to Cross examine the witness

K. J. White
KT WHITE 2t

F 55286 H/Cpl Warfield, WJ, No 4 Ele Provost Coy having been duly sworn states:

On F 55286 H/Cpl Warfield WJ a member of No 4 Ele Prov Coy A'Ham at approximately 1330 hrs 10 Oct 1945 I accompanied H/Cpl Hein to his room we both left it a couple of minutes and about five minutes later I returned to Hein's room and found H/Cpl Hunter & Hein in the room, we sat and talked for about a half an hour when H/Cpl Hein and myself went outside to the laundry when we came in again H/Cpl Warby, Hamlin were sitting in Hamlin's bed talking, immediately H/Cpl Hunter and myself left Hein's room to get dressed in our own rooms. Approximately 1336 hours when I returned to H/Cpl Hein's room I saw H/Cpl Hein Hamlin Warby. H/Cpl Hein was standing with his left side to me. I noticed he had a pistol in his hand I spoke to him and he turned about to face me as he turned I heard a pistol shot and a few seconds later fell a pace to my right side and lay down on the floor of Hein's room. H/Cpl Hein assisted by H/Cpl Hunter put me on a bed.

Q1 Were you on duty at the time of the incident

A1 No

Q2 Did you touch the gun

A2 No

Q3 Had you and H/Cpl Hein been using bad [illegible] before

A3 No other person had a pistol and no [illegible] and other

Pag 9

Q4 How long have you known W/Opl Thom
A4 Since 27 Dec 1943 say, 22 months. We were
in the same section together for about ten months.
Q5 Is there any other evidence you notice any sign
of persons drinking
A5 No.
Q6 As far as anyone knew was W/Opl Thom drunk
A6 No. His body was under the influence of liquor.
Q7 How long was it from the point before the time you arrived
A7 No.

Accused declines to cross examine the witness

Mr MacLeod
7552866 W/Op Mr Leod, RCS.

At about 1350 hrs 16 Feb 1945
the office was relieved that one of our Lancaster
had been wounded by a gun and it was required
that we investigate the matter. I immediately
proceeded to 78 Sqn Coy HQ and I learned that
W/Op No 1 552866 W/Op Mr Leod RCS was the
person who had been wounded by a weapon pistol
Reg No 27830 W/Op Hein, A. of 78 Sqn Coy. After
investigating personnel who were present when the
shooting occurred I was of the opinion that the
shooting was purely accidental and no further
action was necessary so far as this office was
concerned W/Op Thom handled the gun
a .38 Smith & Wesson revolver issued as I last
saw and I took the .38 ammunition

Pag 12

This weapon is the one which had been used on the shooting. I took charge the pistol was to Mr Wright the P.C. of N.7 Police Coy for custody.

Q1 Is it the weapon handed when you arrived?

A1 No. It was empty & was given to me by accused's wife

HK Hancock C.D.M

The accused was cautioned as follows

Do you wish to make any statement to give evidence on oath? You are not obliged to say anything unless you wish to do so but whatever you say in answer to any questions you give will be taken down in writing and may be given in evidence.

A. I wish to make a statement

Q. Do you wish to go on oath

A. No I do not

The accused having duly sworn states

At about 1315 hrs I walked into my room, W/Opt Hamilton & Mabey were sitting on Hamilton bed I started talking with them and started to change my clothes as I was going up town with W/Opt Hamilton & Hunter I pulled my bunk out to get my clothes & pistol and noticed my pistol lying on the bed I took it out and was showing it to W/Opt Mabey & Hamilton W/Opt Hamilton then said something to me about going up town, I turned to point to him and as I did so the pistol went off W/Opt Mac had fell to the floor holding his left side with the assistance of W/Opt Hunter we placed him on the bed & Bob we are waiting for the MO. I got on the bed all the time talking to him & put his shirt & pants on but him on the right side. When the ambulance arrived I accompanied him to RAF.

Q. I have you ever duty at the time of the accident

A. No Sir

Q. Is true did you get the pistol

A. In Hungary during operations

Q. What kind of a pistol was it

A. Smith & Wesson 38

Q6 what were you doing with the pistol
A6 Showing it to the boy
Q6 Were you drinking on 19 Oct 45
A6 yes Sir on duty at 1230 hours
Q7 Has anyone touched the pistol besides you
A7 Not to my knowledge as my room is not locked during daytime but is locked

Q8 Have you ever had any trouble firing your pistol before
A8 No Sir It is in perfect working condition
Q9 How long have you owned the pistol
A9 about 2 or 3 years Sir
Q10 Did you usually keep your pistol loaded
A10 No sir! It rounds were usually in the holster There were six rounds in the holster and after the accident we could only find 2 live rounds and the empty case where the other rounds and 2 live not known

Q11 Did you prove the pistol
A11 No Sir I had no reason to do so as to my knowledge the pistol never had a live round in it and the time I drew had it.

1st Lt. Heinz, A

The accused has not called any witnesses

I certify that the foregoing summary of evidence consists of eleven (11) pages was taken down by me in writing in the presence and hearing of the accused and that the rights and privileges to which he is entitled have been complied with.

W. H. Smith
4 Nov 1945

1st Lieutenant, Inf
Asst Def Counsel
C.M.D.

Ext. "A"

No 6

Capt Butchard of H.M.S. F.D.S. Amsterdam having been duly sworn states.

I am Capt W.O Butchard of H.M.S. F.D.S. Amsterdam Holland. On 19 Sept 1915 L/Sgt Mc Leod was admitted to the hospital. He was suffering from a chest wound which had all the appearance of a Bullet wound.

I palpated the Bullet just under the skin at the back of the Chest.

Q. Was the wound a gun shot or a Bullet wound.

A. It was a typical bullet wound.

W. Butchard Capt

Ext. "A"

1. No of new cases 12 Cdn F.D.S. seen during the week (excl battle cas & infestations)

2. No of New Cases	(a) SCABIES	CAPITIS	(b) PEDICULOSIS CORPORIS	PUBIS
12 Cdn F.D.S.....				
.....				
.....				
.....				
.....				

3. REMARKS: Comments - chiefly on the prevalence of skin, digestive, etc cases only requiring MDR treatment.

4. Daily average no patients held by 12 Cdn F.D.S _____

(R.B. Murray) Major
12 Cdn F.D.S.

Proforma 17

WEEKLY RETURN OF INFESTATIONS

Unit: 12 Cdn F.D.S. For week ending 1600 hours dat

1. No of new cases 12 Cdn F.D.S. seen during the week (excl battle cas & infestations) _____

2. No of New Cases	(a) SCABIES	CAPITIS	(b) PEDICULOSIS CORPORIS	PUBIS
12 Cdn F.D.S.....				
.....				
.....				
.....				
.....				

3. REMARKS: Comments - chiefly on the prevalence of skin, digestive, etc cases only requiring MDR treatment.

4. Daily average no patients held by 12 Cdn F.D.S _____

(R.B. Murray) Major,
Officer Commanding,
12 Cdn F.D.S.

Ex. "17"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L27830	L/Cpl(Pte)	HEIN A	No. 7 Cdn Provost Company

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

XX _____ times.

XXX _____ times.

XXX _____ XXXX

XXX _____ XXXX

Date of first entry in Field Conduct Sheet N/A

Date of last entry in Field Conduct Sheet N/A

2. [redacted]

*3. [redacted]

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for [redacted], and for 34 days in military custody, *i.e.*, [redacted] 34 days in open arrest, [redacted]

5. The present age of the accused is 26 years 2 months

6. The date of his attestation is 24 June 19 40

7. The service which the accused is allowed to reckon is 5 years 5 months

8. The accused is in possession of 1 Good Conduct Badge [redacted]

†State the military decorations (if any) held by accused.

[redacted]

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W's 8888/1502 35,000 8/44 81-4701. Forms/B.296/War/5

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N/A		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the ~~XXXXXXXXXX~~ RPM14 & 6 in my custody, are correct to the best of my knowledge and belief.

Signed this 14th day of November 1945

Capt
(HN MacRitchie) Commanding
No. 7 Cdn Provost Company

Ref. "C"

No. L-67830 Name HEIN, A Sqn, Battery, or Company Corps CDN PROVOST CORPS Date of Enlistment 24-6-40 GC Badges Service or Proficiency Pay

3/17 MFM 6 (AFB 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc (sgd) LM Fourney Lt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				OLD SHEET DESTROYED ON COMPLETION OF TWO YEARS SERVICE WITHOUT ENTRY			30-5-45		

Certified true copy of original

R.Wightman

.....Lt

(R.F.W. Wightman) 2 i/c

No. 7 Cdn Provost Company

Cdn Forces in the Netherlands

MINUTE OF PROMULGATION

L-27830 L/Cpl Hein A
7 Cdn Provost Company

Charges:

AA Sec 40 When on Active Service Neglect to the Prejudice of Good Order and Military Discipline,

In that he,
In the Field in Holland at approximately 1330 hrs 19 Oct 45 so negligently handled a pistol as to cause it to be discharged thereby injuring F-55286 L/Cpl McLeod, M.J., No. 7 Cdn Provost Company.

Date (s) of Trial: 22 Nov 45

Findings

AA Sec 40 GUILTY

Sentence:

To undergo detention for sixty days

Date of Sentence: 22 Nov 45

Confirmation:

I confirm the finding of the court but mitigate the sentence to read as follows, To undergo detention for a period of thirty days, and I confirm the sentence as so mitigated.

Date of Confirmation:

27 Nov 45

(J G Spragge) Brig
Comd A Tps Area, First Cdn Army

Time in confinement awaiting trial: nil

of which nil days were spent in hospital.

Promulgated and extracts taken

Accused	Date	Signature of Officer
L-27830 L/CPL HEIN, A.	8 DEC 45	J A Magee Captain Officer Commanding No. 7 Cdn Provost Coy

4L29.
Pte. Heinbecker. E. N.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B54399 PTE. HEINBECKER E.N.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st SEC 15 (1) AA.	NOT GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1) chw

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 1 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of ~~1000 days~~ 180 days. chw

(Sgd) ..... Judge-Advocate, if any. 15 Dec 44 Date awarded. (Sgd) C.R. Waller Major President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~(1)

(1. AA 57A. Delete if not used.)

Date 18 DEC 44 (Sgd) ..... Lt. Col. Commanding 4 CDN ARMD DIV. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B. 54399 Pte Heinbecker, E.N. 4 CDN ARMD DIV TPS CDN	19 DEC 44	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 11-29
REQ 17 JAN 1945 REGD 19 JAN 1945

FIELD GENERAL COURT-MARTIAL

Convened by Order of LT. COL. D. DOUGLAS Comd RCASC dated 13 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	
B. 54399	PTE. Under Sentence Lieut 17 Jan 45	ERNEST NOEL	HEINBECKER	RCASC 4 CDN ARMD DIV

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 15 DEC 44 chw

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. XVI. 63

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns from ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 10.00 hours trial commences. chw

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) chw

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(2).~~ chw

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	C.R. WALLER	10 CIB Coy RCASC.
Member	CAPT.	J.A. MORAN	4 CAO Tps Coy "
Member	CAPT.	J.T. GRANT	4 CAB Coy "
Judge-Advocate			
Prosecutor	CAPT.	ROD LA B. GIROUARD	4 CAO Tps Coy "
Defending Offr	CAPT	D.E. LEWIS	4 CAO Tps Coy "

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans YES (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B54399 PTE Ernest Noel HEINBECKER before arraignment make(s) (a) plea chw OF NOT GUILTY. (3)

(3. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. chw

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

PROCEEDINGS REVIEWED 1945 BRANCH C.M.H.Q. Edm. Army Gp

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 80, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination, and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (2).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) ~~(no)~~ opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... YES ..... Do you intend to call witnesses on your behalf ?
Ans ..... YES ..... Are they witnesses as to character only ? Ans ..... YES .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is ~~(are)~~ recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ONE charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

~~E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)~~
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~(copies)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans ..... YES .....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B 54399 Pte Ernest Noel HEINBECKER, 4th Canadian Armoured Divisional Troops Company, Royal Canadian Army Service Corps, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he
in the field absenting himself without leave from his Unit from 0600 hrs 8th Nov 44 until 1645 hrs 5th Dec 44.
(Absent: 27 days 10 hrs 45 mins)

(G F Stevenson) Major,
C.C., 4 Can Armd Div Troops Coy.,
R.C.A.S.C.

In the Field
9 Dec 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(D. Douglas) Lt.Col.,
13 Dec 44 C,RASC 4 Cdn Armd Div.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(5).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.54399	Pte		Ernest Noel	HEINBECKER	4 Cdn Armd Div Tps Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 10 Dec 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	C.R. Waller		10 Cdn Inf Bde Coy

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	J.A. Moran		4 Cdn Armd Div Tps Coy
Capt	J.J. Grant		4 Cdn Armd Bde Coy

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt	W.D. Dix		HQ RCASC 4 Cdn Armd Div

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

(D. Douglas) Lieut-Col. (Signed personally. RP 105 fn 2.) Lt.Col. (Rank.)

Dat 13 Dec 44

Commanding R.C.A.S.C. 4 Cdn Armd Div.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4TH CDN ARMD DIV TPS COY, R.C.A.S.C.

4 DTC 4-6-

Date 15 Dec 44

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined No. B54399

Rank Pte Name Heinbecker, E.M.

of 4 Cdn Armd Div Troops Coy. R.C.A.S.C.

and in my opinion he is fit to undergo trial by Court-Martial.

Station Field

Date 15 Dec 44

Medical Officer

I.T.C.M. - Ouderwijk. Holland - 15 Dec 44

(1)

Accused B. 54399 Pte Heinbecker E.A.

Evidence by H 65155 C.S.M. Townsend H. 4th Can. Div. Troops Loyal 1956

I was returning to my Coy lines on 5 Dec 44 at approx. 1645 hrs when a soldier whom I recognized flagged our lorry. We slowed down & picked him up. In the lorry were C.S.M. Torens & Cpl Simon of our Reg. Police. We returned to Coy Lines & the (the accused) was handed over to L/Cpl Cope in "A" Pte lines & put under close arrest.

Evidence by A 632 02 L/Cpl Cope R.T.

I am M.T. Cpl "A" Pte 4th Can Div Troops Loyal RC 1956

The C.S.M. brought the accused in & told me to have him put under close arrest & give him something to eat.

Cross. by Pros: - Q. you recognize the accused. Ans: - Yes.
" " " :- Do you recall the time:- Ans: Yes. 1700 hrs.
" " " :- When you placed him under arrest what did you do?
Ans:- I called Cpl Stewart who took him for supper & afterwards to "A" Pte Guard room.

Evidence by. Lieut SAH Adams. Colon Off. 964 Div Troops Loyal R 1956

As such I produced a record of the declaration of a court of Enquiry held on 4th Dec 44 in the illegal absence of B 54399 Pte Heinbecker E.A. of 4 CAB by R 1956. I produce herewith a certified true copy signed by myself taken from Reg. Book HQ 68 which is in my custody.

Evidence by H 65153 C.S.M. S. Torens R 4 CAB Div Troops Loyal RC

I was returning through Tilburg in the back of a lorry when it stopped & we helped in Pte Heinbecker to the lorry. On arriving at Coy Lines C.S.M. Townsend turned Pte Heinbecker over to A Pte lines for custody.

Cross by Defense:- Did you check the accused kit on his arrival in the lines & what did you find?
Ans:- I checked kit & found no deficiencies.

(2)

Statement by the Accused, in own Defence

I S.S 4399 Pte Steinbecker Ca. of the Can Reg R.C.A.S.C. on the night of Nov. 7 (11.30 P.M.) was proceeding back to camp about 2 Km. from Bergen Op Zoom flagged a car ~~what~~ a car which turned out to be of Canadians. They proceeded up the road toward Bergen & one chap hit me over the head. I do not know where they took me as it was dark & I do not remember very much. I was taken to a farm & they took my uniform away from me. On the 6th day they brought a lady who could speak a little English & it was she who told me that the men were friends of the Germans. She asked me for my unit & location which I did not give to them. The lady looked at my shoulder patches & then said they had the wrong chap but she said something to one of the men & ~~almost~~ all I could make out was something about the police & they kept me there for 25 days. On the 25 day the lady told me that I was going to get my uniform back. She said something about the police but I did not understand her. They took me, as far as I can make out, between Roosendaal & Putte about 02.00 hrs & I went to where my unit had been located but it was not there. In the morning I went to Antwerp & asked some soldiers where my unit was & they said "in Aachen." I flagged a ride to Aachen & when I got there were no Canadians so I asked an American soldier & he said to go to Breda. I came all the way back to Antwerp & got there at 22.30 hrs & proceeded to Breda. At Capellen I hooked on as a Pte by trade & told them I was trying to get to Breda. They took me to their camp for the night. In the morning I borrowed a razor & had breakfast there. Then they brought me as far as Bergen Op Zoom highway. I went to the Town Mayor in Bergen for the location of my unit. He sent me to Reich Hdq. in Breda. I found R.H.Q. & told the Provost that I wanted information on my unit & he sent me in for identification. A clerk in the building gave me information which led us toward my unit. I flagged a ride from Breda to Tilburg. I was walking towards the outskirts when I saw an "8 cwt" lorry & flagged it & asked if he was going to the boy lines.

Ques. by Defence: Did you try to find the place where you were made prisoner. Ans. Yes, but I could not.

Questions by Prov: Are you sure the place where you were held prisoner was a farmhouse. Ans. Yes: I heard cows.

What did you have to wear? Ans:- Long underwear.
What did the civilian hit you with? :- I dont know.
When did they give you your uniform? Ans:- On the 25th day
What were you doing when picked up? Ans Returning from a show in Antwerp; I had the afternoon off.
Did they feed you well? Ans:- No not well.
How many men were there? Ans:- four + as many as twelve women.
Did you try to escape? Ans:- Yes but there was always someone there.
Did you fight? Ans. No.
Was there a window? Yes but it was blacked out.
Can you understand & speak Dutch or German?
- Ans. Yes, a little of both.
Did you have any money on return to Unit: Ans:- Yes 15 francs
What time did they let you go? Ans. About 0200 hrs 2 Dec 44
they took me in a car & let me out on the road. I arrived in Putte at 0500 hrs + Antwerp at 0600 hrs
What kind of a car was it? Ans. Ca 1932 Chevrolet with cycle tires on back.
Do you think your abductors were collaborators? Ans. Yes.
When did you leave Antwerp? Ans:- 11 30 hrs.
" " - arrive Aachen? " :- 1430 " } Looked around to see if there were any Canadians
" " - leave " ? " :- 1500 "
" " - arrive Antwerp? " :- 22.30 .
" " - leave " ? " :- 22.45 . to Maryburg?
I stayed with family by name of Farrens on Boes Leppellan Street.
You borrowed a cap from a soldier in the A/A Bty? - Ans. Yes
How long before since you had shaved? Ans:- 3 days.
Why didn't you tell the Provost your story? Ans:- I did tell a Provost but they said "you're drunk" + told me to go back to my unit.
Did you tell a responsible officer in your company your story?
Ans. No, they'd think I was crazy.

(End of statement by accused)

Character Witness

H. 65155 C.S.M. Townsend. H.

Sworn by Defence.

Do you know the accused? Ans:- Yes, 2 years.
What type of soldier is he? Ans:- I have heard nothing against him. He served 5 or 6 months under me personally in a present capacity & was complimented by the Formation Commander, Col. Brennan, & a Maj. Generals as regards his duties.
Have you anything against him? Ans:- No sir.

Recorded by J. Grant. Capt & A.A.B. Coy. R.C.A.S.C.

Mobilization address in Case of
B 54 399 Pte Hembacher E. N.

The acc is 24 yrs of age. has been some three years in the army and has had a good record; he has some entries in his m/m C but they are of a rather minor nature — the C.S.M. has appeared before the court and given him a high recommendation as a Soldier.

Pte Hembacher is married, has two children and naturally wishes to return to Canada with an excellent military career — the court has reached their decision in this case but I ask that they be most lenient in their ~~findings~~ sentence in the case, that such punishment be the minimum in keeping with the necessities of discipline.

I would also ask the court that a recommendation be forwarded the Convening Officer as they that the man be interviewed by the personal selection officer.

EXHIBIT "A"

RECORD of the Declaration of a Court of Inquiry assembled at on the 4th day of December 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-54399 Pte. Heinbecker, E.N., 4 Cdn Armd Div Tps Coy., R.C.A.S.C.

DECLARATION

The Court declare that No. B-54399 Pte. Heinbecker, E.N. 4 Cdn Armd Div Tps Coy., R.C.A.S.C.

illegally absented himself without leave from his unit at 0600 hrs on the 8th day of November; and that he is still so absent.
and that on the 25 Nov 44 he was deficient, and that he is still deficient of the following articles:—

Voc. Price 75%

ARTICLES		VALUE	ARTICLES	VALUE
Anklets, Web	1 pr	.99		.74
Battle dress blouse	1	5.25		3.94
Battle dress trousers	1	5.39		4.04
Boots, ankle	1 pr	5.46		4.09
Drawers cellular	1 pr	.43		.32
Shirts angola drab	1	2.03		1.52
Socks, worsted	1 pr	.37		.28
	$	19.92	$	14.93

CERTIFIED TRUE COPY
of entry in M.B. 68
now in my possession.
(S.M. Adams) Lt & A.O.
for OC. 4 Cdn Armd Div Tps Coy
RCASC.

(signed) R de la B Girouard Capt President

(signed) R.C. Jones Lt. Member

Signed at Field

this 4th day of Dec 1944

(signed) H. Townsend CSM. H-65155 Member

Signature of Commanding Officer (sgd) G.F. Stevenson Major.
O.C. 4 Cdn Armd Div Tps Coy.
R.C.A.S.C.

Mil. Rs. 69
4000 Mim.—8-41 (D46)
M.Q. 1773-61-69

RECORD of the Declaration of a Court of Inquiry assembled at on the day of 19 , for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION

The Court declare that No. _____

_____

illegally absented himself without leave _____

at _____ on the _____ day of _____;

and that on the _____ he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE

_____ President

Signed at _____ _____ Member

this _____ day of _____ 19__ _____ Member

Signature of Commanding Officer _____

Mil. Rk. 68
5000 Blks.—6-41 (940)
H.Q. 1772-61-68

Exhibit "C"

MFM 6 (AFB 122) 40/F&R/126 (3426)

No. B54299 Name HEINBECKER, E.W. | Sig. Battery, HQ Company | Corps R.C.A.S.C. | Date of enlistment 13 July 1942 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet No. 1, destroyed on completion of six months service. - 13 Jan 43.					
Field AA Sec 15 (1)	10 May 43	Pte	Nil	A.W.L.. from 2300 hrs 10 May 43 to 1945 hrs 17 May 43 (Absent: 6 days 20 hrs 45 mins)	Cpl Pike, E.	Forf 10 days pay FR&I 149(2)	18 May 43	Maj Dixon	forf 7 days FR&I 149(1)a)
Field AA Sec 15 (1)	8 Dec 43	Pte	Nil	A.W.L. from 2359 hrs 8 Dec 43 to 2215 hrs 12 Dec 43. (Absent: 3 dys 22 hrs 16 mins)	Documentary	Awarded 12 days pay. FR&I 149(2)	13 Dec 43	Lt-Col.WC Fletcher	Forf 4 days pay FR&I 149(1) (a)
Field AA Sec 15 (1)	25 Dec 43	Pte	Nil	A.W.L. (23 hrs 30 mins)	Cpl Shaw, GA	forf 7 days pay FR&I 149(2)	27 Dec 43	Maj G F Stevenson	Forf 1 days pay F&I 149 (1)a)
				AWARDED CDN VOL SERVICE MEDAL AND CLASP		w.e.f. 15 Jan 44.			

CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY (Sig. Address) Lt & A.C., for OC 4 Cdn Armd Div Troops Coy, R.C.A.S.C. (PTO)

Schedule "B" to

ARMY FORM B 200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-54399	Pte.	Heinbecker, E.N.	4 Cdn Armd Div Tps Coy. RCASC.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	Within last 12 months.	*Since Enlistment.*
For A.A. Sec 15(1)	Two times	Four times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, Nil

or

There are ■■ entries in the conduct sheets of the accused.

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishment being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the tuition for drunkenness must be stated separately and dated.

2. The accused has not been previously convicted, *or*

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 78 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time. ~~No proceedings in court are pending against accused at present time.~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and One days in military custody, making a total of One days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ record of service is 24 yrs 11 mos

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 13 Jul 42

7. ~~The accused is [illegible]~~

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 5 m s service.

9. ~~The accused is entitled to [illegible] service for the purpose of [illegible]~~

10. The accused is ~~in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (state any military decoration or award)).~~ In possession of C.V.S.M. & Clasp

11. ~~(If the accused has a previous conviction to be proved against him, state the particulars of it.) [illegible]~~

12. ~~(Particulars of gallantry, distinguished conduct or [illegible] and in consequence [illegible]~~

(*24000) W1.24/888/1730 50,000 10/43 A.& E.W.Ltd. Gp.698
(28000) W1.25/994/1499 12,000 2/44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating those convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th day of December

(G.W. Adams) Lt. & A.C.
for O.C. 4 Cdn Armd Div Tps Coy.RCASC.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

	Date of Promotion.
In the rank of	.....
In the rank of ..... N/A	..... years, ...
In the rank of	..... years .....
In the rank of	.....

(DESTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraphs must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs inserted amended accordingly.)

SUMMARY OF EVIDENCE

in the case of

B 54399 Pte HEINBECKER, Ernest Noel of the 4th Canadian armoured Divisional Troops Company, Royal Canadian Army Service Corps, Canadian Army Overseas.

The Commanding Officer, Major G F Stevenson, directs that the evidence be taken on oath.

FIRST WITNESS: H 65155 C.S.M. Townsend, H., of the 4th Cdn Armd Div Troops Coy, RCASC., having been duly sworn, States:

"I am H65155 CSM Townsend, H., of 4th Cdn Armd Div Troops Coy., RCASC. At approximately 1645 hrs 5 Dec 44 I was proceeding by lorry through TILBURG, HOLLAND, on my way to Coy location. A soldier whom I recognized as B 54399 Pte Heinbecker, E.N., an absentee from the unit, flagged us for a ride, so I made the driver stop, and we picked him up. On arrival at Coy lines I turned Pte Heinbecker, E.N., over to A 63202 L/Cpl Cope, R.T., of "A" Platoon, instructing L/Cpl Cope, R.T., to place him under arrest."

H Townsend

The accused declined to cross-examine the witness.

SECOND WITNESS: A 63202 L/Cpl Cope, R.T., MT Clerk, "A" Platoon, 4 Cdn Armd Div Troops Coy., RCASC., having been duly sworn, states:

"I am A63202 L/Cpl Cope, R.T., of 4th Cdn Armd Div Troops Coy., RCASC. At approximately 1700 hrs 5 Dec 44, H65155 CSM Townsend, H., turned B54399 Pte Heinbecker, E.N., over to me, instructing me to place him under arrest. This I did, having Pte Heinbecker, E.N., taken to platoon guard room."

R J Cope

The accused declined to cross-examine the witness.

THIRD WITNESS: Lieut S.M. Adams, A.O., 4th Cdn Armd Div Troops Coy, RCASC., having been duly sworn, states:

"I am Lieut S.M. Adams, of 4th Cdn Armd Div Troops Coy., RCASC. I hereby produce certified true copy of Record of Declaration of Court of Inquiry dated 4 Dec 44 on the illegal absence of B54399 Pte Heinbecker, E.N., of 4 Cdn Armd Div Troops Coy, RCASC., taken from the Regimental Book in my custody."

S M Adams Lt

The accused declined to cross-examine the witness.

"Copy of Record of Declaration of Court of Inquiry signed by me is attached hereto as Exhibit "A"."

R.C. Jones

(R.C. Jones) Lieut.,
Officer detailed to take the Summary.

(cont'd on page 2)

FOURTH WITNESS: H 65153 C.Q.M.S. Torrans, R., of 4th Cdn Armd Div Troops Coy., RCASC., having been duly sworn, states:

"I am H65153 CQMS Torrans, R., of 4 Cdn Armd Div Troops Coy., RCASC. On 6 Dec 44 I checked the kit of B54399 Pte Heinbecker, E.N., and found no deficiencies."

The accused declined to cross-examine the witness.

The accused was then warned in the following manner:

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

ACCUSED: "I decline to make a statement."

Pte E. N. Heinbecker

Certified that R P 4 has been complied with.

(R C Jones) Lieut.,
Officer detailed to take the Summary.

In the Field
this 8th day
of November
1944.

LIST OF WITNESSES FOR THE PROSECUTION

1. H 65155 C.S.M. Townsend, H.
2. A 63202 L/CPL Cope, R.T.
3. Lieut S.M. Adams
4. H 65153 C.Q.M.S. Torrans, R.

LIST OF WITNESSES FOR THE DEFENSE

N I L

LIST OF EXHIBITS

"A" - RECORD OF THE DECLARATION OF THE COURT OF INQUIRY.

FIELD GENERAL COURT MARTIAL

I desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

I desire the services of Capt. J. Gordon if he is available.

Lt. E.R. Heinbecker
.....
(Signature of Accused)

4K23.

Pte. Heinrichs. I.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M-58720 Pte Isaac Heinrichs, 1 Cdn Med Regt Pl RCASC

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd	NOT GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 36, RP 44; Findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lack of kit see RP 44 fn 6.)

At present under sentence for ____ beginning on (date) ____ (1) NIL

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for 12 months

(Sgd) W J Baillie Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ____ (Sgd) ____ Commanding ____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) (1. AA 57A. Delete if not used.) CEB

(Sgd) C E Beckwith-Smith

Date 19 Dec 44 Commanding C.I.R.C.A.S.C. 1 Cdn C Tps
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
M-58720 Pte HEINRICHS, I. 1 Cdn Med Regt Pl RCASC	28 Dec 44	J A Salmon Capt Adjutant 2 Cdn Reinforcement Unit

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4/R-23

REGISTERED JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPA46 (To issue of AFA21) 40/P.M.S./1608 (40/01) 4/38B

Convened by Order of Lt-Col EW Whelpton Comd 1 Cdn Corps Adm Area dated 13 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-58720	Private	Isaac	HEINRICHS	1 Cdn Med Regt Pl RCASC

PROCEEDINGS REVIEWED JAG BRANCH C.M.H.Q. 10 Jan 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 16 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. ZF-148

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(2) AB

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107, 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ AB

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to -- as interpreter? Ans --

The Interpreter is sworn.(1) Do you object to L-22658 Cpl DF McLeod as shorthand writer? Ans no

The shorthand writer is sworn.(1) HQ 1 Cdn Corps

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No, sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W J Baillie	31 Cdn C Tps Coy RCASC
Member	Captain	F R Flourde	2 Cdn Spec Emp Gp
Member	Lieutenant	M V Longworth	7 Cdn A/Tk Regt RCA
Judge-Advocate	Captain	APL DesRosiers	HQ 1 Cdn Corps
Prosecutor	Captain	P J Ivey	81 Cdn Arty Coy RCASC
Defending Offr	Captain	A L Cambell	5 Cdn Med Regt Pl RCASC

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused M-58720 Pte I Heinrichs before arraignment make(s) (no) (~~no~~) plea (1) AB

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule. AB

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C AB

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. M92

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No. .....(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

~~B3. The Court records the Accused's statement of "The Court decides not to allow accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) re-informed and he (they) changes(s) his (their) plea(s) on ..... charge(s) to "Not Guilty" and the Court so records accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D6 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

~~D4. The Prosecutor is closed & the Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the ..... charge(s).(1) The Court is closed, and considers the submission.(2) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge~~.(3)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans I wish to give evidence on oath. Do you intend to call witnesses on your behalf ?

Ans No. Are they witnesses as to character only ? Ans N A

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(m).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President ~~announces the finding(s) of Guilty and~~ states to the accused that the finding(s) of the Court on the second charge(s), being subject to confirmation, will be promulgated later.(1) ~~The President announces that the proceedings in open Court are to be resumed forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No, sir.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MFB 355 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 559. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s) and in mitigation of punishment ?(1) Ans Yes, through my defending offr.(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, M-58720 Private Issac Heinrichs, 1 Cdn Med Regt Pl RCASC, a soldier of the Canadian Army Overseas, is charged with:

First Charge
Section 8(2)
Army Act.

WHEN ON ACTIVE SERVICE, STRIKING HIS SUPERIOR OFFICER

in that he

In the Field in ITALY at approximately 2115 hours on 7 Dec 44 struck with his fist F-77257 Cpl V B Mader of 1 Cdn Med Regt Pl RCASC attached to 81 Cdn Artillery Maintenance Area, who was at the time, Corporal in charge of the guard.

Second Charge
Section 40
Army Act.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field in ITALY at approximately 2100 hours on 7 Dec 44 did improperly force an entry into the 1 Cdn AGRA Field Post Office building at 81 Cdn Artillery Company Maintenance Area by smashing down the door.

(W C R Sergent) Captain
A/Officer Commanding
81 Cdn Arty Coy RCASC.

In the Field
9 Dec 44

To be tried by Field General Court Martial.

(E W Whelpton) Lt-Col.
Comd 1 Cdn Corps Adm Area.

In the Field
13 Dec 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-58720	Private		Issac	HEINRICHS	1 Cdn Med ReCt Pl RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 13 Dec 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

Major (*Rank.*)	W J Baillie (*Must be named. RP 106.*)		31 Cdn Corps Tps Coy RCASC (*Unit.*)

MEMBERS.

Captain	To be detailed by OC 2 Cdn Spec Emp Gp	
Capt or Lieut (*Rank.*)	To be detailed by OC 7 Cdn A/Tk Regt RCA (*Named or detailed. RP 106.*)	(*Unit.*)

WAITING MEMBER.

Capt or Lieut (*Rank.*)	To be detailed by OC 81 Cdn Arty Coy RCASC. (*Named or detailed, if any. RP 106.*)	(*Unit.*)

JUDGE-ADVOCATE.

Captain (*Rank.*)	A P L DesRosiers (*Must be named, if any. RP 106.*)	ADJA 1 Cdn Corps (*Unit.*)

On Active Service in the Fd

in ITALY (*Country.*)

(E W Whelpton) (*Signed personally. RP 105 fn 2.*) Lt-Col. (*Rank.*)

Date 13 Dec 44

Commanding 1 Cdn Corps Adm Area.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAAS (In lieu of AFAS 40/P & S/1807 (4021))

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICER'S CERTIFICATE

K.R. (Can.) Para 557

I certify that I have this morning examined No W58720

Pte. Heinrichs, I of 1 Cdn Med Regt Pl, RCAMC and in my opinion he is

fit
~~unfit~~ to undergo trial by court-martial.

Station Fuld

Date 16 Dec 44

Medical Officer

FGCM proceedings in the case of
M-58720 Private I Heinrichs 1 Cdn Med Regt Pl RCASC

First Witness for the Prosecution:- C-21439 Cpl Boucher, L P, 1 Cdn AGRA Postal Detachment, having been duly sworn, is examined by the Prosecution:

Q-1 Will you identify yourself to the Court?
A-1 I am C-21439 Cpl Boucher, L P, 1 Cdn AGRA postal Det.

Q-2 Can you tell the court what you know of the events surrounding the second charge in this case?
Reads second charge ----------.
A-2 On the night of Dec 7 at about 2100 hours the accused Pte Heinrichs and L/Cpl Smith together with two other people one of whom was Pte Girard and the other whom I did not know came to our quarters. The came into the quarters where we were having a little party at the time. One of them asked one of the boys in the party for a drink and one of the lads I don't know which one gave one of them a drink. Cpl Carson and myself called Pte Girard aside and asked him to have the other men leave as we did not want them there. This he did. After they went out Cpl Carson went out a little later and apparently a fight started. Cpl Carson came in forcably, I don't know whether he was pushed or struck, and Pte Heindrichs and L/Cpl Smith came in after him.

Q-3 Can you describe more fully how they entered the room?
A-3 Cpl Carson wasblocking the door which is the entrance into our quarters and he was pushed or knocked, I am not sure which --- I know they came in forcibly anyway. The door was not locked at that time. The door was locked later on.

Q-4 On that occasion when the door was locked later on what happened?
A-4 After they had been there the first time they had gone out but came back a short time later. I had been out and when I came back in they were in the quarters. Pte Heindrichs was complaining about somebody hitting him over the head with a bottle and he was bleeding. At this time somebody threw a chair and broke the lamp and the room was cleared. Before the chair had been thrown there had been a fight and Pte Heindrichs had pulled a knife. After this there was only Pte Nichols and myself in the building. We had gone out but came back and had lit a candle. We heard somebody talking down the street. We looked out and could see two people. We figured that it was Heinrichs and Smith coming back. We bolted the door. I bolted the door and I believe Pte Nichols was there when I did. It was then that the door was broken in by Cpl Smith and Pte Heinrichs.

Q-5 Did you recognize them when they got in?
A-5 Yes, sir.

Q-6 Did you recognize on, or the other or both of them?
A-6 I recognized both of them.

XX'd by the Defence

Q-7 How many entrances did Smith and Heindrichs make?
A-7 Three.

Q-8 Tell what happened each time?
A-8 The first time the door was not locked and four of them came in. The second time was when the fight started outside and ended up inside. The second time Cpl Carson was pushed or knocked into the room followed by Pte Heinrichs and then L/Cpl Smith. I did not actually see Cpl Carson hit but I presume he was hit. He had a mark on his face where he had been hit. He came through the door at a fair speed. The third time was when the door was smashed down and Smith and Heinrichs entered.

Q-9 Who bolted the door?
A-9 I did and Pte Nichols was with me. I bolted the door and after I had bolted it they came along and smashed it.

Questioned by the JA

Q-10 You say the third time they entered the building they broke in the door? How did they break it in?
A-10 The accused and L/Cpl Smith broke it in by hitting against the door. By throwing themselves against it. I did not see them actually breaking it but I presume that that is what they did. The door was hit three or four times before it gave way.

Q-11 Had you had any drinks that night?
A-11 I had about two or three bottles of beer. I can drink more beer than that without much effect. I am quite positive of the events of that night.

Q-12 Was the door broken the second time when they entered?
A-12 The door was OK after they came in the second time. It did not close as easily as it had previously but I did not have any trouble in bolting it. It was the third time that the door was broken off its hinges.

In the opinion of the Court and the JA it is not considered necessary to comply with RP 83(B).

THE WITNESS WITHDRAWS.

Second Witness for the Prosecution: B-84586 Private H Nichols, 1 Cdn Med Regt Pl RCASC, having been duly sworn, is examined by the prosecution:

Q-13 Will you identify yourself to the Court?
A-13 I am B-84586 Pte H Nichols, 1 Cdn Med Regt Pl RCASC.

Q-14 Will you tell the court what you know of the events leading up to the circumstances surrounding the second charge in this case? Reads second charge ---.
A-14 On the evening of 7 Dec 44 at about 2[illegible] hours I was visiting at the Post Office and was talking to one of the boys and Cpl Bouchier. I heard someone say "what the hell do they want here". I looked around and saw Pte Heindrichs and L/Cpl Smith. They went out and I saw Cpl Carson follow them out and then come back in through the door. Whether or not he was pushed in I do not know. Cpl Carson then shut and bolted the door. I heard Cpl Smith and Pte Heindrichs say "Let's break it down" and then

"Are you ready" and the first thing I know they broke down the door.

Q-15 Who was in the room when you heard someone outside the door say "Let's break it down"?

A-15 There was Cpl Boucher, Cpl Carson, Pte Stephen and myself in the room at that time.

Q-16 What method of light was there in the room at that time?

A-16 There was a gaslight.

Q-17 At that time the room was lit by a gaslight. How many times previously that night had the accused and L/Cpl Smith been in the room that night?

A-17 Once. That was their second time in. The first time they had just walked in as the door was open and they came into the main part of the Post Office.

Q-18 How much did you drink that night?

A-18 Two or three bottles of beer. I can remember the events of the night clearly. I can swear on them.

Q-19 Did you see the accused and L/Cpl Smith come into the room through the door after it was broken down?

A-19 Yes.

Q-20 Do you know the accused well?

A-20 Yes.

Q-21 Do you know his voice when you hear it?

A-21 Yes.

Q-22 Do you know if it was he who spoke the words "Let's break it down"?

A-22 I presume it was one of them who said that as it was them who came through the door.

XX'D by the Defence

Q-23 The first time Heinrich and Smith came in they came in with someboyd else?

A-23 I did not see anybody else. I did not pay any attentio

Q-24 The second time they came in was after they had come out of the room and had come back in with Cpl Carson. How did they come in that time?

A-24 It was then they broke the door down.

Q-25 Were the hinges broken at that time?

A-25 I did not look at the hinges at all.

Q-26 Could you close the door?

A-26 I guess you could close the door the second time. The bolt was sprung right out of place.

Q-27 When Cpl Carson came in what happened when he got in the post office?

A-27 He closed the door and bolted it.

Q-28 Then you heard the conversation about breaking down the door and they broke down the door at that time?

A-28 Yes.

Q-29 Where was Cpl Boucher when this happened?

A-29 He was in the room where the door was broken.

Q-30 He was in the same room as you?

A-30 Yes, I think so.

Q-31 Were you there when the two accused came back the third time?
A-31 Yes.

Q-32 Who else was there the third time?
A-32 Cpl Boucher.

Q-33 Are you sure it was Cpl Carson who bolted it?
A-33 If I am correct I think I helpted him bolt it. It was Carson who was there and he bolted the door.

Questioned by the JA

Q-34 When did you leave the room for the last time that night?
A-34 I left the room the last time after we had brought Pte Edwards home and put him to bed?

Q-35 Was Boucher there at that time?
A-35 No, I do not think he was there.

Q-36 Did you leave it before that?
A-36 Yes, I went to the station before that.

Q-37 Who was with you?
A-37 Cpl Boucher was with me. We left together. L/Cpl Smith and the accused had gone when we left.

Q-38 After the third entrance?
A-38 Yes.

Q-39 In reconsidering the events of this night with reference to the second and third entrance it it possible that you may have made a mistake with reference to the sequence of events? Is it not possible that Cpl Carson did not lock the door but somebody else did?
A-39 I am pretty sure it was Carson.

Q-40 How did Carson come in the second time?
A-40 He backed in through the door. I could not see whether he was pushed or whether he came in himself. I was in the other room. It was then he bolted the door.

Q-41 How did you see him bolt the door if you were in the other room?
A-41 I seme around the counter.

Q-42 Are you sure that Cpl Carson bolted the door? Is it possible that the door was bolted the third time and not the second time?
A-42 Not to my way of remembering. What happened exactly I can't remember for sure.

Q-43 Were you pretty excited by all these events?
A-43 It was bound to jar your nerves.

Q-44 What did you do after you came around the counter and watched him bolt the door?
A-44 I just waited there for them to push the door in.

Q-45 When the door was pushed in what did you do?
A-45 I walked back into the other room. Pte Heinricks and Pte Connley started an argument and I went to stop it which I did. I returned to the back room and I picked up a rifle.to scare them.

Q-46 When did you look at the bolt of the door?
A-46 I saw the bolt after the whole thing had cleared up.

Q-47 When did you actually notice that the bolt was off?
A-47 I think that when the door first blew open was when I noticed the bolt.

Q-48 Are you sure of that?
A-48 No, I am not sure of that.

In the opinion of the Court and the JA it is not considered necessary to comply with RP 83(B).

THE WITNESS WITHDRAWS.

Third Witness for the prosecution: L-7270 Cpl E T Carson, NCO i/c 1 Cdn AGRA Postal Detachment, being duly sworn is examined by the Court:

Q-49 Will you identify yourself to the Court?
A-49 I am L-7270 Cpl E T Carson, NCO i/c 1 Cdn AGRA Postal Detachment.

Q-50 The court would like to know what happened on the night of 7 Dec regarding the breaking in of the door of the FPO?
A-50 I wasn't there. I was at the MA.

Q-51 Did you bolt that door?
A-51 I did not bolt it myself.

The Defence Declines to Cross-examine

Questioned by the JA

Q-51 Did you see the accused that night?
A-51 Yes. In our billets and at the MA. I saw him twice.

Q-52 What happened the first time?
A-52 They came in and had a drink with us and went out.

Q-53 How did they come in the second time?
A-53 They just walked in.

Q-54 Where were you?
A-54 I was at the door.

Q-55 Was the accused alone?
A-55 No, he was with L/Cpl Smith.

Q-56 How did you come in the second time?
A-56 I was hit at the door and we all came in together. I was just at the door, the door was open at the time.

Q-57 What condition was the door in?
A-57 Good condition.

Q-58 How was the bolt?
A-58 In good condition.

Q-59 The Hinges?
A-59 The hinges were very good.

Q-60 Did you have any trouble opening or closing the door?
A-60 No.

Q-61 You say you were hit?
A-61 Yes. I was dazed and do not remember anything else that happened in the building after that.

In the opinion of the Court and the JA it is not considered necessary to comply with RP 83(B).

THE WITNESS WITHDRAWS.

THE CASE FOR THE PROSECUTION IS CLOSED.

First Witness for the Defence: The Accused, being duly sworn, is examined by the defence:

Q-62 Will you tell the court what you know if anything of the events surrounding the breaking down of the door which evidence has been adduced was broken on the second or the third time you visted the FPO on the night of 7 Dec 44?

A-62 On that particular night Cpl Smith and I walked past the FPO. We heard a party going on inside. I went and knocked at the door. I asked a friend of mine Sfferin, if he would give me a drink which he did. We stood there and talked a while. Pte Girard told us to go outside. We went outside and I had gone about ten yards and had a leak. Cpl Carson came out and asked which one was Smith. Smith Walked back and Girard and I kept on talking. Cpl Carson and Smith were arguing and fighting. I walked over and Cpl Carson was inside the door and I followed him in. The moment I entered the door I was hit with a bottle. I was dazed and I walked outside and went away and left.

Q-64 Where did you go?
A-64 I went to the MA.

Q-65 It has been stated that you came back a third time? Did you come back a third time?

A-65 No, sir, we did not. I am sure. At least I do not remember going back. I was dazed. I was bleeding very much and I do not remember going back. A lorry took me back to the MA.

Q-66 You had been drinking?
A-66 Yes.

XX'd by the Prosecution

Q-67 Were you in the post office itself that night?
A-67 No, I was around the counter when Tom Sufferin gave me a drink.

Q-68 Do you know if Cpl Smith was in the Post Office?
A-68 No.

Questioned by the JA

Q-69 Did you have much to drink?
A-69 At the first place we had two bottles of bianco. On the way home we got two bottles of red stuff. We drank that. We went to a place where they had Marsala. It was too sweet to drink. We bought two bottles of vino rosso and poured it into the Marsala. We mixed the vino and the Marsala and as it was still too sweet we mixed in a bottle of Cognac which we bought.

Q-70 How did you feel after drinking all that?
A-70 Up to the time I was hit I felt good, After I was hit I felt dazed. I was bleeding heavily.

Q-71 You have heard the evidence of two of the witnesses with regard to the breaking of a door at the FPO. One says the door was broken on your second visit and the other says you and L/Cpl Smith broke the door when you were there a third time. Is it possible that you were there a third time?

A-71 Not that I remember.

Q-72 Have you a complete record in your memory of that evening and all the events which took place.

A-72 My memory was blank for sometime. It was blank until Cpl Mader detailed a lorry to take us home.

Q-73 Do you think that Cpl Carson and Pte Nichols are saying something which did not in fact happen either through lack of memory on their part or through willfully telling a falsehood to the court?

A-73 As far as I can make out after the time I was hit on the head by a bottle I did not remember anything for quite a while after.

Q-74 When did you start to remember again?

A-74 It was when we were on our way to the MA. Cpl Mader put us in a 60 cwt and was taking us back to camp

In the opinion of the Court and the JAit is not considered necessary to comply with RP 83(B).

THE WITNESS WITHDRAWS.

Summing up by the Prosecution

With reference to the second charge in this case, two witnesses have been brought by the prosecution who have described in detailed manner how the door was broken. The sequence of events as described by themmight be somewhat confused I believe but their minds I submit may have been somewhat cloudy by reason of the fact first that they had had a couple of bottles of beer which although not much might be sufficient to confuse them slightly and secondly that events happened so rapidly that they could not be quite sure of the exact sequence of events in which things did happen.

One thing which I would like to point out is that both witnesses have described in almost the same words that the door was forced in and that when the door was forced in L/Cpl Smith and Pte Heinrichs came into the room through the door immediately after. There is also evidence that the words "Let's break it down" were heard and L/Cpl Smith and Pte Heinrichs entered the room almost immediately.

I think that is fairly conclusive evidence of the actual act itself in that while the sequence of events is not quite clear in the evidence the events themselves are the same in the testimony of both witnesses.

Summing up by the Defence

I think on the matter of the breaking down of this door that the court must be impressed with the contradictory evidence which has been heard by the court today despite the close questioning of the JA which has taken place this morning.

Cpl Boucher tells us he bolted the door. Pte Nichols is equally as sure that Cpl Carson bolted the door after the second entrance. Cpl Carson says he did not bolt the door and he is very very vage on the events that happened.

If the court believe that the door was broken down by the accused and L/Cpl Smith Isubmit the court take into consideration the fact that Heinrichs had been hit on the head by Pte Connley for some reason which has not come out in evidence. Heinrich was hit on the head by this bottle and he says that he does not remember what happened after that. I submit that it is quite possible that a man who is hit on the head by a Canadian beer bottle is bound to be dazed and that along with the drinking which he had been doing is not going to have no recollection of what happened for some time.

In view of the extreme contradictory evidence and the fact that nobody knows or seems to remember very clearly what did happen there is a definite element of doubt and by the practice of british justice the accused must be given the benefit of that doubt.

Summing up by the JA

It is my duty in this court as Judge Advocate to advise the court on points of law. Your function on the other hand is to act as a fact finding body. You are complete masters of the facts arising out of the evidence in this case and if I should at any time during the course of the trial or during this summing up express any opinion on the facts of the case I must instruct you to disregard that opinion. You should on the other hand however follow my advice on points of law and should not disregard that advice exeept for very weighty reason.

We have here a charge under Sec 40 of the Army Act. Reads charge ----------. You have heard the evidence bearing on this charge and it will be up to you as masters of the facts to draw inferences from this evidence. You have in this case contradictory evidence. Pte Nichols and Cpl Boucher do not remember the events of the evening in the same sequence and do not give their evidence in the same manner. You may on that account test the credibility of either or both of the witnesses and you may also ask youself whether or not is is possible for persons for instance who see an accident to give various versions and different versions of the same happening. You also have a silent witness on this point. By that I mean the door itself. You have heard evidence as to its condition after the events in question had taken place. It will be up to you to determine how it got that way. If the evidence is such as to permit inferences to be drawn you may draw inferences in that respect. If you think that there is no evidence to support the allegation that the door was broken by the accused that you are not satisfied beyond a reasonable doubt an offence has been committed and that the accused is connected with the commission of that offence then the accused must be given the benefit of that doubt. By a reasonable doubt I mean not a doubt based on fancy or imagination, or speculation or a doubt arising out of undue sympathy for the accused, but a common sense doubt arising out of the evidance which you have heard in this court today.

It is a well known principle of British law that a man is presumed to be innocent until proven guilty and that the onus of proving his guilt rests entirely on the shoulders of the prosecution at all times. If the prosecution has failed to prove by evidence adduced by them that the offence was committed and that the accused was connected with the commision of the offence, beyond a reasonable doubt, then it is your duty to, acquit him of this charge.

Statement in Mitigation by Defending Offr.

When considering the amount of punishment to be given in this case I would just like to bring to your attention once again the fact that the accused had been drinking quite heavily prior to the alleged offences. He had also been hit on the head by a beer bottle in the hands of Pte Conley. This I submit must have had considerable effect on the mental condition of the accused. I should also like to bring to your attention that fact that all the witnesses had themselves been drinking, and that for no apparent reason Pte Heinrichs had been hit on the head by a beer bottle. In his condition I submit that Pte Heinrichs could not have helped but be dazed and effected by the happenings of that evening and it is quite natural also that in his condition he may have been angered by being hit on the head by a beer bottle. For this reason I would ask the court to be lenient when considering the sentence.

While on this occasion Pte Heinrichs has definitely slipped but he has and can be a good soldier. He held the rank of L/Cpl and Cpl . It is in the realm of possibility that if the court are lenient in awarding sentence in this case that the accused when he has completed his sentence will return to his unit and again be a good and useful soldier.

SUMMARY OF EVIDENCE

in the case of

M58720 Pte Isaac Heinricks, 1 Cdn Med Regt Pl RCASC., a soldier of the Canadian Army placed on active service.

The Commanding Officer directs that the evidence be taken on oath.

First Witness

C21439 Cpl Boucher, L.P., 1 Cdn AGRA Postal Detachment, having been duly sworn, states:-

I am C21439 Cpl Boucher, L.P., 1 Cdn AGRA Postal Detachment. At approximately 2230 hrs on the 7th Dec 1944 the accused and L/Cpl Smith forced their way into our quarters which are part of the M.A. Post Office, breaking down the door to do so. There was an argument and a fight started. I saw a knife in Pte Heinricks hand. During the fight a chair was thrown, knocking down the gas pressure lamp. This fell on my bed setting fire to my tunic. Everyone left then except Pte Nichols and I. Approximately 10 or 15 minutes later, the accused and L/Cpl Smith returned accompanied by six or eight men. When they reached the door the other men, realizing that it was a Post Office, left, but the accused and L/Cpl Smith again forced the door and passed through our quarters into the large room we use for the Post Office. I was in there but they did not see me. I heard them say, "this is the main Post Office, lets get out of here". I saw them again at the corner of the Post Office after the guard had been called out. I ordered them to halt and fired one shot in the air. There were several rounds fired from a tommy gun and everyone scattered. I saw the accused and L/Cpl Smith at the M.A. later on when they were being taken to their unit. That is all I know of the case, Sir.

QUESTION 1 - Would you say that the accused was drunk?

ANSWER 1 - He had been drinking but he definitely was not drunk.

The accused declined to cross-examine.

.....
C21439 Cpl Boucher, L.P.

Second Witness

H51931 Pte Stephen, H., 1 Cdn Med Regt Pl RCASC., having been duly sworn, states:-

Sir, I am H51931 Pte Stephen, H. I was spending the evening of the 7 Dec at the Post Office quarters. At approximately 2100 hrs the accused and L/Cpl Smith came in. I was in the next room and I don't know if the door was damaged or not. They went outside and Cpl Carson went out to talk to them. All of a sudden he seemed to be pushed back through the door and I went back into the next room. As I went out I looked back and saw L/Cpl Smith break the lamp with a chair. Cpl Carson and I went up to the M.A. and I got Cpl Mader who was Guard Cpl and told him Cpl Carson wanted to see him. I took over from Cpl Mader and he went upstairs. Shortly after, the accused and L/Cpl Smith came along and asked me where all the boys were. I told them they were in Cpl Mader's room and they went up. That is all I know of the case, Sir.

The accused declined to cross-examine.

.....
(H51931 Pte Stephen, H.

Third Witness

B84586 Pte Nichols, H., 1 Cdn Med Regt Pl RCASC., having been duly sworn, states:-

Sir, I am B84586 Pte Nichols, H. On the evening of 7 Dec., I went to the Post Office to visit Cpl Carson and Cpl Bouchier. I was sitting in the back room talking to Cpl Bouchier.and then walked into the second room. While there, I heard someone say, "what the hell do they want." I then saw the accused and L/Cpl Smith in the next room. Someone spoke to them and they went outside. Cpl Carson then went out and was talking to them. Cpl Carson came back inside and closed and bolted the door. I then heard someone outside say, "let's break it down" and the accused and L/Cpl Smith came through the door together, knocking it from its hinges. There was an argument started and the accused struck Cpl Carson in the face. I tried to stop them and the accused drew out a knife. I went back to the next room and picked up a rifle, thinking to scare them. L/Cpl Smith picked up a chair and threw it at the lamp, knocking it down. When it was dark, everyone left, except Cpl Bouchier and I. Cpl Bouchier and I got a flashlight and went to look for Cpl Carson. We were unable to find him and went back to the Post Office. I heard the accused and L/Cpl Smith coming back so we went into the main Post Office. They came through our quarters into the big room and I heard them say, "this is the main Post Office, let's get out of here." That is all I know of the case, Sir.

QUESTION 1 - Would you say they were drunk?

ANSWER 1 - I would say that they definitely were not drunk.

The accused declined to cross-examine.

H. Nichols
B84586 Pte Nichols, H.

Fourth Witness

A59907 Pte Edward, G.R., 1 Cdn AGRA Postal Detachment, having been duly sworn, states:-

Sir, I am A59907 Pte Edward, G.L. At approximately 2000 hrs 7 Dec., there were several of us in the Post Office quarters. The accused and L/Cpl Smith walked in. They went out shortly afterwards and Cpl Carson also went outside. Someone hit Cpl Carson and in the fight someone threw a chair, knocking over the lamp. As it was dark, I went outside and with Cpl Carson went up to the M.A. We went into Cpl Mader's room and shortly after Cpl Mader came in followed by the accused and L/Cpl Smith. There was a bit of scuffling and the accused struck me on the mouth, knocking me onto a bed. I saw both the accused and L/Cpl Smith strike Cpl Carson. Then someone kicked me in the testicles and I passed out. That is all I know of the case, Sir.

The accused declined to cross-examine.

G.R. Edwards
A59907 Pte Edward, G.R.

Fifth Witness

L7270 Cpl Carson, E.T., 1 Cdn AGRA Postal Detachment, having been duly sworn, states:-

Sir, I am L7270 Cpl Carson, E.T. At approximately 2100 hrs 7 Dec the accused and L/Cpl Smith came to the front entrance to our billet. They knocked and we let them in.

Shortly afterwards they went outside and stood there talking. I went outside to see what the trouble was. I don't know what words were actually said, but the accused and L/Cpl Smith came back inside, L/Cpl Smith hitting me in the face.

I don't know what happened in the billets after that. We went up to the M.A. to Cpl Mader's room, and sat down to explain what had happened. Cpl Mader, the accused and L/Cpl Smith came in the room. I tried to explain to L/Cpl Smith that I had nothing against either of them, but he again struck me. The last I remember was being on the bed. That is all I know of the case, Sir.

QUESTION 1 - Were the accused and L/Cpl Smith drunk?

ANSWER 1 - I wouldn't say they were.

The accused declined to cross-examine.

R.J. Carson Cpl
L7870 Cpl Carson, R.T.

Sixth Witness

F77257 Cpl Mader, V.B., 1 Cdn Med Regt Pl RCASC., having been duly sworn, states:-

Sir, I am F77527 Cpl Mader, V.B. On the night of the 7 Dec I was on Guard at the M.A. At approximately 2115 hrs, Pte Stephen came to the M.A. and asked me to go upstairs, as the accused and L/Cpl Smith were causing a disturbance and Cpl Carson wanted to see me. I went upstairs and tried to talk to the accused and L/Cpl Smith and have them go back to their unit. The accused struck me, knocking me to my knees. I got up and he hit me again. We finally got them quietened down. Sgt Glover told me to put them under arrest. I finally got them out and into a truck and took them back to their lines. That is all I know of the case, Sir.

QUESTION 1 - Would you say they were drunk?

ANSWER 1 - They were drinking, but I wouldn't say they were drunk.

The accused declined to cross-examine.

V.B. Mader
F77257 Cpl Mader, V.B.

QUESTION TO THE ACCUSED:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER BY ACCUSED:

I have nothing to say.

I certify that Rules of Procedure 4 (C) (D), (E) and (F) have been complied with.

Taken down by me in the presence of the accused in the Field, this 8th day of December, 1944.

[illegible] Snowball Capt
Officer Commanding
2 Cdn Med Regt Pl RCASC

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
M58730	Pte	HEINRICHS, I.	1 Cdn Med Regt Pl RCASC

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For A.W.L. (AA Sec 15)	~~one~~ times	~~one~~ times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or,

~~There are no entries in the conduct sheets of the accused.~~ Nil

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

~~2. The accused has not been previously convicted~~ Nil

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act / Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

Nil

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 6 days in military custody, making a total of 6 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 22 yrs 4 mos

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 12 Oct 42

7. The service which the accused is allowed to reckon towards discharge is 2 yrs 2 mos & 3 dys

8. The accused is entitled to reckon 2 yrs 2 mos & 3 dys service for the purpose of determining his pension, etc.

9. The accused is in possession of ~~or entitled to~~ ~~his air force~~ military decoration, ~~or air force~~ ~~(or is in possession of or entitled to)~~. State any ~~air force~~ military decoration or reward. CVSM&C - 12 Apr 44

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~ .....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ~~Permanent Force~~ unit dated [illegible], and in his regiment (or corps), the rank of ~~dated~~ dated [illegible].

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of L/Cpl 4 mos years. 1 Mar 44 to 6 Jul 44

In the rank of A/Cpl 1 mo years. 7 Jul 44 to 14 Aug 44

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15th day of December, 1944 [illegible] Capt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked [illegible] signed by the president, and annexed to the proceedings.

MFM 6
(AFB 122)
40/PAS/136 (3438)

No. M58720 Name HEINRICHS, I. | Sqn, Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 12-10-42 | GC Badges | Service or Proficiency Pay |

Date of last entry in Company Conduct Sheet: N/A | No and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No 2 | Signature OC Company, etc: C.B. Fuller, Character Capt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Original Last Entry - Nil.	Sheet destroyed on completion of Six Months Service on 12-4-43 in accordance with CRO 319. (Sgd) C.B. Fuller, Capt.								
Field	13Aug 44	Pte	NIL	AA Sec 15(1) A.W.L. from 1800 hrs 13 Aug 44 until 1845 hrs 21 Aug 44 (TTA 8 days & 45 mins)	Sgt.Glover Sgt.Guest Cpl.Benson Cpl.Penny L/Cpl.Day	28 days F.P. Forf 28 days pay FR&I 149(2)	22Aug44	Capt. WCM Sergent	Forf 8 days pay FR&I 149(1) Total forf 37 days pay.

Certified a true copy from the original MFM 6 in my custody

(W.C.M. Sergent) Capt.
A/OC 81 Cdn Artillery Coy RCASC

(PTO)

M-LL
PTE HEIPEL J.

Correspondence to be PINNED here.

66 m

Army Form A.B.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this Third day of August, 19 42

Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of Second Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~I am unable to appoint~~ [illegible]

*~~Three Officers to form the Court~~ [illegible]

*~~Two Field Officers as President~~ [illegible]

for the following reasons, namely:—]

* Omit if not applicable.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	M.J. Griffin	Seaforth of C

Members.

Rank.	Name.	Regiment.
Lieut	R.L. Proctor	Edmn R
Lieut	T.P.H. Darlington	Edmn R
Lieut	D.S. Harley (waiting)	Seaforth of C

* Must be signed personally by the Officer usually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] (C. Vokes) Brig
Commanding 2nd Cdn Inf Bde *Convening Officer.*

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
H16702 Pte John HEIPEL Princess Patricia's Canadian Light Infantry	1st Charge: Army Act Sec 11 Neglecting to obey Regtl Part I Orders	Guilty	Guilty One year Detention	Confirmed

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer *(to be recorded on separate sheet if necessary)*:—

(Signed) (C. Vokes) Brig — *Commanding*
2nd Cdn Inf Bde — *Convening Officer (c)*

(Signed) (M. J. Griffin) Major — *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 6th day of August 1942 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. ~~The witnesses~~
3. ~~The interpreter~~
4. ~~The officers under instruction~~

* Omit if not applicable.

were duly sworn.

Signed this 6th day of Aug 1942.

(M. J. Griffin) Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this eleventh day of August 1942.

(C. Vokes) Brigadier,
Comdg. 2 Cdn. Inf. Bde.
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 12 Aug 1942 (Signed) K. A. Lindsay

Promulgated and extracts taken in the case of Pte Heipel

(Dated) AUG 17 1942 (Signed) for C. Vokes Brigadier, Comdg. 2 Cdn. Inf. Bde.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W.C. 4770(2)1007 50 M. 5/41 K.JL.2126(2) Gp. 688.2

Exhibit D

SHORT STATEMENT AS TO PARTICULARS OF SERVICE OF THE ACCUSED

(a) The accused has been in confinement awaiting trial on the present charges for no days in Civil Custody and from 1530 hrs 24 Jul 42 for six (6) days in Military custody making a total of six (6) days of which none were spent in hospital.

11 days as at day of trial Capt.

(b) The present age of the accused, according to his attestation paper is twenty-six (26) years.

(c) The date of his attestation specified in his attestation paper is 6 Jan 40.

(d) The accused is in possession of, or entitled to no Military decoration or Military reward.

I hereby certify that the foregoing particulars are true extracts from the Regimental books in my custody.

C.M.S.
30 Jul 42

(R.A. Lindsay) Lieut-Col.
Commanding, P.P.C.L.I.

M.F.M. 6
A.F.H. 1777
11320—7-41 (1310-20)
M.O. 1777/39-1652

No. 116702 Name Heipel J. Sqn., Battery, or Company "A" Corps R.C.E.L.I. Date of enlistment 18-1-40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 1. — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
R.C.A.S.F.S.	26-3-40	Pte.		Absenting himself from barracks from 2600 hrs. 26-3-40 until 0930 hrs. 26-3-40 (Absent 3 hrs. 30 min.)	L/C. Paul A.	3 days C.B.	27-3-40	Capt. K.E. Malone.	
								Capt. Newson A.F.	
R.C.A.S.F.S.	1-4-40	Pte.		Absenting himself without leave in that he was absent without leave from barracks from 2600 hrs. 1-4-40 to 1000 hrs. 1-4-40. (Absent 4 hrs.)	Cpl. Potter J. / L/C. Paul A.	Admonished.	2-4-40		
	Sec. 15 (1)							Maj. R.A. Lindsay.	Frfts. one days pay, FR&I
Belville Brks.	18 Jun. 40.			R.C.A.S.C. absent without leave from 0600 hrs. 18 Jun. 40 to 0600 hrs. 20 Jun. 42. (Absent 2 days.)	Cpl. Ball T.A. / Cpl. Fox J.W.	7 days C.B.	20 Jun. 40.		
	Sec. 15 (1)								

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
									Frfts.5days pa y rR & I.
England.	31 Oct.40	Pte.		WOAS.Absenting himself without leave from 2230 hrs. 31 Oct.40 until reporting in at 1430 hrs. 31 Oct.40. (Absent 16 hrs.)	Cpl.Critchley R.	14 days C.B. Fined 2 days pay.	4 Nov.40.	Maj.R.A. Mitchell.	
	Sec.15 (1)								
England.	16 Feb.41	Pte.		WOAS.Absenting himself without leave from 2230 hrs.16 Feb.41 to 0300 hrs. 16 Feb.41. (Absent 30 min.)	L/cpl. Arbour E.	3 days C.B.	17 Feb.41	Capt.J.A. Early.	
	Sec.15 (1).								
C.A.S.	21 Jul.42.	Pte.		W.O.A.S.Absenting himself without leave from 1400 hrs.21 Jul.42 to 2230 hrs. 21 Jul.42. (Absent 8 hrs. 30 min.)	Cpl.Harrison E.	Admonished.	22 Jul.42.	Maj.R.A. Clarke.	Frfts.1 days pay,R.R.& I.
	Sec.15 (1)								

Certified true copy.
By [illegible] Maj.
Comdg. 4th Coy.

Court Martial in the case of H16702 Pte Heyjet J. PPCLI

I certify that I have viewed 28 packages of cigarettes, exhibits submitted by the Prosecution, and that they have been delivered to O.C. P.P.C.L.I.

[signature]
President

6. Aug 42

Exh. B

CHARGE SHEET

The accused, H16702 Private John HEIPEL, Princess Patricia's Canadian Light Infantry, a soldier of the Canadian Army Active Force, is charged with, while on Active Service:

1st Charge
A.A. Sec 11

NEGLECTING TO OBEY REGIMENTAL PART I ORDERS

in that he

In the Field, at about 1100 hrs on 21 Jul 42, did sell Canadian "SWEET CAPORAL" Cigarettes (Gifts from Canada) to Mrs. Rosa Ann Russell of "Luern", Brighton Road, Hassocks, contrary to Regimental Part I Order No. 6 dated 7 Jan 42 paragraph 14 sub-paragraph 3 which directs that "the sale, or any disposal on a commercial or barter basis in the United Kingdom by military personnel to other military personnel or a civilian person or corporation, of any gift or gifts to an officer or soldier of the Canadian Army or for distribution to the personnel or a unit of the Canadian Army, which have entered, or are commonly known to enter the United Kingdom free of duty, is hereby forbidden."

R.A. Lindsay
(R.A. Lindsay) Lieut-Col.
Commanding, P.P.C.L.I.

Brigadier,
Comdg. 2 Cdn. Inf. Bde.

O.A.S.
30 Jul 42

Proceedings of a Field General Court Martial, held in the Field, on the 6th day of August 1942, by order of Brigadier C. Vokes, Commanding 2 Cdn Inf Bde, Canadian Army, in the Case of

H. 16702 Pte. Heipel, J. P.P.C.L.I.

President

Major M.J. Griffin Seaforth of C

Members

Lieut. R.L. Proctor Edmonton Regiment

Lieut. T.P.H. Darlington Edmonton Regiment

The order convening the Court, the charge sheet, and the Summary of Evidence are laid before the Court. The Court complies with R.P. 22 and 23.

At 0945 hrs the Court opens.

The accused and witnesses are brought before the Court.

Prosecutor Lieut. C.P. McPherson P.P.C.L.I.

Defending Officer Capt. R.G.N. Gemmell P.P.C.L.I.

Medical Certificate is laid before the Court and signed by the President and marked Appendix "A".

The Convening order is read by the President to the accused. The President and Members answer to their names.

Question by the President.

1.Q. Do you object to be tried by me as President or by any of the Officers whose names you have heard read?

A. No, Sir.

The President and Members are duly sworn, the charge sheet is read to the accused and signed by the President and annexed to the proceedings as Appendix "B", the accused is arraigned.

Question by the President.

2.Q. Are you guilty or not guilty of the charge which you have heard read?

A. Guilty, Sir.

R.P. 35 (a) is complied with and a plea of 'Guilty' is recorded. The Summary of Evidence with Exhibits thereto as read, signed by the President and annexed to the Proceedings as Appendix "C". A short statement of the service of the accused is produced by the Prosecution and with the approval of the Defending Officer is accepted by the Court, is marked by the President as Appendix "D".

M.F. M6 of accused is likewise produced and marked as Appendix "E".

R.P. 37 is complied with and the accused does not wish to make a statement. A written statement in mitigation of sentence is handed in, read by the Court, signed by the President and annexed to the proceedings as Appendix "F".

The Court is closed for consideration of the sentence.

Case of H 16702 Pte John Heipel. R/Appx F. PPCLI

Statement of Defending Officer

1) Police statement contains matter which is entirely irrelevant to the present charge, and should not be taken into consideration in the awarding sentence.

2) Neither the company commander, nor the platoon commander of the accused, are available to give evidence as to character, but the accused conduct sheet shows only minor S.W.L. convictions.

3) The accused appears to have only profited from the transaction in question to the extent of 5s.

R.G.W. Gammell Capt
Defending Officer

Appx C.

SUMMARY OF EVIDENCE in the Case of H16702 Private John HEIPEL, "A" Coy P.P.C.L.I.

The Commanding Officer, P.P.C.L.I., directs that the evidence be taken on oath.

1st WITNESS for the PROSECUTION.

K85230 Sgt. Strom C.A., Regimental Police, P.P.C.L.I., having been duly sworn, states:

"As a result of investigations made, I had reasons to believe that Canadian cigarettes from this Unit were being sold to civilians. I contacted the Civil Police and in company with Walter Paviour (Constable) I questioned the accused, whom I recognize. As a result of the interrogation he stated that on Tuesday, 21 Jul 42, he had sold some Cdn cigarettes to a civilian, Mrs. R.A. Russell, "Luern", Brighton Road, Hassocks. We immediately went to said place and recovered 28 packets of 20's Sweet Caporal cigarettes. Mrs. R.A. Russell made a statement to the effect that she had bought these cigarettes from a Canadian soldier who came from the woods nearby on 1 Jul 42 at about 1100 hrs. She also stated she had paid £2-9-0 for them. We again interrogated the accused who admitted selling the cigarettes and also stated he had received them from H16705 Pte. Mancini L.D "A" Coy P.P.C.L.I. to sell, receiving five shillings for his trouble. I produce herewith 28 packets 20's Sweet Caporal cigarettes, marked EXHIBIT "A" which were found on the premises of Mrs. R.A. Russell and which she stated were part of the cigarettes she had purchased from a Canadian soldier. I further produce Regimental Part I Order No. 6 dated 7 Jan 42 marked EXHIBIT "B" which deals with illegal sale of cigarettes that are gifts from Canada".

C.A. Strom
K85230 Sgt. Strom C.A.

The accused declines to cross-examine this witness.(R.P.4(d))

2nd WITNESS for the PROSECUTION.

Walter Paviour (Constable), having been duly sworn, states:-

"I produce a report, marked EXHIBIT "C", which deals with the sale of Canadian cigarettes by H16702 Pte. Heipel J., whom I now recognize, to Mrs. Rosa Ann RUSSELL of "Luern", Brighton Road, Hassocks.

I also produce a confession, marked EXHIBIT "D", made by the accused to me, in the presence of Provost Sgt. Carl Arnold Strom."

Walter Paviour Pc. 82
Walter Paviour (Constable)

The accused declines to cross-examine this witness.(R.P.4(d))

3rd WITNESS for the PROSECUTION.

Mrs. Rosa Ann Russell of "Luern", Brighton Road, Hassocks, having been duly sworn, states:-

"On the 21 Jul 42 at about 1100 hrs a Canadian soldier whom I recognize as the accused, called and asked whether or not the boss was in as he had some cigarettes to sell to him. I asked him how much he wanted for them and he answered: '1/6 per packet'. I asked him if they were stolen and he replied: 'No. We are allowed one thousand a month'. I then gave him £2-9-0 (I'm not sure of the amount) and received some cigarettes in exchange. They were the same cigarettes the police took away from this house".

Rosa A. Russell
Mrs. Rosa Ann Russell

The accused declines to cross-examine this witness.(R.P.4(d))

4th WITNESS for the PROSECUTION.

Mr. George Russell, "Luern", Brighton Road, Hassocks, having been duly sworn, states:

"Abour a month ago, H16702 Pte. Heipel J., P.P.C.L.I., whom I recognize as the accused, approached me and asked whether or not I would buy any cigarettes from him. I had no money with me so asked him to call at my house, giving him my address. He called shortly after but I was not at home. On the 21 Jul 42, on returning home from work, my wife showed me some Sweet Caporal cigarettes. She said a soldier had sold them to her and she had paid a sum of money for them, either £2-9-0 or £3-9-0, I am not quite sure of the amount".

G. Russell.
Mr. George Russell

The accused declines to cross-examine this witness. (R.P.4(d))

The accused, having been duly cautioned in accordance with Rule of Procedure 4 (E), declines to make a statement

Certified that Rule of Procedure 4 (C) (D) (E) and (F) have been complied with.

Taken down by me in the presence and hearing of the accused this 27th day of July, 1942, at Hassocks, Sussex.

C.P. McPherson
(C.P. McPherson) Lieut.
a/Adjutant, P.P.C.L.I.

REGIMENTAL ORDERS

by

Lieut-Col. R.A. LINDSAY

Commanding

PRINCESS PATRICIA'S CANADIAN LIGHT INFANTRY

7 JAN 1942

P.P.C.L.I.

No.6. PART I 7 Jan 42

1. LAST ORDER ISSUED. No.5 dated 6 Jan 42.

2. DUTIES. Field Officer of the Day, tomorrow:-
Major J.D. Ogilvie, P.P.C.L.I.
Next for duty:-
Capt. J.F. Harper, P.P.C.L.I.
Regimental Duty Officer, tomorrow:-
To be detailed by "D" Coy. P.P.C.L.I.
Next for duty:-
Lieut. T.E. Wales. P.P.C.L.I.
Regimental Duty Sergeant, tomorrow:-
Sgt. Curry R.E. P.P.C.L.I.
Next for Duty:-
L/Sgt. Fox J.E. P.P.C.L.I.

3. ORDERS. C.O's orders will be held at 0900 hrs, tomorrow.

4. TRAINING. As detailed.

5. BLACK OUT Black out time for tonight, 7/8 Jan 42:-
TIME. 1738 hrs to 0852

6. NIGHT MARCHING. In addition to lights carried at head and tail of marching columns, all cross roads and corners will be pickketted by a sentry carrying a light. This traffic control sentry will carry a light and remain at the corner or cross roads until the whole column has passed.
(Auth. Can Corps Order 600 dated 29 Dec 41).

7. DISCIPLINE - DANCE HALLS - BRIGHTON. Civil Police Regulations forbid the entry of Service or Civilian personnel to Dance Halls in Brighton after 2200 hrs. These regulations will be complied with by all ranks.

8. DISCS - IDENTITY DISCS. Advice has been received that many soldiers on being admitted to hospital, have been found to be without Identity Discs or have them in CARD (OS) No. 29, and many Identity Discs which are worn are not properly tied.

9. DISCIPLINE - USE OF M.D. PETROL. 1. Checks have shown that officers and other ranks are using M.D. petrol in private motor vehicles. This is forbidden, and disciplinary action will be taken in any case of contravention.

2. Arrangements are being made to carry out further checks throughout the United Kingdom.

3. All ranks are warned that the presence of M.D. petrol in a tank can be detected by analysis and that any cases discovered will be severely dealt with.
(Auth. 2 C.I.D. Order 5 dated 2 Jan 42)

10. POSTS. The undermentioned personnel are posted to Coys as shown opposite their names w.e.f. 7 Jan 42:-
[illegible] Pte. Whitney C.D. Bn.H.Q.
[illegible] Pte. Wickstrom J.E. "A" Coy. (Attd "B" Sec)

(cont'd)

EXHIBIT "B"
to Affidavit "C"

No.6. (Cont'd) PART I 7 Jan 42

11. COURT OF INQUIRY. A Court of Inquiry composed as under, will assemble at the call of the President for the purpose of inquiring into and reporting upon: the loss of 1 pair of spats on charge to 15879 Pte. McDonell D.A.W., "D" Coy., P.F.C.L.I.

President: Major A.B.T. Paquet.
Member: Lieut. W.H. Stevens.

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12. FUNDS HELD ON LEAVE. 1. It has been reported that soldiers on leave in London have made application to Unit and to the Cdn Pay Office at Acton for advances of pay. Attention is directed to the provisions of Appx to CARE/(OS)/1017, parts 13 and 14 which read as follows:-

13. "Commanding Officers must ensure that other ranks proceeding on leave are in possession of sufficient money to cover the entire period of leave. If a soldier has insufficient money, leave should not be granted or should be reduced accordingly, with his available funds. All ranks must be in possession of return transportation when proceeding on leave."

14. If a soldier on leave expends his funds, he should report to his unit forthwith. No advances of pay to personnel on leave will be given at Cdn Pay Office, Acton."

2. If a soldier on leave finds himself without money or has lost his return transportation, he should report as follows:-

(a) If outside London - to the nearest R.T.O.

and

(b) If in London, to the DAPM Cdn Pro Corps, 20 Henrietta St., Covent Garden, London.

These officers may issue return transportation, the cost of which will be a charge against the soldier's pay.

(Authy: 2 C.I.B. Order 2 dated 2 Jan 42).

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13. POSTINGS. The undermentioned personnel are posted to Coys as shown opposite their names w.e.f. 7 Jan 42:-

Gibson Pte. Bennett D.C. "B" Coy.
Mi0837 Pte. Stewart D.C. "D" Coy.

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X 14. ILLEGAL SALE OF GIFTS FROM CANADA. 1. Attention is directed to A.C.I. (Misc) 699 and the instructions therein that Officers Commanding will see that DARA appropriate disciplinary action is taken immediately any crimes are reported or come to their notice of the sale by personnel of the Can Army of gifts, particularly cigarettes and tobacco, which have entered the U.K. free of duty.

2. Disciplinary action should be taken promptly in all cases. To facilitate proff and in order that a charge may be laid under A.A. Sec 40, the following special order is made.

X 3. The sale, or any disposal on a commercial or barter basis in the U.K. by military personnel to other military personnel or a civilian person or corporation, of any gift or gifts to an officer or soldier of the Can Army as for distribution to the personnel or a unit of the Can Army which have entered, or are commonly known to enter, the U.K. free of duty, is hereby forbidden.

(Authy: 2 C.I.B. Order 4 dated 2 Jan 42).

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(D.F. McPherson) Lieut.
A/Adjutant, P.F.C.L.I.

520

B U L A G E S

[illegible] Rev. Ivy Archibald Hughes, Christian Science Officiating Minister [illegible] Eastern Command, invites members of this Church to communicate with [illegible]

Little Trees, Beech Avenue, Chichester.

[illegible] Coy's Xmas Mess at 1800 hrs.

FORM 97.

Beat File No.
Crime Report No.
No. in Summons Book

EXHIBIT "C"
to Affidavit "C"

EAST SUSSEX CONSTABULARY.

Haywards Heath Division Hassocks Station

25th, July. 1942

Subject: Re: - Tobacco Act. 1842. s. 13.

I respectfully beg to report Mrs Rosa Ann RUSSELL, aged 21 years, of "Luern", Brighton Road, Hassocks, Parish of Clayton, for an offence under the above Act, on the 21st, July, 1942, at her address.

In consequence of information received and enquiries made, on the 24th, July, 1942, in company with Sergt BUCKLAND, Hurst, and Provost Sergt STROM, of the Princess Patricias' Canadian Light Infantry, "A" Company billets, which are in a wood in Hassocks, were visited and enquiries continued. Members of the "A" Company, P.P.C.L.I. were interviewed, including Privates Jack HEIPEL and Louis MANCINI.

Acting on the information contained in the attached Statement of Pte HEIPEL, a visit was made to "Luern" Brighton Road, and Mrs RUSSELL was interviewed. She stated that she had purchased several packets, number not known, of "Sweet Caporal" Cigarettes off a Canadian soldier, whose name she did not know on the 21st July, 1942, and paid the sum of £2.9.0. for same. When asked if there were any packets of these cigarettes left, three packets were produced from a cupboard in the kitchen and twenty five packets recovered from a shed on the premises. I told her that the facts would be reported.

The two Privates mentioned above were further questioned and it was admitted by Pte HEIPEL that he had received the Cigarettes about 46 packets from Pte MANCINI on the 21st, inst and he stated that they were given to him by Pte MANCINI to sell. After the sale of the cigarettes on the 21st, instant, Pte HEIPEL retained 5/- of the money, which he states was £3.5.0. and gave the balance, £3.4.0. to Pte MANCINI. The carton in which the complete 1,000 cigarettes came from Canada in was found in the tent of Pte MANCINI and gave the name of the sender thereon as a brother of Pte MANCINI.

It was by the subsequent assistance given by the two soldiers mentioned above that this matter was cleared up. Privates HEIPEL and MANCINI were taken into custody by the Military Police to be dealt with by ~~Court Martial~~. MILITARY AUTHORITY (AX Exh)

In view of information I have received, I respectfully beg to suggest that a copy of this report be forwarded to Col.LINDSAY O.C. Princess Patricias' Canadian Light Infantry, Hassocks, for his information and a copy also forwarded to the Customs and Excise Authorities, for their information.

Walter Parsons P.C.121.

The Superintendent of Police,
HAYWARDS HEATH.

Sgt. (R) H.M.A.D.

FORM 31.

EXHIBIT "D" & Offender "C"

Beat File No.
Crime Report No.
No. in Summons Book

EAST SUSSEX CONSTABULARY.

Hassocks Station Haywards Heath Division

Statement taken at :— Hassocks,

Place "A" Coy Camp. P.P.C.L.I. Time 11.30 a.m. Date 24th, July, 1942.

Name HIEPEL. Jack No. H.16702.

Address "A" Coy Camp, Hassocks. Sussex.

Occupation Private. PRincess Patricias' Canadian Light Infantry. Age 26 years

Statement :— "I have been cautioned and wish to make this Statement volutary and that anything I may say may be used in evidence:

(Signed) Jack Hiepel. Jack Hiepel

"In February, 1942, I was stationed at Kemp Town, Brighton with my Unit and visited Brighton periodically. I came into contact with a Mr. PIERCE when I was waiting for a bus early one morning. The conversation turned to the subject of cigarettes. I told him that I got an issue from home at different times. He said he would buy any surplus I had, and gave me his address, Grafton Street, Brighton. About the beginning of March, 1942, I visited Mr. PIERCE at Grafton Street, and took about 300 "Sweet Caporal" Cigarettes. He paid at the rate of 1/6d a packet, there being 20 in a packet. I sold him various quantities of the same brand of cigarette at the same rate. It was approximately the end of April, when I disposed of the last lot to him. Shortly after this I moved to Hassocks. There was another man, Mr. BOND, Hairdresser, Bedford Street, Brighton, who had cigarettes at the same rate off of me. I moved to Hassocks about May, 1942, with my Unit. I visited Hassocks often and used to walk along the road, Brighton Road, into the town. I got friendly with a young man in a bungalow on the Bright Road, Hassocsk. I am not sure if he asked me if I had cigarettes to sell or whether I offered him some. On the 21st, July, 1942, Private MANCINI, of "A" Coy, P.P.C.L.I. gave me 46 packets of 20s "Sweet Caporal" cigarettes and told me to sell them for him. I went along to this Bungalow and saw a young lady, who is the wife of the man I had got to know there. I asked her if her husband was in, she told me he was out. I told her that I had got some cigarettes for him. She took the 46 packets and paid me £3.9.0. Of this sum I gave MANCINI £3.4.0 and kept 5/- for the trouble of selling them. I was quite aware at the time of selling these cigarettes that it was wrong. I gave MANCINI the £3.4.0. the same day in which I had disposed of the cigarettes:

(Signed) Jack HEIPEL. Jack Hiepel

The above statement was made to me in the presence of Provost Sergt Carl Arnold STROM, and the above, and recorded by me at the same time.

Wallis Pearce Police Constable. No. 121.

Summary of Evidence in the case of H16702 Pte Hespeler John A' Coy PPCLI

The Commanding Officer directs that the evidence be taken on oath

1st Witness for Prosecution. K85230 Sgt Storm C.A. Regtl Police PPCLI having been duly sworn states —

As a result of investigations made, I had reasons to believe that Canadian cigarettes from the canteen were being sold to civilians. I contacted the Civil Police & in company with Walter Parsons (Constable) I questioned the accused, whom I now recognize. As a result of the interrogation he stated that on Tuesday 21st Jul 42 he had sold some Can Cigarettes to a civilian, Mrs R.A. Russell, "Luern", Brighton Rd. Hassocks. We immediately went to said place & recovered 28 Packets of 20's Sweet Caporal Cigarettes. Mrs R.A. Russell made a statement to the effect that she had bought these cigarettes from a Canadian Soldier who came from the woods nearby on 1st July 42 at about 11 AM. She also stated she had paid £2.9.0 for them. We again interrogated the accused who admitted selling the cigarettes & also stated he had received them from H16705 Pte Mancini L.D. A Coy PPCLI to sell, receiving five shillings for his trouble. I produce herewith 28 Packets 20's Sweet Caporal Cigarettes, marked Exhibit 'A' which were found on the premises of Mrs R.A. Russell & which, she stated, were part of the cigarettes she had purchased from a Canadian Soldier. I further produce Regtl Pol Order #6 dated 7 Jan 42, marked exhibit 'B' which deals with Illegal sale of cigarettes that are gifts from Canada

C.A. Storm.

The accused declines to cross-examine the witness

the police took away from the house

Rosa A Russell.

The accused declines to cross-examine this witness

2nd Witness for Prosecution — Walter Parsons (Constable) having been duly sworn states:-

I produce a report, marked Exhibit 'C', which deals with the sale of Canadian Cigarettes by Pte Heigel, whom I now recognize, to Mrs. Rosa Ann Russell of "Luen" Brighton Rd. Hassocks.

I also produce a confession, marked Exhibit 'D', made by the accused to me, in the presence of Provost Sgt Carl Arnold Strom

Walter Parsons Pc. 121.
Hassocks Station.

The accused declines to cross-examine this witness

4th Witness for Prosecution — Mrs. Ivy Russell "Luen" Brighton Rd. Hassocks having been duly sworn states

About a month ago Pte Heigel W121, whom I recognize as the accused, approached me and asked whether or not I would buy any cigarettes from him. I had no money with me so I asked him to call at my house, giving him my address. He called shortly after but I was not at home. On the 21st July 42, on returning home from work my wife showed me some Sweet Caporal Cigarettes. She said a soldier had sold them to her & she had paid a sum of money for them, either £2 90 or £3 90. I am not quite sure of the amount.

E Russell.

The accused declines to cross examine this witness

3rd Witness for Prosecution — Mrs Rosa Ann Russell of "Luen" Brighton Rd Hassocks, having been duly sworn states:-

On the 21st July 1942 at about 11 AM a Canadian Soldier, whom I recognize as the accused, called & asked whether or not the boss was in as he had some cigarettes to sell to him. I asked him how much he wanted for them & he answered "1/6 per packet." I asked him if they were stolen & he replied, "No, we are allowed one thousand a month". I then gave him £2.90, I'm not sure of the amount & received some cigarettes in exchange. They were the same cigarettes

The accused declines to give evidence after being duly cautioned

The accused does not call any witnesses for the defence.

I certify that the foregoing summary of evidence of Evidence consisting of three pages was taken down by me & that rules of procedure 4 (c), (d) (e) & (f) have been complied with

Hassocks
21 Jul 42

[illegible]
a/Adjutant PPCLI

[illegible]
Provost

App A

"A"

I have this day examined H16702 Pte. Heipel J. P.P.C.L.I.,
and find him fit to undergo trial by Court Martial.

(C.C. Fairfield) Capt.
R.C.A.M.C.

O.A.S.
6 Aug 42

4K24.
Pé. Helkenberg. J.R.D.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K51086 Pte John Ronald David HELKENBERG Sask R.C.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. 12(1)(a)	Not Guilty	Not Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) .....
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial: a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

~~Sentence promulgated by the Court.~~

(Sgd) ..... Judge-Advocate, if any. Date awarded: 25 Nov HH (Sgd) R C Potts Major President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761; KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Noted

I direct that the accused be not committed to prison or detention barracks [illegible] other orders.(1)
(1. AA 57A. Delete if not used.)

Date 28 Nov 44 (Sgd) W.L. Bogert Lt. Col
Commanding 2 Can Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

Robt L McDougall Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORD OF PROCEEDINGS 160 4K-24

CPA96 (In lieu of AFA2) 40 P&R/1808 (2804)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt Col J.R. STONE A/Comd 2 Can Inf Bde dated 22 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K51086	Private	John Ronald David	HELKENBERG, Sask R.C.	CMHQ.

PROCEEDINGS REVIEWED BY REVIEWING OFFICER'S BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 25 Nov HH.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2F-134

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A96, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (not) amenable to military law, and each charge discloses an offence.(4)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (not) brought before the Court. At 1045 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is fit (unfit) to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans ~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No Sir.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see AA 51, RP 25, 71, 187, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R.W. Potts	P.P.C.L.I.
Member	Capt.	A.M. Johnson.	L.E.R.
Member	Lt.	W. Remple.	L.E.R.
Judge-Advocate	Nil.		
Prosecutor	Lt.	A.N. McMullen	Sask R.C.
Defending Offr	Lt.	M.P. Finnerty	Sask R.C.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and fn 2 were not followed. See DI p)

A8. The accused K51086 Pte HELKENBERG, J. before arraignment make(s) (no) ~~(a)~~ plea(s).
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fins to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (not) arraigned (separately) on all charges in the charge sheet.(1) The accused does (not) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32. RP 33. If otherwise, delete and make appropriate record.)

A10. The Court ~~adjourns~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

F87 AB/19

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 86, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*I. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans _____(5)
(*I. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 2, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on _____ charge(s). Part I of the Schedule is amended accordingly.
(*I. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*I. RP* 37(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex _____, initialled and read aloud by the President.(1)
(*I. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are continued by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*I. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*I. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are continued by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No Sir.(1)
(*I. If "yes", see RP* 39(*A*) *for procedure. Statement of evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~no~~) opening address.(1)
(*I. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*I. RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the First charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the First charge(s), and allowed on the ~~remainder~~ charge(s), and that, accordingly, the trial will proceed ~~on the charge(s) but the finding will be that the accused is not guilty thereof.~~ RWP
(*I. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans No Sir. Do you intend to call witnesses on your behalf ?
Ans No Sir. ~~See thirty witnesses as to character only.~~ Ans RWP
(*I. RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*I. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*I. RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. ~~The President announces the finding(s) of not Guilty, and states to the accused that the findings of the Court on the charge(s) being subject to confirmation, will be promulgated later.~~ RWP
~~Or~~ The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*I. AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. ~~The accused having been found Guilty on one or more of the charges, the proceedings are continued by using Record Form E below.~~ RWP

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans _____
(*I. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex _____ and Ex _____ respectively.(3)
(*I. MFB* 355 *or AFB* 296. 2. *MFMs* 5, *RP* 86, *AA* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans _____(2)
(*I. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*I. AA* 54(5), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*I. When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishments or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas AO* 209, 1323. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

K51086 Pte John Ronald David HELKENBERG,
The Seaforth Highlanders of Canada, a soldier in the Canadian Army (OVerseas), placed on Active Service, is charged with, when on active service,

First Charge
Sec.12(1)(a)
Army Act

WHEN ON ACTIVE SERVICE,
DESERTING HIS MAJESTY'S SERVICE,

in that he, in the field, between the hours of 2000 and 2130 on the 21st October, 1944, when serving with his Company in a forward area, with intent to avoid such service, absented himself from his said Company until surrendering himself to the NCO in charge of Stores at "A" Echelon at 1600 hours 22 October, 1944.

W.S. Murdoch

In the field
16 Nov 44

(W.S.Murdoch) Major.
A/OC The Seaforth Highlanders of Canada.

To be tried by F.G.C.M.

J.R. Stone

In the field
22 Nov 44

(J.R. Stone) Lt Col
A/Comd 2 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K51086	Private		John Ronald David	HELKENBERG,	Sealf of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 NOV 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable that such offence should be tried by any other Field General Court-Martial~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I appoint the officer first detailed to be President, and the senior officer next detailed~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as reserve the officer detailed next after the junior member hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	R.W. Potts	PPCLI

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	A.M. Johnson	L E H
Lt	W. Remple	L E H

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	D.G. McCulloch	PPCLI
~~(Rank.)~~	~~(Must be named, if any. RP 106.)~~	~~(Unit.)~~

On Active Service in the Fd

in Italy (Country.)

Date 22 Nov 44

(Signed personally. RP 105 fn 2.)

(J.M. Stone)

A/Commanding 2 Cdn Inf Bde

Lt Col (Rank.)

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA85 (In lieu of AFA3) 40/P & S/1601 14601)

(See overleaf for oaths and notes for use on trial.)

I CERTIFY that I have this day examined K51086 Pte Helkenberg, J.R.B., The Seaforth Highlanders of Canada, and find him fit/unfit to undergo trial by Field General Court Martial.

In the Field

Date...25/11/44.....

.....(Capt)
RCAMC

Proceedings In the Case of K 51006 Pte. Helkenberg J.R.D.

~~1st Witness~~ Defence states no witness Pl. Beatty not available — has been taken P.O.W.

1st Witness Lt. W. Liddell being duly sworn states

Jan 7 Pl. Cmd. A.V. of Canada. On the night of 21 Oct 44 my Pl. was ordered to be ready to move off from the assembly area to the jumping off point at 2000 hrs. At that time I called the Platoon Sgts. and they reported all in present. Shortly before that hr. the Coy Cmdr. marked the F.U.P. Sgt. Kennedy, myself Pl. Sgt. came to me and told me that Sgt. Beatty had reported to him Pte. Helkenberg was not with the section. Sgt. Kennedy, Sgt. Beatty and I checked the section and Pte. Helkenberg was not there. I did not see him until the Sgt. mentioned it to me. She was under close arrest. I personally warned the Pl., ~~Sgt~~ ~~Helkenberg~~, that we were to move off to the F.U.P. Pte. Helkenberg was present at that time.

Cross Exam.

Q. On the night concerned was it dark.

A. Yes.

Q. Does close arrest consist during the move from the assembly area to the F.U.P.

A. No.

Q. Had you anticipated that during the action some of your men might possibly get lost.

A. Yes.

Q. Did any of them get lost.

A. No.

Q. Had you appointed a rendezvous in case some of them did get lost

A. An R.V. had been appointed by Major Clark. Nil

Q. Where was that R.V.
A. It was a house in R. Coys. area across the river.
Q. You say that no one got lost and yet when you arrived your evidence shows some were missing. How do you know they did not get lost.
A. The men that were missing were missing before we reached the F.U.P. The route to there was down a deep ditch - we moved in single file and the possibilities of getting lost were remote.
Q. But you cannot say that they did not get lost.
A. No.

By Court.
Q. Was the O.S. V. passed to all ranks.
A. Yes. We were in the F.U.P. for approx. 2 hours. There was no sign of the accused in spite of the fact that we were only a short move to there. The ditch was along the road — the only branches or paths were at right angles.
Q. How and when did you have to pass the information of location of O.S. V. to your men.
A. There was plenty of time. I checked around men who had the information.
Q. Who was to be at the O.S. V.
A. Our Coy. H.Q.

(R.P. 83 (1) complied with.)

2nd Lieut. James 37102 Cpl. Kennedy J.B. having been duly sworn states.
On the night of the 21 OCT 44 at approx. 20.00 hrs. Lt. Liddell, 3 Pl. Cmdr. made a personal check of his Platoon and they were reported all present. We then moved off from the assembly area to the F.U.P. We arrived there at approx. 21.30 hrs. At that time Cpl. Kenny reported to me that the accused was missing from the section. I reported this to Lt. Liddell

and he, together with Lt. Lesly and me, made a check of the section. The accused, when I was arriving, was missing. I did not see him again till the time assembly was made. He was under close arrest.

I heard Lt. Liddell order the Platoon to open ranks. That the Platoon was likely to move off.

Q. Was the accused present at the time.

A. I think so but there were no duplicate check made, but it was at meal time.

Cross Exam.

Q. Was it dark on the night concerned.

A. Not unusually so.

Q. How long did the run from the assembly area to the F.U.P. take.

A. Approx. one and a half hours.

Q. How many men were missing when you arrived at the F.U.P.

A. 4

Q. Do you feel it possible that they might have got lost.

A. A slight possibility.

Q. Did you see any of the missing men later.

A. I saw one man.

Q. What was the drill for men who got lost

A. Return to Coy. H.Q.

Q. In the several days preceding this night how many men reported at Coy. H.Q.

A. The Sgt. Major's attitude was not one to encourage men to return to Coy. H.Q. He [redacted] had previously [redacted] threatened men with a revolver. This information was common knowledge in the Platoon. To my knowledge no shot was ever fired.

Q. Would you expect a man in your Platoon who got lost to report to Coy. H.Q. during the Coy. [illegible]

Major was using a revolver in his own men.
A. Yes.

By the Court.
Q. What was the reason for the Sgt. Major's threat?
A. He was using his threats to keep men in their places
Q. Was there enemy fire in your area during the move
during shelling
& the F.U.P.
A. Slight harassing artillery and mortar fire. To my knowledge there were no casualties in the Coy during the move up.

(R.P. S 3(4) complied with)

Defence

(Defence under instruction that evidence of prosecution has not established a prima facie case)
(Submission disallowed by court)

~~Summing up of Evidence in the Case~~

Defending Officer's opening address.

Re Kallenberg.

Gentlemen -

The defence submits that the prosecution must prove either that the accused absented himself in a deliberate & clandestine manner under Section 20 & that he is guilty under Section 17 and if no intention must be proved. I submit Sir that no evidence has been presented to show that the man went absent in a deliberate & clandestine manner and that no evidence as to intention has been brought forth. Therefore I ask the court to find him not guilty

~~W~~ Comdy.

Defending Officer

Summary of Evidence in the case of K50186 Pte Helkenberg, John Ronald David, Seaf of C.

By direction of the Commading Officer the evidence is taken on oath.

First Witness:

Lt. W.Tisdall having been duly sworn states:
"I am Lt. W.Tisdall, 7 Pl "A" Coy Seaf of C. At approx 2000 hrs on the night of 21 Oct 44 the Coy was in the assembly area before moving up to the F.U.P. for an attack. I checked with L9871 Cpl Bentz P, one of my section commanders, who reported that his section was all present. The accused was a member of this section. Some time after leaving the assembly area and before reaching the F.U.P. K37107 Cpl Kennedy J.P. acting platoon sergeant, told me that Cpl Bentz had reported to him that the accused was absent. I recognize the accused as a member of my platoon. I went back with Cpl Kennedy and with Cpl Bentz checked his section. The accused was not present. I reported his absence to the OC "A" Coy Major R.S. Clark when we reached the F.U.P. I did not see the accused again until the Bn came out of the line into rest. He was under arrest."

(SGD) W.Tisdall

The accused declines to cross-examine

Second Witness:

K37107 Cpl Kennedy, J.P. having been duly sworn states:
"I am K37107 Cpl Kennedy, J.P. of "A" Coy Seaf of C. On the night of 21 Oct 44 at approx 2000 hrs Lt. W.Tisdall, my platoon commander, made a check of the platoon to make sure that all were present. They were all reported present. We then marched off from the assembly area to the F.U.P. At the F.U.P. Cpl Bentz, one of the section leaders, reported to me that the accused, whom I now recognize, was absent. I reported this to Lt Tisdall and together we made a check of Cpl Bentz' section and the accused was not present. I did not see the accused again until, the Bn came out of the line into rest. He was under arrest."

(SGD) John P. Kennedy, Cpl.

The accused declines to cross-examine.

The accused was cautioned as follows:
"Do you wish to make any statement or give evidence under oath? You are not obliged to say anything or give evidence unless you wish to do so, but anything you say or any evidence you give will be taken down and may be given in evidence."

The accused reserves his defence.

(SGD) J.R.D.Helkenberg

This page was taken down by me in the presence of the accused this 14th day of November, 1944. R.P.A.(c)(d)(e)(f) and (g) have been complied with.

In the field
14 Nov 44

(SGD) L.C.Day-Smith, Lt.
Officer Taking Summary.

Summary of Evidence in the case of K51086
Pte Heikenberg, John Ronald, David Sask. of C.

By direction of the Commanding Officer the evidence is taken on oath.

1st Witness: Lieut W. Tisdall, having been duly sworn states:
"I am Lieut W. Tisdall, 7 Pl "A" Coy, Sask. of C. at approximately 2000 hrs on the night of 21 Oct 1944 when the Coy was in the assembly area before moving up to the F.U.P. for an attack, I checked with L9871 Cpl Bentz P., one of my section commanders, who reported that his section was all present. The accused was a member of this section. Some time after leaving the assembly area and before reaching the F.U.P., K37107 Cpl Kennedy, P. acting as platoon sergeant, told me that Cpl Bentz had reported to him that the accused was absent. I recognize the accused as a member of my platoon. I went back with Cpl Kennedy, and with Cpl Bentz, P. checked his section. The accused was not present. I reported his absence to the O.C. of "A" Coy, Major R.S. Clarke, when we arrived at the F.U.P. I did not see the accused again until the Bn came out of the line into rest. He was under arrest."

SIGNED A. Tisdall

The accused declines to cross-examine.

2nd Witness: K37107 Cpl Kennedy, J.P. having been duly sworn states:

"I am K37107 Cpl Kennedy, J.P. of "A" Coy, Seaf. of C.
On the night of the 21 Oct 1944 at approximately 2000 hrs, Lt W. Tisdall, my platoon commander, made a check of the platoon to make sure that all were present. They were all reported as being present. We then marched off from the assembly area to the F.U.P. At the F.U.P. Cpl Bentz, one of the section leaders, reported to me that the accused, who I now recognize, was absent. I reported his absence to Lieut Tisdall, and together we made a check of Cpl Bentz's section, and the accused was not present. I did not see the accused until the Bn came out of the line and into the rest area. He was under arrest."

SIGNED John P. Kennedy Cpl.

The accused declines to cross-examine.

The accused was cautioned as follows: "Do you wish to make any statement or give evidence under oath? You are not obliged to say any thing or give evidence unless you wish to do so, but whatever you say or any evidence you will give will be taken down and may be given in evidence."

The accused reserves his defence.

SIGNED
J R D Helpenberg

This page and the preceding page taken down by me in the presence of the accused this 14th day of November 1944. R.P. 4 (c) (d) (e) (f) and (g) have been complied with.

In the field
14 Nov 44

SIGNED
L.C. Day-Smith Lt
OFFICER TAKING SUMMARY

Additional Summary of Evidence in the case of K51086 Pte Helkenberg, John Ronald David, Seaf of C.

By direction of the Commanding Officer the evidence is taken on oath.

Third Witness: K52448 L/Cpl Nelson, J.H., having been duly sworn states: "I am K52448 L/Cpl Nelson, J.H., Seaf of C. On the 22 Oct 44 at approximately 1600 hrs I was on duty in charge of xtmx stores at "A" Echelon, when the accused, whom I now recognize, surrendered himself to me. I put him under arrest, and at approximately 0900 hrs on the 23 Oct 44 I dispatched him along with several other prisoners in a truck to X area, where they were to be held under arrest."

(sgd) J.H. Nelson

The accused declines to cross-examine.

Fourth Witness: K52718 Sgt Portwood, W.J., having been duly sworn, states: "I am K52718 Sgt Portwood, W.J., Seaf of C. At approx. 1500 hrs on 23 Oct 44 I was the senior NCO in charge of X area. A number of prisoners, among whom was the accused, whom I now recognize, were placed in my custody. I placed them under close arrest."

(sgd) W.J. Portwood, Sgt.

The accused declines to cross-examine.

Fifth Witness: K37107 Cpl Kennedy, J.P., having been duly sworn states: "I am K37107 Cpl Kennedy, J.P., Seaf of C. On the night of 21 Oct 44 at approx. 2000 hrs we marched off from the assembly area. We arrived at the F.U.P. at approximately 2130 hrs."

(sgd) John P. Kennedy

The accused declines to cross-examine.

The accused was cautioned as follows:

"Do you wish to make any statement or give evidence under oath? You are not obliged to say anything or give evidence unless you wish to do so, but anything you say or any evidence you give will be taken down and may be given in evidence."

The accused reserves his defence.

(sgd) G.W. Romer o

This page and the preceding page taken down by me in the presence of the accused this 21st day of November 1944. R.P. 4(C)(D)(E)(F) & (G) have been complied with.

(sgd) L.C. Day-Smith, Lt.
Officer taking Summary

In the Field
21 Nov 44

RWP

Additional Summary of Evidence in the case of K51086 Pte Helkenberg, Johan Ronald Davick, Sergt of C.

By direction of the Commanding Officer the evidence is taken on oath.

Third Witness: K52448 L/Cpl Nelson, J. H. having been duly sworn, states:

"I am K52448 L/Cpl Nelson J. H. Sergt of C. on the 22 Oct 44 at approximately 1600 hrs I was on duty in charge of stores at "A" Echelon, when the accused, whom I now recognize, surrendered himself to me. I put him under arrest, and at approximately 0700 hrs on the 23 Oct 44 I despatched him along with several other prisoners in a truck to X area, where they were to be held under arrest."

(SGD) [illegible]

The accused declines to cross-examine.

Fourth Witness: K52718 Sgt Portwood, W. J., having been duly sworn, states:

"I am K52718 Sgt Portwood, W. J., Sergt of C. at approximately 1500 hrs on 23 Oct 44 I was the senior A.C.O. in charge of "X" area. A number of prisoners, among whom was the accused, whom I now recognize, were placed in my custody. I placed them under close arrest."

SGD. W. J. Portwood Sgt.

The accused declines to cross-examine.

Fifth Witness: K37107 Cpl Kennedy J. P. (recalled)

having been duly sworn states:

"I am K37107 Cpl Kennedy, J. P., Sqn HQ. On the night of 21 oct 44 at approx 2000 hrs we marched off from the assembly area. We arrived at the F.U.P. at approximately 2130 hrs."

Sgd John P. Kennedy

The accused declines to cross-examine.

The accused was cautioned as follows:

"Do you wish to make any statement or give evidence under oath? You are not obliged to say anything or give evidence unless you wish to do so, but anything you say or any evidence you give will be taken down and may be given in evidence."

The accused reserves his defence.

J R D Walkerley

This page and the preceding page taken down by me in the presence of the accused this 21st day of November 1944. R.P.A (c)(d)(e)(f) and (g) have been complied with.

Signed L. C. Day-Smith Lt

OFFICER TAKING SUMMARY

For the Field
29 Nov 44

List of witnesses in the case of K51086 Pte Helkenberg, J.R.D. The Seaforth Highlanders of Canada.

Lt.	W.	Tisdall		Seaf of C
K37107	Cpl	Kennedy	J.P.	Seaf of C

List of Exhibits in the case of K51086 Pte Helkenberg, J.R.D. The Seaforth Highlanders of Canada.

Nil

OC
Seaf of C

Sir:

I respectfully request that ~~Capt. A. Staples~~ LT. M.P. FINNERTY J.R.H.

represent me at my forthcoming Field General Court Martial.

J.R.D. Helkenberg

R.W.P.

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

BBB-C3

SPR - HEMMINGS L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H 39138 Spr. Hemmings L. 8 Cdn. Fd. Pk. Coy. RCE.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kia see RP 44 fn 6.)

~~At present under sentence for ... beginning on date~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo Detention for a period of ~~Seventy~~ 90 days.

(Sgd) ... Judge-Advocate, if any. 17 Jan 44 Date awarded. (Sgd) H. E. Mathews Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding ...

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,44(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be entered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the court but commute the sentence to read: To suffer field punishment for 90 days and to forfeit all ordinary pay for a period of 90 days.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 18 Jan 44 (Sgd) W. Buck. Brig. Commanding HQ. RCE. 2 Corps. Tps Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
H 39138 Spr. Hemmings L.	19 Jan 44	[signature] Major RCE

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFA98 (In lieu of AFA3) 40/P/R/S 1698 (2864)

Convened by Order of LT COL. D.K. BLACK Comd CRE 2 CON. C. Tps Dated 14 JAN 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H39138	Spr	Lawrence	Hemmings	No 2 Can Fd Pk Sec and 8 Can Fd Pk Coy

PROCEEDINGS REVIEWED Date 31 Jan 44

[signature] Capt. 15 Feb 44

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 17 Jan 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Instr RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~—~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~were~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~were~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~President to accused: Do you object to ... as interpreter? Ans ...~~

~~The Interpreter is sworn.(1) Do you object ... as shorthand writer? Ans ...~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 53, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H. E. Mathews	46 Cdn Fd Pk Coy 2 Corps 95 Cdn Inf Bde ~~HQ 2 Cdn C Tps~~
Member	Capt.	J. P. Findlay	~~HQ 2 Cdn C Tps~~
Member	Capt.	J. W. Smith	HQ. RCE 2 Cdn. C. Tps.
Judge-Advocate			
Prosecutor	Lieut.	W. H. MacDougall	8 Cdn. Fd. Pk. RCE
Defending Offr	Lieut.	E. W. Chrisman	2 Cdn Fd Pk. RCE.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pres a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ... before arraignment make(s) (no) ~~one~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to Rule cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge~~s~~ ~~call witnesses as to character and make an address in mitigation of punishment.~~(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge~~s~~.(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

~~B2. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

~~(1. Court may be closed to consider the statement. Delete whole or part not used.)~~

B4. On the charge~~s~~ to which the plea~~s~~ of Guilty is ~~(are)~~ not changed the President records finding~~s~~ of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(2) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans.....

Do you intend to call witnesses on your behalf?

Ans.....

Are they witnesses as to character only? Ans.....

(1. *RP ~~105~~ 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. No.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement~~s~~ as to Character and Particulars of Service(1), and certified true copy ~~extracts~~ of Conduct Sheet~~s~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 183(1) (g) (h), and (ii) they purport to refer to (a) soldier~~s~~ having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MFB 355 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement~~s~~ and Conduct Sheet~~s~~ and in mitigation of punishment?(1) Ans. Yes by my defending officer.(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) *(over for (2))*

(1. *When several accused tried separately see RP ~~105~~ 115. One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 1303, MML p 90, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(2), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused H.39138 Spr Laurence Hemmings 2 Cdn E & M Section "A" R.C.E., a soldier of the Canadian Army Overseas is charged with:-

Sec.15(1) A.A . WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

in the field, on 19 Dec 43 did absent himself without leave from his unit, No 2 Cdn E & M Section "A" R.C.E. from 2359 hours on said 19 Dec 43 until he surrendered himself to his unit guard room at 2300 hours 9 Jan 44. (Absent 20 days, 23 hours, 1 minute.)

To be tried by FGCM in the field.

14 JAN 44

(A. Webster) Major RCE
Commanding
6 Cdn Field Park Coy R.C.E.

.....Lt. Col.
H.Q. R.C.E. 1 Cdn. Corps Tps.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA5)
40/P&R/1007 (D68)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 106. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H39138	Spr.		Lawrence	HEMMINGS	No. 2 Cdn E & M Sqn attd. 8 Cdn Fd Pk Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 JAN 44 endorsed by me, ~~for by an offr of my unit (or me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	K. E. MORRIS	46 Cdn Gen Tpt Coy

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	F. W. SMITH	HQ RCE 2 Cdn C Tps
Capt	F. P. FINDLAY	95 L.A.D.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	A. L. MOORE	2 Cdn Hvy A.A. Regt RI

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 (a) 2.)

(Rank.) Lt. Col.

Date 14 Jan 44

Commanding H.Q. R.C.E. 2 Cdn. Corps Tps.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Officer for Defence

Plea of Mitigation of Sentence

The accused Spr. Hemmings joined the Canadian Army in May 1940 and commenced with 2nd Bn. RCE in September 1940.

He has served as a Moto Mechanic with 2 Bn. R.C.E. most of his 3¼ years in England. I would like to bring to the attention of the court, that for a man who has spent 3 years in the country, the accused has a fairly good conduct sheet - having only one crime of any importance.

The accused has been anxious to get in a theatre of operations. Most of his former friends are in Italy, and he is anxious to join them. He came to a new unit, 2 Cdn E. & M. Section, RCE recently and knows no one in this unit, and as a result is not particularly happy there.

We respectfully request that the above matters be taken into consideration by the court in considering sentence

3.

I examined H 39138, Spr Hemmings, L. this morning 17 Jan 44 and found him (fit) or (~~Unfit~~) to undergo trial by Field General Court Martial.

17 Jan 44

[illegible] Capt.
(Medical Officer)

Exhibit "A" 3.

Summary of Evidence in the case of H.39138 Spr Laurence Hemmings, No 2 Cdn E & M Section "A", Cdn Army Overseas, charged with Absence without leave from 2359 hours 19 Dec 43 to 2300 hours 9 Jan 44.

The Commanding Officer directs that the evidence be taken on oath.

First Witness

B.25920 L/Cpl Bowins, W.I. No 2 Cdn E & M Section "A", sworn, states:-

I was on 19 Dec 43 and still am L/Cpl in No 2 Cdn E & M Section "A". I am well aquainted with H.39138 Spr Hemmings, L. whom I recognize here as the accused. On 19 Dec 43 I was Orderly Cpl at Balcombe Tunnel Camp and on that date the accused was listed as being on pass and due to report back at his unit at 2359 hours. The accused failed to report by 2359 houns whereupon I recorded him as being A.W.L.

The accused declined to cross examine this witness

L/Cpl. Bowins, W.I.
(B.25920 L/Cpl Bowins, W.I.)

SECOND Witness

B.25674 Sgt Copeland, G.M., 8 Cdn Field Park Coy R.C.E., sworn, states:-

I was on 20 Dec 43 and still am a Sgt in the 8 Cdn Field Park Coy R.C.E. I am aquainted with H.39138 Spr Hemmings, L. whom I recognize here as the accused and who has been for the past month a member of my section. At the first parade at 0800 hours 20 Dec 43 I called the roll of my section and the accused did not answer his name I searched his barrack room in the unit lines and was unable to find him. I have called the roll on all subsequent parades of the section and the accused has not been present at any parades, and I did not see him again until 0815 hours 10 Jan 44 at which time I placed him under close arrest.

The accused declined to cross examine this witness.

Sgt Copeland, G.M.
(B.25674 Sgt Copeland, G.M.)

Third Witness

B.25944 Spr Warnock, B.W. 8 Cdn Field Park Coy R.C.E., sworn, states:-

I was on 9 Jan 44 and still am a soldier in the 8 Cdn Field Park Coy R.C.E. I am aquainted with H.39138 Spr Hemmings, L., the accused and I recognize him as the accused here. On 9 Jan 44 I was on duty in the unit Guard Room. At 2300 hours the accused came into the Guard Room and stated that he was returning from Absence Without Leave. He gave me a pass which covered the time from 1300 hours 18 Dec 43 to 2359 hours 19 Dec 43 on which I duly noted the time and date at which the accused reported in. I did not place the accused under arrest. The accused was sober and properly dressed.

The accused declined to cross examine this witness.

Spr Warnock, B.W.
(B.25944 Spr Warnock, B.W.)

The accused was warned as follows:-

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be

taken down in writing and may be given in evidence.

The accused: I have nothing to say at this time.

L Hemmings
(The signature of accused)

I certify that R.P. 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this 10th day of January 1944.

G W Fraser Capt
(Signature of Officer taking Summary)

I desire the convening officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

L Hemmings
(Signature of Accused)

CANADIAN ARMY OVERSEAS
LEAVE PASS

Date Dec 18-1943

Pass No. 1

No. H89181 Rank Gnr Name Hemmings

has permission to be absent from his unit from NOON hrs 18-12-43

until 2359 hrs 19-12-43 for the purpose of proceeding to London.

Reported in 2300 hrs Jan 4th 44

COY ORDERLY ROOM
DATE RECV'D
17 DEC 1943

A A Hadley Lt R A Sig
Commanding 8 Fd [illegible]

11. [illegible]

12. [illegible]

[illegible] Date of promotion.

[illegible]

[illegible]

[illegible]

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, Air Force Act, and of cases in which trial has been dispensed with of accused. Number H.39138 Rank Spr Name HEMMINGS, Laurence of No 2 Cdn E & M Section "A" Unit

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 14th day of January 1944

[illegible] Capt. 8 Cdn E & M Pl Coy

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked [illegible] signed by the president, and annexed to the proceedings.

10

M.F.B. 355
ZUM—5-41 (373-S)
H.Q. 1772-33-(29)
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H-39138	Spr	Hemmings, L.	8 Cdn Field Pk Coy

1. The following is a fair and true summary of the entries in the [redacted] or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Sec 15(1) A.A. AWL	2 times	Sec 15 (1) A.A. AWL	4 times
For	Sec 9(1) A.A.	0 times	Sec 9 (1) A.A.	1 times
For	Sec 40 A.A.	0 times	Sec 40 A.A.	1 times
For		times		times

[redacted]

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. [redacted]

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

[redacted]

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 7 days in military custody, making a total of 7 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is 28 years

6. The date of his attestation specified in his record of service is 31 May 40.

7. [redacted]

8. [redacted]

9. The accused is in possession of or entitled to no military [redacted] military

[redacted]

10. [redacted]

Supplementary from MFM 4 dated 21 Jan 43

No. H39136 Name HEMINGS, L. Sqn., Battery, or Company N/A Corps R.C.E. Date of enlistment 21 May 40 G.C. Badges Service or Proficiency Pay Character

M.F.M. 6 (A.F.R. 128)

Date of last entry in Company Conduct Sheet n/a No. and date of last drunk 1 Period not reckoning towards freedom from extra fine n/a Sheet No. 1 Signature O.C. Company, etc. H.B. Ford Capt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24Dec 1941	Spr	nil	A.A. Sec. 15(1) AWL from 1920 hrs 24 Dec 41 to 2330 hrs 24 Dec 41	Documentary	14 days C.B.	31 Jan 42	Documentary	14 days pa under FR&I 149 (2)
Field	28Feb 1942	Spr	nil	A.A. Sec 15(1) AWL from 2200 hrs 28 Feb 42 to 1040 hrs 1 Mar 42	Documentary	1 days pay	2Mar42	Documentary	1 days pay under FR&I 149 (2) 2 days pay FR&I 149(1)(a)
Field	30Aug 1943	Spr		A.A. Sec 15(1) AWL from 1200 hrs 30 Aug 43 to 1040 hrs 20 Sep 43(Absent 20 days 22 hrs 40 min)	Documentary	28 days F.P. 28 days pay	21Sep43	Lt.-Col WA Capelle	21 days pay under FR&I 149(1)(a)

CERTIFIED TRUE COPY - 17 Jan 44
FROM THE RECTL BOOKS IN MY CUSTODY
H.B. Ford Capt
(H.B. Ford) Capt. R.C.E.
Adjt., 8th Cdn Fd Pk Coy RCE

P.T.O.

Regimental No. H.39138 Rank Spr. Sheet No.

Name HEMMINGS, L.

MFM 1 & 3a
40/F & S/115 (3913)

Record of Promotions, Reductions, Transfers, Casualties, Reports, etc.	Rank Shown	Effective Date	Unit	Place	Authority: IRO Number	Authority: Dated
Forf. 14 days pay. AWL 24 Dec.41. FR&I. 149(2)	Spr.	31 Jan42	2 Bn	U.K.	7	13 Feb.42
Forf.1 days pay. FR&I. 149(2) AA.40	Spr.	25 Feb42	2 Bn.	U.K.	10	6 Mar.42
FR&I 149(2) and 149(1) Total forf.2 days pay for AWL(12 hrs. 40 mins. 28 Feb.42	Spr.	2 Mar42	2 Bn.	U.K.	12	20 Mar.42
A.A.15(1) Total Forf. 6 days pay.	Spr.	5 Jun43	2 Bn.	U.K.	28	11 Jun.43
Reported A.w.L. 12.00 hrs.	Spr.	30 Aug43	2 Bn.	U.K.	46	18 Sep.43.
Still absent 12.00 hrs. (8th. day)	Spr.	7 Sep43	2 Bn.	U.K.	46	18 Sep.43.
Ret. from A.W.L. 10.40 hrs.	Spr.	20 Sep43	2 Bn.	U.K.	48	30 Sep.43.
AA.15(1) Total forf 49 days pay. 28 days F.P.	Spr.	21 Sep43	2 Bn.	U.K.	48	30 Sep.43.

CERTIFIED TRUE EXTRACT FROM M.F.M.2.

D Henderson

(D. HENDERSON) Capt.
for Officer i/c Records.
CANADIAN MILITARY HEADQUARTERS.

CH/C.47 - 11 Jan.44.

40-1
Pte Hemond P.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C57554 Pte Phillip HEMOND, HQ CRU

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Sec 40 AA	GUILTY	GUILTY	
2nd Sec 40 AA	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 752, and in loss of kit see RP 44 fn 6.)

~~At present under sentence~~ for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of sixty (60) days and to be put under stoppages of pay. Until he has made good 7 17-11-10 d. portion of pay ~~in respect of~~ lost by reason of his absence ~~occasioned by the~~ commission of the 1st charge in the charge sheet. 15 FEB/45

(Sgd) (Sgd) Commanding

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding & sentence but remit sixty (60) days detention

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 15 Feb 45 (Sgd) J. M. ROBERTS, Maj-Gen, Commanding Comd. Cdn. Rft. Units in U.K. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 573.)

Accused.	Date.	Signature of [illegible]
C-57554, Pte. HEMOND, P.	15 Feb. 45	(A.E. LEROY) Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 23 FEB 1945 AG BRANCH

RECORDED AT CMHQ IN AB 160, 42-1.

(CF AB 56, 1 to 200) (or AFAA) 10/P & S/1098 (AG1)

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Maj-Gen JM Roberts, DSO, MC. Comd Cdn Rft Units dated 12 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
~~C57554~~	~~Pte~~	Phillip	HEMOND	HQ CRU

~~REVIEWING OFFICER~~ Roberts Lieut 27 Feb 45

~~REVIEWING OFFICER, JAG BRANCH C.M.H.Q.~~

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 15 FEB/45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS, FOR GUIDANCE. WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Cautions do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or subsequent para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record address, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 43-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto (1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~as interpreter~~? Ans

~~The Interpreter is sworn.~~(1) Do you object to K-58558 Sgt Nicholles, J.S. as shorthand writer? Ans NO-SIR

The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO-SIR

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT.-COL.	D. L. REDAHL, V. D.	HQ CRU
Member	CAPTAIN	L. E. TAYLOR	1 CGRU
Member	LIEUTENANT	C. A. BOWELL	1 CGRU
~~Judge Advocate~~			
Prosecutor	LIEUTENANT	A.V.L. MILLS	3 CITY
Defending Offr	CAPTAIN	F. A. BURRELL	1 CGRU

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dil p 32)

A8. The accused ~~before arraignment~~ make(s) (no) ~~dilatory~~ plea. accused requested 7 days to obtain Mrs Prost to a lawyer

(1. If a special plea is made that separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are enumerated per Notes. For forms of record see references in fns to FoF cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of footers p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 13

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 : *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO - SIR (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court ~~decides (not) to advise~~ accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). ~~The accused is (are) so informed, and he (they)~~ change(s) ~~his (their)~~ plea(s) on ..... charge(s). ~~Part I of the Schedule is amended accordingly.~~
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ! Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(4). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No I have evidence NOTE-AT1
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (*g*) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. By Adv Offr NOTE-AT1 (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(4).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Ref. A Articles (b)

Hemond P.

CANADIAN PROVOST CORPS

SUBJECT: DATE: 22nd Nov 44

STATEMENT of Rept No: C-57554, Pte. Hemond, P.
of "C" Hqs. H.Q.C.R.C. Taken at:- H.Q. C.R.C.

"I have been warned that I am not obliged to say anything unless I wish to do so, but anything I now say will be taken down in writing and may be given in evidence".

"To show that I understand the above warning, I make this statement voluntarily and sign my name herewith".

SIGNED: P. Hemond.

STATES:

I am a batman for Majr Simms, Capt. Harris Sillars and Rousseau at "C" Hqrs. H.Q.C.R.C.

On Sunday 19th Nov 44, I left "C" Hqrs at about 11.30 hrs and went to the Unit Camp Hotel, where I spend at 1200 hrs. I did not have a drink there but went to the Block Town Pub Room, Canadian Legion, Rue de Bonte closing time at 1400 hrs.

I then went to the Corner Cafe had something to eat and went to "O" Officers Mess, had a pint bottle beer from one of the boys in the Mess and I went back to "C" Hqrs. Had three or four drinks [illegible] that I brought out for an Officer, Capt Sillars and told me to tell the bartender that the beer I obtained was for him.

I decided then to get into civilian clothes, I went into Capt Sillars room and got a pair of his shoes to shine and got a pair of green pants from Rousseau's room that I had previously taken from the Mess [illegible]

P.T.O.

from Caithness with Thankerton my [illegible] Sgt
Sept Roussian & Rabbette. [illegible] Coy
and went to the Hotel Continental where we
be 1800-1815 hrs. I had a pint of beer at this
place and my friend Pte Hargreaves of 'C' Coy
in. We each had a pint and I had my
supper.

I then went up to the Field Camp to get
with Pte Hargreaves, I stayed to lunch.
The last thing I remember of being in the
Field Camp I left a blanket with him.

The next thing I can remember was
slightly opening a car bitten up and a
lot of people around. I then remember
I was in some Office with a Doctor. My
face was very raw, my hands and wrist
with blood. I do not remember being in
a car or driving a car. I know a Capt Walker
but I'm sure I was not with him. I can't
remember being at Billet Mess. I cannot remember
being found in a yard.

I know River Bourne & Hecq. The
last time I was in this billet was at Tilloy
Officers Mess. It could be possible I went
to Tilloy Officers Mess to see him.

I cannot remember anything about
an accident.

I have read over this statement
and given the opportunity to add to
delete any part of it and I say the whole
truth.

R Hammond Cpl. P Hammond Pte
[illegible] 5575554

CHARGE SHEET

The accused, C57554 Pte Phillip HEMOND, on the strength of Headquarters, Canadian Reinforcement Units, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 40 AA

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, on 19 Nov 44, improperly and without authority used Canadian Military Vehicle No CM-4203000, thereby causing damage to said vehicle in the amount of £35-3-9.

SECOND CHARGE
Sec 40 AA

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, on 19 Nov 44, was improperly in possession of one khaki tie, the property of Capt J. Rousseau, RCAMC, HQ CRU; one pair of brown Oxford shoes, the property of Capt I. Sillars, 2 CMHQ Coy RC Sigs, att HQ CRU; and one brown leather windbreaker, the property of Major HT Fosbery, HQ CRU.

(A.E. Lefroy) Major
Camp Comd,
HQ Cdn Rft Units

In the Field
9 Feb 45

To be tried by Field General Court Martial

(J.P. Roberts) Maj-General
Comd
Cdn Rft Units.

In the Field
12 Feb 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C57554	Pte		Phillip	HEMOND	HQ CRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 Feb 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to obtain the trial for reference to a superior qualified offr)~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. - I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

~~5. - I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-col	D.L. Redman, VD	HQ ERU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt	To be detailed by OC	1 CGRU
A Lieut	To be detailed by OC	1 CGRU
	XXXXXXXXXXXXXX	
	(Named or detailed, if any. RP 106.)	
	XXXXXXXXXXXXXX	
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 12 Feb 45

J.H. Roberts (Signed personally. RP 105 fn 2)

(J.H.Roberts) Maj-Gen

Commanding Cdn Rft Units

Convening Officer.

Maj-Gen (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAMS (To Hieu of AFAS) 40/F & S/1667 (4691)

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificates
R.R. (Can) para 557

I certify that I have this morning examined No C-57554 Pte. Hinnel, S.
(Rank) (Name)
of H.Q. CRV and in my opinion he is ~~unfit~~ fit to undergo
trial by Court Martial.

Station Tunbridge Wells

Date 15 February 45 Sgd. [signature] Capt
(Medical Officer)

RM

CASE OF

C-57554 Pte HEMOND, P. H& CRU

STATEMENT BY ACCUSED
(UNSWORN EVID)

Well sir I am not in the habit of going out and getting tight or Drunk, it was just a bad break I had that night. I would like to stay in the army and see the war through as a soldier. I am married, sir, my wife is in Canada. I have no children. I have only 2 small offences on my AFW 6 which are for absences of hours only prior to this occurrence In civilian life I worked in an Aircraft factory before enlistment. I completed public school. I am 21 years of age. My category is P.4 for Hernia. I have nothing further to say sir.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

FURTHER PLEA IN MITIGATION
(BY DFC, OFFR)

I would like to bring to the attention of the court the fact that I have interviewed the WOO IC of "C" Mess H& CRU and he assures me the accused was a very good worker and never disobeyed him or carried out any order in a wrong way. He has always been a very good batman and quite trustworthy. In this plea of mitigation I would like to bring forth to the court several points which are worthy of your attention. First, Hemond has suffered considerable punishment already at the hands of the Civilian court and if we total up his detention under civil and military authority we find that he has already 90 days imprisonment. Not only has he suffered physically so far he has also had financial punishment in so far as he has lost already 90 days pay and will be required to pay £15/2/0 to Canadian Army Claims on account of the damage to the taxi. If I may bring this point to the attention of the Court both from the point of view of his past record and Hemonds character I think you will agree that if his sentence is considerably ~~xx~~lightened in the military court he will end this war as well as any other man who has not had any bad record against him and will be able to return to civilian life in the very near future in the same manner as any other soldier in the Canadian Army.

15 Feb 45

COURT MARTIAL.

Plea in mitigation

ACCUSED : Pte HEMOND Philip.

I. The a/m pleads GUILTY and I,Capt F.A BURRELL defending offr,submit to the indulgence of the Court,a PLEA OF MITIGATION on Pte HEMOND'S behalf.

2. I submit respectfully to the Court that the following considerations are worthy of your attention insofar as they show that Pte HEMOND has under gone considerable punishment already,financially and physically.

a . Pte HEMOND has served a period of 90 days civil and military detention.

b . He has lost already 90 days pay ~~and marriage allowances~~.

c . He is required to pay the sum of 15 pounds sterling to Cdn Army Claims.

d .Out of a total of 3 years service two years have been served overseas.He has an excellent record,24 hrs AWOL in three years.

e. The NCO i/c batmen at "C" Mess HQ CRU assures me that Pte HEMOND is a willing worker and very obedient.

3. I will end this plea for the indulgence of the Court in this case by reminding the Court that Pte HEMOND's offence was not incurred after premeditation and is not the result of habitual drinking and bad behaviour.May I suggest that it is a"bad break" which may be mended if this man is given a chance to prove the Court right in their indulgence.

Respectfully submitted,

F.A BURRELL (CAPT)

F.A Burrell

C-3

SUMMARY OF EVIDENCE.

Summary of Evidence in the case of C.57554 Pte HEMOND, Philip, on strength of Headquarters Canadian Reinforcement Units, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS for the prosecution H.41427 Pte ST.GERMAIN F.L. on strength of Headquarters Canadian Reinforcement Units, a soldier of the Canadian Army Overseas, having been duly sworn states as follows:

I am a batman at "C" Mess HQ CRU. At 1800 hrs 19 Nov 44 I went with Pte Hemond to the NAAFI. We both had one pint of beer for supper. Later after 1900 hrs we walked to North Camp Hotel, Farnborough, and drank beer until 2045 hours. Pte Hemond left me then and I later found him at the Clock House, Farnborough. This is near the other Pub. I went up to him and asked him if he was ready to go home. He said he was not. His condition at that time, between 2130 and 2200 hrs I would describe as a happy mood. He was not staggering and I would not say he was drunk. I returned alone to "C" Mess at about 2215 hrs. I never saw Hemond again the rest of that night.

Q.(by Officer taking Summary) Do you recall what clothes Pte Hemond was wearing that evening?
A. When we went out Hemond was dressed in a brown windbreaker, khaki shirt collar and tie, and blue civilian trousers. He was not wearing a hat.

Q. Did Pte Hemond tell you what he was going to do for the rest of the evening when you left him at the Clock House?
A. No.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

.....F.L. St Germain.....
(H.41427 Pte St.Germain F.L.)

SECOND WITNESS for the Prosecution L.20747 Pte. CHOVIN J. on strength of No. 4 C.C.D. a soldier of the Canadian Army Overseas, having been duly sworn states as follows:

I am night Fireman at Lille Barracks Officer Mess No. 4 CCD. About 2200-2215 hours on 19 Nov 44 I can't remember the exact time now, I noticed a man dressed in civilian clothes at the back of Lille Mess coming from North Camp road, through the bushes. I saw him coming and went to meet him because he was having difficulties and called to me. I showed him the way with a flashlight as I thought he was an Officer in civilian clothes. The man, whom I now recognise as Pte Hemond was wearing a brown windbreaker, Officer's shirt and tie, and green pants. He was not wearing either a greatcoat or a hat, and had been drinking. He asked for Driver Brown and we looked around the barracks for him. We couldn't find him so I then showed the civilian the bar of the Officers Mess and he went in.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

.....J. Chovin.....
(L.20747 Pte. CHOVIN J.)

THIRD WITNESS for the prosecution

A.3200 Pte TULLY R.M.K. on strength of No. 3 CITR attached to No. 4 CCD, a soldier of the Canadian Army Overseas, having been duly swornm states as follows:

On the night of 19 Nov 44 I was serving in the Bar of the Officers' Mess, Lille Barracks. Between 2300 and 2315 hrs a man of medium height in civilian clothes came to the Bar. He was dressed in a khaki shirt and tie and a brown leather windbreaker. Believing him to be a Canadian officer I served him with a pint of beer. He stayed approximately 5 minutes and then left the Bar. At 2315 hrs Pte Brown who is a driver at 4 CCD came into the Bar for one of the officers who was to be taken to 4 Cdn Gen Hosp. The civilian who was in the Bar had not left more than 5 minutes before Dvr Brown came in. As it was then closing time I closed the Bar and proceeded to the kitchen.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

R.M.K. Tully
(A.3200 Pte Tully RMK)

FOURTH WITNESS for the prosecution

Mr. Alfred Thomas Shorter, Taxi Driver, of 51 Haig Rd., Aldershot, Hants, having been duly sworn, states as follows:

I picked up some fares at Ash Vale Station at approx. 1130 pm 19 Nov 44, and started out for Mytchett Place. On the way, when about 150 yds from the George Inn, I noticed a lot of lights shining around the bend. I then saw two vehicles coming towards me. They appeared to be racing one another. Realizing that it was unsafe for me to proceed, I pulled in to my nearest side and stopped. The car on the crown of the road turned sharp right, mounted the footpath on its offside. The vehicle continued along the path towards me at what I would estimate to be about 50 mph. It crashed into my near side front and ended up with the back of the vehicle to the back of mine. I got out of the car and went straight round to the Army vehicle which was a Canadian Station Wagon and shone my torch inside. There was nobody in it. This was about half a minute after the collision, but the offside front door was open as though a person had gone out that side. I returned to the car and took down the names and addresses of my passengers. A short while later I saw the Police questioning a man in civilian clothes who had been brought out of a garden across the street.

Q.(by officer taking Summary.) Did you notice the number of the Army vehicle.
A. I did notice it and took down the number but I haven't got it with me now. I gave the number at the Farnham Police Court on 30 Nov 44. The vehicle had a red and green identity disc with the name of 1 Adm Tpt on it.

Q. Did you see anyone walking or running away from the Army vehicle?
A. No.

Q. Did you notice what clothes the man who was being questioned was wearing?
A. No I did not.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

Alfred Thomas Shorter

FIFTH WITNESS for the prosecution

Major A.S. STEWART [illegible] "E" Group Headquarters, an Officer of the Canadian Army Overseas, having been duly sworn, states as follows:

On the evening of 19 Nov 44 I was a passenger in a staff car proceeding from "E" Group Headquarters to Aldershot. At a point on the road leading from Frimley Green to Ashvale near the intersection with the road leading to North Camp a station wagon pulled in front of our staff car. I immediately detected the smell of burning rubber and suspected it to be from our own car. I then noticed smoke coming from the rear of the station wagon and concluded that it must have been driven with its brakes on. My driver sounded his horn and attempted to overtake the station wagon, but without success. I also noticed that the station wagon was swerving and had the appearance of being driven in a reckless manner. Shortly afterwards I observed the lights of another car approaching the station wagon in the opposite direction. There was a collision. Our driver stopped our car and we jumped out and ran to the scene of the collision. The car with which the station wagon collided and which was apparently blocking the road, turned out to be a taxi, and I found the station wagon bore the identification plate of No. 1 Adm Tpt and it was piled up in the hedge. I took down the number of the station wagon, but have since mislaid it. There was no sign of a driver either inside or near it. While I was talking to the passengers from the wrecked taxi, Capt. G.L. Atkinson 3 CACPU who was with me in the staff car came out of a garden adjacent to the wrecked station wagon and brought with him a man dressed in civilian clothes. He was wearing a grey tiffle cloth jacket, greenish trousers, low shoes, and was bare headed. Capt. Atkins also brought from the garden an officer's khaki coat. I questioned the man and he stated that he was [illegible] whom I now recognise, and he gave me his number and initials. He said that he was a batman in "C" Mess HQ CCG. He did not have any means of identification with him. He denied that he was the driver of the station wagon. His nose was bleeding and he was confused and excited. I could smell liquor on him. When the P/Con Adnett of the Ashvale Police arrived I turned Hammond over to him and drove both of them to the Police Station at Ash.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

Alan S. Stewart Maj
(Major A. S. Stewart)

SIXTH WITNESS for the prosecution

No. B.74573 Pte BROWN W.A. on strength of 4 CCD, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

On the 19 Nov 44 at 7300 hrs I was MX duty driver and had to pick up two officers in Little Mess and take them to No. 4 CCH. I was driving a Ford station wagon CM 420300 which is one of our vehicles on loan from No. 1 Adm Tpt Coy. I reported at the Mess at 2110 hours and left the Station wagon outside the Mess and went inside to assist one of the Officers who had a leg amputated. When the Officer and I got to the door I found my vehicle had disappeared. I immediately reported this to Lieut T.C. Dunby who was then Transport Officer. During the time I was in the Mess assisting the Officer I saw no one. Later on the Transport Officer and I searched the vehicle but we were unable to find the missing vehicle.

Q. (by Officer taking Summary) Did you give anyone permission to drive your vehicle that night?
A. No sir.

Q. Was the accused in any way connected with the Tpt at 4 CCH?
A. No he was not.

THE ACCUSED DECLINES TO CROSS- EXAMINE THIS WITNESS.

W A Brown
(B74573 Pte. Brown W.A.)

SEVENTH WITNESS for the prosecution

Capt O.J. Atkins, on strength of No. 3 C.A.C.R.U. an officer of the Canadian Army Overseas, having been duly sworn, states as follows:

At about 1130 pm on 19 Nov 44 I was a passenger in the same Staff car as Major Stewart returning to Aldershot from Blackdown. When we witnessed the collision I wentto the Station Wagon which was a Canadian vehicle with RCASC colours, which was one of the vehicles involved, and found no driver. I went around the car and into the yard behind the fence into which the Station Wagon had crashed, where I found an officer's trench coat. I flashed my light around the yard but did not make a thorough search. I then went out of the yard to look around the outside of. Upon investigation I found the yard was completely surrounded by a fairly high fence and I decided that if the driver of the car had gone in there that he was still there. I went back into the yard to search the bushes and met a man dressed in civilian clothes whom I now recognize as the accused. He was wearing a windbreaker, was bareheaded and his nose was bleeding. I asked him for his identification and he didnt have any. When I asked him if he was the driver of the car he stated that he was not but someone else was. He didnt deny being a passenger. I then turned him over to Major Stewart. A Police Constable came along and took down particulars.

Q.(by Offr taking Summary) In your opinion could any one else have got into the yard without your knowledge after the collision occurred?
A. Since the Station Wagon was blocking the entrance to the yard I do not think it possible for anyone to have entered without being seen.

Q.(by accused) If there were two of us in the front of the vehicle couldnt both of us have gone into the yard?
A. If there were two people in the car they must both have gone into the yard because the left hand door, which would open on to the road, had not been used as it was in full view of us all the time.

.....
(Capt O.J. Atkins)

EIGHTH WITNESS for the prosecution

Police Constable Sidney James Adsett, of the Ash Vale Police, having been duly sworn, states as follows:

At approx. 11.40 pm on 19 Nov 44 I received information of an accident on Frimley Road, Ash Vale. I arrived at the scene at 1145 pm where I saw two vehicles extensively smashed on both near sides. One vehicle, a Canadian Station Wagon CM 4203000 and the other vehicle a Taxi No. BXV 337. At the scene I saw a person dressed in civilian clothes who told me he was in the Canadian Army and I asked his for his pay-book. He stated he did not have it with him. I made a thorough search at the scene of the accident in an attempt to find any other person who may have been in the Station Wagon, but no other person was found. The man was conveyed to Ash Vale Police Station where he told me his name was Pte Hemond, and he stated verbally that he was in the Station Wagon when it crashed.

He inferred he was not the driver but stated that he did not know who the driver was or the driver's name. Pte Hemond whom I now recognize was released on his own recognizance, The next day and on 30 Nov 44 he was charged at Farnham Police Court with driving vehicle CM 4203000 whilst under the influence of drink and driving in a dangerous manner. He was there found guilty of both charges and sentenced to 3 months imprisonment with hard labour on each charge, each to run concurrently.

Q.(By offr taking Summary) Did you notice what clothing this man was wearing at the time of the accident?
A. He was wearing a dark brown leather windbreaker, greenish pants, brown shoes, officer type collar and shirt with khaki tie. Lying at the side of the car was found an officer's trench coat.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS

.....
(P.C. Sidney James Adsett)

NINTH WITNESS for the prosecution

C.42004 Sgt Hammond H.F. of the S.I.S. Canadian Provost Corps, attached to Headquarters Cdn Rft Units, having been duly sworn, states as follows:

At Farnham Police Court at about 1500 hrs on 20 Nov 44 I took over the custody of C57554 Pte Hemond P whom I now recognize. He had just been released on bail of £10 on his own recognizance, pending charges of drinking and negligent driving whilst in charge of a motor vehicle. I found Hemond, on his release from civil custody, dressed in civilian clothes. He was wearing a brown leather windbreaker, a green pair of trousers, officers dress shirt, collar and tie and a civilian pair of shoes. I asked him where he obtained the clothes and he stated that he had borrowed them from the officers' quarters at "C" Mess, HQ CRU. On asking him for his service book Part I he stated that it was in his other clothes, meaning his uniform. He was not in possession of a service book at the time I arrested him. I escorted Pte Hemond to his quarters at "C" Mess and he changed into his battle dress. I took possession of the civilian clothes he had been wearing. On instructions from the Camp Commandant I handed to Major Fosbery, who was being posted overseas shortly the leather windbreaker which he identified as his own. I then escorted Pte Hemond to HQ CRU Guard Room andhanded him over to the NCO i/c. On 22 Nov I interviewed Pte Hemond and after cautioning him and his signature of caution of having understood same he made a voluntary statement. I wish to produce Pte Hemond's statement as an exhibit. (attached as Exhibit "A"). I was present at the Farnham Police Court at 1000 hrs 30 Nov 44 when Pte Hemond appeared before Gen. Sir Robert Haining, Chairman of the Farnham Petty Sessional Bench. He was found guilty of being drunk whilst in charge of Ford Station Wagon WD No. CM4203000 and also found guilty of driving this vehicle in a negligent manner. He was sentenced by this Court to terms of 3 months imprisonment on each charge, to run concurrently and to be served at H.M. Prison Wormwood Scrubs.

On 1 Dec 44 I handed over one pair of blue trousers one pair of brown oxford shoes andone khaki tie to Capt I Sillers, HQ CRU and obtained a receipt for same which I produce herewith. (attached as exhibit "B")

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

.....
(C.42004 Sgt Hammond H.F.)

TENTH WITNESS for the prosecution

Capt J. Rousseau, R.C.A.M.C. on strength of Headquarters Canadian Reinforcement Units, an officer of the Canadian Army Overseas, having been duly sworn, states as follows:

About two months ago Sgt Hammond came to the M.I.R. HQ CRU and showed me a khaki tie with some blood on it. I recognized it to be mine by the name tab on the inside. It was later returned to me and since then I have had it cleaned. I cannot now identify which of my ties it was and I am therefore unable to produce it as an exhibit.

Q.(by Offr taking Summary) Did you give anyone permission to wear any of your ties
A. No

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

.....
(Capt Rousseau)

ELEVENTH WITNESS for the prosecution

Capt I. Sillers, O.C. 2 CMHQ Coy, R.C. Sigs, attached to Headquarters, Cdn Rft Units, an officer of the Canadian Army Overseas, having been duly sworn states as follows:

On 2e Nov 44 Sgt Hammond (SIS) HQ CRU came to my office and showed me a pair of brown oxford shoes. I immediately identified them positively as my own property by certain marks on them and the name of the firm from which I purchased them. About 10 days later Sgt Hammond handed me my shoes, one pair of blue trousers and a khaki tie, which with the exception of the shoes I turned over to the Bar Steward at "O" Mess for distribution to the owners. My shoes are now in my room and are available when required.

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS.

.....
(Capt I. Sillers)

TWELFTH WITNESS: for the Prosecution

Major J.H. Cornell, No. 1 Adm Tpt Coy RCASC, an Officer serving with the Canadian Army Overseas, having been duly sworn states as follows:

Dw 24 Nov 44

I am Officer i/c Workshops No. 1 Adm Tpt Coy. I examined CM 4203000 Ford chad for the purpose of making out an estimate of the cost of necessary repairs to the said vehicle. I herewith submit this estimate.

EXHIBIT "C" IS SUBMITTED.

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS.

J.H. Cornell
.....
(J.H. Cornell) Major

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

THE ACCUSED DECLINES TO MAKE A STATEMENT AND RESERVES HIS DEFENCE.

I certify that the foregoing Summary of Evidence consisting of 6½ pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d) and (e) have been complied with.

A.V.L. Mills
.....
(A.V.L. Mills) Lieut 3 CLIR (Att 4 CCD)
Officer detailed to take the Summary of Evidence.

Farnborough, Hants.

8 Feb 45.

ETA

Lt. A Arsenault (Lt)

CANADIAN PROVOST CORPS

DATE: 22nd Nov 44

STATEMENT of Regt No.: C.57554 Pte. HEMOND P.

of "C" Mess H.Q. C.R.U. Taken at: H.Q. C.R.U.

"I have been warned that I am not obliged to say anything unless I wish to do so, but anything I now say will be taken down in writing and may be given in evidence."

"To show that I understand the above warning, I make this statement voluntarily and sign my name herewith".

SIGNED: P. Hemond.

STATES:

I am a batman for Major Morris, Capts Harris, Sillars and Rousseau at "C" Mess HQ CRU

On Sunday 19th Nov 44 I left "C" Mess at about 11:30 hrs and went to the North Camp Hotel, which opened at 1200 hrs. I did not have a drink there but went to the Clock Tower Pub House Farnborough. I drank mixed Ales and Beer to closing time at 1400 hrs.

I then went to the Corner Cafe had something to eat and went to "D" Officers Mess, had a pint bottle of beer from one of the boys I know and went back to "C" Mess. Had three or four drinks that I brought out for an Officer, Capt Milliken who told me to tell the bartender that the beer I obtained was for him.

I decided then to get into civilian clothes. I went into Capt Sillars room and got a pair of his shoes without permission. I got a pair of green pants from Pte Simmans' room that I had arranged to buy. In my room I had Major Fosberg's brown leather windbreaker in my room, also Capt Rousseau khaki tie. I doned this clothing and went to the NAAFI Canteen, this would be 1800-1815 hrs. I had a pint of beer at this place and my friend Pte St Germain of "C" Mess came in. We each had a pint and I had my supper.

I then went up to the North Camp Hotel with St. Germain, we started to drink. The last thing I remembered I was in the North Camp Hotel, drinking with him.

The next thing I can remember very slightly of seeing a car broken up and a lot of people arrived. I then remember I was in some Office with a Doctor. My nose was very sore, my handkerchief covered with blood. I do not remember being in a car or driving a car. I know a Capt Wallace but I'm sure I was not with him. I cant remember being at Lillie Mess. I cannot remember being found in a yard.

I know Driver Brown of 4 CCD. The last time I was in his billets was at Lillie Officer Mess. It could be possible I went to Lillie Officers Mess to see him.

I cannot remember anything about an accident.

I have read over this statement and given the opportunity to add to or delete any part of it and it is the whole truth.

Sgd (H.F. Hammond) Sgt. C.42004

Sgd (P. Hemond) Pte. C.57554

Exhibit B
Pte. Hammond

CANADIAN PROVOST CORPS.

Exhibit and Property Report No. 244

COMPANY: A.P.M's Office **FORMATION:** HQ CRU

FILE NO.: 450/Vehs/1B-148

DATE: 23 Nov 44 **PLACE:** FIELD

SUBJECT: C 57554 Pte. HEMMOND P. "C" Mess HQ CRU.
THEFT OF MOTOR VEHICLE AND CLOTHING.

The property described below came into our possession on 20th November 1944

At: FARNHAM By: being found in possession of the above named soldier.

ITEM NUMBER	DESCRIPTION OF PROPERTY
1.	One pair of trousers (green)
2.	One pair 'Oxford' shoes (brown)
3.	One tie (khaki)

Sgt.
C 42004 (H.F. HAMMOND)
S.I.S. HQ CRU.

(F.B. Creasy) Major
A.P.M.
CANADIAN REINFORCEMENT UNITS

The property described above has been disposed of

At: Field On: 1 Dec 44 By: Being handed over to owners.

Receipt/destruction of the property described above is hereby acknowledged/certified.

WITNESS: L-59264 Pte Kennedy D.P.M.

SIGNATURE OF RECIPIENT: F Creasy Capt

C.M.H.Q./1000/124
AD.P.A.S./1943 (10/42)

E&L C
MT Tech (Lt)

Nov. 24th. 1944.

Estimated cost of repairs to CM-4203000 Ford Chad.

Parts.

1-Centre radiator grille)	16-4
2-Side " ")	
1-Radiator core	£4-18-5
2-Front fenders @ £2-10-0 each	£5- 0-0
2-Windshield glasses @ £1-12-6 each	£3- 5-0
1-Left front door glass	-15-0
1-Left rear door glass	-15-0
1-Right front door glass	-15-0
1-Radious rod assy.	£1-10-0
1-Left steering knuckle	£1- 1-3
1-King pin	- 3-0
1-Drag link	-18-6
1-Steering wheel	£1- 2-3
1-Tire 900x13	£2-14-8
1-Tube 900x13	-18-8
2-Top hoses	- 3-0
2-Lower hoses	- 2-0
1-Battery	£2- 3-8
	£27- 1-9

Labour.

Straighten front axle	8 Hrs.	
" front bumper	2 "	
Replace front fenders	6 "	
Replace radiator grille assy.	2 "	
Replace radiator core & hoses	2 "	
Bump out engine hood	3 "	
Bump out left rear fender	4 "	
Bump out right rear fender	3 "	
Bump out front of body	12 "	
Replace windshield glasses	6 "	
Replace door glasses	3 "	
Replace steering wheel	1 "	
Replace new tire & tube	2 "	
Total	54 Hrs. @ 3/=	£ 8-2-0
	Parts	£27-1-9
	Total	£35-3-9

J.H.Cornell.....Major.
(J.M.Cornell)
Officer i/c Workshops
No.1 Admt. Transport Coy.
R.C.A.S.C. C.A. (O)

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
C-57554	Private	HEMOND, Philip	Headquarters, Canadian Reinforcement Units

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		* Since Enlistment.	
For	AWL	Nil times	Two (2) --	times
For	~~----------~~	~~times~~	~~----------~~	~~times~~
For	~~----------~~	~~times~~	~~----------~~	~~times~~
For	~~----------~~	~~times~~	~~----------~~	~~times~~
For	~~----------~~	~~times~~	~~----------~~	~~times~~

~~Number of instances of gallantry or distinguished conduct~~ ~~Nil~~

or

~~There are no entries in the conduct sheets of the accused~~ ~~Nil~~

2. ~~[redacted]~~ Nil

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under suspension from~~ Nil ~~on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for ~~----------~~ Nil ~~----------~~ day, in civil custody, and 15 days in military custody, making a total of 15 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ ~~Nil~~ is 21 years and 225 days

6. The date of his ~~attestation~~ ~~Nil~~ specified in his ~~record of service~~ ~~Nil~~ is 17 August, 1942

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 years and 176 days

8. The accused is entitled to deferred pay or gratuity in respect of 2 years and 176 days service

9. The accused is entitled to reckon 2 years and 176 days service for the purpose of determining his pension, etc.

10. The accused ~~is in possession of, or entitled to, any decoration or military award~~ Nil (*or* is in possession of *or* entitled to (~~state any military decoration or award~~) Canadian Volunteer Service Medal with Clasp

11. ~~(If the accused is a warrant officer.) The accused was made a warrant officer and held the regimental rank of~~ Nil

12. ~~(In the case of an officer.) The accused holds the rank of~~ Nil ~~dated~~ ~~and in his regiment (or corps) is substantively the rank of~~ Nil ~~dated~~

W.L.5007/1559 20M. 5/40. P. Ltd. TS3-1.

E & B

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C-57554 *Rank* Pte *Name* HEMOND, P. *of* HQ CRU *Regiment* (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted
Farnham Petty Sessions, Farnham, Surrey	30 Nov. 44 (i)	Drunk i/c of Motor Vehicle	Three months Hard Labour	
	(ii)	Dangerous Driving	Three months Hard Labour (Sentences to run concurrently)	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 19th day of February, 1945

(A.E. IZPROG,) Major, Camp Commandant, H.Q., Cdn Rft Units

13. The accused was informed of the convictions recorded against him and of the sentences awarded thereon, without reduction, on the 30th day of November 1944

Initials of accused

Initials of officer

(INSTRUCTIONS—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be inserted from such records as are available and the paragraph concerned amended accordingly.)

No. C-57554 Name HEMOND, Philip Sqn., Battery, or Company — Corps CIC — Date of enlistment 17 Aug 1942 — G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet 5 Feb 43 — No. and date of last drunk n/a — Period not reckoning towards freedom from extra fine n/a — Sheet No. 1 — Signature O.C. Company, etc.

MFM 6 (A.F.B. 122) 500M—8-39 (7521) H.Q. 1770-42-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	21 Dec 43	Pte		WOAS, AWL from 2200 hrs, 21 Dec 43 until 1915 hrs, 22 Dec 43 (21 hrs and 15 mins) AA Section 15 (1)	Cpl Standed DV Documentary	Forf Five Days Pay FR&I 149(2)	23 Dec 43	A.B. NOBLE Lt-Col	Forf 1 days Pay FR&I 149 1(a)
Field	13 Jan 44	Pte		WOAS, AWL from 1115 hrs, 13 Jan 44 til 1445 hrs, 13 Jan 44 (Total Absence: 3 hrs & 30 mins) AA Section 15(1)	L/Cpl FOX J.	4 days Pay	14 Jan 44	Lt-Col G.F. CLINGAN	Total Forf 4 days Pay FR&I 149 (2)
Field	19 Nov	Pte		(i) Drunk i/c Motor Vehicle (ii) Dangerous driving	on 30 Nov 44, sentenced to three months hard labour on each charge, sentences to run concurrently. Farnham Petty Sessions, Farnham, Surrey.				

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED A TRUE COPY OF A DOCUMENT IN MY POSSESSION:					
				15 February, 1945	(A.E. LEYROZ,) Major Camp Commandant, H.Q., Cdn Inf Units Officer having custody of Regimental Books.				

WO 213/1

13 February 1945.

I certify that I have received free of charge the following documents in connection with my forthcoming Court Martial

(a) Copy of Charge Sheet

(b) Copy of Summary of Evidence with all exhibits

P. Remond

(057554 Pte. REMOND P)

LIST OF EXHIBITS.

Exhibit "A" Statement by C.57554 Pte Hemond P.

Exhibit "B" Exhibit and Property Report No. 244 . CFA 174

Exhibit "C" Estimated cost of repairs to CM/4203000 Ford Chad.

LIST OF WITNESSES

For the prosecution -	H.41427 Pte St. Germain F.L.	HQ CRU
	L.10747 Pte Chovin J	4 CCD
	A.3200 Pte Tully RMK	3 CITR. Att 4 CCD
	Mr. A.T. Shorter	Aldershot, Hants
	Major A.S. Stewart	DAA&QMG HQ "E" Gp
	B.74573 Pte Brown WA	4 CCD
	Capt C.J. Atkins	3 CACRU
	P.C. Sidney J Adsett	Ash Vale Police
	C.42004 Sgt Hammond HF	SIS Cdn Pro Corps
	Capt J. Rousseau	HQ CRU
	Capt I. Sillars	2 CKHQ Coy RC Sigs
	Major J.H. Cornell	1 Adm Tpt Coy RCASC

9 February, 1945

I CERTIFY THAT I DESIRE THE SERVICES OF

a Competent Officer

TO DEFEND ME IN MY FORTHCOMING TRIAL BY COURT-MARTIAL.

P. Hemond
(C-57554, Pte. HEMOND, P.)

41-8.

Pte Hempshell, A.S.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G8232 Pte Alden Sellers HEMPHILL CyR

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st ~~Sec. 15(1) A.A.~~	Guilty	Guilty	
2nd Sec. 12(1)(a) A.A.	Not Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 8.)

At present under sentence/~~for~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which ~~and~~ days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo imprisonment WITHOUT HARD LABOUR for a period of one year.

(Sgd) 10 Nov 44 (Sgd) J.W. Maddocks

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Finding and sentence confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) PPS

(1. AA 57A. Delete if not used.)

Date 14 Nov 44 (Sgd) Kenneth Exg

Commanding 2 Can Inf Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
G8232 Pte Alden Sellers Hemphill	17 Nov 44	Kenneth Exg

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECORDED AT CMHQ IN AD 160 - 42-8

FIELD GENERAL COURT-MARTIAL

CFA96 (To face of AFA3) 40-P-N-8-1608 (3864)

Convened by Order of Lt-Col J.W. Allard DSO Comd 2 Can Inf Bde dated 8 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G8232	Pte		Alden Sellers	HEMPHILL	CyR

PROCEEDINGS REVIEWED 18 Dec 44

JCC W.C. Death Capt

REVIEWING OFFICER, JA

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date/s) 10 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2E. 34

A1. The President, Members, waiting Member, JA, ~~if any~~, and Offrs ~~under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (~~s~~) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 12 fn 5. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to an interpreter?~~ Ans ~~The Interpreter is sworn.(1) Do you object to a shorthand writer?~~ Ans ~~The shorthand writer is sworn.(1)~~ NA

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs ~~under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc.

President	Major	D.W. Maddocks	Wpg LdH
Member	Capt	D.G. Smith MC	CyR
Member	Capt	J.R. Charlebois	RCR
~~Judge Advocate~~			
Prosecutor	Lieut	C.N. ~~Macleod~~ Burn Meeke	CyR
Defending Offr	Lieut	N.M. Leitch	CyR

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Qu. p 3.)

A8. The accused G8232 Pte Alden Sellers HEMPHILL before arraignment makes(s) (no) ~~other~~ plea

(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~respectively~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~adjourns~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

542 RH/102

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B--PROCEEDINGS ON PLEAS OF GUILTY TO ~~ALL~~ FIRST CHARGE.

B1. The President ~~of JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement (1).~~ The Court declines not to advise the accused to change his ~~(their) plea(s) of Guilty to Not Guilty on first charge(s).~~ The accused is (are) so informed, ~~and he (they) change(s) his (their) plea(s) on charge(s).~~ Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C--PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D--PROCEEDINGS ON PLEAS OF NOT GUILTY TO ~~ALL~~ SECOND CHARGE(S).

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2).~~ The Court, ~~is closed, and considers the submission.(3)~~ The Court is re-opened, and the President announces that ~~the submission is disallowed on the charge(s), and allowed on the charge(s); and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans I wish to give evidence on oath Do you intend to call witnesses on your behalf ? Ans NO Are they witnesses as to character only ? Ans NA
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the second charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2).~~
(1. AA 54(2) (5), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~ THE PROCEEDINGS ARE CONTINUED ON RECORD FORM B

RECORD FORM E--PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans NO
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (extract) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A C and Ex B D respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 89, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323. MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 58(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused G8232 Pte Alden Sellars Hemphill a soldier of the Carlt & York R. Canadian Army (overseas), C.M.F. is charged with

First Charge
~~AA Sec 15 (1)~~

When on active, service, absenting himself without leave,

in that he,

in the Field, in Italy, absented himself without leave from approximately 0800 hrs. 16 Oct 44, until 0800hrs. 17 Oct 44,

Total Absence - 1 day.

Second Charge
~~AA Sec 12 (1)~~ (a)

When on Active Service, deserting His Majesty's Service.

in that he

In the field, in Italy, on 18 Oct 44, after having been warned to proceed for service to the front, with intent to avoid so proceeding, absented himself without leave from approximately 1630 hrs 18 Oct 44 until he surrendered himself to No. 1 Provost Coy. at 2100 hrs 24 Oct 44.

In the field

Date 2 Nov 44,

(J.B. Ensor) Lt.-col.
Comd Carlt & York R.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

8 Nov 44
In the Field

A/Comd 3 Cdn Inf Bde.

FIELD GENERAL COURT-MARTIAL

(CFAO 5 (In lieu of AFAO 40/1945/1697 (1968))

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G82232	Pte		Alden Sellars	HEMPHILL	CYR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Nov 44 endorsed by me (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for preference to a superior qualified offr~~) A

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ A
~~attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint an Judge-Advocate Absent the Offr mentioned hereunder.~~ A

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	D W McAdam (Must be named. RP 106.)	WNSR (Unit.)

MEMBERS.

Capt	D E Smith MC	CYR
Capt (Rank.)	J.L Charlebois (Named or detailed. RP 106.)	R22R (Unit.)

WAITING MEMBER.

Lieut (Rank.)	D G Kirk (Named or detailed, if any. RP 106.)	WNSR (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

Date 8 Nov 44

(Signed personally. RP 105 fn 2.) Lt-Col. (Rank.)

A/Commanding 3 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

KR(CAN) PARA 357

32dh.

I certify that I have this morning examined

No. G-8232 Rank Pte Name Humphrey, L. S.

of The Carleton & York Regiment and in my opinion he is fit/~~unfit~~

to undergo Trial by Court Martial.

Station In the field

Date 10 Nov. 1944

[signature] Capt.,
Medical Officer
R.M.O. Carleton & York Regt.

Evidence for the Prosecution

First Witness For Prosecution

22245 Cpl Chandler D. S., Carleton and York Regt, having been duly sworn, state:

On 18 Oct 44 I got my section together and warned them that we were moving forward at one hour's notice and told them to roll their blankets. The accused was in my section when they were warned by me. At 1630 hrs the same day when we were ready to move off, on checking my section I found that the accused was absent. I did not see him again until he reported before the company commander on 30 Oct 44.

Cross-examined by defence:

Question 1: How many men were there in your section on 18 Oct 44?

A. 1: Five, sir.

Q 2: How do you know the accused was present when you warned your section on 18 Oct 44?

A 2: Because I saw him rolling his blankets with me.

(R.P. 83(b) complied with)

Second Witness For Prosecution

C 17660 Sgt. Barton J. S., C. F. R., having been duly sworn states:

On 17 Oct 44 I was informed that we would be on one hour's notice from 0500 hrs 18 Oct 44. My platoon was warned of this by me. During the morning of the 18th Oct. I was informed by my platoon commander that we would be moving forward to the front at 1630 hr that date. At approximately 1300 hrs I called a parade for the platoon and warned them that we were moving forward at that time. The company parade was formed up at 1635 hrs. The section

commanders had called the rolls of their sections. Cpl Chandler of 7 section reported to me that Private Hemphill was not present. I then checked the platoon myself, also checked with the C.Q.M.S. and my platoon commander & they had seen Private Hemphill around the area. I did not see Pte Hemphill again until 30 Oct 44 when he came up in front of his coy. cond on orders parade.

Cross-examined by defence:

Q 1. Are you sure that you called your platoon together on 18 Oct 44?

A 1. Yes

Q 2. Was Pte Hemphill present when you called your platoon together?

A 2. Yes.

Q 3. How do you know that Pte Hemphill was present?

A 3. The section commanders had reported their men present and I also counted the number of men on parade myself and the right number of men were there.

R.P. 83 (B) complied with.

Third Witness for Prosecution Lt. C.E. Emerald, C.Y.R., having been duly sworn, states:

I am Lt. C.E. Emerald, commanding 15 fd coy of C.Y.R. On 18 Oct 44, while at rest, I was warned that my platoon was to move forward with the Div on actual operations. I called all of my N.C.O.'s and warned them that the platoon was to be ready to move on an hour's notice for this operation and I ordered the N.C.O.'s to pass on the warning to the men. At approximately 1630 hrs on 18 Oct the coy fell in ready to move off.

I checked with the NCO to see if everyone in the platoon was ready to go. On being told that the accused was absent I checked the platoon and the cookhouse and he was nowhere to be found. We embussed at 1650 hrs. when the accused was still absent. He has not been with my platoon since.

Cross-examined by Defence.

Q 1. Did you know the accused in your platoon for any length of time before that day?

A 1. I had him in my platoon for five days in the Gothic Line before I had him evacuated.

Q 2. Why did you have him evacuated?

A 2. The medical reason was for boils, but an additional reason was because I considered that his mental outlook had a bad effect on the platoon, due to his nervous attitude.

Q 3. When did he come back to you?

A. 3. While at rest at the Naval Barracks about the 4th or 5th of October, 1944.

Q 4. In what condition did he appear to be in at that time?

A 4. His attitude from the time he came back until the time we went back into action was such that I was glad to be rid of him when we went back into action.

Q 5. Did you think of counselling the accused officer on his attitude?

A. 5. I counselled the M.O. personally about the man's condition.

R.P. 83 (E) 20M 11/44

Fourth Witness
For Prosecution

Capt. W.T. McGrath C.Y.R. having been duly sworn, states:

I am Capt W.T. McGrath, Adjt of the Canadian 1st York Regt. I introduce certificate under A.A. 163 i (55) which shows the accused, Pte Hemfield, surrendered himself on 24 Oct 44 at 2100 hrs to 1 Can. L of C Provost Coy.

(Certificate marked Exhibit "A" by Court.)

No Cross-Exam.

R.O. P.X.B. confined until.

Evidence for the Defence

First Witness For Defence

The accused, 6232 Pte Humphrill A.S., C.Y.R., having been duly sworn, states:

Q 1. How old are you?
A. 1 Nineteen.
Q 2 How long have you been in the Army?
A. 2 Eighteen months.
Q 3. When did you get to England from Canada.
A 3. I arrived in England about 4 Jan 44.
Q 4. When did you go to Italy?
A 4. About 4 Mar 44.
Q 5. When did you come to the C.Y.R.?
A. 5. I came to the C.Y.R. about April, 1944, when the regiment was in the caves near Villa Grande.
Q 6 Were you in the Gothic Line?
A. 6. Yes.
Q 7. Can you tell us something about the action that you were evacuated?
A 7. I was in a defensive slit trench. I remember talking and sniping but cannot recall any definite times or instances. I was evacuated from the [illegible]. I was sent to a forward dressing station and from there to 9 Fd. Amb. because of boils and desert sores. From there I returned to the unit. Physically I felt alright when I returned to the unit, except for my stomach, and my nerves were bad. I saw the Medical Officer and he looked at the forward dressing station report and said there was nothing he could do. I remained with the unit during which time we were under fire from the Naval Barracks. I had a minor headache and a "black out". I refused to go

MO before we were out of the Naval Barracks. He gave me tablets. I told him I wanted to see an eye specialist. He said that none were available at the time. I couldn't bring myself to go with the eye when they moved forward so I went A.W.L.

Cross-Examined by Prosecution:

(Court is adjourned at 1225 hrs. for lunch)
(Court reopened at 1345 hrs. 10 IV 0944)

Q 1 Were you at any time a member of 1st Pl C Coy?

A 1 Yes.

Q 2 Were you a member of that same Pl on the morning of 18 Oct 44?

A 2 Yes.

Q 3 Do you remember receiving any definite orders from your sec cond that day?

A 3 Yes.

Q 4 Will you tell the Court what Cpl Chandler ordered you to do?

A 4 He gave us instructions on packing and carrying our equipment and arms.

Q 5 Were any other instructions given?

A 5. No.

Q 6 Can you remember if Cpl Chandler did give you certain any orders to move?

A. 6. No.

Q 7. Do you know if any hazzles were called for any warning purposes?

A 7 No.

Q 8 Will you tell the Court what you did after you receive instructions regarding your equipment and arms?

A 8 I stayed in the vicinity of Coy H.Q.

Q9 Did you roll your blanket this day?

A9 Yes.

R.P. 83(B) complied with.

The Prosecution requests recalling P.W. C.E. Searched for further questioning - but withdraws request after being questioned by Court as to purpose.

The closing address is given by the Defence and is attached to Proceedings.

The Prosecution declines to make a closing address.

Closing Address for the Defence

The accused acknowledges the fact that he was warned that his Platoon was moving to active operations. But, in a case of desertion extenuating circumstances must be taken into consideration, and in this case, the man's nervous condition after undergoing days of the heaviest shelling the Canadian Corps has had in this country during the Somme Line is an extenuating circumstance.

After mulling over in his mind while at rest the hardships and dangers of those days, this man who is not too strong as can plainly be seen, could not find the

warned that the Platoon was moving he stayed with the Platoon for 4 hours and at the last minute his mental state was such that he could not control his will sufficiently to allow him to proceed with the Platoon.

Any man with the same mental set-up would have probably have left the Platoon before the last hour.

The accused at the time of leaving was not in control of his thoughts and therefore could not have the intention of deserting although on the surface the act of deserting appears

Lieut. H. M. Little

E-3 JCW

(1)

Plea in Mitigation
for G 82332 Pte. Eldon Sellon
Hemphill

In passing sentence on Pte. Hemphill I wish the Court to take into consideration the mans youth. He is only now 19 years of age. He has been in the army 18 months. He was mailed over to England arriving there about January 4. Then on March 4 he landed in Italy. In April he came to the Carleton & York Regt. He was not able to become psychologically adjusted for front line duty. In the Gothic Line after very severe shelling he was evacuated for shock and came to the Regt again when we were on rest.

(3)

1 Cdn. Corps Neuropsychiatric Centre

Neuropsychiatric Report

Appx "X" to Plan B Malingering

68332 Pte. Hemphill, A.S. C & Y Regt. Age 19.

Enlisted May/43. U.K. Jan/44 C.M.F. Mar/44.

17 Sept 44: Evacuated from the Gothic line 15 Sept 44.
Note on W3118 states:-
"Under extreme battle conditions for 5 days. Now so tired and nervous he cannot keep up with the troops. Cannot dig into a position on arrival, cannot fight. With 5 - 6 days complete rest this man should be redeemed.
"gd. Unit M.O.

Complaints: " I am feeling run down and still weak. My head aches now. I have a bit of a sick stomach. I dream a lot about home, most of them are not dreams colours".

Past History: Born and brought up in N.S. a home boy. His father died from car accident 15 yrs ago. His mother is quiet and a constant worrier. All her children is very proud of her and the family tye has always been strong. He went to school up to age 15. Average student. Never keen on games and sports and rather of a recessive and unaggressive nature. Fearful of the dark up to recent time. Helped his father in Shoe-repair shop for 1 - 2 yrs. till the latter enlisted, then went home and did the odd chores. Enlisted because he always wanted to be a soldier. Only one minor crime in Canada. (A.W.O.L.). Was on the Ortona front "holding the line". This has been his first real action. Missed the action in the Liri Valley following hospitalization for boil in the arm. Rejoined his unit after the Hitler line.

O.E.: Looks tired but not unduly anxious nor depressed. Is of average intelligence.
Has several small furuncles of neck and a purrelent discharging ulcer of 4th finger rt. hand. Though somewhat immature and tense this man does not show any marked evidence of psychiatric disability. He should be fit for R.T.U. after a few days rest.

Diagnosis: **Physical exhaustion.**

Disposal: **Discharge for R.T.U. 21 Sept 44.**

AMS/CMS
In The Field,
18 Sept 44.
Dist:- "A"1.

(A.E. Moll), Major, R.C.A.M.C.
O.C. 1 Cdn. Corps Neuropsychiatric Centre.

21/Sept/44:- This man is undergoing treatment for his furuncles. From a psychiatric point of view he is fit for R.T.U.
Discharge to 6th. Br. Lt. Fd. Amb.

Sgd. (A.E. Moll), Major, R.C.A.M.C.

SCHEDULE "C"

Exhibit A

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1)(3)

I, Captain H.F. Law Officer Commanding No 1 Cdn L of C Provost Coy certify that

Reg No G-8232 Rank Pte Name HEMPHILL A.S.

REGIMENT Carleton and York Regt

Stationed at FIELD

Surrendered himself to No H-59040 Rank Sgt Name Tippett J.A.

Of the No 1 Cdn L of C Provost Company, Cdn Provost Corps

On the 24th day of Oct 1944 at 2100 (hours)

AS AN ABSENTEE WITHOUT LEAVE

At the time of his surrender he was wearing (military uniform) or

x

(a)

Signature of Provost Marshal, Assistant Provost Marshal or other officer or the Commanding Officer of the portion of his majesty's forces or the officer, warrant officer or non commissioned officer in charge of the detachment of the Canadian Provost Corps, Cdn Army, into whose custody the above named person was taken on surrender

(H.F. Law) Capt

Exhibit "B"

Summary of evidence in the case of G8232 Pte Hemphill,A.S. a soldier of the Canadian Army (overseas) on strength of the Carlt & York R. C.M.F.

The Commanding officer directs that the evidence be taken under oath.

First Witness for Prosecution — G22245 Cpl Chandler, D.S. Carlt & York R. having been duly sworn states:-

I am G22245 Cpl Chandler,D.S. 15 Pl. "C" Coy. Carlt & York R. I called the roll in my section at 0800 hrs 16 Oct 44 and found G8232 Pte Hemphill,A.S. absent I called the roll again at 0800 hrs 17 Oct 44, and G8232 Pte Hemphill , A.S. was present and answered his name, Pte Hemphill, was not in the ~~area~~ Coy area on 16 Oct 44 at any time when I was there.

On 18 Oct 44 G8232 Pte Hemphill , A.S. was a member of my section in 15 Pl. He was present in the afternoon of 18 Oct 44 when I warned my section to be prepared to move on one hours notice. He was also present when the section rolled their blankets preparatory to moving. At 1630 hrs when we were ready to move I found him absent and we proceeded without him, He did not return to his section and the next time I saw him was on 30 Oct 44, at 1300 hrs. when he was brought before the Coy Commander on Charge.

D B Chandler

The accused declines to cross- examine this witness.

Second Witness for Prosecution — G17660 Sjt Barton, J.J. Carlt & York R. C.M.F. having been duly sworn states:-

I am G17660 Sjt Barton, J.J. 15 Pl. "C"Coy Carlt & York R.C.M.F. at 1200 hrs 18 Oct 44 I warned my platoon that we were moving forward to the front at 1630 hrs. Pte Hemphill, A.S. was present when I warned the platoon, when we were ready to move off at 1630 hrs. Pte Hemphill,A.S. was absent and failed to answer his name. I notified the Pl. Commander and the C.S.M. of his absence and the Coy proceeded without him, I did not see Pte Hemphill, again until 1300 hrs, 30 Oct 44 when he appeared before the Coy. Commander for office.

J J Barton

The accused declines to cross- examine this witness.

Third Witness for Prosecution — Lieut.C.E. Senechal, Carlt & York R. C.M.F. having been duly ~~sworn~~ sworn states:-

I am Lieut. C.E. Senechal, Pl. Comdr. of No. 15 Pl. "C" Coy Carlt & York R. at approximately 1130 hrs 18 Oct 44 I was warned that the platoon was to proceed on one hours notice on active operations, I immediately called my N.C.O.'s and warned them to that effect and also ordered them to warn their sections, at 16[illegible] hrs. I checked the platoon to see that all the men were preparing to move as we had been warned to embuss at 1630 hrs at that time the accused Pte Hemphill,was missing and was still missing when the Trucks left I have not seen him again until today.

C E Senechal

The accused declines to cross- examine this witness.

(2)

Fourth Witness Capt W.T. McGrath Adjutant Carlt & York R. having been duly for Prosecution Sworn states:-

I am Capt. W.T. McGrath, Adjutant, Carlt & York R. I submit certificate in accordance with AA 163 (1)(j) dated 24 Oct 44. showing G8232 Pte Hemphill,A.S. Carlt & York R. surrendered himself to No. 1 Cdn L. of C. Provost Coy on that date this document came into my possession through normal channels.

W McGrath Capt

The accused declines to cross- examine this witness.

Question to the accused

Do you wish to make a statement or to give evidence upon oath? You are not obliged to do so, but any evidence you give or any statement you make will be taken down in writing and may be givin in evidence.

Answer by the accused

No.

I certify that the foregoing summary evidence was taken down by me in the presence of the accused and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

In the field

Date 7 NOV 44,

Offiser taking the summary

List of exhibits

In the case of ~~Pte~~ G8232 Pte Hemphill,A.S. a soldier of the Canadian Army (overseas) on strength of the Carlt & York R.

Exhibit "A" Certificate under the AA Sec. 163 (i) (J)

List of Witnesses

for the prosecution In the case of G8232 Pte Hemphill,A.S. a soldier of the Canadian Army (overseas) on strength of the Carlt & York R.

G22245 Cpl Chandler,D.S.	-	Carlt & York R.
G17660 Sjt Barton,J.J.	-	Carlt & York R.
Lieut. G.E.Chenechal	-	Carlt & York R.
Capt. W.T.McGrath	-	Carlt & York R.

for the defence NIL.

Certificate by the accused

I certify that I have received free of charge, a copy, of the charge, sheet summary of evidence, list of Witnesses and list of exhibits pertaining to my trial by Court Martial.

I require the services of No Later to defend me at my trial

In the field

Date 7 NOV 44

Army Form B.199.

Exhibit C

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be)
G8232	Pte	Hemphill A.S.	Carleton & York Field

1. The following is a fair and true summary of the entries in the ~~regimental and squadron, battery or company~~ conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be extracted from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See note 6(1) K.R. 1940.

* The ordinary summary of field conduct with the number of entries in the specified periods prescribed being given to the local officials should be such entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the dates for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	...times	...times.
For	...times	...times.
For	...times	vtm ...times.
For	vtm ...times	...times.
For	...times	...times.

Numbers of instances of gallantry or distinguished conduct, vtm

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court or by summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement. vtm

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for ...beginning on the vtm day of ...

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 15 days in military custody, making a total of 15 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ record of service is 19 yrs

6. The date of his ~~enlistment~~ attestation specified in his ~~attestation paper~~ record of service is 4 May 43 vtm vtm

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1½ yrs

8. The accused is entitled to deferred pay or gratuity in respect of 1½ yrs service.

9. The accused is entitled to reckon 1½ yrs service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*). CVSM w clasp

11. (*If the accused is a warrant officer*.) ~~The accused before he was made a warrant officer last held the regimental rank of~~ vtm

12. (*In the case of an officer*.) The accused holds in the army the rank of ..., dated ..., and in his regiment (*or corps or department*) the rank of vtm ...dated ...

(*1420m) W11502/144 125,000 8/41 A.&E.W.Ltd Gp.498

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 63232 Rank Pte Name Hemphill. R.S. of C.S.F. Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th day of Nov 44

W. M. Gunn Capt
Officer i/c Records
Cmld + York Regt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

Exhibit R.

No G8 232 Name Hemphill AS | Sqn, Battery or Company | Corps C & G | Date of enlistment 4 Aug 43 | GC Badges | Service or Proficiency Pay | (AFW 122) 60/PAY/3438

Company Conduct Sheet Date of last entry in N/a | No and date of last drunk N/a | Period not reckoning towards freedom from extra fine N/a | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Previous Sheet destroyed after six months Service							17 Jan 44	Cameron Capt.	

certified True copy
W.R. Stack capt
Spec II Records
Coll + York Regt.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
		Sergeant	5						

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : G 8232 Pte ALDEN Sellers HEMPHILL CYR

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Sec 15(1)AA	Guilty	Guilty	
2nd	Sec 12(1)(a)AA	NOT Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~He is not entitled to~~ "DWM" ~~any remission~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To ~~be~~ undergo imprisonment without hard labour for a period of one year.

"DWM" 10 NOV 44 (Sgd) "D.W. McADAM" Maj

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Finding and sentence confirmed.

~~I direct that the accused be not committed to penitentiary detention pending until further ordered.~~(1) "PEB"

(1. AA 57A. Delete if not used.)

(Sgd) "P.E. BERNATCHEZ" Brig.

Date 14 NOV 44 Commanding 3 Cdn Inf Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G 8232 Pte Alden Sellars HEMPHILL	17 NOV 44	"J.P. ENSOR" Lt Col.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY

42-8

FIELD GENERAL COURT-MARTIAL

CPA66 (In lieu of AFA51 40/P & S/1608 (40/01) 4/38B

(D.M. Owen) Capt. Lt Col.
Cdn Sec GHQ 2 Ech AAI

Convened by Order of J.V. Allard DSO A/comd 3 Cdn Inf Bde dated 8 NOV 44
31 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G 8232	Pte	Allen Sellers	HEMPHILL	CYR

Proceedings Reviewed
"W.P. Taylor" Major
27 Nov 44 DJA
Cdn Sec GHQ 2 Ech - AAI

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date) "DWM" 10 NOV 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~and if any and other duties, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) "DWM" The Court is satisfied that it is properly convened and constituted(2), accused is (~~XX~~ amenable to military law, and each charge discloses an offence.(3) "DWM"

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~XX~~ brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~XX~~ fit to undergo trial by court-martial.(1) "DWM" ~~The Prosecutor informed the Court that accused wished to be tried by court-martial instead of being dealt with summarily by his C.O.~~ "DWM"

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused : Do you object to ~~XXXX

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M.M.L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*H*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-88 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or wkr if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused : Do you wish to make a statement ? Ans No (4)
(*1. RP* 17(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* £3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on "DWM" charge(s) the accused is (are) informed, and he (they) changes (does not change) his (their) plea(s) on charge(s) in Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(2)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to that Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No (1)
(*1. If "yes", see RP* 39(*A*) *for* "DWM" *Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (a) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the "DWM" charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para. if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans I wish to give evidence or a witness Do you intend to call witnesses on your behalf ?
Ans No Are they witnesses as to character only ? Ans NA
(*1. RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42 (*Dig*).)

D7. The Court is closed to consider the finding(s) of "DWM" "DWM" "DWM" The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule* *RP* 44(*A*).)

D8. The President announces the finding(s) of "DWM" if any, of Not Guilty, and states to the accused that the finding("DWM" of the Court on the Second charge(s) "DWM" subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2) "DWM"
(*1. AA* 54(3) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. ~~The accused having been found guilty on one or more of two or more charges, the proceedings are concluded by using Record Form E on p 3.~~ The Proceedings are continued on record form B "DWM"

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

"DWM" E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy of Conduct Sheet(s) "DWM" purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) "DWM" the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(2)
(*1. MFB* 355 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) "DWM" and Conduct Sheet(s) "DWM", and in mitigation of punishment ?(1) Ans Yes.(2)
(*1. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the whole of para 3.(2)
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

No C-8232 Name Hemphill AS | Sqn, Battery, or Company | Corps C I C | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/156 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Nil entries as of 21 Dec 44.					
				CERTIFIED TRUE EXTRACTS FROM MFM 4					
				(D.M. Owen) Capt. for Officer i/c Cdn Sec CHQ 2nd Ech AAI.					

(PTO)

CHARGE SHEET "DWM"

The accused G 8232 Pte Alden Sellars HEMPHILL a soldier of the Cartl & Work R. Canadian Army (Overseas), C.M.F. is charged with:

First Charge: AA Sec 15(1) When on active, service, absenting himself without leave,

in that he

in the Field, in Italy, absented himself without leave from approximately 0800 hrs 16 Oct 44, until 0800 hrs. 17 Oct 44,

Total Absence - 1 day

Second Charge: AA Sec 12(1)(a) When on active service, deserting His Majesty's Service.

in that he

In the field, in Italy on 18 Oct 44, after having been warned to Proceed for service to the front, with intent to avoid so proceeding, absented himself without leave from approximately 1630 hrs 18 Oct 44 until he surrendered himself to No.1 Provost Coy. at 0100 hrs 24 Oct 44.

In the Field
Date 2 NOV 44

"J.P. ENSOR"
(J.P. ENSOR) Lt.col.
Comd Carlt & York R.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

8 NOV 44
In the field

"Jean ALLARD" Lt col.
A/Comd 3 Cdn Inf Bde.

"DWM"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G 8232	Pte		Alden Sellars	HEMPHILL	CYR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has(~~XXX~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 8 Nov 44 endorsed by me, (~~XXXX

MEDICAL OFFICER'S CERTIFICATE "DWM"
KR (CAN) 357

I certify that I have this morning examined

No. G 8232 Rank Pte Name HEMPHILL, A S

of the Carleton &York Regiment and in my opinion he is fit

to undergo trial by Court Martial.

Station In the Field

Date 10 NOV 1944

"J. BROOK" Capt Capt.
Medical Officer
R.M.O. Carleton & York Regt.

Page 1 "DWM"

EVIDENCE FOR THE PROSECUTION

First Witness for Prosecution: G 22245 CPL CHANDLER D S., Carleton and York Regt, having been duly sworn, states:-

On 18 Oct 44 I got my section together and warned them that we were moving forward at one hour's notice and told them to roll their blankets. The accused was in my section when they were warned by me. At 1630 hrs the same day when we were ready to move off, on checking my section I found that the accused was absent. I did not see him again until he reported before the Company Commander on 30 Oct 44.

CROSS-EXAMINED BY DEFENSE:

Q.1 How many men were there in your section on 18 Oct 44?
A.1 Five, Sir.
Q.2 How do you know the accused was present when you warned your section on 18 Oct 44?
A.2 Because I saw him rolling his blankets with me.

R.P. 83(B) complied with.

Second Witness for Prosecution: G 17660 Sgt. BARTON J J., CYR. having been duly sworn states:

On 17 Oct 44 I was informed that we would be on one hour's notice from 0500 hrs 18 Oct 44. My platoon was warned of this by me. During the morning of the 18th Oct., I was informed by my platoon commander that we would be moving forward to the front at 1630 hrs that date. At approximately 1300 hrs I called a parade for the platoon and warned them that we were moving forward at that time. The company parade was formed up at 1630 hrs. The section

commander had called the rolls of their sections. CPL CHANDLER of 7 Section reported to me that Private HEMPHILL was not present. I then checked the platoon myself, also checked with the CSM and my platoon commander if they had seen Private HEMPHILL around the area. I did not swe Pte HEMPHILL again until his coy comd on orders parade. (18 Oct 44, when he came up - front)

CROSS- EXAMINED By DEFENCE:

Q. Are you sure that you called your platoon together on 18 Oct 44?

A. Yes

Q.2 Was Pte HEMPHILL present when you called your platoon together?

A. Yes.

Q.3 How do you know that Pte HEMPHILL was present?

A. The section commander had reported their men present and I also counted the number of men on parade myself and xthe right number of men was there.

R.P. 83/(B) complied with.

Third Witness For Prosecution: Lt C.E. Senechal, CYR having been duly sworn states:-

I am Lt. C.E. SENECHAL, commanding 15 Pl of CYR. On 18 Oct 44, while at reat, I was warned that my platoon was to move forward with the bn on active operation. I called all of my NCO's and warned them that the platoon was to be ready to move on an hour's notice for this operation and I ordered the NCO's to pass on the warning to the men. At approximately 1630 hrs , the Coy fell in ready to move off.

"DWM"

I checked with the NCOs to see if everyone in the platoon was ready to go. On being told that the accused was absent I checked the platoon and the coy area and he was no where to be found . We embussed at 1650 hrs, when the accused was still absent. He has not been with my platoon since.

CROSS EXAMINED BY DEFENCE

Q. Did you have the accused in your platoon for any length of time before that day?

A. I had him in my platoon for five days in the Gothic line before I had him evacuated.

Q2. Why did you have him evacuated?

A. The medical reason was for boils, but an additional reason was because I considered that his mental outlook had a bad effect on the platoon, due to his nervous attitude.

Q3. When did he come back to you?

A. While at rest at the Naval barracks, about the 4th or 5th of October, 1944.

Q4. In what condition did he appear to be in at that time?

A. His attitude from the time he came back until the time we went back into action was such that I was glad, he was away when we went back into action.

Q5. Did you think of consulting the Medical Officer on his condition?

A. I consulted the MO personnaly about the man's condition.

R.P. 83(B) complied with.

FOURTH WITNESS
for
Prosecution: Capt. W.T. McGRATH CYR
Having been duly sworn states:-

I am Capt W.T. McGRATH Adjt. of the Carleton and York Regt. I introduce certificate under AA 1631 (JJ) which shows the accused, Pte Hemphill, surrendered himself on 24 Oct 44 at 2100 hrs to 1 C BN L of C Provost Coy.

(Certificate marked Exhibit "A" by court).

R.P. 83(B) complied with.

EVIDENCE FOR THE DEFENCE

FIRST WITNESS
For
Defence: The accused, G 8232 Pte HEMPHILL A S.,CYR,
Having been duly sworn, states:-

Q1. How old are you?
A. Nineteen.
Q2. How long have you been in the Army?
A. Eighteen months.
Q3. When did you go to England from Canada?
A. I arrived in England about 4 Jan 44.
Q4. When did you come to Italy?
A. About 4 Mar 44.
Q5. When did you come to the C.Y.R?
A. I came to the CYR about April, 1944, when the regiment was in the caves near VILLA GRANDE.
Q6. Were you in the GOTHIC LINE?
A. Yes.
Q7. Could you tell us something about that action until the time you were evacuated?
A. I was in a nervous state during this action. I remember shelling and sniping but cannot recall any definite dates or instances. I was evacuated for exhaustion. I was sent to a psychiatrist and from there to 9 Fd Amb. because of boils and desert sores. From there I returned to the unit.
Q Physically I felt alright when I returned to the unit, except for my stomach, and my nerves were bad. I saw the Medical Officer and he looked at the psychiatrist's report and said there was nothing he could do. I remained with the company until we were under tents in the vicinity of the Naval Barracks. I had continuous headaches and "blackouts". I reported to the

MO before our move out of the Naval Barracks. He gave me tablets. I told him I wanted to see an eye specialist. He said that none were available at the time." I could not bring myself to go with the coy when they moved forward so I went A.W.L."

CROSS-EXAMINED BY PROSECUTION:
(Court is adjourned at 1225 hrs for lunch)
(Court re opened at 1345 hrs, 10 Nov 44.

Q1. Were you at any time a member of 15 Pl C Coy?
A. Yes.
Q2. Were you a member of that same Pl on the morning of 18 Oct 44.
A. Yes.
Q3. Do you remember receiving any definite orders from your sec comd that day?
A. Yes.
Q4. Will you tell the court what CPL. CHANDLER ordered you to do?
A. He gave us instructions on packing and carrying our equipment and arms.
Q5. Were any other instructions given?
A. No.
Q6. Can you remember if CPL CHANDLER did give you section any orders to move?
A. No.
Q7. Do you know if any parades were called for any warning purposes?
A No.
Q8. Will you tell the court what you did after you received instructions regarding your equipment and arms?
A. I stayed in the vicinity of Coy HQ.

Q9. Did you roll your blankets that day?
A. Yes.

R.P. 83(b) complied with.

The prosecution requests recalling Lt. C.E. Senechal for further questioning - but with draws reguests after being questioned by Court on to purpose.

The Closing address in given by the defence and is attached to Proceedings. The Prosecuton declines to make a closing address.

1. "DWM"

CLOSING ADDRESS
for the Defence:

The accused acknowledges the fact that he was warned that his Platoon was moving to active operations, But, in a case of desertion, extenuating circumstances must be taken into consideration, and in this case, the man's nervous condition after undergoing days of the most intense shelling the Canadian Corps has had in this country during the GOTHIC LINE is an extenuating circumstances. After milling events his mind while at rest the harships and dangers of those days, this man who is not too strong as can plainly be seen, could not find the

2. "DWM"

Necessary-energy-to-s

necessary energy to return to the front. After being warned that his Platoon was moving he stayed with the Platoon for 4 hours and at the last minute his mental state was such that he could not control his will sufficiently to allow him to proceed with the Platoon.

Any man with the same mental set-up would have probablmy have left the Platoon before the last hour.

The accused at the time of leaving was not in control of his thoughts and therefore could not have the intention of deserting although on the surface the act of deserting appears.

"Lieut. N.M. Leitch"

E-3 "DWM"
(1)

PLEA IN MITIGATION

for G 8232 Pte Alden Sellars HEMPHILL.

In passing sentence on PTE. HEMPHILL I wish the court to take into consideration the man's youth. He is only now 19 years of age. He has been in the army 18 months. He was rushed over to England arriving there about January 4. Then on March 4 he landed in Italy. In April he came to the Carleton & York Reg't. He was not able to become psycholggically adjusted for front line duty. In the GOTHIC LINE after very severe shelling he was evacuated for exhaustion and came to the regiment again when we were on rest.

---

(2) "DWM"

While on rest he mulled over the dangers of the front line and at the last minute he found it impossible to go forward.

The accused has had a good record previously in the Army.

Considering the accused's youth, his previous good record and what he had already gone through in the war in Italy. I'm sure the Court will make the sentence as light as possible.

"Lt N.M. Leitch"
Defending Officer.

Appx "X" att. is submitted for consideration of court in Mitigation.

"DWM"

(3) Appx "X" "DWM"
to Plea of Mitigation.

1 CDN CORPS NEUROPSYCHIATRIC CENTRE

Neuropsychiatric Report

G8232 Pte. HEMPHILL, A.S. C & Y Regt. Age 19.

Enlisted May/43 U.K. Jan/44 C.M.F. Mar/44.

17 Sept 44: Evacuated from the Gothic line 15 Sept 44.
Note on W3118 states:-
"Under extreme battle conditions for 5 days. Now so tired and nervous he cannot keep up with the troops. Cannot dig into a position on arrival, cannot fight. With 5 -6 days complete rest this man should be redeemed.
Sgd. Unit M.O.

Complaints: "I am feeling run down and still weak. My head aches now. I have a bit of a sick stomach. I dream a lot about home, most of them are not dreams colours".

Past History: Born and brought up in N.B. a home boy. His xx father died from car accident 15 years ago. His mother is quiet and a constant worrier. All her children is very proud of her and the family tye has always been strong. He went to school up to age 15. Average student. Never keen on games and sports and rather of a recessive and unaggressive nature. Fearful of the dark up to recent time. Helped his father in Shoe-repair shop for 1 - 2 yrs. till the latter enlisted, then went hom and did the odd xxxx chores. Enlisted because he always wanted to be a soldier. Only one minor crime in Canada.(A.W.O.L.) Was on the Ortona front "holding the line". This has been his first real action. Missed the action in the Liri Valley following hospitalization for boil on the arm. Rejoined hisunit after the Hitler line.

O.E: Looks tired but not unduly anxious nor depressed. Is of average intelligence.
Has several small furuncles of neck and a purrelent discharging ulcer of 4th finger rt. hand.
Though somewhat immature and tense this man does not show any marked eviden e of psychiatric disability. He should be fit for R.T.U. after a few days rest.

Diagnosis: Physical exhaustion.

Disposal: Discharge for R.T.U. 21 Sept 44.

AEM/CHM
In the Field,
18th Sept 44
Dist:- "A" 1.

"A.E. MOLL"
(A.E. Moll), Major, R.C.A.M.C.
O.C. 1 Cdn. Corps Neuropsychiatric Centre.

21/Sept/44:- This man is undergoing treatment for his furuncles. From a psychiatric point of view he is fit for R.T.U. Discharge to 6th Bn.Lt.Fd. Amb.

Sgd (A.E. MOLL), Major, R.C.A.M.C.

SCHEDULE "G"

Exhibit A
"DWM"

CERTIFICATE UNDER THE ARMY ACT SECTION 163 (1)(J)

I, Captain H.F. Law Officer Commanding No 1 Cdn L of C Provost Coy

certify that

Reg No. G-8232 Rank Pte Name HEMPHILL A.S.

REGIMENT Carleton and York Regt.

Stationed at FIELD

Surrendered himself to No H-59040 Rank Sgt. Name Tippett J.A.

Of the No 1 Cdn L of C Provost Company, Cdn Provost Corps

On the 24th day of Oct 1944 at 2100 (hours)

AS AN ABSENTEE WITHOUT LEAVE (a)

At the time of his surrender he was wearing (military uniform) or

Signature of the Officer, in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on surrender.

"VEJ Black" Lt.

"H.F. LAW"
.....
(H.F. Law) Capt.,

Summary of evidence in the case of G8232 Pte HEMPHILL A S., a soldier of the Canadian Army (Overseas) on strength of the Carlt & York R. C.M.F.

The Commanding Officer directs that the evidence be taken under oath.

First Witness for Prosecution: G22245 Cpl. Chandler, D.S. Carlt & York R. having been duly sworn states:-

I am G22245 Cpl Chandler, D.S. 15 Pl. "C" Coy. Carlt & York R. I called the roll in my section at 0800 hrs 16 Oct 44 and found G8232 Pte Hemphill, A.S. absent I called the roll again at 0800 hrs 17 Oct 44, and G8232 Pte Hemphill, A.S. was present and answered his name, Pte Hemphill, was not in the Coy area on 16 Oct 44 at any time when I was there.
On 18 Oct 44 G8232 Pte Hemphill, A.S. was a member of my section in 15 Pl. He was present in the afternoon of 18 Oct 44 when I warned my section to be prepared to move on one hour's notice. He was also present when the section rolled their blankets prepucatory to moving. At 1630 hrs when we were ready to moveI found him absent and we proceeded without him, He did not return to his section and the next time I saw him was on 30 Oct 44, at 1300 hrs. whenhe was brought before the Coy Commander on Charge.

"D.S. CHANDLER"

The accused declines to cross-examine this witness.

Second Witness for Prosecution G17660 Sjt BARTON, J.J., Carlt & York R. C.M.F. having been duly sworn states:-

I am G17660 Sjt BARTON, J.J. 15 Pl. "C" Coy. Carlt & York RCMF at 1200 hrs 18 Oct 44 I warned my platoon that we were moving forward to the front at 1630 hrs. Pte Hemphill, A.S. was present when I warned the platoon, When we were ready to move off at 1630 hrs. Pte Hemphill A.S. was absent and failed to answer his name. I notified the Pl. Commander and the C.S.M. of his absence and the Coy proceeded without him, I did not see Pte Hemphill, again until 1300 hrs. 30 Oct 44 when he appeared before the Coy. Commander for office.

"J.J. BARTON"

The accused declines to cross-examine this witness.

Third Witness for Prosecution: Lieut. C.E. SENECHAL, Carlt & York R. C.M.F. having been duly sworn states:-

I am Lieut. C.E. Senechal, Pl. Comdr. of No. 15 Pl. "C" Coy Carlt & York R. At approximately 1130 hrs 18 Oct 44 I was warned that the Platoon was to proceed on one hours notice on active operations, I immediately called my N.C.O's. and warned them to that effect and also ordered them to warn their sections, at 1630 hrs. I checked the platoon to see that all the men were preparing to move as we had been warned to embuss at 1650 hrs at that time the accused Pte Hemphill, was missing and was still missing when the Trucks left I have not seen him again until today.

"C.E. Senechal"

The accused declines to cross-examine this witness.

Fourth Witness for Prosecution: Capt W.T. McGRATH Adjutant Carlt & York R. Having been duly sworn states:-

I am Capt. W.T. McGRATH, Adjutant, Carlt & York R. I submit Certificate in accordance with AR 163(i)(J) dated 24 Oct 44, showing G8232 Pte Hemphill, A.S. Carlt & York R. surrendered himself to No. 1 Cdn L. of C. Provost Coy on that date this document came into my possession through normal channels.

"W. McGRATH" Capt

The accused declines to cross-examine this witness.

Question to the accused: Do you wish to make a statement or to give evidence upon oath? You are not obliged to do so, but any evidence you give or any statement you make will be taken down in writing and may be givenin evidence.

Answer by the Accused: No.

I certify that the foregoing summary evidence was taken down by me in the presence of the accused and that Rules of Procedure 4(C)(D)(E)(F) and (F) have been complied with.

In the Field

Date 7 NOV 44

"FGJ BLACK" Lieut.
Officer taking the Summary.

LIST OF EXHIBITS

In the case of G8232 Pte Hemphill, A.S. a soldier of the Canadian Army(Overseas)on strength of the Carlt & York R.

Exhibit "A" CERTIFICATE under the AA Sec 163 (i)(J).

LIST OF WITNESSES.

For the Prosecution In the case of G8232 Pte Hemphill, A.S. a soldier of the Canadian Army (Overseas) on strength of the Carlt & York R.

G22245	Cpl. Chandler, D.S.	-	Carlt & York R.
G17660	Sjt Barton, J.J.	-	Carlt & York R.
Lieut	C.E. SENECHAL	-	Carlt & York R.
Capt.	W.T. McGRATH	-	Carlt & York R.

For the Defence: NIL.

CERTIFICATE BY THE ACCUSED

I certify that I have received free of charge, a copy, of the charge, sheet summary of evidence, list of Witnesses and list of exhibits pertaining to my trial by Court Martial.

I require the services of N.M. LEITCH to defend me at my Trial.

In the Field
Date 2 NOV 44

"A.S. HEMPHILL"

"DWM" Exhibit C

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
G-8232	Pte	HEMPHILL A.S.	Carleton & York Field

1. The following is a fair and true summary of the entries in the ~~regimental and squadron, battery or company~~ conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—If a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not endorsed to the proceedings.

† See para. 817, K.R., 1940.

* The numbers herein stated should correspond with the number in column 1 of the conduct sheets, repetitions being given in the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	"WMCG" times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct—

or

There are no entries in the conduct sheets of the accused.

"WMCG"

2. The accused has not been previously convicted, or

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for ////// beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 15 days in military custody, making a total of 15 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~"WTM"~~ record of service ~~"WTM" attestation paper~~ is 19 yrs.

6. The date of his ~~"WTM"~~ attestation specified in his ~~"WTM"~~ record of service ~~attestation paper~~ is 4 May 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1½ yrs

8. The accused is entitled to deferred pay or gratuity in respect of 1½ yrs service.

9. The accused is entitled to reckon 1½ yrs service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or reward*)). CVSM & CLASP

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of .....

12. (*In the case of an officer.*) The accused holds in the army the rank of ..... dated .....

and in his regiment (*or corps or department*) the rank of ..... dated .....

"WTM"

(*2264) Wt.21708/1877 10,000 10/42 A.& E.W.Ltd. Gp.698
(*21431) Wt.13827/421 M.M.000 5/43

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. G8232 Rank Pte Name HEMPHILL A S of C & Y Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
XXXXX	XXXX	"WTM" XXXXXXXX		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th day of Nov 44

"W. McGRATH" Capt.
Officer i/c Records
Carl & York Regt.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

In the rank of , Date of Promotion,
In the rank of , Date of Promotion,
In the rank of , Date of Promotion,
years.

"WTM"

(Instruction—*any matter to any of the above paragraphs cannot be stated in the regimental books the paragraph must be struck through, except in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.*)

No. G8232 Name HEMPHILL A S | Sqn, Battery, or Company | Corps CIC | Date of enlistment 4 May 43 | Badges | Service or Proficiency Pay "DWM" | MFM 6 (AFB 122) 40/PAS/156 (3438)

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc "JG Rogerson" Capt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed after six months service		14 Jan 44		"D. Creekman" Capt.	

CERTIFIED TRUE COPY

"W. McGRATH"
Officer i/c Records
Carlt & York Regt.

(PTO)

TTT-189

Pte. Hempstock LA

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M 50248 Pte. GEORGE ALBERT HEMPSTOCK 2ND BN 2 CBRD

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) .....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 69 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: to undergo detention for a period of 9 months.

(Sgd) ..... Judge-Advocate, if any. 15 Jun 44 Date awarded. (Sgd) J.K. McCullagh Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed Ed W

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) C.H. Constantine Brig

Date 18 June 44 Commanding Officer.

COMMANDING OFFICER
1 CDN BASE RFT GROUP

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
M. 50248 Pte. George Albert Hempstock	20 June 44	R.W. Smith Lt-Col.

Officer Commanding
1 Canadian Reinforcement Depot

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECORDED AT CMHQ IN AB 180: 777-189

T. 121

RECEIVED 1 CANADIAN BASE REINFORCEMENT GROUP

FIELD GENERAL COURT-MARTIAL

CFA 196 (In lieu of AFA 7) 40 P.G. (S.) 1698 (20/44)

Convened by Order of BRIG. E.W. HALDENBY Comd 1 CDN B.R. Gp dated 13 JUN 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
M 50248	Pte	George Albert	Hempstock	1 Can Repl Dep 2 BN 2 CBRD.

PROCEEDINGS REVIEWED

[illegible] Lieut-Colonel Asst. Judge Advocate General

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on May 29 20 JUN 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Finn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2) [illegible].

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans Not at all.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	J.K. McCULLAGH	A.C.A	2 Can Reception Centre.
Member	CAPT.	A.S. GREEN	C.A.C.	5 BN. 2 CBRD.
Member	LIEUT.	J. FORGET	C.I.C.	9 BN. 2 CBRD.
Judge-Advocate				
Prosecutor	CAPT.	E.E. BATES	C.I.C.	2 BN. 2 CBRD.
Defending Offr	LIEUT.	J.H. PROWSE	C.I.C.	2 BN. 2 CBRD.

Questions by President: Is the Prosecutor a lawyer? Ans Not Is the Defending Offr a lawyer? Ans Not (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 86 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment makes(s) (no) ~~one~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RaP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)

(*1. RP* 27(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) (*c*), *para* 3. *MML p* 54 *para* 47. *4. See para* E3 *of Record Form* E. *5. Statement, if any, recorded per Notes.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by completing with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No Sir (1)

(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~no~~) opening address.(1)

(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The ~~Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.~~(3) ~~The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans I will give evidence & a statement through my Defending Officer. Do you intend to call witnesses on your behalf ?

Ans Yes Sir. Are they witnesses as to character only ? Ans To character and alibi.

(*1. RP* 155. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 101(*e*).)

D7. The Court is closed to consider the finding~~s~~.(1) The finding~~s~~ of the Court is ~~are~~ recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding~~s~~ of the Court on the first charge charge~~s~~, being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA* 54(*2*) (*d*), *RP* 45, 120(*A*). *2. AA* 54(*2*), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans Yes Sir I wish to call a witness as to character

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex H and Ex I respectively.(3)

(*1. MFB* 255 *or AFB* 296. *2. MFH* 6. *3. RP* 46. *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes Sir. (2)

(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA* 54(*e*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 328, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1B), 68(1), *KR Can* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Accused elected for trial by Court Martial

- CHARGE SHEET -

The accused, M50248 Pte George Albert HEMPSTOCK, X-4 List, The Loyal Edmonton Regiment, 2 Canadian Base Reinforcement Battalion, 1 CBRD, a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
Sec 12(1)(a)
Army Act

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field, in Italy, after having been warned to proceed on draft, and after having acknowledged said warning, with intent to avoid said draft, absented himself without leave from 0500 hours on the 31st May 1944 until apprehended by the Military Police in Naples at 1000 hours on the 3rd June 1944.

(R. W. LENT) Lt.-col.,
Commanding,
2 Cdn Base Rft Bn.,
1 Cdn Base Rft Depot - CMF.

In the Field
10 June 1944

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(E. W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Group
Cdn Army - C M F

13 Jun 44

FIELD GENERAL COURT-MARTIAL

CFAES (In lieu of AFA3)
40/PA&S/1607 (2003)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-50248	Pte		George Albert	HEMPSTOCK	L Edmn R 2 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~s~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~s~~ set forth in the Charge Sheet~~s~~ attached and on (date) 13 Jun 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence~~s~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offer)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~s~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons stated attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	J.K. McCULLAGH - RCA - (Must be named. RP 106.)	2 Cdn Reallocation Centre (Unit.)

MEMBERS.

Capt	A.J. GREEN - CAC -	6 Bn 2 CBRD
Lieut (Rank.)	J.Y. FORGET - CIC - (Named or detailed. RP 106.)	6 Bn 2 CBRD (Unit.)

WAITING MEMBER.

Lieut (Rank.)	G. STARK - CIC - 2 Cdn Reallocation Centre (Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

Date 13 Jun 44

(E. W. Haldenby)
(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding 1 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

I certify that I have this morning examined -

M-50248 Pte. Hempstock, G. A.

and he is fit to undergo trial by Court Martial.

15 Jun 44

Statement in Mitigation of Punishment.

Sir, you will observe that the offences noted on the record of the accused are all relatively minor ones for which none of the punishments have been severe.

You will recall, also, that C.S.M. Giles, in his statement as to character, stated that to his personal knowledge the accused lived with the C.P.R. for some two months in a most satisfactory manner. You will recall also, that C.S.M. Giles noted that at a later date, while in hospital he noted a change in the accused.

Just when that change took place, and for what reason only a qualified psychiatrist could say. I would suggest to you, that, in the interest of justice, that a psychiatrist should examine & report upon the present mental condition before sentence is pronounced.

I would point out also to you, that he has been tried on a most serious charge, under a technical section, and would ask, when considering sentence, that his past record of service, and his present mental condition, be taken into consideration along with the other evidence and statements submitted by the defence.

Page 1. Evidence re A.W.L. Pte Hempstock

1st Witness

Having been duly sworn states -

I am Lieut J. G Cormie coy comd (acting) 6 coy 2 Bn 1 CBRD.

On 30 May 44, as part of the usual procedure of clearing drafts, I witnessed the signatures of all personnel on the draft warning roll.

I present this to the court. It is headed " I the undersigned, acknowledge having been warned for draft B proceed forward. I realise that if I am absent without leave when the draft departs, I am liable to trial by Field General Court Martial for desertion."

Document is accepted by court and marked exhibit (B).

Witness continues -

On 31 May 44 at 0500 hrs, I was present when C.S.M. C Keenan of my coy called the roll. Pte Hempstock did not answer his name. I was also present when R.S.M Waddell of 2 Bn 1 CBRD. called the roll again. Pte Hempstock did not answer his name. The draft proceeded forward to 4 Bn. short one man.

RP. 83(b) complied with.

J.G.C.

2nd Witness

Having been duly sworn states - I am A21100 R.S.M. Waddell A.D. 2 Bn - 1 CBRD.

At approx 0500 hrs on 31 May 44 I was on parade with the outgoing draft x Base 62 from 2 Bn 1 CBRD. I was detailed by the adjutant Capt. R.L. Griffin to muster the draft. This was done by nominal roll by coys.

I called the roll of #6 Coy Pte Hempstock failed to answer. I reported his absence to the adjutant

Question ① (by prosecutor)

What steps were taken to make sure that pte Hempstock was not present?

Ans. ① I personally checked the nominal roll and counted the draft.

Question ② (by the court)

Do you recognise Pte Hempstock in this room?

ans. ② Yes sir, he is sitting at that table.

R.P. 83 (c)
Complied with.

J. Waddell

3rd Witness

Having been duly sworn states - I am Capt R.L. Griffin adjutant of 2 Bn I.C.B.R.D.

At approx 0600 hrs 31 May 44 I was present when the draft from # 6 Coy. to be despatched that morning. was mustered. I heard and saw C.S.M. C. Keenan. 6 Coy call the roll of the draft which was known as X Base 62. PTE Hempstock S.A. failed to answer although his name was repeated loudly several times by C.S.M Keenan.

I heard and saw R.S.M. Cockell A.D. R.S.M. of 2 Bn call the roll also. Pte Hempstock still did not answer. I counted the number of ORs in the 6 Coy draft and there was one short. This draft was despatched short one O.R. of the demanded number.

I produce certificate of apprehension marked exhibit (C) certifying that M 50248 Pte Hempstock S.A. was apprehended by No 111 Provost Coy NAPLES at 1000 hrs 3 Jun 44

R.P. 83(6) complied with.

4th Witness (for the defense).

Having been duly sworn states - I am M16878 P.T. Hempstock D.W. Loyal. Edm. Regt. now on X-4 list 6 Coy 2 Bn 1.C.B.R.D. At approx 2200 hrs 30 May 44 my brother, the accused, arrived at the Pow camp where I was a patient. He appeared to be under the influence of liquor. He said nothing at that time about being warned for draft so I got him to bed. The next morning he told me he was on draft. His nerves were bad and he was stuttering when he talked. I got him something to eat and about noon 31st May he left the camp, as far as I know, to return to Bvellino.

Question 3. (by the prosecutor)

What did your brother say was his reason for coming to see you?

Answer 3.

He said he wanted to see me before going back into the line.

R.P. 83(6)
Complied with.

J.H. Lee.

Address by Defence.

I wish to produce evidence that at the time the accused went A.W.L. he was incapable of forming an intent as a result of three things one, that he has an inadequate personality, secondly he was under the influence of liquor thirdly that he has what is known as a big brother complex in other words, in everything he does, he has the habit of running to his elder brother for advice.

Statement for accused by defending officer.

The accused came to the Edm Regt first in June 1941. and went to Sicily in July 1943. He actually came over as a reinforcement at that time and went up to the regt in Dec 43 just before the battle of Vino Ridge near Ortona. He was in "C" Coy in the regt as a rifleman and during the fighting was transferred to the scouts, serving as a scout until he was evacuated, sick, about the middle of Feb. He admits signing the draft warning order but states that both before and after signing he was drinking wine. His brother was in the Edm Conv. Camp at Salerno and he decided that before going forward to the Regt he wanted to see his brother

So he went out on the road in front of Canada Bks on the evening of 30 May and he asked a ride on a veh going through to Salerno. When he awoke the next morning he was sleeping with his brother in the Conv Camp

After a ~~(a)~~ discussion with his brother he left the Conv Camp with the purpose of returning to Avellino, once he was away from his brother he became nervous because he knew he would be in serious trouble and wandered around Naples until he was arrested by the Mil police.

He was properly dressed in his Army clothes and made no effort to disguise the fact that he was a Cdn soldier. He had no intention of deserting

AP 63(b) complied with.

~~Witness for defence~~
~~H116878 Pte D.H. Hempstock Cdn Regt~~
~~& H list Coy 2 Bn 1 C BRD having~~
~~been duly sworn states~~
Defending Officer decided not to place accused on the stand.

[signature]

[signature]

Statement for the Defence. CLOSING ADDRESS
BY DEFENDING OFFICER

The defence admits that the accused was in fact A.W.L during the period stated in the charge. It also admits that the accused signed the draft warning order and was, in fact, at the actual time of signing, aware of its meaning.

But sir, the defence has produced the evidence of two witnesses who state clearly that at approx 2200 hrs on 30 May 44 the accused was in fact very drunk - so drunk as to be incapable of carrying on a conversation. This, it is submitted, bears out the submission of the defence, that, by virtue of his condition, at the time of going A.W.L., was not capable of forming an intention to desert.

It is submitted that what actually happened was this, that the accused, who is a weak-minded type, after having been warned for draft, decided to celebrate the occasion by going on a binge, which he did. Then, while under the influence of liquor, decided to go and see his brother, to whom he was very closely attached, and did — without at that time stopping to realize that by doing so he left himself liable to the serious charge for which he is now being tried.

When he awoke on the morning of 31 May 44, and realizing what the circumstances were he was greatly distressed and was afraid to go back like a man and accept the consequences - but in a fog of indecision wandered around until he met a C.M.P, to whom he readily admitted he was A.W.L.

He served with distinction in action with the C.A.R. which is shown by the fact that he was employed as a scout at a time when a scout's job was particularly important.

~~[illegible] on the above date, [illegible] drunk and [illegible] in hospital, he [illegible] struck by [illegible] and [illegible] thereby [illegible] to his [illegible] for [illegible] and [illegible].~~ Plac.

It is submitted, sir, that while the witnesses will support a conviction on a charge of A. W. O. L. that there has been no evidence presented to the court that shows an intention to desert - which must be the essence of the charge. On the other hand, there is evidence that he was drunk to the point of being incapable of taking orders. It is submitted, is surely evidence that he was too drunk to be capable of forming an intent. It is pointed out too that he gave no trouble to the police who apprehended him, and made no attempt to disguise his uniform or otherwise disguise his identity as a member of His Majesty's Canadian forces.

In conclusion, sir, it is submitted, that there must be, on the evidence before the court, at least a reasonable doubt as to whether the accused actually intended to desert, in which case, a conviction can must not be found.

Plac.

Closing Address By Prosecution

Summary –

The case against the accused is as follows –

1. The accused signed the warning draft roll of X Base 62 in the presence of Lt. Comiskey as shown by Exhibit "B". The accused was fully aware that a charge of desertion could be laid if he were absent from the draft at its departure.

2. Evidence produced by witnesses for the prosecution proves the absence of the accused when the draft departed.

3. The accused, although drunk when he arrived at the destination / Ctn Cor. Comp Salerno was not necessarily drunk incapable when he left Avellino. In fact, he was quite capable of knowing what he was doing and where he was going.

4. No reasonable excuse has been brought forward by the defence for the accused's absence from draft except that he wanted to see his brother before going forward to his battalion.

5. In the face of this evidence, the accused knowing the consequences of being absent from draft, deliberately left camp.

6. I submit that the accused is guilty of the offence with which he is charged, namely desertion with intent to avoid draft.

Character Witness for Defence

having been duly sworn states —

M 10756 C.S.M. Giles. N.L. Depot training school Canada Barracks C.B.R.D.

I first became acquainted with accused when he came to Edm Regt at battle of Vimy Ridge. I saw him several times before and during the battle for Ortona

I particularly noticed he seemed to be enjoying the battle. After the battle my Coy was stationed nearest Bn Hq and I spent a lot of time in BHQ which was also the station of the Scouts. At this time I saw the accused practically daily as he had been transferred from a rifle Coy to the Bn Scouts. He was doing a very good job with the battalion and had been on several patrols. The accused

Sometime in march I met Pte Comstock on 14 Cdn Gen Hosp He appeared to be nervous stutters badly. He made an appointment to go out with me that afternoon and failed to turn up. While in hosp he came into the ward several times looking for his mates. If he had been posted to my company at that time I would

not have accepted him as he was nervous erratic and definately unreliable. I had appointments several times to go out with him which he failed to keep. Whenever I saw him he was always eating where his brother was and seemed to be lost without him.

A.P. 88.(6) Complied with



Re "B"

NO. BN., 1 CANADIAN BASE REINFORCEMENT DEPOT

F ..... A. Coy. 4 B.N/117. Draft X Base 62 Date 29 May 44

I the undersigned, acknowledge having been warned for draft to proceed forward. I realize that if I am absent without leave when the draft departs, I am liable to trial by Field General Court Martial for desertion.

NUMBER	RANK	NAME	INITIALS	SIGNATURE
	LT.	FRASER	G.D.	
M16455	RQMS	WHITE	H.W.	
M17010	CPL	HORTON	E.E.	
K67423	PTE	ADAMS	P.	
M35721	"	ATKINSON	S.M.	
B43753	"	BLOYE	H.R.	
M106473	"	BOLKING	L.C.	
B149528	"	BOSWORTH	C.T.	
C102395	"	BOULAY	G.C.	
M31779	"	BOURQUE	L.A.	
M11836	"	BRABANT	M.H.	
K69121	"	BROWN	W.D.	
K50430	"	BRYAN	W.E.	
K51565	"	BRANDON	L.G.	
K50704	"	CAMERON	D.B.	
K50218	"	COOPER	B.M.	
B144006	"	COOPER	J.G.	
E56213	"	CROCKER	D.E.	
M102377	"	CUNNINGHAM	H.G.	
B137610	"	DALBY	J.E.	
L2504	"	DUMONT	C.P.	
K45074	"	FAHEY	J.E.	
662359	"	FILLMORE	W.H.	
H46255	"	FUNNELL	L.A.	

Certified that the above statement was read and signed by each of the a/m in my presence 30 day of May 1944

Note: Witness must be an Officer. .....(Signature of Witness)

Exhibit "B" cont.

NO. BN., 1 CANADIAN BASE REINFORCEMENT DEPOT

.....6.....Coy. 4 E N/17 Draft Date 29 May 44

I the undersigned, acknowledge having been warned for draft to proceed forward. I realise that if I am absent without leave when the draft departs, I am liable to trial by Field General Court Martial for desertion.

NUMBER	RANK	NAME	INITIALS	SIGNATURE
M100045	PTE	BATTOCLIAT	R.A.	R Battocliat
K66187	-	GRAHAM	W.A.	W A Graham
K49567	-	HALL	R.A.	R A Hall
M12002	-	HEAD	C.E.	C E Head
M50249	-	HEMPSTOCK	G.A.	G A Hempstock
M35305	-	HOLMES	W.G.	W G Holmes
M105427	-	JOHNSON	H.E.	H E Johnson
M31506	-	KUTINSKY	P.	P Kutinsky
H102745	-	LAIRLAW	R.M.	R M Lairlaw
M16272	-	LAWRENCE	H.M.	H M Lawrence
A21598	-	LAWRENCE	K.W.	K W Lawrence
M106562	-	LENZ	A.C.	A C Lenz
K49340	-	LEONARD	A.J.	A J Leonard
B74377	-	LOCKE	G.H.	G H Locke
M16025	-	MACKENZIE	T.C.	T C MacKenzie
F60367	-	MACPHEE	H.E.	H E MacPhee
M107028	-	MARSHALL	M.L.	M L Marshall
~~M17269~~	~~-~~	~~MARSHALL~~	~~R.M.~~	
K57689	-	MARTIN	H.	H Martin
M31196	-	MASKELL	T.	T Maskell
M16203	-	McGRATH	J.J.	J J McGrath
F55742	-	McNEIL	A.D.	A D McNeil
L102481	-	MERLET	P.A.	P A Merlet
A102877	-	MOIR	W.M.	W M Moir

Certified that the above statement was read and signed by each of the a/m in my presence 30 day of May 1944

Note: Witness must be an Officer. .....P.S. Cormie.....
(Signature of Witness)

NO. BN., 1 CANADIAN BASE REINFORCEMENT DEPOT

.....6.....Coy. 48N/117 Draft X Base 62 Date 29 May 44

I the undersigned, acknowledge having been warned for draft to proceed forward. I realize that if I am absent without leave when the draft departs, I am liable to trial by Field General Court Martial for desertion.

NUMBER	RANK	NAME	INITIALS	SIGNATURE
H105496	PTE	MONTSION	E. J.	E. Montsion
M107261	"	MUIR	R. J.	R. Muir
M31602	"	MUSA	M. J.	
M107671	"	OSBORNE	R. S.	R. Osborne
K49426	"	OLSEN	O.	O. Olsen
M63657	"	PHILLIPS	E. W.	E. W. Phillips
M16755	"	PRITCHARD	G. E.	G. E. Pritchard
K49166	"	ROBINSON	H. N.	H. N. Robinson
M105112	"	SCHLARETH	B. F.	B. F. Schlareth
M101717	"	SEAWOLT	J.	J. Seawolt
M107006	"	SMITH	C. H.	C. H. Smith
M16695	"	SMITH	W. H.	W. H. Smith
M53405	"	STASIUK	P. F	P. F. Stasiuk
M67685	"	SWANKY	F. E.	F. E. Swanky
H84121	"	SZUSTYKIEWICZ	M.	M. Szustykiewicz
K52479	"	THERIAULT	M.	M. Theriault
M105954	"	THOMSON	D. W.	D. W. Thomson
A106244	"	TURFORD	J.	J. Turford
F56243	"	UMLAH	P. E.	P. E. Umlah
K45604	"	WARNER	G. O.	G. O. Warner
~~K66470~~	~~"~~	~~WATSON~~	~~R. G.~~	
M15530	"	McPHERSON	B. J.	B. J. McPherson
M38787	"	SCHMULAND	N.	N. Schmuland
M16226	"	SWEENEY	J.	J. Sweeney

Certified that the above statement was read and signed by each of the s/m in my presence 30 day of May 1947

Note: Witness must be an Officer. ..... (Signature of Witness)

NO. BN., 1 CANADIAN BASE REINFORCEMENT DEPOT

.....Coy. .....Draft Date .....

I the undersigned, acknowledge having been warned for draft to proceed forward. I realize that if I am absent without leave when the draft departs, I am liable to trial by Field General Court Martial for desertion.

NUMBER	RANK	NAME	INITIALS	SIGNATURE
~~[illegible]~~	~~[illegible]~~	~~[illegible]~~	~~[illegible]~~	
[illegible]	Pte	[illegible]	J.S.	[illegible]
[illegible]	Pte	[illegible]	R.A.	[illegible]
[illegible]	Pte	[illegible]	A.	[illegible]

Certified that the above statement was read and signed by each of the s/m in my presence 30 day of May 1944

Note: Witness must be an Officer. .....(Signature of Witness)

Re "C"

Certificate in accordance with the Army Act Sec. 163 (1) (jj)

I certify that

No M.50248 Rank PRIVATE Name HEMPSTOCK. G.A.

of the THE LOYAL EDMONTON REGIMENT.

was arrested at NAPLES. at 1000 Hrs.,

on the 3rd. day of JUNE. 194 4.

Signature of P. M., A. P. M., or other Officer into whose custody the above named person was taken on arrest.

Rank CAPTAIN.

Appointment (if any)

Commanding 111 PROVOST COMPANY. CM POLICE.

Date 3rd. JUNE. 1944.

PSSN/771/5-44/3 5M

Exhibit "B" E.G. Bates Capt.

Old Sheet Destroyed 18-9-41

FIELD CONDUCT SHEET.

Army Form B122
Sheet No. 1

*No. M 56278 Name HEMPSTOCK C.A. Sq., Batty., or Company Corps C.I.H.F.C. Date of Enlistment 18-3-41

Date of last entry in Company Conduct Sheet | No. and date of last drunk N.K. | G.C. Badges | Long Service and G.C. Pay | Signature G.C. Company, etc.

Place	Date of offence	Rank	Cases of Drunk-enness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded and Remarks
IN THE FIELD	1-11-41	GNR		ABSENT WITHOUT LEAVE 0600 HRS 1-11-41 TO 1600 HRS 1-11-41	B.Dr. SNUGGS	REMINDED	5-11-41	[illegible]
FIELD	4.3.42	PTE		ABSENT 18 HRS 18 MINS		2 DAYS C.B.	31.3.42	[illegible]
FIELD	29.8.42	"		ABSENT 1 DAY 22 HRS ABSENT WITHOUT LEAVE FROM 0600 HRS 28-8-42 TO 0400 HRS 30-8-42	Sgt. SHORTZ J.E. Sgt. EVANS J.J.	5 DAYS C.B.		[illegible]
FIELD	13 JUNE 43	"		ABSENT WITHOUT LEAVE FROM 2259 HRS 12 JUNE 43 TO 0400 HRS 13 JUNE 43 (4 Hrs 26 Mins)		10 DAYS C.B. 5 days Extra Fatigues	13 JUNE 43	[illegible]
FIELD	6 JULY 43	"		ABSENT FROM PARADE 0900 HRS 6 JULY 43 TO 1100 HRS 6 JULY 43 (2 Hrs) DISOBEYING A LAWFUL COMMAND GIVEN BY SUPERIOR OFFICER (CQ SERGEANT)	Sgt. [illegible]	7 DAYS C.B.	2 JULY 43	CAIRO EGYPT
FIELD	3 SEPT 43	PTE		ABSENT FROM ROLL CALL 1800 HRS 2 SEPT 43 TO 0400 HRS 3 SEPT 43 (10 HRS)	L/CPL J. EVANS	FINE 7 Days Pay	7 SEPT 43	[illegible]

*Serial Number in case of enemy prisoner of war.

P.T.O.

Wt. 14538/1990 1000M. 6/42 W.P.Co. 51-5024.

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded and Remarks
ALEXD	2 May 44	Pte		ABSENTED AWOL FROM 2 CDN BASE REINFORCEMENT DEPOT ON 2 MAY 44 AND REMAINED ABSENT UNTIL RETURNED TO CONTROL ON 26 MAY 44 (ABSENT 24 DAYS 21 HRS. 15 MIN)	DOCUMENTARY EVIDENCE OF C.O.	12 DAYS FIELD PUNISHMENT NO. 1 14 DAYS C.B.	30 May 44	3 DAYS ANTE FIELD PUNISHMENT 2 DAYS DAY awaiting trial

Certified true Copy
9 June 44
G. Gorman A/C

Certified true copy from the Regimental Books in my custody.

10 June 44

W.H. Griffin
Capt.
2 Bn 1 Cdn Base Reinforcement Depot

Ec. "H"

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
M-50248	Pte	HEMPSTOCK, G. A.	2 Cdn Base Rft Bn, 1 C.B.R.D.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not entered by the prosecutor.

† See para. 377, K.R., 1940.

* The commanding officer should refer to any cases which, though not subject to the penalties mentioned, he considers it necessary to allow to the most serious offence in question, and to any recommendations for special acts of gallantry or distinguished conduct.

Instructions.—If the character of the offence or the entries for drunkenness is to be stated separately add dates.

	* Within last 12 months.	*Since Enlistment.
Army Act Sec 15(1) For Absent without leave	3 times	6 times.
Army Act Sec 9(2) For Disobeying a lawful command	1 times	1 times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, "N I L"

or

[illegible]

2. The accused has not been previously convicted, [illegible]

[illegible]

3. The accused is not under sentence at the present time, [illegible]

[illegible]

4. The accused has been in confinement, awaiting trial on the present charges, for 8 days

[illegible] in military custody, making a total of 8 days.

[illegible]

5. The present age of the accused according to his [illegible] attestation paper is 22

6. The date of his [illegible] attestation specified in his [illegible] attestation paper is 18:3:41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

[illegible]

11. [illegible]

12. [illegible]

(*18230) W1.11852/144 125,000 8/42 A.S.E.W. Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. M50248 Rank Pte. Name HEMPSTOCK, C. A. of 2 Bn., ICBRD Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the disposing authority	Punishment remitted

"NIL"

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10 th day of June 1944

Adjutant
2 Bn 1 Cdn Base Reinforcement Depot

N.B.—The accused has served as a non-commissioned officer continuously without reduction to the present date

In the rank of years

In the rank of years

In the rank of years

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraph continues unscored accordingly.*)

Date of Promotion.

A46.

- SUMMARY OF EVIDENCE -

Summary of Evidence in the case of No. M50248 Pte HEMPSTOCK, G. A. of the Loyal Edmonton Regiment, on Strength X-4 List (2 Bn) Loyal Edmonton Regiment, 2 Cdn Base Rft Bn., 1 CBRD, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

Lieut J. G. Cormie, 2 Cdn Base Rft Bn., 1 CBRD, having been duly sworn, states:

"I am Lieut J. G. Cormie, Acting Company Commander of the Loyal Edmonton Regiment Company, 2 Cdn Base Rft Bn., 1 CBRD. On 30 May 44 in the process of preparing draft X Base 62, I witnessed the signatures of all personnel on the draft warning roll which is headed, "I, the undisigned, acknowledge having been warned for draft to proceed foward. I realize that if I am absent without leave when the draft departs, I am liable to trial by Field General Court Martial for desertion." The name and signature of M50248 Pte Hempstock, G. A. is on this roll, which I now produce. At about 0500 hrs, 31 May 44 I heard and saw H19868 CSM Keenan, C., CSM of the Loyal Edmonton Regiment Company, call the roll for the draft; Pte Hempstock did not answer his name. A few minutes later A21100 RSM Waddell, A. D. called the roll and again Pte Hempstock did not answer his name. Capt R. L. Griffin and myself were present both times the roll was called. The draft was despatched forward short one other rank."

.....J. G. Cormie Lt.....

The accused declines to cross examine this witness.

The draft warning roll, X Base 62, referredto by this witness, produced, certificate as given in evidence read to the accused, marked Exhibit "A", signed by me, and attached hereto.

.....E. E. Bate Capt.....
(Officer detailed to take Summary)

(To page 2)

SECOND WITNESS FOR THE PROSECUTION

A21100 RSM Waddell, A. D., 2 Cdn Base Rft Bn., 1 CBRD, having been duly sworn, states:

"I am A21100 RSM Waddell, A. D. I am RSM of 2 Cdn Base Rft Bn., 1 CBRD. On the morning of 31 May 44 I was detailed by the Adjutant, Capt R. L. Griffin, to check by name, the personnel warned for draft from 2 Bn. This was done by Companies. I called the roll of the Loyal Edmonton Regiment Company draft at approximately 0500 hrs, 31 May 44. M502A8 Pte Hempstock, G. A. did not answer his name. I reported his absence to the Adjutant."

A D Waddell RSM
A21100.

The accused declines to cross examine this witness.

THIRD WITNESS FOR THE PROSECUTION

Capt R. L. Griffin, 2 Cdn Base Rft Bn., 1 CBRD, having been duly sworn, states:

"I am Capt R. L. Griffin, Adjutant of 2 Cdn Base Rft Bn., 1 CBRD. At approximately 0500 hrs, 31 May 44 I was present when the draft, X Base 62, from the Loyal Edmonton Regiment Company, despatched that morning, was mustered in front of the Petawawa Building. I counted the men on parade and there was one short of the number as per roll. I heard and saw H19668 CSM Keenan, C., CSM of the Loyal Edmonton Regiment Company, call the roll and M502A8 Pte Hempstock, G. A. did not answer, although his name was repeated several times in a loud voice by CSM Keenan. I also heard and saw RSM Waddell, A. D. call the roll shortly afterwards and again Pte Hempstock did not answer. The Loyal Edmonton Regiment draft was despatched short one other rank. I produce certificate of apprehension from 111 Provost Company, CMP, dated 3 June 44, certifying that M502A8 Pte Hempstock, G. A. was arrested at Naples at 1000 hrs, 3 June 44.

P R Griffin Capt.

The accused declines to cross examine this witness.

The certificate of apprehension referred to by this witness produced, read to the accused, marked Exhibit "B", signed by me and attached hereto.

E K Batten Capt
(Officer detailed to take Summary)

(to page 3)

The accused was cautioned as follows:-

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given as evidence."

The accused declines to make a statement or to give evidence on oath.

Certified that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

I certify that the foregoing Summary of Evidence, consisting of three (3) pages, was taken down by me in the presence and hearing of the accused this 9th day of June 1944.

E. E. Bates

.....Capt.,
(E. E. BATES) (Officer detailed to take Summary.)

In the Field
9 June 1944.

LIST OF WITNESSES FOR THE PROSECUTION

1. Lieut. J. G. Cormie 2 Bn. 1 C.B.R.D.
2. A-21100 RSM Waddell, A.D. 2 Bn. 1 C.B.R.D.
3. Capt. R. L. Griffin 2 Bn. 1 C.B.R.D.

No witnesses for the Defence.

LIST OF EXHIBITS

"A" Draft Warning Roll.

"B" Certificate of Apprehension.

Re:- H-60848 Pte. Hampstead, G.A.

I acknowledge having received, gratis, a copy of Charge Sheet and a copy of Summary of Evidence, in connection with my trial by F.G.C.M.

11 Jun 44 .....G.A. Hampstead.....
(H-60848 Pte. Hampstead, G.A.)

STATEMENT BY ACCUSED UNDER R.P. 14 (3)(b)

I do not desire to have an officer assigned by the Convening Officer to represent me at my trial by F.G.C.M.

Field Italy
10 Jun 44 .....G.A. Hampstead.....

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M50248 Pte. George Albert Hempstock 2nd Bn 2 CBRD

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	GUILTY	
2nd			
XX			
3rd			
"JKMcC"			
4th			
XXX			
5th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~- - - -

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M.M.L. p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of J.A. see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of J.A or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No Sir "JMcC" (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1) "JMcC"
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1) "JMcC"
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2). The Court is cleared, and considers the submission.(3) The Court is reopened, and the President announces that the submission is disallowed on the ..... charge(s) and allowed on the ..... charge(s) and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~ "JMcC"
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 80(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither. "JMcC"

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans I wish to make a statement through my Defending Officer Do you intend to call witnesses on your behalf ? Ans Yes sir. Are they witnesses as to character only ! Ans Character and defence.
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened. "JMcC"
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(B).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the first charge charge(s), being subject to confirmation, will be promulgated later.(1) "JMcC"
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes sir I wish to call a witness as to character "JMcC"
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex H and Ex I respectively.(3) "JMcC"
(1. MFB 355 or AFB 296. 2. MFB 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes Sir. "JMcC" (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1) "JMcC"
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas NO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

The accused elected for trial by Court-Martial

/ CHARGE SHEET / "JKMcC"

The accused, M50248 Pte George Albert HEMPSTOCK, X-4 List, The Loyal Edmonton Regiment, 2 Canadian Base Reinforcement Battalion, 1 CBRD, a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE
Sec 12(1)(a)
Army Act

in that he

In the Field, in Italy, after having been warned to proceed on draft, and after having acknowledged said warning, with intent to avoid said draft, absented himself without leave from 0900 hours on the 31st May 1944 until apprehended by the Military Police in Naples at 1000 hours on the 3rd June 1944.

"R.W. Lent"

(R.W. LENT) Lt.-col.,
Commanding,
2 Cdn Base Rft Bn.,
1 Cdn Base Rft Depot - CMF.

In the Field
10 June 1944

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"EW Haldenby"
(E.W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Group
Cdn Army - C M F

13 Jun 44

"JGGeC"

FIELD GENERAL COURT-MARTIAL

CFA88 (In lieu of AFA8)
40/P&R/1697 (1662)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
M-50248	Pte		George Albert	HEMPSTOCK	L Edmn R 2 Bn 1 CSRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 13 Jun 44 endorsed by me, (or by an offr of my Hd Qrs), "To be tried by Field General Court-Martial". "EWH"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for attendance of a witness qualified after) "EWH"

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) More Offs to form the Court, (b) A Pd Offr as President, for the reasons I have attached hereto. "EWH"

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder. "EWH"

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.K. McCULLAGH - RCA - 2 Cdn Reallocation Centre	

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	A.J. GREEN - CAC	5 Bn 2 CSRD
Lieut	J.Y. FORGET - CIC -	8 Bn 2 CSRD

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	G. STARK - CIC - 2 Cdn Reallocation Centre	

JUDGE ADVOCATE. "EWH"

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

"EW Haldenby"

in	(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)
Italy		(E.W. Haldenby)	Brigadier

Date 13 Jun 44 Commanding 1 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"JKMcC"

I certify that I have this morning examined -

M-50248 Pte. Hempstock, G.A.

and he is fit to undergo trial by Court Martial.

15 Jun 44 "WI McFadzean" Capt.

Page one Evidence on F.G.C.M. Pte G. Hempstock

1st Witness
Having been duly sworn states: -
I am Lieut. J.G. Cormie Coy Comd (Acting) 6 Coy 2 Bn 1 CBRD.
On 30 May 44, as part of the usual procedure of clearing drafts, I witnessed the signatures of all personnel on the draft warning roll.
I present this to the court. It is headed "I the undersigned, acknowledge having been warned for draft to proceed forward. I realise that if I am absent without leave when the draft departs, I am liable to trial by Field General Court Martial for desertion.

Document is accepted by Court and marked wxhibit (B).

Witness continues -

On 31 May 44 at 0500 hrs, I was present when C.S.M. C Keenan of my Coy called the roll.
Pte Hempstock did not answer his name. I was also present when R.S.M. Waddell of 2 Bn 1 CBRD. called the roll again. Pte Hempstock did not answer his name. The draft proceeded forward to 4 Bn. short one man.

"JKMcC"

R.P. 83(b) complied with.

Page 2

2nd Witness
Having been duly sworn states - I am A21100 R.S.M. Waddell A.D. 2 Bn. - 1 CBRD.
At approx 0500 hrs on 31 May 44 I was on parade with the outgoing draft X Base 62 from 2 Bn 1 C.B.R.D. I was detailed by the adjutant Capt. R.L. Griffin to muster the draft. This was done by nominal roll, by Coys.
I called the roll of #6 Coy. Pte Hempstock failed to answer.
I reported his absence to the adjutant.

Question 1: (by prosecutor)
What steps were taken to make sure that Pte Hempstock was not present?
Answer 1:
I personally checked the nominal roll and counted the draft.

Question 2: (by the court)
Do you recognise Pte Hempstock in this room?
Answer 2:
Yes sir, he is sitting at that table.

"JKMcC"

R.P. 83(b) complied with.

Page 3

3rd Witness
Having been duly sworn states - I am Capt R.L. Griffin adjutant of 2 Bn 1 C.B.R.D.
At approx 0500 hrs 31 May 44 I was present when the draft from #6 Coy, to be despatched that morning, was mustered. I heard and saw C.S.M. C. Keenan 6 Coy call the roll of the draft which was known as X Base 62. Pte Hempstock G.A. failed to answer although his name was repeated loudly, several times by ~~Mr~~ C.S.M. Keenan.
I heard and saw R.S.M. Waddell A.D. RSM of 2 Bn call the roll also.
Pte Hempstock still did not answer. I counted the number of ORs in the 6 Coy draft and there was one short. This draft was despatched short one O.R. of the demanded number.
I produce certificate of apprehension marked exhibit (C) certifying that M50248 Pte Hempstock G.A. was apprehended by No 111 Provost Coy NAPLES at 1000 hrs 3 Jun 44.

R.P. 83 (b) complied with.

"JKMcC"

.....

4th Witness (For the defense).

Having been duly sworn states - I am M16878 Pte Hempstock DW Loyal Edm. Regt. now on A 4 list 6 Coy 2 Bn 1 C.R.D.

At approx 2200 hrs 30 May 44 my brother, the accused, arrived at the Conv Camp where I was a patient. He appeared to be under the influence of liquor.

He said nothing at that time about being warned for draft so I got him to bed. The next morning he told me he was on draft. His nerves were bad and he was stuttering when he talked.

I got him something to eat and about noon 31st May he left the camp, as far as I know, to return to Avellino.

Question 3: (by the Prosecutor)
What did your brother say was his reason for coming to see you?
Answer 3:
He said he wanted to see me before going back into the line.
"JMMcC"

R.P. 83(b) complied with.

D5

Address by Defense

I wish to produce evidence that at the time the accused went A.W.O.L. he was incapable of forming an intent, as a result of three things one, that he has an inadequate personality, seconaly he was under the influence of liquor, thirdly that he has what is known as a big brother complex, in other words, in everything he does, he has the habit of running to his elder brother for advice.

Statement for accused by defending officer.

The accused came to the Edn Regt first in June 1941 and went to Sicily in July 1943. He actually came over as a reinforcement at that time and went up to the regt in Dec 43 just before the battle of Vino Ridge near Ortona. He was in "C" Coy in the regt as a rifleman and during the fighting was transferred to the scouts, serving as a scoute until he was evacuated, sick, about the middle of Feb. He admits signing the draft warning order but states that both before and after signing he was drinking vino. His brother was in 1 Cdn Conv. Camp at Salerno and he decided that before going forward to the Regt he wanted to see his brother
"JMMcC"

---

so he went out on the road in front of Canada Bks on the evening of 30 May and hitched a ride on a veh going through to Salerno. When he awoke the next morning he was sleeping with his brother in the Conv. Camp.

After discussion with his brother he left the Conv Camp with the purpose of returning to Avellino, once he was away from his brother he became nervous because he knew he would be in serious trouble and wandered around Naples until he was arrested by the Mil police.

He was properly dressed in his Army clothes and made no effort to disguise the fact that he was a Cdn soldier. He had no intention of deserting.

R.P. 83(b) complied with.

Defending officer decided not to place accused on the stand. "JMMcC"

Statement for the Defence CLOSING ADDRESS BY DEFENDING OFFICER

The defence admits that the accused was in fact AWL during the period stated in the charge. It also admits that the accused signed the draft warning order and was, in fact, at the actual time of signing, was aware of its meaning.

But sir, the defense has produced the evidence of one witness who states clearly that at approx 2200 hrs on 30 May 44 the accused was in fact very drunk - so drunk as to be incapable of carrying on a conversation. This, it is submitted, bears out the submission of the defence, that, by virtue of his condition, at the time of going A.W.L., was not capable of forming an intention to desert.

It is submitted that what actually happened was this, that the accused, who is a weak-willed type, after having been warned for draft, decided to celebrate the occasion by going on a binge, which he did, then, while under the influence of liquor, decided to go and see his brother, to whom he was very closely attached, and did--without at that time stopping to realize that by doing so he left himself liable to the serious charge for which he is now being tried.

When he awoke on the morning of 31 May 44, and realizing what the circumstances were he was greatly distressed and was afraid to go back like a man and accept the consequences--but in a fog of indecision wandered around until he met a CMP, to whom he readily admitted he was A.W.L.

He served with some distinction in action with the L.E.R. which is shown b the fact that he was employed as a scout at a time when a scout's job was particularly important.

"JK McC"

It is submitted, sir that while the evidence will support a conviction on a charge of A.W.L. that there has been no evidence presented to the court that shows an "intention" to desert--which must be the essence of the charge. On the other hand, there is evidence that he was drunk to the point of being incapable of talking which, it is submitted, is surely evidence that he was too drunk to be capable of forming an intent. It is pointed out too that he gave no trouble to the police who apprehended him, and made no attempt to disgard his uniform or otherwise disguise his identity as a member of his Majesty's Canadian Forces.

In conclusion, sir, it is submitted, that there must be, on the evidence before the court, at least a reasonable doubt as to whether the accused, actually intended to desert, in which case, a conviction must not be found.

"JKMcC"

CLOSING ADDRESS BY PROSECUTION "JKMcC"

Summary-

The case against the accused is as follows:-

1. The accused signed the warning draft roll of X Base 62 in the presence of Lt. Cornie as shown by Exhibit "B". The accused was fully aware that a charge of desertion could be laid if he went absent from the draft at its departure.
2. Evidence produced by witnesses for the prosecution proves the absence of the accused when the draft departed.
3. The accused although drunk when he arrived at 1 Cdn Con. Camp Salerno was not necessarily drunk or incapable when he left Avellino. In fact, he was very capable of knowing what he was doing and whenehe was going.
4. No reasonable excuse has been brought forward by the defence for the accused's absence from draft except that he wanted to see his brother before going forward to his battalion.
5. In the face of this evidence, the accused knowing the consequences of being absent from draft, delibertly left camp.
6. I submit that the accused is guilty of the offence with which he is charged, namely desertion with intent to avoid draft.

"JKMcC"

Character Witness for Defence.

Having been duly sworn states --

M10756 C.S.M. Giles, N.L. Depot Training School Canada Barracks, C.B.R.D.

I first became acquainted with the accused when he came to Edm Regt at xx Battle of Vino Ridge. I saw him several times before and during the battle for Ortona.

I particularly noticed he seemed to be enjoying the battle. After the battle my Coy was stationed nearest Bn Hq and I spent a lot of time in BHQ which was also the station of the Scouts. At this time I saw the accused practically daily as he had been transferred from a rifle Coy to the Bn Scouts. He was doing a very good job with the battalion and had been on several patrols.

Sometime in March I met Pte Hempstock in [redacted] Cdn Gen Hosp. He appeared to be nervous stuttered badly. He made an appointment to go out with me that afternoon and failed to turn up. While in hosp he came into the ward several times looking for his brother. If he he had been posted to my company at that time I would

---

not have accepted him as he was nervous erratic and definitely unreliable. I had appointments several times to go out with him which he failed to keep. Whenever I saw him he was always asking where his brother was and seemed to be lost without him.

R.P. 83(b) complied with.

"JKMcC"

Statement [redacted] in Mitigation of Punishment

"JKMcC"

Sir, you will observe that the offences noted in the record of the accused all all relatively minor ones for which none of the punishments have been severe.

You will recall, also, that C.S.M. Giles, in his statement as to character, stated that to his personal knowledge the accused served with L.E.R. for some two months in amost satisfactory manner. You will recall, also, that C.S.M. Giles noted that at a later date, while in hospital he noted a change in the accused.

Just when that change took place and for xxx what reason only a qualified psychiatrist could say. I would suggest, Sir, that, in the interests of justice, that a psychiatrist should examine a report upon this man's mental condition before sentence be promulgated.

I would point out, also, Sir, that he has been tried on a most serious charge, under a technical section, and would ask, when considering sentence, that his past record of service, and his present mental condition, be taken into consideration along with the other evidence and statements submitted by the defence.

"J K McC"

Old Sheet Destroyed 18-9-41

Ex "I" JKMcC"

NO M50248 Name HEMPSTOCK CA Sqn, Battery, or Company Corps C.INF.C. Date of enlistment 18-3-41 GC Badges Service or Proficiency Pay

MFM 6 (AFB 122) 40/PAB/136 (3439)

Date of last entry in Company Conduct Sheet | No and date of last drunk N11. | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	1-11-41	Hr		Absent without Leave 0600 hrs 1-11-41 to 1610 hrs 1-11-41 AXX Absent 10 hrs 10 min.	Bdr. Snugss	Admonished	3-11-41	Major RF Barnesss	Fofs. 1 dys pay.
Field	4.3.42	Pte		AWL		2 dys CB	31-8-42	Maj.Sinclair	2 dys forf pay.
Field	29-8-42	"		WOAS AWL 1 day 22 hrs AA Sec 15	Sgt Swartz JF L/C Egan JJ	5 dys CB			
Field	13 Jun	42 "		WOAS AWL from 2359 hrs 13Jan43 to 1230 hrs 18 Jun43(4dys12h31ms)		10 dys CB 5 dys forf.pay	18Jun42	Maj. WJ Campbell	5dys forft pay
Field	11 Jul	43 "		AA Sec 3(2) WOAS Disobeying a lawful command given by Superior Officer	3-15633 Cpl Bednar L	7 days CB	12 Jul 43	Capt FWH Meek	
Field	3 Sep	43 "		AA 15(1) WOAS AWL from 1800 hrs 3 Sep 43 to 1230 hrs 4 Sep 43. Total time absent - 19 hrs.	Lieut J.	Forft 5 dys pay	7 Sep 43	Lt. Flynn Major	Forf 1 dys pay

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	2May44	Pte		AA Sec 15(1) AWL from 2200 hrs 28 May 44 until 1915 hrs 30 May 44 (Absent 2 days 21 hrs 15 min).	Documentary CSM Keenan C.	12 dys forf pay 14 dys CB	30 May 44	3 dys 3 dys	aut. forf. Day awaiting trial.

Certified true Copy
9 June 44.

"AG Cormie" Lt.

Certified true copy from the Regimental Books in my custody.

10 Jun 44

"RW Griffin
Capt" Adjutant
2 Bn 1 Cdn Base Reinforcement Depot.

174 A

Pb. Hennie, L.

R. 22 e R.

10/N/304

Correspondence to be PINNED here.

1 A
J Ackett Major

Army Form A.3

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 3rd. day of March, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 3rd. Bde. Inf. Bde., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*~~I am unable to appoint —~~
*~~(1. Three Officers to form the Court.)~~
*~~(2. A Field Officer as President.)~~
*~~(3. Three Officers having more than one year's service.)~~
~~for the following reasons, namely —~~

President.

Rank.	Name.	Regiment.
Major	J. A. Keeble	W.N.S.R.

Members.

Rank.	Name.	Regiment.
Captain	W. P. Steers	Sault + York R.
Lieut.	L. A. Duplisea	"
Waiting - Lieut	R. J. Annand	W.N.S.R.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed H. W. Jarvis Brigadier,
Commanding 3rd Infantry Brigade.
Commanding Convening Officer C.A.S.F.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E-4568 Pte. Hénaire L.	See charge sheet attached 1st Charge - See 41 AA 2nd " - See 41 AA 3rd " - See 41 AA 4th " - See 41 AA	Guilty Not Guilty Guilty Not Guilty	Guilty Not Guilty Guilty Guilty Sentence: 15 months (fend) servitude. Also To reimburse Lieut. Louis Denisot the sum of five pounds (£5)	I confirm the finding of the Court, but commute the sentence to 6 months imprisonment, and to reimburse Lieut Louis Denisot the sum of five pounds (£5) H.H. Simons

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

No

(Signed) W. Stewart Lt. (Signed) L Duplessis Lt.
Commanding Base Section (b) Commanding 3rd Infantry Brigade. President.

(a) Appointment acting rank or acting appointment, if C.A.S.F. be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the seventh day of March, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) ~~not~~
*(4. ~~The officers under instruction~~) not

were duly sworn.

* Omit if not applicable.

Signed this seventh day of March 1941.

J. Gabb, Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 11th day of March 1941

H.H. Simons Brigadier,
Commanding 3rd Infantry Brigade.
Confirming Officer

Promulgated and extracts taken in the case of E 4568 Pte Hénaire, L. C.A.S.F.

(a) (Dated) 12 March 1941 (Signed) C F Common Capt
F. Adjutant,
ROYAL 22e. REGIMENT, C. A. S. F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] 1940 F.St. G.640

MEDICAL CERTIFICATE.

This is to certify that Reg. No. £45.68 (Rank). Pte.
(Name) Hainet. "B" Sqn. Royal 22e. Regiment, (C.A.S.F.).
(is - ~~is not~~) mentally and physically fit to undergo Trial before
a Court-Martial and (is - ~~is not~~) is fit to undergo Deten-
tion with ~~without~~ hard Labour.

Signed L. P. Robertson Capt.

Unit R.C.R.

In The Field,
Date 7.3.41.

B2
Major

CHARGE SHEET

The accused, No. E.4568 Pte. Menaire, L., Royal 22e Regiment, a soldier of the Canadian Army, is charged with, while on active service,

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY
FORGERY

1st charge A.A. Sec 41 — in that he in the field, on or about 28 Oct 40 with intent to defraud, forged the name of Lieut. Louis Deniset, Royal 22e Regiment, to a cheque, purporting to be a cheque dated 28 Oct 40 drawn on the Bank of Montreal, 9 Waterloo Place, Pall Mall, London, for two pounds in favor of Pte. Paul Landreau, and thereby obtained the sum of two pounds.

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY
UTTERING A FORGED DOCUMENT

2nd charge A.A. Sec 41 — in that he in the field on or about 28 Oct 40 uttered a certain forged cheque purporting to be a cheque drawn on the Bank of Montreal, 9 Waterloo Place, Pall Mall, London, for two pounds, in favor of Paul Landriau, and to be signed by Louis Deniset, knowing the same to be forged and with intent to defraud.

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY
FORGERY

3rd charge A.A. Sec 41 — in that he in the field, on or about 26 Nov 40 with intent to defraud, forged the name of Lieut. Louis Deniset, Royal 22e Regiment, to a cheque, purporting to be a cheque dated 26 Nov 40 drawn on the Bank of Montreal, 9 Waterloo Place, Pall Mall, London, for three pounds in favor of Pte. Paul Landreau and thereby obtained the sum of three pounds.

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY
UTTERING A FORGED DOCUMENT

4th charge A.A. Sec 41 — in that he in the field on or about 26 Nov 40 uttered a certain forged cheque purporting to be a cheque drawn on the Bank of Montreal, 9 Waterloo Place, Pall Mall, London, for three pounds, in favor of Paul Landriau, and to be signed by Louis Deniset, knowing the same to be forged and with intent to defraud.

C.E. Cosmie
(P.E. POIRIER), Lt.-Col.
Commanding Royal 22e Regiment

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL

HELD IN THE FIELD

On the 7th day of March 1941

by Order of

Brigader H. V. Ganong, Commanding 3 Cdn. Inf. Bde., dated the 3rd day of March 1941.

President:	Major J. A. Hebb, W. N. S. R.
Members:	Captain W. P. Steen, Carlt. & York R.
	Lieut. L. A. Duplisea, Carlt. & York R.
Waiting Member:	Lieut. H. T. Annand, W. N. S. R.

Trial of E4568 Pte. Henaire, L., R22e Rgt.

The order convening the Court, the charge-sheet, and the Summary of Evidence are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 and 23.

The accused is brought before the Court.

The Prosecutor, Lieut. J. H. Chicoine.

Defending Officer, Lieut. R. Caron.

At 1013 hrs. the Trial commences.

The Order convening the Court is marked 1 A, signed by the President.

The names of the President and Members of the Court are read over in the hearing of the accused and they severally answer to their names.

Question: "Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?"

Answer: "No."

The President and Members are duly sworn.

The charge-sheet is signed by the President and marked B 2.

The accused is arraigned upon each charge on the charge-sheet.

Question: " Are you Guilty or Not Guilty of the 1st Charge against you which you have heard read?"

Answer: " Guilty."

Question: "Are you Guilty or Not Guilty of the 2nd Charge against you which you have heard read?"

Answer: "Not Guilty."

Question: "Are you Guilty or Not Guilty of the 3rd Charge against you which you have heard read?"

Answer: "Guilty."

Question: "Are you Guilty or Not Guilty of the 4th Charge against you which you have heard read?"

Answer: "Not Guilty."

The accused having pleaded Guilty to the first and third charges, the provision of R.P. 35 (B) are complied with.

Question: "Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby on the ground that you have not had sufficient opportunity to prepare your defence."

Answer: "No."

1st Witness for the Prosecution.

Lieut. J. H. Chicoine, R 22e R, having been duly sworn, states,-

I wish to produce two checks drawn on the Bank of Montreal which are alleged to have been signed by Louis Deniset, as exhibits, as well as a laundry list in the writing of the accused and signed by the accused.

These checks here, the face of which the accused has already admitted writing. I wish to say in my testimonial that the signatures and endorsements on the cheques have been written by the same person who forged the cheques.

The Prosecutor produces for the Court, a cheque drawn on the Bank of Montreal, 9 Waterloo Place, Pall Mall, ~~for three pounds, to the order of Pte. Paul Landreau, dated November 26, 1940. This is marked Exhibit "B"~~

for two pounds, to the order of E.4690 Landriau, P., dated 28 October 40. This is Exhibit "A" and is signed by the President.

The Prosecutor produces for the Court a cheque drawn on the Bank of Montreal, 9 Waterloo Place, Pall Mall, for three pounds, to the order of Pte. Paul Landreau, dated November 26, 1940. This is marked Exhib "B", and is signed by the President.

The Prosecuting Officer produces a laundry list purporting to be signed by Pte. Henarie. This is marked Exhibit "C" and is signed by the President.

The witness explained that he had had several years experience with the R.C.M.P. in the detection of forgery and counterfeit engraving. The witness pointed out similarity in writing on the face of the cheques, the endorsements on the back of the cheques and the writing on the laundry lists. He further states "I am of the opinion that the person who wrote the cheques and signed them, also endorsed them."

The accused declines to cross-examine the witness.

2nd. Witness for the Prosecution.

Lieut. Louis Deniset, R 22e R, having been duly sworn, states,-

Question: "Do you know the accused?"
Answer: "Yes."

Question: "Was the accused at any time under your orders?"

Answer: "The accused was my batman from 15 Sep 40 until sometime in November."

Question: "Have you seen these documents before?"

Here the Prosecutor hands exhibits "A" and "B" to the witness.

Answer: "Yes."

Question: "I have in my hand a document marked Exhibit "A". Will you tell the Court what you know about it?"

Answer: "This is a cheque which came from my cheque book. Sometime around the end of November I received this cheque back from the bank and I noticed that the cheque was forged. Landrian was brought up for forging it but was found not Guilty as he was in detention at the time the cheque was cashed. Then, thinking it over, I thought that my batman could easily get to my blank cheques at the time they were made so I compared his writing with the writing on the cheque and found it was similiar. Then I thought he was responsible. I went to Lloyd's Bank in Croyden but it did not seem possible to identify the man who had cashed the cheque.

Question: " Do you mean the man who cashed the cheque or tracing the cheque?"

Answer: "It seemed difficult totrace the cheque."

Question: "Have you seen this cheque marked Exhibit "B" before?

Answer: "Yes."

Question: "Is it a cheque that came out of your cheque book?"

Answer: "The story is the same as applies to Exhibit "A"."

Question: "Were you successful in tracing this cheque marked Exhibit "B"?"

Answer: "Yes, I was."

Question: "Will you tell the Court what happened once you had traced this cheque?

Answer: "I went to Farm Shop in Addington, asked for the

Manager, Mr. Little. I asked him ifhe remembered this cheque, whic. according to Barkley's Bank, Selsdon, had been deposited by him. He said, 'Yes, I do remember', then I asked him, can you iden ify the man who cashed the cheque? He said, 'Yes I can', so I took Pte. Henarie with L/Cpl. Trudeau as escort and Pte. Doucette to Farm Shop. Mr. Little identified Pte. Henarie as the man who had cashed this cheque.

Question: "Was the accused alone at the time of identification?"

Answer: "There were several soldiers there in front of Mr. Little at the time he identified Pte. Henarie .X Mr. Little then wrote out a statement.

The accused declined to cross-examine this witness.

R.P. 83 (B) is complied with.

This witness produced a written statement which was marked Exhibit "D" signed by the President of the Court and read to th Court. The Court satisfy themselves that the cheque refered in Exhibit "D" is the cheque marked Exhibit "B".

Question: "Have you seen this paper marked Exhibit "C"?"

Answer: "Yes."

Question: "Will you tell the Court the story concerning Exhibit "C"."

Answer: "This is one of the laundry lists I asked my batman to make for my laundry. It is signed by him and I believe it is in his writing. It is the same writing as used by him on the acquittance rolls on pay day.

Question: "Were these cheques debited to your bank account?"

Answer: "Yes."

Question: "Dou you remember writing these cheques?"

Answer: "I never did."

Question: "Do you ever give blank ceques to any one?"

Answer: "I did, but not these. The account numbers were changed on them while I was there."

Question: "Did you miss these blank ceques?"

Answer: "I noticed the disappearance of these blank cheques but I did not think it necessary to advise the bank."

Question: "Were the stubs blank?"

Answer: "Absolutely blank."

Question: "When you loaned the cheques to your friends did you mark the stubs?"

Answer: "Usually I did."

The accused declines to cross-examine the witness.

XXX. Question by the Court: "Was the accused your batman on November 26th?"

Answer: "I don't know."

Question:" Do you remember if he was your batman when you missed the second blank ceque?"

Answer: "Yes he was."

R.P. 83(B) is complied with.

At 1210 hrs. the Court adjourns untill 1400 hrs.

The Court re-opened at 1400 hrs.

3rd Witness for the Prosecution.

Mr. C. A. Little, the Farm Shop, Addington, having been duly sworn, states,-

Question: "Have you seen the accused before this Court, at any other time?"

Answer: "Yes."

Question: "Will You tell the Court in what circumstances you saw the man?"

Answer: "He came into my store in November last and cashed a cheque."

Question: "I have here a cheque marked Exhibit "B" drawn on the Bank of Montreal for the amount of three pounds. Have you seen this document before?"

Answer: "Yes, that cheque was given to me to cash."

Question: "Who gave you that cheque?"

Answer: "The accused."

Question: "Did the accused receive anything in exchange for that cheque?"

Answer: "Three one pound notes."

The accused declines to cross-examine the witness.

Question by the Court: "How did you recognize the accused as the man who cashed the cheque?"

Answer: "I recognized him because he was cashing a cheque signed by an officer I did not know, and knowing he wasn't a local soldier I took particular notice of him." I cash quite a number of cheques for soldiers and officers."

Question: "Did you ask the accused for any identification of himself?"

Answer: "No."

Question: "Was the cheque already endorsed or did he endorse it in your presence?"

Answer: "It was already endorsed."

Question: "Are you sure that this is the man who cashed the cheque?"

Answer: "Yes, very sure."

Question: "Did you see the accused between the date of cashing the cheque and today?"

Answer: "Yes. I saw him about three weeks ago accompanied by an officer and an escort."

Question: "What was the occasion?"

Answer: "An officer accompanied him and asked if I could tell from the men at the table which one had cashed the cheque R.P. 83(B) Complied with.

The prosecuting officer does not wish to call further witnesses.

Question to accused: "Do you apply to give evidence yourself as a witness?"

Answer: "No."

Question: "Do you intend to call any other witnesses in your defence?"

Answer: "No."

Question: "Do you wish to call any witnesses as to character?"

Answer: "No."

The prosecutor then addresses the Court.

Question to the accused: "Have you anything to say in your defence?"

Answer: "No."

The President addresses the accused thus: "Pte. Hensire, you have pleaded guilty to the first charge which I will now read." (Presiden reads the first charge)

"You have pleaded guilty to the third charge against you which I will now read."(President reads third charge)

Question: "Do you wish to make any statement in mitigation of punishment?"

Answer: "I have nothing to say."

The Court is closed for deliberation of the finding.

FINDING

The Court find that the accused, E4568 Pte. Henaire, L., R 22e R, is Guilty of the First, Third, and Fourth charges against him.

The Court being re-opened the accused is again brought before it.

Question: (To the Prosecution) "Do you wish to produce any evidence as to the character of the accused?"

Answer: "Yes."

Captain A. F. Cannon A/Adj. of the R 22e R, having been duly sworn, states,-

I wish to produce this certified copy of the M.F.M. 6 of the accused. T

The M.F.M. 6 is marked 2E and signed by the president who then reads the contents of the document to the court.

Question by the Court: "Is the accused the person named in the statement which you have heard read?"

Answer: "Yes."

Question: "Are they true extracts from the regimental books and is the statement of entries a fair and true summary?"

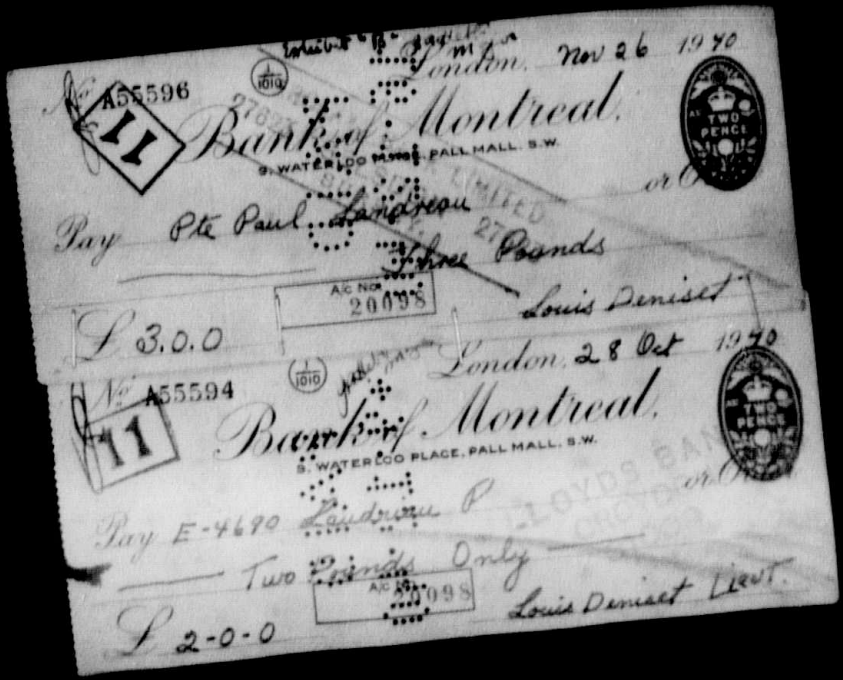
Answer: "Yes."

The accused declines to address the Court on the evidence of character.

SENTENCE

The Court sentence the accused, E-4568 Pte. Henaire, L, R 22e R to fifteen months (15 Mos.) penal servitude and also to reimburse Lieut. Louis Deniset, R 22e R with the sum of five pounds sterling (£5)

Signed in the Field this Seventh day of March, 1941.



London Nov 26 1940

No A55596

11

Bank of Montreal.

5. WATERLOO PLACE, PALL MALL, S.W.

TWO PENCE

Pay Pte Paul Landreau

Three Pounds

A/C No 20098

Louis Deniset

£ 3.0.0

London 28 Oct 1940

No A55594

11

Bank of Montreal.

5. WATERLOO PLACE, PALL MALL, S.W.

TWO PENCE

Pay E-4690 Landreau P

Two Pounds Only

A/C No 20098

Louis Deniset Lieut.

£ 2-0-0

Paul Landreau — E 4690

Pte Landrian P.

Landrian P.

P. Landrian

PAID
16·12·40

PAID
+9·12·40

BANK OF MONTREAL
DEC 16 1940
Victoria Place

ARMY FORM C.2118

MESSAGE FORM

CALL AND INSTRUCTIONS

IN Exhibit "C" Hallett Major 21.10.40

OUT BY 24.10.40 IF POSSIBLE

ABOVE THIS LINE IS FOR SIGNALS USE ONLY

TO LAUNDRY

FROM LIEUT DENISET (Originator's Number)

2 shirts
6 Handkerchiefs
2 stockings
1 under Gar
1 Towel.

Sign. Hénaire L.

THIS MESSAGE MAY BE SENT AS WRITTEN IN ANY MEANS

IF LIABLE TO BE INTERCEPTED OR FALL INTO ENEMY HANDS, THIS MESSAGE MUST BE SENT IN CIPHER.

(Signature and Appointment) Officer of Originator

Passed

(BELOW THIS LINE IS FOR SIGNALS USE ONLY)

System In	Time In	Reader	Sender	System Out	Time Out	Reader	Sender	System Out	Time Out	Reader

Forms F/2129/12. Wt. 34168/1296 1/4000. pads 12 /50. B.& A. Ltd. 41-1021.

Exhibit D.
J.C. Hall
Major

Farm Shop.
Addington
Feb 20/41

I Charles Andrew Little am certain that the man now in my cafe who tells me his name is Henarie L. cashed the cheque in question Value $3-0-0 made out to Pte Paul Landreau signed Louis Benoit dated Nov 26th

The number of cheque a 55596. a/c no 20098.

I asked the man when cashing same whose it was & he told me it was made out to him & signed by his Officer.

C.A. Little

witnesses.
P. Landreau.
A. Benoit.

In the Field, England.
6 Mar 41.

TO WHOM IT MAY CONCERN.

I the undersigned, hereby certify that I have been duly warned that I am to be tried by Field General Court Martial on the 7th of March 1941, that I am aware that Lieutenant J.H. Chicoine is to act as prosecutor at my trial and I further certify that I am aware of the charges laid against me and that I am fully prepared.

(L. HENAIRE), Pte.,
Royal 22e. Regiment.

Henaire L.

SUMMARY OF EVIDENCE

IN THE CASE OF

E-4568, Private Leonard Hénaire, Royal 22e Régiment.

1st witness for Prosecution: Lieutenant Louis Deniset, Royal 22e Régiment, having been duly sworn, states:

"At the end of December, I received from the Bank of Montreal two cheques, respectively No. A55594 and No. A55596 which I produce here. They had disappeared from my cheque book at the end of October, both at about the same time. I noticed that the signature was not mine. Those cheques had been cashed. I went to Barclay's Bank at Selsdon; I was told that the three pounds cheque had been brought to them by Farm's Café or Shop at Addington. I went to them and asked for the Manager, Mr. Little. I asked him if he remembered this cheque. He said he did and that he could identify the man who cashed it in. Because Pte. L. Hénaire could easily find his way to my cheque book in the month of October, I compared his handwriting with the one on the cheques and found it so similar that I took xx him to Farm's Shop for identification by Mr. Little. There, Mr. Little identified him as the one who had cashed the the cheque of three pounds. there were several soldiers in the café at the time of the identification. I also asked Hénaire to tell his name to Mr. Little and replied: "Hénaire". As for the second cheque, the handwriting is so similar to that of the other cheque that they both must have been written by the same person. From the 15 Sept till about the 15 Dec. 40, I was with the 3 Recce Sqn. Hénaire was my batman till sometimes in November; Landriau, to whose name the cheques are written out, was also a man of the 3 Recce Sqn. At the end of September or the beginning of October, I wrote out a cheque of £2-0-0 to Pte. Landriau; that cheque was cashed and finally returned to me by the Bank at the end of the month as is customary. When the other cheques, the exhibits here, were returned by the Bank of Montreal, I noticed that the first one, made to Landriau by me had disappeared. That was at the end of December. At first, I thought Landriau Had something to do with it and a charge was laid against him, but it was found that he was undergoing detention when the cheques were cashed and that the hadwriting was not his. It is then that I suspected Hénaire. I also produce a laundry list written by him when he was my batman to compare the handwriting."

Louis Deniset Lieut.
Louis Deniset, Lieut.
R. 22e R.

The accused declines to cross-examine this witness.

P.T.O.

STATEMENT BY ACCUSED TO HAVE AN OFFICER ASSIGNED TO REPRESENT HIM AT HIS TRIAL.

I, No. E-4568, Pte. L. Hénaire, Royal 22e Régiment, ~~desire~~ (do not desire) to have an officer assigned to represent me at my trial by Court-Martial.

I desire the services of.....
if he is available.

Hénaire L.

In the Field,
23 Feb. 41.

LIST OF WITNESSES IN THE CASE OF E-4568, PTE. L. HENAIRE, R. 22e REGIMENT.

WITNESSES FOR PROSECUTION:

Lieutenant Louis Denisot, Royal 22e Régiment.
L/Cpl. J. Trudeau, ~~_____~~ " " "
To be called: Mr. A.C. Little, Addington.
DOCUMENTARY:
Statement signed by Mr. A.C. Little.

EXHIBITS:

"A" : Cheque on the Bank of Montreal, 9 Waterloo Place for two Pounds, to the order of P. Landriau, dated 28 Oct. 40.

"B" : Cheque on the Bank of Montreal, 9 Waterloo Place, for three Pounds, to the order of P. Landriau, dated 26 Nov. 40.

"C" : Laundry list, purporting to be signed by L. Hénaire.

WITNESSES FOR DEFENCE:

NIL

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Caterham	30-1-41	Pte		1. W.O.A.S.- A.W.L. from 1330 hrs 30-1-41 till 1630 hrs 5-2-41 Total 5 days 23 hrs. 2. Conduct to the prejudice of good order and military discipline in that he on 5-2-41, was found in Croydon improperly dressed.	Cpl Anderson L/C Desjardins	168 hrs Field punishment 7 days's pay	7-2-41	P.E. Poirier	6 day's pay

Certified true copy

[signature] Adjutant,
ROYAL 22e REGIMENT, C.A.S.F.

SHEET DESTROYED 9-6-40.

2E [signature] Major

No. 4568 Name Henaire L. Sqn., Battery, or Company Corps R. 22e. R. Date of enlistment 9-11-39 G.C. Badges Service or Proficiency Pay Character

M.F.M. 6 (A.F.B. 122) 500M—4-39 (1703) H.Q. 1772-43-18

Date of last entry in Company Conduct Sheet 22-5-40 No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Gwillemont	20-6-40	Pte.		A.W.L. from 1345 hrs. 20-6-40 untill 0530 hrs. 21-6-40, Total 15 hrs. 45 min.	Cpl. Solis	2 days C.B.	21-6-40	Maj.Lafontaine	2 days Pay
Woodstock	29-6-40	Pte		W.C.A.S. conduct to the prejudice of good order and military discipline	Sgt. Pittman	7 days C.B.	1-7-40	J.A. Lefebvre Capt.	
In The Field	25-8-40 29	Pte.		W.O.A.S. conduct to the prejudice of good order and military discipline in that he was going out Without Respirator.	L/C Ernest	Admonished	2-9-40	Maj. J.A. Lefebvre.	
In Field	14-9-40	Pte.		A.W.L. from 1600 hrs. 14-9-40 untill 1900 hrs. 14-9-40	CSM Archembeault	7 days C.B. 2 months restriction pay	16-9-40	Maj. JA. Lefebvre.	

(P.T.O.)

No. Name | Sqn., Battery, or Company | Corps | Date of enlistment | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Caterham	4-1-41	Pte.		2- Was found in bed 2 hrs after reveille also absentinghimself from Route March o900 hrs. 3-1-41	CSM Descoteaux	7 days CB	4-1-41	C. Bellevance C.	
Caterham	6-1-41	Pte.	1.	Absenting from Route March 6-1-41 2. Absenting himself from CB 4-1-41 3. Absenting himself from Guard Mounting 5-1-41	Sgt. Levesque	4 days CB	7-1-41	C. Bellevance Capt.	
In Field	18-1-41	Pte.	1.	Absent from Guard Mounting 18-1-41 2. Neglecting to obey an order.	Cpl. Gagne Pte. Bacon	3 extra Guard	20-1-41	E.A. Doiron Capt.	
In Field	20-1-41	Pte.		1. Absent from Camp Piquet 20-1-41 and replaced by a comrade. 2. A.W.L. from 1600 hrs. 20-1-41 till o630 hrs 21-1-41 Total 14 hrs. 30 min.	Cpl Poitras	14 days CB	21-1-41	P.M. Poirier M	1 day's pay

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In Field	16-11-40	Pte		W.O.A.S. Conduct to the prejudice of good order and military discipline in that he was improperly dressed on pay Parade.	CSM Pinel	2 days C.B.	18-11-40	JM. Ardagh Maj.	
In Field	3-12-40	Pte.		W.O.A.S. A.W.L. from 2230 hrs. 3-12-40 until 1o30 hrs 4-12-40 Total 12 hrs.	Cpl Poulin	1 day's pay	6-12-40	AP. Ardagh	
Caterham	17-12-40 to 18-12-40	Pte.		W.O.A.S.- A.W.L. from 1o3o hrs. till o830 hrs 16-12-41 Total 2 days 2 hrs.	CSM Bouchard Cpl Richard	3 days's pay	17-12-40	C. Bellevance Capt.	
Caterham	19-12-40	Pte		W.O.A.S. refused to obey an order given by an N.C.O.	CSM Bouchard Cpl Richard	1 extra garde	19-12-40	JPE. Bernatchez Ma.	
Caterham	27-12-40	Pte.		W.O.A.S.- A.W.L. from 2040 hrs. 25-12-40 till o6oo hrs. 27-12-40 Total 1 day 9 hrs. 30 min	Cpl. Gauvin	2 day's pay	27-12-40	Capt. Bellevance	
Caterham	4-1-41	Pte.	1-	A.W.L. from 1200 hrs. 31-12-40 till 0630 hrs. 3-1-41 Total 2 days 18 hrs. 30 min.	Sgt. Levesque	3 days's pay	4-1-41	Capt. Bellevance	

180 C

PTÉ HENAIRÉ L.

Promulgated DO 216 d/12-9-41

E-4568 Pte. Henaire, L.
No.2 Cdn Inf Hldg Unit

Correspondence to be PINNED here.

D.O. # 316

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 29th day of August, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[redacted]

*(1. [redacted]

*(2. [redacted]

*(3. [redacted]

[redacted]

PROCEEDINGS REVIEWED.

Reviewing Officer

President.

Rank.	Name.	Regiment.
Major	G.M. Smart	No.1 Cdn Sigs Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	J.M. Bonin	No.2 Cdn Inf Hldg Unit
Lieutenant	C.M. Darling	No.1 Cdn Gen Hldg Unit
Lieutenant	J. Chapin	No.3 Cdn Inf Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [redacted] Brigadier

Commanding Cdn Base Units, Cdn Army.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
E-4568 PTE. MENAIRE, L. No.2 Cdn Inf Hldg Unit.	First Charge A.A. sec 15(1) See charge sheet attached.	Guilty	Guilty To undergo detention for nine (9) months.	Confirmed [signature]

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [signature] Brigadier (Signed) [signature]
Commanding Cdn Base Units, Cdn Army. *President.*
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Third day of September, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*3. ~~The interpreter~~ Shorthand writer Lt/Maj
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this Third day of September 19 41
Lt/Maj
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

~~*I certify that the terms of A.C.I. 570 of 1918 have been complied with.~~

Signed this ____ day of ____ 19 ____
President of the Court Martial

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the Soldier named in the margin be not committed to prison until further order.~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 8th day of Sept 1941.
[signature] Brigadier.
Confirming Officer.

Promulgated and extracts taken in the case of E 4568 Pte. Menaire L.

(*a*) (Dated) 12 Sept. 41. (Signed) [signature] W.O.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

E4568 Private HENAIRE, L., Royal 22e Regiment Reinforcement, #2 Canadian Infantry Holding Unit, a soldier of the Canadian Army (Overseas) is charged with:

FIRST CHARGE
Sec 15(1) A.A.

When on Active Service, absenting himself without leave,

in that he,

at Laurentide Camp, Witley, Surrey at about 2230 hours on 19th July 1941 absented himself without leave until surrendering to the Civil Police at Croydon at 1330 hours on 20 August 1941.

(F.S. MATHESON) Lieut.-Col.
Officer Commanding
No. 2 Cdn. Inf. Holding Unit

Laurentide Camp
Witley, Surrey
26 August 1941

To be tried by Field General Court Martial

(F.R. Phelan) Brigadier
Commanding Cdn Base Units.

Bordon, Hants
This 28th day of Aug 41.

MEDICAL OFFICER'S CERTIFICATE

K.R. (C'W) PARA 552

I certify that I have this morning examined

XXXX E-4568 Pte. Hinaire, L

No. .....

R 22e.R. Coy.

of .....and in my opinion he

is fit to undergo Trial by Court Martial.

Laurentide Camp.

Station.....

3rd Sep.1941

Date.....

Medical Officer

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT WITLEY ON THE 3rd DAY OF SEPT 41.

TRIAL OF:- No. E 4568. PTE. MENAIRE L.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) LT J.H. CHICOINE (Unit) No 2 C.I.H.U.

Defending Officer:- (Name) LT J.M. GENDRON (Unit) No 2 C.I.H.U.

At 1135 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1- No, Sir.

The President, members and judge-advocate (if any) are duly sworn.

The officers under instruction are duly sworn.

~~Q2. Do you object to acting as shorthand writer?~~

~~A2.-~~

~~The shorthand writer is duly sworn.~~

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Q3. Do you wish to make any statement in mitigation of punishment?

A3.- Yes, Sir.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4.- No, Sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER.

Accused states his marriage was set for 26 Inst. His Co. refused permission to marry as he did not have sufficient money. He went A.W.L. was married & his wife being sick he remained with her until she was better & returning, when he surrendered.

Prosecutor sworn, produces MEMO & AF B 196.

Def. Officer requests mercy & states accused was pleading guilty & wished to soldier. Requests the leniency of the Court.

Lt Col

SUMMARY OF EVIDENCE
in the case of

Reg. No. E4568 Private Menaire, L., Royal 22e Regt. Reinforcement, No. 2 Canadian Infantry Holding Unit, a soldier of the Canadian Army (Overseas)

The evidence is taken under oath by direction of the Commanding Officer.

First Witness Prosecution

E4188 Sgt. Lebel, L.P., R. 22e Regt. Company, having been duly sworn, states:

"On 19th July 1941 at 2230 hours the Accused was reported as absent at Tattoo Roll Call. I was Company Orderly Sergeant that week.

Sgt L.P. Lebel

The accused declines to cross-examine this witness.

Second Witness Prosecution

E5298 L/C Emard, F. R. 22e Regt. Company, having been duly sworn, states:

"On 19th July 1941, being Corporal in charge of the Barrack room, I noticed the absence of the accused at Tattoo Roll Call at 2230 hours, and reported his absence to the Company Orderly Sergeant.

L/Cpl Emard F

The accused declines to cross-examine this witness.

Third Witness Prosecution

Lieut. W.A. Leask, having been duly sworn, states:

" I am Records Officer of No. 2 Canadian Infantry Holding Unit. A Court of Inquiry was held on the absence of the accused on 12 August 1941 at Laurentide Camp, Witley, Surrey. Lieut. B.J. Guimond was President. The Court declared that the accused was absent from 19th July 1941 and that on 12 August 1941 was still absent.
I produce Army Form O 1617, being Certificate of Surrender to the Civil Police of a Deserter or Absentee without Leave. Said document certifies that the accused surrendered himself to Police Constable 103 ASH at the Y.M.C.A. North End, Croydon, at 1330 hours on 20th August 1941.

W.A. Leask Lieut. C.I.H.U.

The accused declines to cross-examine this witness.
The accused having been duly warned under Section 4 (e) R.D. reserves his defence.

Certified that Rules of Procedure 4 (c) (d) (e) and (f) have been duly complied with.
Taken down in the presence and hearing of the accused.

Laurentide Camp
Witley, Surrey
26 August 1941

J.N. Chicoine
(J.N. CHICOINE) Lieut.
Officer detailed by O.C.
No. 2 C.I.H.U. to take
Summary of Evidence.

Lt/Maj

H/272

I CERTIFY that the man whose personal description is given below surrendered himself to* Det 6103 Ptc at YMCA Toronto at (hour) 1.30 pm on the 20th day of August 1941 as being No. L 43 68 (Rank and Name) 2/Lt Leonard HENAIRE a ~~deserter (or~~ absentee without leave) from Royal 22nd Regt RCASF and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 22 Height 6 Feet 1 Inches

Complexion Fresh Hair Dark Eyes Brown

Marks Nil

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	Quebec City 9.11.39
Probable Date of Desertion or beginning of absence, and from what place	19 Y 41 Whitby Camp

Signature of Officer of Police in charge of [illegible] Station.

20 August 1941 Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of

No. Nil

who surrendered to the Police at on

Payable to

Nil

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

Army Form B 115.

3 Copies

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Laurentide Camp, Witley, Surrey. on the 12th day of August 1941, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. H 4568, Pte Hemaire, L. R 22 R, (2 C.I.H.U.)
D. O. 1089 d/ 11 aug 1941.

DECLARATION.

The Court declare that Pte. Hemaire, L. No. H4568, did illegally absent himself without leave at Laurentide Camp, Witley, Surrey, on the 19th July 1941, that he is still absent, and that on the twelfth August, 1941 was deficient in the following kit to the value of £ 9 - 3 - 6½.

	£	s	d
1 pr. anklets, web	0	4	4
1 badge, cap	0	0	4
1 bag, kit	6	5	3
1 blouse, serge	1	2	6
1 trousers, serge	1	0	6
1 pr. boots ankle	1	2	6
1 brush, button	0	1	2
1 brush, cloth	0	2	3
1 cap, field service	0	1	6
1 comb, hair	0	0	2
2 discs, identity	0	0	2
2 drawers, woolen	0	15	0
1 dressing first field	0	1	1
1 fork table	0	0	4½
1 housewife	0	0	7
1 jacket sweater	0	8	6
1 knife, clasp and lanyard	0	2	11
1 knife table	0	0	10
2 shirts, flannel ~~woo~~ Khaki	1	0	0
2 shirts woolen	0	15	6
1 pr canvas shoes	0	3	6
1 pr socks	0	1	11
1 spoon table	0	0	4½
1 towel, hand	0	1	6
1 eyeshields	0	2	3
1 respirator haversack mk VI	0	8	6
1 wallet A/G	0	0	9
1 belt, waist web	0	2	9
1 cover, mess tin	0	0	3
1 pullt rough	0	0	4½
1 sheet, ground	0	10	0
1 drawers, short gym	0	2	1
1 vest, cotton gym	0	1	11
Total £	9	3	6½

Names of President and Members

President Lieut. B. J. Guimond.
Members Lieut. J. M. Gendron.
Lieut. P.F. Botwin.

Signature of Commanding Officer J. M. Watkins Lieut. Col.
Officer Commanding,
No. 2 Can. Inf. Bde.

CERTIFIED TRUE COPY.

J. Louis McKenna Lieut. Asst Adjt

Signature of Officer having custody of the Original Record.

(12281) WL24316/1622 75,000 10/39 A.& E.W.Ltd. Gp.498 Forms/B115/56
(13443) WL40720/789 225,000 1/40

Description of Court by which tried, or name of Officer disposing of the charge or disposing with Trial	Date and place of Trial, or summary award, or of Order disposing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 3. day of Sept 1941

P. Louis McNamara, Lieut.
Adjutant,
No. 2 Inf. Rifle Holding Unit, C.A.S.F.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B4568 Pte. Menaire, L. of the Royal 22e Regt. Reinforcement #2 Cdn. Inf. Holding Unit

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—The Regimental and Squadron, Battery or Company Conduct sheets are to be produced to Court with this statement but are not to be exhibited to the proceedings.

*The numbers inserted should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dates.

	*Within last 12 months.	*Since Enlistment.
For A.A. 15(1)	5 times	5 times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct.

or,

~~There are no entries in the Conduct sheets of the accused.~~ /

~~2/ The accused has not been previously convicted.~~ /

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

W1 40560/384 50,000 2/40 W. S. Ltd. 31—4054

3. The accused is not under sentence at the present time,

or,

The accused is at the present time under sentence of / / / / / / / / / / days/

4. The accused has been in confinement, awaiting trial on the present charges

for 248 days in Civil Custody,

and 14 days in Military Custody.

Total 14 days.

Of which civil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 23

6. The date of his attestation specified in his attestation paper is 9-11-39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is nil

8. The accused is entitled to deferred pay or gratuity in respect of one years' service.

9. The accused is entitled to reckon one years' service for the purpose of determining his pension &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , and in his regiment (*or corps or department*) the rank of , dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

	Date of Promotion.
In the rank of	, years,
In the rank of	, years,
In the rank of	, years.

(INSTRUCTIONS.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name E4568 Pte. Hennire, L. R of the Royal 22e Regt. Reinforcement #2 C.I.M.U.

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
F.G.C.M.	CATERHAM 7-3-41	Sec. 41 A.A. Forgery Sec. 41 A.A. Uttering Sec. 41 A.A. Forgery Sec. 41 A.A. Uttering	Guilty all charges To undergo imprisonment for six months	2 months

(Continued overleaf.

No. D4568 Name Henaire, L. Sqn., Battery, or Company Corps R.22eR. Date of enlistment 7-10-39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

M.F.M. 6 (A.F.B. 122) (10M - 8/39 (1703) H.Q. 1771-45-18)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishments awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
England.	6-2-40	Pte		Admonished and forfeits one day's pay					
England.	18-4-40	Pte		Admonished and forfeits two days pay.					
England.	21-6-40	Pte		Awarded two days C.B. and forfeits one day's pay.					
England.	30-9-40	Pte		Awarded 7 days C.B. and placed under two months restricted pay for being A.W.L.					
England.	6-12-40	Pte		A.W.L. Forfeits one day's pay.					
England.	19-12-40	Pte		Forfeits 3 days pay for A.W.L.					

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
England.	28-12-40	Pte		Forfeits two days pay for being A.W.L.					
England.	22-1-41	Pte		Forfeits one day's pay for being A.W.L.					
England.	7-2-41	Pte		7 days F.P. and forfeits 13 days pay for being A.W.L.					
England.	7-3-41	Pte		Tried by Field General Court Martial. (1) A.A.Sec 41. Committing a Civil Offence, that is to say forgery. (2) A.A.Sec 41. Committing a civil offence that is to say uttering a forged document. (3) A.A.Sec 41 Committing a civil offence that is to say forgery. (4) A.A.Sec 41. Committing a civil offence that is to say uttering a forged document.		Six months imprisonement and forfeits 199 days pay.	7-3-41	F.G.C.M.	

Terms for 4

Certified through extract M.F.M.4

for Officer Commanding

Z-68 (Case #3)

PTE HENAIRE L.

See A-174 for 1st case

See C-180 for 2nd case

Correspondence to be PINNED here.

WNSR

2-68

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this 27th day of FEBRUARY, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*~~I am unable to appoint~~ 4

*~~1. Three Officers to form the Court~~

*~~2. A Field Officer as President~~

for the following reasons, namely:—67

(42)

Proceedings Reviewed Reviewing Officer's Comments 16 Mar 43

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

President.

Rank.	Name.	Regiment.
Major	F.D. Courtney	West NSR

Members.

Rank.	Name.	Regiment.
Captain	L. Deniset	R 22e R
Captain	J.H. Farthing	Carlt & York R
(Waiting) Captain	R.G. Thexton	West NSR

*Signed [signature] Brigadier,

Commanding 3 Cdn Inf Bde

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E.4568 Private, Leonard, HENAIRE. R 22 e R	FIRST CHARGE S90 15 A.A.	Guilty	Guilty	Confirmed Charles Lindsay Brigadier, Comd. 3 Cdn Inf. Bde.
	SECOND CHARGE Sec 41 A.A.	Not Guilty	Guilty 12 Months Detention Regimental Pris & DSM 6 March 42	1 March 1943

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? No Sir.
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) Charles Lindsay Brigadier, (Signed) Regimental Major, DSO & Bar
Commanding 3 Cdn Inf Bde — Convening Officer (e) — President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 1 day of March, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this 1 day of March 19 43

D Regimental Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

Signed this 1st ~~month~~ day of March 1943.

Charles Lindsay Brigadier,
Confirming Officer. Comd 3 Cdn Inf Bde.

Promulgated and extracts taken in the case of E 4568 PTE Leonard Henaire

(a) (Dated) 6 march 1943 (Signed) Henaire

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(24 M) 38002-1316 Tim 2-41 W. & Co., Ltd. Gp. 748-2

CHARGE SHEET

The accused, H.4568 Private Leonard, HENAIRE, Royal 22e Regiment, a soldier of the Canadian Army, (Overseas) is charged with:-

FIRST CHARGE
A.A. Sec. 15

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE.

in that he,

In the Field, was absent without leave from 1600 hrs 5 Feb 43 until apprehended by the Military Police at 2100 hrs the 14 Feb 43.
Total absence: 9 days, 5 hrs, ~~10 mins~~.

SECOND CHARGE
A.A. Sec. 41

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE. that is to say, an offence against the Regulations of Railways Act 1889.

in that he,

At approx 2100 hrs on the 14th February 1943 at Brighton did travel on the Southern Railway, without a ticket then in force, and with intent to avoid payment there of contrary to Regulations of Railways Act 1889 Sec 5 (3).

(J.P.E. Bernatchez), Lt.-Col.,
Commanding Royal 22e Regiment.

In the Field
26 Feb 43.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
27 Feb 43

(P. Roulleau) Brigadier,
Comd 3 Cdn Inf Bde.

I certify that I have this morning examined No. L 7565

Pte Henaine L. of _____ and in my opinion he is

fit to undergo trial by Court Martial.

Station Seaford

Date 1-3-43

Medical Officer

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

Army Form A 9.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Sur the Fields on the 1st day of March 19 43 by order of Brig. C Carter Coulden Commanding 3 Cdn Inf Bde dated the 27th day of Feb 19 43

President.

Major T.B. Courtney West N.S.R.

Members.

Capt L. Doucet R22eR

Capt J.H. Larkeny Canadian York R.

Trial of* C 43768 Pte Menaire, Leonard, Judge Advocate.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that to serve owing to is not available

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut P.L. Chasse' R22eR

Counsel‡ or defending officer† Lieut J. Dubé R22eR

At 11.00 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* N/O

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Per O/C

W.O. 67/1 (2) 426. 10,000 sets. 1/40. K. & H., Ltd. G467/H. Forms A 3/55.

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

N/A

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 16 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

✓ *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

✓ *Answer.*

The accused having pleaded Guilty to first charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

F. Wm. Thompson
Pte. O.S.C.M.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? No

Answer.

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. 16879701 a/Sgt Goddard H.
Brighton & Hove Military Police

being duly sworn, is examined by the prosecutor.

On complaint from ticket collector at Brighton I examined ticket he stated to have been issued to the accused travelled from East Croydon to Purley. His ticket was not collected at Purley so he used the same ticket to come back to Brighton. That was the only means he had of getting on the train at East Croydon. The date of issue of this ticket was 12 Oct. 43. The date the accused was taken into custody was 14th Oct 43. The accused claimed his pay book and wallet had been stolen while on leave

Cross-examination
By Defence

Q. Can you swear the accused did not buy a ticket from Purley to Brighton

A. No.

Q. Can you swear that the accused did not lose this ticket

A. No.

Questioned by the Court

Q. Did you take the ticket from the accused

A No. I got it from the ticket collector via the R.T.O's Office and this charge was laid at the request of the Railway.

Second Witness for Prosecution

86141 L/Cpl Hallet L.C. 2nd Cdn. Provost Corps. being sworn states:

at about 21.10 hrs on 1st Oct 43 I saw the accused in argument with the ticket collector at Brighton Station. I saw the ticket which the accused had given to the ticket collector. It was a single ticket from Croydon to Purley. The accused had no other ticket.

Cross-examined by Prosecution.

Q. Can you swear the accused did not buy a ticket from Purley to Brighton

A. No.

Q. Can you swear the accused did not lose the ticket

A. No.

Q. Was it dark enough so that you could hardly read the destination

A. We could read the ticket

Q. When did you take the ticket from the accused.

A. I did not take it from him

J. H. Cowley Major
Pres. D.S.C.M.

CC

Proceedings on Plea of Guilty.

* To be struck out in case of plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused is found guilty of 1st charge

†[The summary (or abstract) of evidence is read, marked signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment ~~says~~:—

~~He~~ hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

D Courtenay Lt
Pro DAAG

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness? *Yes*.

Answer.

Question. Do you intend to call any other witness in your defence? *No*.

Answer.

Question. Is he a witness as to character only? *Answer.* *No*.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

Montgomery
Pres. F.S.C.M.

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

First Witness for Defence

24588 Pte Leonard Horace R2nd R. Surrey sworn states:

On 12 Feb 43 I bought a ticket from East Croydon to Purley. I did not go to Purley because it was impossible. On 14th Feb I went to station at East Croydon and asked to see the station-master. I asked him if there was an R.T.O. at East Croydon and he said that the nearest one was Brighton. I wanted to see an R.T.O. to get a warrant to pay my way from East Croydon to Brighton. Upon arrival at Brighton I asked the ticket collector to allow me to see the R.T.O. I did not give the "East Croydon to Purley" ticket to the collector on coming through the gate. This ticket was in my hat and was taken out by a Sgt in the R.T.O.'s office. This Sgt then called in the two escort and they took me to an office and called my Regt. then they put me under arrest.

While in the R.T.O.'s office I told the Sgt there that I wanted a warrant to pay my way from East Croydon to Brighton. They did not give me one

W Cpl Sig Coy
for DSCM

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Guilty on the 1st Charge.

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

the Examiner, Lieut P.E. Chance is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked C-1, C-2 signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes.

[Instructions.—If by reason of the nature of the service of the accused in a dependency, corps, or detachment, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the president must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Cross-examined by the accused.

No cross-examination

Question to the accused.

Do you wish to address the Court? *Answer.* Yes. Written statement attached marked

The Court is closed for the consideration of the sentence.

[illegible]

F

Sentence.

The Court sentence the accused to undergo Sentence.

Detention for a period of 12 months

[illegible]
for DJAG
1 Mar 43

[illegible]
for DJAG

ABSTRACT OF ADDITIONAL EVIDENCE
IN THE FIELD GENERAL COURT MARTIAL
OF E.4568 PTE. HENAIRE, L., ROYAL
22e REGIMENT, IN PURSUANCE TO R.P.
76.

Take notice that a the trial of the above mentioned soldier.

L/Cpl. Goddard, A., Brighton & Hove Military Police, will called as a witness to the fact that he arrested Pte. E.4568 HENAIRE L. at Brighton at 2100 hrs the 14 Feb 43.

L/Cpl. Mallet, L.C., 2nd Provost Coy., will he called as a witness to state that he was with L/Cpl. Goddard, A., when Pte. HENAITE was arrested at Brighton at 2100 hrs the 14 Feb 43.

(J.P.E. BERNATCHEZ), Lt.-Col.,
Commanding Royal 22e Regiment.

ABSTRACT OF ADDITIONAL EVIDENCE IN THE FIELD GENERAL COURT MARTIAL OF E.4568 PTE. HENAIRE, L., ROYAL 22e REGIMENT, IN PURSUANCE TO R.P. 76.

Take notice that at the trial of the above mentioned soldier, L

L/Cpl. Goddard, A., Brighton & Hove Military Police, will be called as a witness to the fact that he arrested Pte. E.4568 HENAIRE, L. and to proove that he was in possession of a false Railway ticket.

L/Cpl. Hallet, L.C., 2nd Provost Coy., will be called as a witness to state that he was with L/Cpl. Goddard, A., when Pte. Henaire was arrested. and to proove that he was in possession of a false Railway ticket.

(J.E.E. BERNATCHEZ), Lt.-Col.,
Commanding Royal 22e Regiment.

LIST OF WITNESSES

in the case of

E.4568 Pte. Leonard, HENAIRE Royal 22e Regiment,
a soldier of the Canadian Army, (Overseas).

PROSECUTION

E.4093 Cpl. Beaudoin R.

WITNESSES TO BE CALLED UNDER RULES OF PRECEDURE 76

L/Cpl. Goddard, A. - Brighton & Hove Military Police
L/Cpl. Hallet L.C. - 2n Provost Coy.

STATEMENT BY ACCUSED

I, E.4568 Pte. Leonard Henaire, Royal 22e Regiment, desire to have an Officer to represent me at my trial by F.G.C.M.

I desire the services of Lieut Yvan Dubé
if he is available.

This is to certify that I received free of charge, copies of proceedings, documents, etc, relating to my trial by F.G.C.M.

L Henaire

In the Field
23 Feb 43.

J Kennedy Maj
Pres FGCM

SUMMARY OF EVIDENCE

in the case of

E.4568 Pte. Leonard, HENAIRE, a soldier of the Royal 22e Regiment, Canadian Army, (Overseas).

By direction of the Commanding Officer the Summary of evidence is taken on oath.

- -

FIRST WITNESS FOR PROSECUTION

E.4093 Cpl. Beaudoin, R., of the Royal 22e Regiment, having been duly sworn, states:-

" On the 5th of February, 1943, acting as Orderly Sergeant, I reported the absence of Pte. Henaire, at about 1600 hrs."

R Beaudoin
.....Cpl.
Royal 22e Regiment.

The accused declines to cross-examine this witness.

The accused having been duly cautioned in accordance with Rule of Procedure 4 (c) declines to make a Statement and reserves his defence.

I certify that the foregoing Summary of Evidence was taken down by me in the presence of the accused and that Rules of Procedure 4 (c) (d) (e) (f) & (g) have been complied with.

(P.E. CHASSE), Lieutenant,
Royal 22e Regiment.
Officer detailed to take the Summary.

In the Field
23 Feb 43.

Kentney Maj
for DJAG

28.2.42

While on 48 hours leave home with my wife that was ill, she asked me if I could have my seven days leave and I told her that I could if I would see my Coy Commanding Officer, the reason why my wife asked me for my seven days leave is because she was staying with her folks and she was obliged to leave, so I left on Thursday evening for Croydon to take the first train Friday morning for Stafford and I slept at the Y.m.c.a. And the next morning I had my shoes stolen so I could not get back, I reported it to the manager of the Y.m.c.a. and he gave me a letter to prove to you that it is the reason I could not take the train, so I had borrow a pair of boots to return to my unite and a few days later I managed to get a pair from Gunner Hardwick of the R.E.A. and then I reported to Brighton to the R.T.O. and he put me under close arrest and I was brought down to my unite.

Signature L 15-6-68

M.F.M. 6
A.F.B. 122
(1934—7-41 (1211-20)
H.Q. 1272-39-1652

No. 4566 Name Henaire L. Sqn., Battery, or Company A Corps R. 22e R. Date of enlistment 7-10-39 G.C. Badges

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Signature O.C. Company, etc. | Service or Proficiency Pay | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
[illegible]	18-7-41	Pte		[illegible]	[illegible]				
"	20-7-41	"		[illegible]	[illegible]				
"	25-7-41	"		[illegible] barracks [illegible]	[illegible]	3 days C.B	26-7-41	Sgt. [illegible]	
"	28-7-41	"		[illegible]	[illegible]	28 days Detention	2-10-41	Maj. [illegible]	
"	4-8-41	"		[illegible]	[illegible]	28 days Detention	19-10-41	A/Col. [illegible]	

(P.T.O.)

M.F.M. 6
A.F.B. 122
(1934—7-41 (1211-20)
H.Q. 1272-39-1652

No. 4566 Name Henaire L. Sqn., Battery, or Company A Corps R. 22e R. Date of enlistment 7-10-39 G.C. Badges

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Service or Proficiency Pay | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
[illegible]	18-7-41	Pte		[illegible]	[illegible]	[illegible]			
[illegible]	30-7-41	Pte		[illegible]	[illegible]	[illegible]			

On the 7-10-41 the above record of service was read over to the prisoner and he was cautioned that the above record entries were required from the purpose that he might be dealt with on the 19-10-41

Certified True Copy

[illegible]
Commandant de la Cie "A"
Royal 22e. Regiment.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
C-2									
Mandatory									
for 2 S.O.'s									

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
[illegible]	16-4-42	Pte.		[illegible]	[illegible]	[illegible]	22-4-42		
"	2-5-42	"		[illegible]	[illegible]	14 days F.P.	13-5-42	[illegible]	[illegible]
"	5-6-42	"		[illegible]	[illegible]	14 days C.B	3-6-42	[illegible]	[illegible]
"	10-6-42	"		[illegible]	[illegible]	3 days C.B	22-6-42	[illegible]	[illegible]
"	22-7-42	"		[illegible]	[illegible]	14 days F.P	28-7-42	[illegible]	[illegible]
"	13-8-42	"		[illegible]	[illegible]	28 days F.P.	31-8-42	[illegible]	[illegible]
"	17-9-42	"		[illegible]	[illegible]	14 days C.B	21-9-42	[illegible]	[illegible]

C-1

M.F.B. 355
(2M—5-41 (572-3))
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
E 4568	PTE	LEONARD HENAIRE	ROYAL 22° REGT.

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets / or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For Absence int. Cause 14	times	19 times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct NIL

or,

There are no entries in the conduct sheets of the accused. NIL N.A.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted NIL

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act / Section 47 of the Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of N.A.

4. The accused has been in confinement awaiting trial on the present charges, for N.A. days in civil custody, and 14 days in Air Force / military custody, making a total of 14 days in custody, of which N.A. days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is 25 years old

6. The date of his commission specified in his record of service is attestation / attestation paper 10th NOV. 1939

7. The service which the accused is allowed to reckon towards discharge is N.A.

8. The accused is entitled to reckon N.A. service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force / military decoration, or air force / military reward (or is in possession of or entitled to). State any air force / military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N.A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N.A. dated ....., and in his regiment (or corps), the rank of

N.A. dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N.A. Date of promotion.

In the rank of N.A. years.

In the rank of N.A. years.

In the rank of N.A. years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number E 4668 Rank PTE

Unit

Name LEONARD HENAIRE of ROYAL 22° REGIMENT Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	19-2-41	W.O.A.S.	6 months	—
F.G.C.M.	19-7-41	W.O.A.6	9 months	78 days remission

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1st Monday day of March 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

4X-107.

Pte. Henaire L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : E.4568 Pte Leonard HENAIRE

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Sec 15 (1)	Guilty	Guilty	
2nd	Sec 15 (1)	Guilty	Guilty	
3rd	Sec 15((1)	Guilty	Guilty	
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 86, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~[illegible]~~ "WdeCH" (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 31 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be imprisoned with hard labour for two years and to be discharged with ignominy from his Majesty's Service.

(Sgd) ..... 5 Feb 45 (Sgd) "W deC HEPBURN Maj"

Judge-Advocate, if any. Date awarded. President. (RP 45, 90.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 32(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~but recommend the accused be permitted to purchase his discharge with further service~~ "TGG" (1)

(1. AA 57A. Delete if not used.)

(Sgd) "T G Gibson" Brig
Commander
Date Feb 6 1945 Commanding 1 Cdn Base Rft Group
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
E-4568 Pte HENAIR Leonard	8 Feb 45	"Vincent McKenna Lt Col" Officer Commanding 1 Bn 1 Cdn Base Reinforcement Depot

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY

(D M Owen) Capt
Cdn Sec 2nd Ech AFHQ
17 FEB 45

RECORDED AS CMHQ IN AB 100 4X-107

CFA96 (In Lieu of AFA3) 40/P & S/1658 (2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig T G Gibson Comd 1 Cdn Base Rft Gp dated 3 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E.4568	Pte	Leonard	Henaire	1 C I B R Bn

PROCEEDINGS REVIEWED
"W B Bete" Capt
A/DJA
Cdn Sec 2 Ech AFHQ

PROCEEDINGS OF TRIAL

Held in the Fd in (country) Italy on (date)(1) 5 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Can RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.) "WdeCH"

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~[illegible]~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~[illegible]~~ brought before the Court. At 1400 hours trial commenced "WdeCH"

A4. The Prosecutor produces a Medical Certificate that accused is ~~[illegible]~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elects to be tried by a court martial instead of being tried summarily by his CO(2)~~ "WdeCH"

(1. KR Can 557. 2. AA 46(6), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~[illegible]~~ Do you object to ~~[illegible]~~ as interpreter ? Ans ~~[illegible]~~

The Interpreter is sworn.(1) Do you ~~[illegible]~~ "WdeCH" ~~[illegible]~~ shorthand writer ? Ans ~~[illegible]~~
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	W deC HEPBURN	(CAC) 3 Cdn Gen Base Rft Bn
Member	Lieut	R D EVANS	(CIC) 2 Cdn Inf Base Rft Bn
Member	Lieut	M R LARIN	(RCCS) 1 Cdn Inf Base Rft Bn
Judge-Advocate			
Prosecutor	Capt	J R NICHOLSON	(CIC) 1 Cdn Inf Base Rft Bn
Defending Offr	Lieut	A E RUTHVEN	(CIC) 1 Cdn Inf Base Rft Bn

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Ch 1 p 3.)

A8. The accused ~~[illegible]~~ before arraignment make(s) (no) ~~[illegible]~~ plea. "WdeCH" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fn to RP cited. Insert in AB room and name of the accused making the plea.)

A9. The accused is (not) arraigned ~~[illegible]~~ on all charges in the charge sheet.(1) The accused does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. [illegible] "Wde CH"

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex F, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) to which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(D) 39(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 117, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF AR5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA (see RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement as to Character and Particulars of Service(1), and certified true (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex G and Ex H respectively.(3)

(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes "Wde CH" (2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to present on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(5), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(8), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET "WdeCH"

The accused, E.4568, Pte Leonard HENAIRE, 1 Canadian Infantry Base Reinforcement Battalion, 1 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, In Italy, at about 0800 hrs, 5 Nov 1944, absented himself withoutleave until apprehended at about 1750 hrs, 3 Dec 1944. (Absent, 28 days, 9 hours, 50 minutes).

SECOND CHARGE
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT
LEAVE,

in that he,

In the Field, in Italy, at about 1900 hrs, 13 Dec 1944, absented himself without leave until apprehended at about 1130 hrs, 15 Dec 1944. (Absent, 1 day, 16 hours, 30 minutes).

THIRD CHARGE
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT
LEAVE,

in that he,

In the Field, in Italy, at about 1900 hrs, 19 Dec 1944, absented himself without leave until apprehended at about 1200 hrs, 5 Jan 1945. (Absent, 16 days, 17 hours).

"Vincent McKENNA" Lt Col
(VINCENT McKENNA,)
Officer Commanding,
1 Cdn Inf Base Rft Bn, 1 CBRGp.

IN THE FIELD
2 FEB 1945

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
3 Feb 45

"T G Gibson"
(T G GIBSON) Brigadier
Comd, 1 Cdn Base Rft Gp

"WdeCH"

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AF A32) 40/P&S/1697 (2500)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E4568	Pte		Leonard	HENAIRE	1 CIBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(X named above as the accused, being subject to military law, has [illegible] committed the offence(s) set forth in the Charge Sheet(X) attached and on (date) 3 Feb 45 endorsed by me, [illegible] "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible] "TGG"

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(N, and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W deC HEPBURN (CAC)	3 CGBR Bn

MEMBERS.

Capt or Lieut to be detailed by the OC 1 Cdn Inf Base Rft Bn

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lieut to be detailed by OC 2 Cdn Inf Base Rft Bn		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by the OC 2 Cdn Inf Base Rft Bn		

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

"T G Gibson" (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(T G GIBSON)

Date 3 Feb 45

Commanding 1 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE "WdeCH"
(FR (Can) 557)

I certify that I have this morning examined No E.4568 Rank Pte Name HENAIRE L of 1 Bn 1 CBIRD "B" and in my opinion he is fit to undergo trial by Court Martial.

In the Field
Date 5 Feb 45

"John K ? ? ? Capt"
(MEDICAL OFFICER)

E.4568 Pte Leonard Henaire "WdeCH"

Members of the Court
Gentlemen:

We have before us a '39er - one of the first '39ers. At the age of 22 yrs Pte Henaire joined the Army in the Fall of 1939. He was in England 17 Dec '39 long before the most of Canada realized we were at war. Many long years of waiting were spent in England - some or all of you probably know what it was like.

Pte Henaire did what many other of our Canadian boys did- he married an English girl with bright hopes of taking heyhome to Canada after the war. They had a baby, a boy, and things wer looking fine. However, as sometimes it happens things went wrong and they found it wouldn't work out. There were no grounds for divorce but they tried anyway. This was in the fall of 1943.

Just then Pte Henaire was sent on draft to Italy - that was Nov 43. Soon he was with the R22R and for seven months in and out of the line, including the Ortona Show.

In the meantime things were happening in England. The Germans were sending over the flying bombs. The south of England as you all know got it and so did the house in which his wife and child lived. Both were sent to the hospital but only scant news has come to Pte Henaire's ears, it was friends who told him most. Since November 1943 only two letters have come from Mrs Henaire and so he has to sit and wonder how his child is doing. How would you feel gentlemen?

The one impulse is to get there to find out - every red-blooded man would have it. Compassionate Leave! Many in the Regiment, same with more cause, were turned down so it was no use there. The only other thing was to make your own way there and see for yourself. He failed, gentlemen, but he still has his worry. Can not something be done? Pte Henaire has a worry, a legitimate one -- I ask you to consider that.

"A E Ruthven" Lieut

Summary of Evidence Ex F "WdeCH"
in the case of
E-4568 Pte Henaire, Leonard, 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken under oath.

First Witness for Prosecution: E-6144 Cpl Dastie R, Orderly Room Clerk, 1 Bn, 1 CBRD having been duly sworn STATES:-

I am E.6144 Cpls Dastie R, Orderly Room Clerk, Royal 22nd Coy, 1 Bn 1 CBRD. I present for evidence in the case of E-4568 Pte Henaire L "I" List Royal 22nd Reg't Part II Order No 122 dated 14 Nov 44 issued by Canadian Section, C.H.Q., 2nd Echelon, A.A.I., which states that E-4568 Pte Henaire L, AWL from 0800 hrs 5 Nov 44, still absent 0800 hrs 13 Nov 44 (8th day).

I amso present Certificate in Accordance with the Army Act Sec 163 (1)(jj) which states that E-4568 Pte Henaire I of the Royal 22nd Regt, 1 CBRD was arrested at Rome at 1750 hrs 3rd December 1944. The certificate is signed by Officer Commanding, RAAC, DAPM.

I further present I List Royal 22e REGT PART II order

Regt Part II order no. 141 dated 27 Dec 44, issued by Canadian Section GHQ 2nd Echelon, AAI which states that E.4568 Pte Henaire L was AWL from 1900 hrs 19 Dec 44, still absent 1900 hrs 20 Dec 44. (1 day).

I also present certificate in accordance with the Army Act Sec 163 (1) (jj) which states that E-4568 Pte Henaire L. of the Royal 22nd Regiment was arrested at Rome at 1200 hrs on the 5th Jan 1945. The certificate of Arrest is signed by Officer Commanding, 111 Provost Company C.M.P. Police.

"R. Dostie"

The accused declines to cross-examine the witness.

The X List Royal 22nd Reg't Part II Order No. 122 dated 14 Nov 44, Certificate in accordance with the Army Act Sec 163 (1) (jj) dated 8 Dec 44, "X" List Royal 22 Regt Part II Order No. 141 dated 27 Dec 44, and Certificate in accordance with the Army Act sec 163 (1) (jj) dated 5 Dec 1945 referred to by the witness produced, read over, shown to the accused, marked Exhibits "A" "B" "C" "D" respectively and attached to the Summary.

"W Jas Rinn Lieut"
Officer ~~xxxx~~ Taking Summary of Evidence.

Question to the accused.

Do you wish to make a statement or to give evidence under oath you are not oblige to do so but any evidence you may give or any statement you may make will be taken down in writing and may be used as evidence.

Answer by the accused.

I reserve my defence.

I certify that the foregoing Summary of Evidence consisting of three (3) pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

"W. Jas Rinn Lieut"
Officer taking Summary of Evidence.

In the Field
11 Jan 1945.

Additional Summary of Evidence "WdeCH"
in the case of

E.4568 Pte Henaire, Leonard, 1 Canadian Base Reifnrocement Battalion, 1 K Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken under oath.

First Witness for Prosecution Recalled

E-6144 Cpl Dastie R, Orderly Room Clerk, Bn, 1 CHRD, having been duly sworn states:
I am E-6144 Cpl Dastie R, Orderly Room Clerk, Royal 22nd Coy, 1 Bn, 1 CHRD. I present for evidence in the case of E-4568 Pte Henaire Leonard "X" List Royal 22e Regiment Part II Order No 7 dated 16 Jan 45 issued by Canadian Section, GHQ, 2nd Echelon AFHQ which states that E-4568 Pte Henaire L was AWL from 1900 hrs 13 Dec 44, Apprehended 1130 hrs 15 Dec 44.

"R Dastie"

The accused declines to cross-examine the witness.

The "X" List Royal 22e Regt Part II Order No 7 dated 16 Jan 45 referred to by the witness, produced, read over, shown to the accused, marked Exhibit "B" and attached to the Additional Summary.

"W Jas Rinn Lieut"
Officer taking additional summary of Evidence.

Question to the Accused

Do you wish to make a statement or to give evidence under oath. You are not obliged to do so but any evidence you may give or any statment you may make will be taken down in writing and may be given as evidence.

Answer by the Accused

I reserve my defence.

I ceritfy that the foregoing Additional Summary of Evidence consisting of two (2) pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c)(d)(e)(f) and (g) have been complied with.

"W Jas Rinn Lieut"
In the Fiedl
24 Jan 45 Officer taking additional Summary of Evidence"

This is Exhibit "A" referred to in the Summary of Evidence in the case of E-4568 Pte Henaire L taken before me this 11th day of January 1945. Ex A "WdeCH"

"W Jas Rinn Lieut"
Signature of Officer taking Summary

Last Order	"X" LIST ROYAL 22e REGIMENT	This Order
No 121	Part II Order issued by	No 122
12 Nov 44	CANADIAN SECTION, B.H.Q., 2 ECHELON, AAI	14 Nov 44

"B" OTHER RANKS

ABSENT WITHOUT LEAVE

3. (d) A.W.I. from 0800 hrs 5 Nov 44. Still Absent 0800 hrs 13 Nov 44 (8th day)

E4568 Pte Henaire, L. X-# list(1 Bn)

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT SEC 163 (1)(jj) Ex B "WdeCH"

I Certify that:-
No E-4568 Rank Pte Name Henaire L of the Royal 22e Regt No 1 CHRD was arrested at CANADA CLUB, ROME, at 1750 hrs on the 3 day of Dec 1944.
Signature of P.M. or other officer into whose custody the above named person was taken on arrest. "Stan ????? Capt"
Rank Capt
Appointment (if any) D A P M
Date 8 Dec 44 Commanding R A A C

This is Exhibit "[illegible]" referred to in the Summary of Evidence in the case of [illegible] Henaire L taken before me this 11th day of January 1945.

Certificate in accordance with the Army Act Sec 163 (1)(ii)

I certify that
No E/4568 Rank Private Name HENAIRE L of the ROYAL 22nd REGIMENT was arrested at ROME at 1200 hrs on the 5th day of JANUARY 1945.

Signature of JM, AJM or other Officer into whose custody the above named person was taken on arrest. } (undecipherable) "W&C H" } Rank Captain

"D"

This is Exhibit "D" referred to in the Summary of Evidence in the case of E.4568 Pte Henaire L.
taken before me this 11th day of January 1945.

"W. Jas Rinn Lieut"
Signature of Officer Taking Summary

January 1945.

"W Jas Rinn Lieut"
Signature of officer taking
Additional Summary of Evidence

Last Order	"X" LIST ROYAL 22e REGIMENT	This Order
No 6	Part II Order issued by	No 7
13 Jan 45	CANADIAN SECTION GHQ 2 ECHELON, A.F.H.Q.	16 Jan 45

"B" OTHER RANKS Page 3

7. ABSENT WITHOUT LEAVE

(b) A.W.I. from 1900 hrs 13 Dec 44. App 1130 hrs 15 Dec 44
E4568 Pte Henaire, L. X-3 List (5 CGH)

"J. L. HAYES" Capt
(J L HAYES) Capt
for Officer i/c
Pte Sec G HQ 26th RFHG

Ex G "WdeCH"
ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
F. 4568	Pte	HENAIRE I.	1 C B R Bn, 1 C B R D

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement, but it not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, premonition being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For A A Sec 15(1)	15 times.
For A A Sec 24(2)	2 times.
For A A Sec 10(4)	1 times.
For A A Sec 40	1 times.
Date of first entry in Field Conduct Sheet	
Date of last entry in Field Conduct Sheet	

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for 25 days in military custody, i.e., nil days in open arrest, 24 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 27 yrs

6. The date of his attestation ~~XXXXXXXXXXXXXXXXXX~~ is 2 Oct 1939

Cause the military qualifications (if any) held to be entered.

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of †

9. (If the accused is a warrant officer or N.C.O.). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Wt. 13479/2837 30,000 1/44 H 433 T.54/6 Forms/B.296(War)/12

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended.
F.G.C.M.	Field 3/9/41	AA Sec 15(1) (AWL for 30 days 15 hrs)	9 months detention	
F.G.C.M.	Field 1/3/43	AA Sec 15(1) (AWL for 9 days 5 hrs)	12 months detention	109 days

"WJR"

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 2nd day of February 1945 "W Jas Rinn Lieut"

Officer having Custody of Regt'l Books

SHEET DESTROYED 7 JUL 41, LAST ENTRY 19 FEB 41 - CASES OF DRUNKENESS - NIL -(Signed) (Lt. P. --Tremblay)

MFM 6 (AFB 122) 40/PAS/136 (3438)

No E 4568 Name HENAIRE L. | Bgn, Battery or Company | Corps CIC | Date of enlistment 9 Sep 39 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet: n/a | No and date of last drunk: n/a | Period not reckoning towards freedom from extra fine: n/a | Sheet No 1 | Signature OC Company, etc: Major Simard | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19 Jul41	Pte		A.A.15(1)AWL 2230 hrs. 19 Jul 41 till 1330 hrs.20 Aug 41(30 days, 15hrs)	Documentary	9 Mos. detn.	3 Sep 41	F.G.C.M.	
Field	16 Apr42	Pte.		AA.15(1)AWL 1400 hrs. 16 Apr 42 till 0600 hrs. 18 Apr 42(1 day, 16hrs)	Cpl.Robidoux	Admonished	22 Apr42	O.C.	2 Days pay-149(1)(a)(b)
Field	2 May42	Pte.		AA.15(1)AWL 2230 hrs. 2 May 42 till 1230 hrs. 9 May 42(6 days, 14hrs)	Documentary	14 Days F.P.	13 May42	Lt.-Col. Bernatchez	21 days pay 149(1)(a)(b)
Field	5 Jun42	Pte.		AA.15(1)AWL 1400 hrs. 5 Jun 42 till 1400 hrs. 9 Jun 42(4 days)	Cpl.Trepanier " Drapeau	14 Days C.B.	13 Jun 42	Maj. Millette	4 days pay-149(1)(a)(b)
Field	23 Jul42	Pte.		AA.15(1)AWL 1400 hrs. 23 Jul42 till 1530 hrs. 28 Jul.42(5 days, 1 hr. 30 mins.)	CMS.Archambeault L/Cpl Theberge Cpl.Deschene	14Days F.P.	29 Jul42	Maj. Millette	20 days pay 149(1)(a)(b)
Field	13 Aug42	Pte.		AA.15(1)AWL 2230 hrs. 13 Aug 42, till 2025 hrs. 20 Aug 42(6 days 21 hrs. 55 mins)	Documentary Cpl.Brochet	27 Days F.P.	22 Aug42	Lt-Col. Bernatchez	34 days pay-149(1)(a)(b)

(PTO)

No E 4568 Name HENAIRE L. | Bgn, Battery or Company | Corps CIC | Date of enlistment 9 Nov 39 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13 Nov43	Pte.		WOAS, AWL 2 days, 8 hrs.(AASec15(1)	Cpl.Gionet	14 days CB	16 Nov43	Lt-Col.CO	3 days pay
Field	17 Nov 43	Pte.		WOAS, AWL(4 hrs. 30 Mins)whilst in CB, AA Sect 15(1)	Cpl.Gionet	7 days F.P. 7 days Pay	18 Nov43	Taschereau Lt.-Col CO Taschereau	149(1)(a) 7 days pay 149(1)(b)
Field	26 Nov 43	Pte.		1/WOAS, AWL 8 hrs. AA Sec(15(1) 2/WOAS, AWL 2 days,12 hrs.25mins.	Cpl.Lapointe Doc (try.)	27 days F.P. 27 days Pay	30 Nov43	Lt-Col.J.E. Power	4 days pay 149(1)(a) 27 days pay-149(1)(b)
Field	11 Jan	Pte.		AA.Sec.15(1) WOAS,AWL 2215 hrs. 6 Jan 44 - 0915 hrs. 10 Jan 44	Documentary	Forfs 15 days pay -149 (2)	11 Jan44	Lt-Col.LM. Watson	Forf.4 days pay 149(1)(a)
Ship.	23 Jan44	Pte.		WOAS/send.to prej.etc.-in that he did not carry out the order of L/Cpl Martin (Prov Sec) to stop smoking immediately. AA.40	L/Cpl. Martin	£-/3/6 costs 3 days pay	24Jan44	D.B. Decks	3 days pay 149(1)(e)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18 Sep 42	Pte		AA.24-losing by negl, etc. 3 blankets, value £1-9-0	CQMS Lapointe	14 days CB	21 Sep 42	Maj Millette	To make good £1/9/0
Field	19 Sep 42	Pte.	1	AA15(1)AWL 2230 hrs.19 Sep.42 till 0700 hrs. 20 Sep 42 (8 hrs. 30 Mins)	Cpl. Trepanier	3 days CB	26 Sep 42	Capt. C-------	2 days pay 149(1)(a)
Field	29 Sep 42	Pte.	2	AA.51(1)AWL0800 hrs. till 2130 hrs 20 Sep42 (13 hrs. 30 Mins)					
Field	28 Sep 42	Pte	3	A.A.10 (4) A.A.15 (1) AWL 1945 hrs. 28 Sep 42 till 2245 hrs. 29 Sep 42(3hrs)	Sgt.Asselin Cpl.Trepanier	72 hrs.detn.	2 Oct42	Maj. Millette	3 days pay- 149(1)(a)(b)
Field	11 Oct 42	Pte.		AA.15(1) AWL 0800 hrs 11 Oct 42, till 1330 hrs. 14 Oct 42. (3 days, 18 hrs. 30 mins.)	Documentary	28 days detn	19 Oct42	Lt-Col. Bernatchez.	32 days pay- 149(1)(a) (b)
Field	5 Feb43	Pte.	1	AA.15(1) AWL 1600 hrs. 5 Feb 42, till 2100 hrs. 14 Feb 42(9 days 5 hrs)	Documentary	12 Months detn. (Lt.--Tremblay)	1 Mar 43	F.C.C.M.	384 days pay- 149(1)(a)(b) -(c)(
			2	AA.41 - Committing a civil offense against the regulations of the Rly Act.					

RELEASED FROM CDN DET BKS 11 NOV 43, GRANTED 109 DAYS REMISSION DO 244 d/12 NOV 43 (6 CIHU/

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	5/3/44	Pte.		WOAS,absenting himself without leave, in that he, in the Field, was absent without leave from 1330 hrs. 5 Mar 44 to 1650 hrs. 5 Mar 44 (Absent 3 hrs. 20 mins) AA.Sec.15(1) WOAS, losing by neglect, his equipment, clothing, and regtl necessaries, in that he, at Avellino, on 5 Mar 44 was deficient of the articles amounting to $16.49(100%).	CSM Gagnon Sgt.Labelle	14 days pay -149(2)	6/3/44	Maj. R.D. Clendinning	Put under stoppage to make good sum of $16.49

CERTIFIED TRUE COPY FROM REGTL BOOKS IN MY CUSTODY. "W. JASKING LIEUT"
(Officer in Custody of Regtl.Books)

56 H Pte. HENDERSON A. E. G.

O. H. M. S.

D-21359 Pte. Henderson, A.C.G.
1 C.D.I.R.U.

56 H

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 24th day of April, 1942.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CDN ARMY, OVERSEAS, [redacted] that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder [redacted] appointed or detailed hereunder.

* Omit if not applicable.

*[redacted]:—

*(1. [redacted])

*(2. [redacted])

*(3. [redacted])

[redacted]

Judge-Advocate Capt. A.H. Friedgut, K.C.
A/D.J.A. H.Q., C.R.U.

PROCEEDINGS REVIEWED.

President.

Rank.	Name.	Regiment.
Major	W.G. Bury (Edmn Reg't)	1 Cdn Div Inf Reinf Unit

Members.

Rank.	Name.	Regiment.
A Captain	from	1 Cdn Div Inf Reinf Unit
A Captain	from	1 Cdn Div Inf Reinf Unit
A Lieutenant	from	1 Cdn Div Inf Reinf Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [signature] Brigadier

Commanding Cdn Reinforcement Units.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-21359 PTE. HENDERSON, A.C.G. H.& P.E. Reg't 1 Cdn Div Inf Reinf Unit	First Charge A.A. sec 15(1) See charge sheet attached.	Guilty	Guilty To undergo detention for thirty (30) days and to be severely reprimanded and to forfeit One Pound Nineteen Shillings and Fourpence ($1-19-4) to make good Cost of Apprehension C.B.B. 28-4-42	Confirmed D.H.Clarke Brig

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) D.H.Clarke Brigadier (Signed) C.B. Bray Lt.Col.
Commanding Cdn Reinforcement Units. *President.*
Convening Officer (*c*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 28th day of April 42, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court and the Judge Advocate
2. The witnesses and Interpreter
*(3. The interpreter)
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 28th day of April 1942

C.B. Bray. Brig.
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 579 of 1918 have been complied with.

* See footnote (*b*) on page 702 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 30 day of April 1942

D.H.Clarke Brig
Confirming Officer.

Promulgated and extracts taken in the case of D-21359 Pte. Henderson, A.C.G.

(*a*) (Dated) 4-5-42 (Signed) Lorn Slack Lt-Col.
D.O. 104 6/6/5/42 (L.W.T. Slack) A/Commander
No. 1 Cdn. Div. Inf. Reinf. Unit.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W.L. Cit "A"

D.J. Surg. Maj.
Remarks

CHARGE SHEET

The accused, D-21359 Pte. Henderson, A.C.G., (H.& P.E.) Regiment, on the strength of No.1 Canadian Division Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army (Overseas) is charged with:

1st Charge
Sec.15(1)
Army Act

When on Active Service, Absenting himself without Leave:

in that he:

At Algonquin Camp, Witley, Surrey, absented himself from 0630 hours on the 27th day of March 1942, until apprehended by the Civil Power, at Weston-super-Mare, at 1700 hours, on the 15th day of April, 1942, there-by incurring expenses to the public for the costs of his apprehension, in the amount of £1.19.4.

Total absence - 22 days; 10 hours; 30 minutes.

L.W. Black

.....Lt.Col.
(L.W.W. Black) A/Comdr,
No.1 Cdn. Div. Inf. Reinf. Unit

Algonquin Camp,
Witley, Surrey,
22nd day of April,
1942

To be tried by Field General Court Martial

(E.R. Phelan) Brigadier
Commanding Cdn Reinforcement Units.

Farnborough, Hants
This 24th day of Apr 42.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT WITLEY, Surrey, ON THE 28 DAY OF APR 42

TRIAL OF:- No. D-21359, PTE HENDERSON A.C.G. Unit 1 CDIRU.
The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.
The Court satisfy themselves as provided by R.P. 22 & 23.
The accused is brought before the Court.
Prosecutor:- (Name) Lt. J.R. Turner (Unit) 1 CDIRU.
Defending Officer:- (Name) Lt. J.S. Freeman (Unit) 1 CDIRU.
At 0930 hrs the trial commences.
The order convening the court is read, signed by the President and attached to the proceedings.
The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.
Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 - No, sir.
The President, members and judge-advocate (if any) are duly sworn.
The following constitute the Court:

President ,Major W.G. Bury.....(Unit) 1 CDIRU

Members ...Capt. E.M. Crouse,.....(Unit) 1 CDIRU.

...Capt. T.M. Powers,.....(Unit) 1 CDIRU.

The officers under instruction are duly sworn.
Q2 Do you object to ..Sgt. T. Pyburn.....acting as shorthand writer? A2.-No, sir.
The shorthand writer is duly sworn.
The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(b) is duly complied with.
The summary of evidence is read, signed by the President, and attached to the proceedings.
Court is closed to consider its finding. Court is re-opened.
Name Lt. J.R. Turner.....(Unit).....1 CDIRU,..... sworn, produces AFB 296 and MFK 8 and upon being questioned by Court states that the accused is the person named in these documents which have been compared by him with Regtl records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.
Q3. (To accused) - Do you wish to make any statement in mitigation of punishment? A3 - Yes, sir.
Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4 - No, sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

DEFENDING OFFICER states accused's statements not consistent; is vague about what occurred in relation to present offence, i.e. not sure where he spent his time, hazy recollection of wandering aimlessly through the countryside. M.O. recommends accused undergo mental examn.

ACCUSED stated went AWL immly following 7 days leave. Unable to explain his actions, feels himself there is something wrong mentally and requested mental examn. Disputes apprehension, stating he went to RTO to arrange return to camp and was then taken into custody. States when AWL he simply roamed around with no definite plan in mind, sleeping anywhere and eating very little.

CERTIFIED a true and correct
report of the proceedings:-

T Pyburn Sgt.
Shorthand Writer.

SUMMARY OF EVIDENCE

In the case of D-21359 Pte. Henderson, A.C.C. (H.& P.E.)
No.1 Canadian Division Infantry Reinforcement Unit.

By direction of the Commanding Officer, this Summary of Evidence is taken on Oath.

1st Witness for the Prosecution

A-22296 Sgt. White, J.P., 48th Highlanders of Canada, having been duly sworn, states:

I am A-22296 Sgt. White, J.P., 48th Highlanders of Canada. I am Sergeant of the Officers' Mess, 1 C.D.I.R.U., and as such, I am in charge of the staff, working in theOfficers' Mess. D-21359 Pte. Henderson, the accused, whom I now recognize, was employed in the kitchen of the Officers' Mess as a cook.

He was absent from his duties from Reveille on the 27th day of March 1942 and was not on duty at any time between this date and the 19th day of April. I did not see him, nor did he report to me, at any time between these dates.

(The accused declines to cross-examine this Witness)

.....J.White.....Sgt.

2nd Witness for the Prosecution

Capt. G. Cruickshank, Officer in Charge of Records, No.1 C.D.I.R.U., having been duly sworn, states:

I am Capt. G. Cruickshank, Officer in Charge of Records, 1st Cdn. Div. Inf. Reinf. Unit. - I produce in evidence:

Exhibit "A" - Army Form C.1618, descriptive return of of ~~XXX~~ D-21359 Pte. Henderson, A.C.C., bearing date, 16th April 1942, and signed by E. Jackson Barnlow, Committing Magistrate.

Exhibit "B" - Expense Voucher bearing date, 20 March 1942, and signed by Lieut. M.F. Byers, No.3 Provost Company. These documents, duly initialled by me for purposes of identification refer to the accused, whom I now recognize.

(The accused declines to cross-examine this Witness)

.....Capt.

The accused being duly cautioned in accordance with Rule of Procedure 4(E), reserves his defence.

Certified that Rule of Procedure 4(C)(D)(E)(F) has been complied with.

Taken down by me in the presence and hearing of the accused this 22nd day of April 1942 at Algonquin Camp, Witley.

.....Lieut.
Officer taking Summary.

Expense Voucher No—: Ref: K.R. & O. (Can) 539

Reg. No. H. 21389 Rank Pte Name Henderson A. C. Unit 1 C.A.P.R.U.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit~~ from London from Weston-Super-Male

Date	Particulars	Amount		
20 Apr. 41	Escorts return fare from LONDON To Weston-Super-Male	1	1	0
	Prisoners single fare to LONDON From Weston-Super-Male		10	6
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Rail~~, Meals, Bus fares		7	10
	Total £	1	19	4

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

M. E. Byers. Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/38
40/P & S/483

Ex "B" 4.

DESCRIPTIVE RETURN OF § _____ who

‡ _____ at _____ (hour) on the _____ day

of _____, and was committed to confinement at _____

on the _____ day of _____ as a Deserter (or Absentee without

leave) from the _____ Bn. of the _____

Regiment of _____

Age _____ Height _____ feet _____ inches

Complexion _____ Hair _____ Eyes _____

Marks _____ In uniform or plain clothes _____

Probable date and place of attestation	
Probable date of desertion or beginning of absence and from what place	
Name, occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured	
Particulars in the evidence on which the prisoner is committed, and showing in what manner and upon what grounds he was apprehended. The fullest possible details to be given.	that's true, I am fed up. I want to return to Canada

I DO HEREBY CERTIFY that the Prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he† the before-mentioned Corps.

E. Jackson Barr — Signature
The Lodge — Residence
Weston super Mare — Post Town
of Committing Magistrate.

_____ Date of Signature

D.C. Henderson — Signature of Prisoner

Pte. Berry No. 149 — Signature of Informant

Or where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming.

I HEREBY CERTIFY that the above-named Prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the _____ day of _____ for the purpose of obtaining such evidence.

_____ Signature
_____ Residence
_____ Post Town
of Magistrate.

_____ Date of Signature

§ Care should be taken to insert Army No. and Rank.
‡ Insert "was apprehended" or "surrendered," as the case may be.
* It is important for the public Service, and for the interest of the Deserter or Absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.
† Insert "is" or "is not a Deserter" or "Absentee without leave from," or "belongs," or "does not belong to," as the case may be.

Ex A. Gc.

Army Form C.1615.

PART II.

This portion of the Form, after the Magistrate has committed the soldier and completed the recommendations as to reward, will be handed by the Clerk of the Court to the Police, who will add thereto a statement of any expenses incurred by them.

Apprehension of No. _____ of _____

Regiment at _____ on _____ by _____

who was committed as a Deserter (or Absentee without leave) on the _____

RECOMMENDATION FOR REWARD.

I RECOMMEND* _____

_____

Address _____

for a reward of _____

_____ Signature of Committing Magistrate.

_____ Date.

*The Magistrate will insert the name and address (in full) of the person for whom the reward is recommended, and the amount (5/-, 10/-, 15/-, or 20/-) which in his opinion should be granted in this particular case, having regard to the following rules :—

1. When soldiers are apprehended in uniform near their quarters it is considered that as a general rule 5/- is a sufficient reward. Not more than 10/- will be allowed in any case where the soldiers were in uniform.

2. When soldiers are apprehended in plain clothes, at a distance from their units, and after having been absent for some time, the reward may be increased to 10/- or 15/- according to the nature of the cases and the trouble incurred in apprehension. A reward in excess of 15/- will seldom be granted.

3. The reward of 20/- should be strictly reserved for cases where superior intelligence has been displayed in apprehending men in plain clothes, or under difficult or exceptional circumstances.

Rewards and expenses attendant upon apprehensions will be paid by the Command Paymaster of the Command or District in which the soldier's Unit is stationed.

4. No reward can be authorised if the Deserter or Absentee voluntarily surrendered, or if it shall appear that he was in collusion with the person who apprehended him, or if the apprehended man was not a Deserter or Absentee.

No. D21359 Name Henderson, A.C. Sqn., Battery, or Company D.R.Sect. Corps No.1 C.W.I.U. Date of enlistment 22-9-39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine R.C.C.S. Sheet No TWO Signature O.C. Company, etc. F.R.Gray, Capt. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
								R.B. Meredith, Lt.	
				Previous Sheet destroyed 22-3-40					
Quebec. Que.	5/2/40	Pte		A.W.L. for 19 days, 19 hours. A.A. Sec.15(1)	Sgt.Blakeney	14days detn.	26-2-40	Col. P.E. Le Clerc	For. 20 days pay F.A.I. total For. 34 days pay.
Cove, Field	2/4/40	Pte		A.W.L. from 0700 hrs. 2-4-40 to 0700 hrs, 11-4-40 A.A. Sec. 15(1)	Sgt.McLeod	14 days detn.	11-4-40	Col.LeClerk	For.14 days pay and 9 days pay. F.A.I. total 23 days pay

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon Hants.	16/~~10~~ 10	Pte		A.W.L. from 2359 hrs. 16-10-40 to 1400 hrs 19-10-40. A.A. Sec. 15(1)	Sgt. Potts L/Cpl. Dempster		21-10-40	Lt.-Col. Black	For 3 days pay, F.R.I., For. 3 days pay, F.R.I. Total, 6days pay R.M.
Bordon Hants	7/~~12~~ 12/40	Pte		A.W.L. from 1500 hrs 7-12-40 to 2215 hrs. 9-12-40 A.A. Sec. 15(1)	Cpl. Jones	168 hrs Detn.	10-12-40	Lt.-Col. Black	For 3 days pay " 7 days pay F.R.I. Total 10 days pay. R.M.
Witley	2/4/41	"		A.W.L. from 1200 hrs. 31-3-41 until 0630 hrs 1-4-41 A.A. Sec. 15-1	Sgt. Woodard	168 Hrs Detn.	5-4-41	Lt.Col. Black	For 3 days pay F.R.I. Sep. 149-1 D.I. Total For, 10 days pay.
Witley	28/10/41	Pte		W.O.A.S. he did disobey a standing order, not wearing respirator during training period (A.A. Sec. 11) failing to answer at place of parade ap., by duty non officer, at 0900 hrs, 28-10-41 (Sec. 15 A.A.)	Sgt. Hobbs Doe.	3 extra parades	29-10-41	Major Kennedy	AWH

CERTIFIED TRUE COPY [illegible] Lt. Col. Commanding Officer 1/c Records 15.1 C.D.I.R.U.

Ex Exhibit "C"
Lt. Col. Dwight F.B. 296
Adjutant
Quartermaster

STATEMENT as to CHARACTER & PARTICULARS OF SERVICE of ACCUSED

D-21389 Private Henderson, A.C.G. Hastings & Prince Edward Reg't
No.1 Canadian Division Infantry Reinforcement Unit

1. The following is a fair and true summary of the entries in the regimental conduct sheet of the accused, exclusive of convictions by a court-martial or a civil court, and of cases in which trial has been dispensed with:

	Within last 12 months	Since Enlistment
Absence without Leave: A.A.15(1)	0	5

2. Number of instances of gallantry or distinguished conduct: NIL
3. The accused is not under sentence at the present time.
4. The accused has not been previously convicted by a Court-Martial or a civil court.
5. The accused has been in confinement, awaiting trial on the present charges, for 1 days in civil custody, and 10 days in military custody, making a total of 11 days in custody, of which 0 days were spent in hospital.
6. The present age of the accused according to his attestation paper is 26 years.
7. The date of his attestation specified in his attestation paper is 22nd day of September 1939
8. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 years 135 days
9. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 135 days service.
10. The accused is entitled to reckon 2 yrs 135 days service for the purpose of determining his pension, etc.
11. The accused is in possession of or entitled to no military decoration or military reward.

SCHEDULE

of convictions by a court-martial or a civil court and of cases in which trial has been dispensed with of the accused. NIL

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

George Rickshaw Capt.
(G. Cricksbank) Officer i/c Records,
No.1 Can. Div. Inf. Reinf. Unit

Algonquin Camp
Witley, Surrey
28 day of April 1942

MEDICAL OFFICER'S CERTIFICATE

- K.R. (Can) Para. 557 -

I certify that I have this morning examined No. D-21359

Private A.C.G. Henderson, H. & P.E.Reg't

No. 1 Cdn. Div. Inf. Reinf. Unit, and in my opinion,

he is fit to undergo trial by Court-Martial.

Algonquin Camp,
April 28th, 1942

.... Capt.
(Medical Officer)

I C I-92

PTE HENDERSON GE

Certified True Copy RECORDED AT CMHQ IN AB 160
III-92

R. Cordeau
(R. Cordeau) Capt.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twelfth day of March, 1944,

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.] "T.G.G."

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~I am unable to appoint~~

*(1. ~~Three Officers to form the Court;~~)

*(2. ~~A Field Officer as President;~~) "T.G.G."

~~for the following reasons, namely:~~

*Omit if not applicable.

70.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	R.W. Morsey	48th Highlrs of Canada

Members.

Rank.	Name.	Regiment.
Captain	G.E. Taylor	West NSR
Captain	G.C. Buerk	R.C.A.F.C.
Waiting Lieut	S.R. Nickerson	West NSR

**Signed* "T.G. Gibson" Brigadier

Commanding 3 Cdn Inf Bde
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A50471 Pte George Edgar HENDERSON, West NSR	First Charge Sec 12(1)(a)	Not Guilty	Not guilty of desertion but guilty of absence without leave. To be imprisoned without hard labor for 18 months 14 Mar 44 "R.M. Horsey" Major	Confirmed "T.G.G."

*Question to be asked of accused, if he pleads not guilty (R. of P. 29 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) "T.G. Gibson" Brigadier (Signed) "R.M. Horsey" Major

Commanding 3 Cdn Inf Bde
Convening Officer (e) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings

I certify that the above Court assembled on the 14 day of March 44, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The Interpreter)
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 14 day of March 19 44.

"R.M. Horsey, Major"
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (h) on page 262 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.) "T.G.G."

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no further duty to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 19 day of March 19 44

"T.G. Gibson, Brig."
Confirming Officer.

Promulgated and extracts taken in the case of A50471 Pte George Edgar Henderson West N.S.R.

(a) (Dated) 20 Mar 44 (Signed) "A.J.E. Dyer, Capt., Adjt West N.S.R."

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

No A50471 Name HENDERSON, G.E Bgn, Battery or Company | Corps CIC | Date of enlistment 14 Jan 41 GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9 Dec 43			AA Sec 15(1) AWL 1100 hrs 9 Dec 43 still absent on the 22nd day returned 2030 hrs 23 Jan 44. Total absence 45 days 10 hrs.		18 mos imprisonment with HL	14 Mar 44	FGCM	Forf 46 days pay FR&I 149 (1)(a) Forf 549 dys pay FR&I 149(1)(b) Forf 50 dys Pay FR&I 149 (1)(c)(i) Total Forf 645 days pay.
				Certified true copy from M.F.M. 4		(D.M. Owen) Capt for Officer i/c Cdn Sec GHQ, 2nd Ech - AAI.			

(PTO)

B 2
"R.M.I."

C H A R G E S H E E T

The Accused, A30471 Pte George Edgar HENDERSON, West Nova Scotia Regiment, a Soldier of the Canadian Army Overseas, C.A.P., on Active Service, is charged with:-

1st CHARGE
Sec 12(1)(a) when on Active Service, DESERTING HIS MAJESTY'S SERVICE,
Army Act

in that he,

in the Field, at approx 1030 hrs 9 Dec 43, did absent himself from the West Nova Scotia Regiment, until surrendering himself to the Military Police at ALGIERS at approx 2030 hrs 23 Jan 44. (Total time absent: 45 days 10 hrs).

"F.E. Hilts"
(F E Hilts) Major
A/Cond West N S R.

In the Field
11 Mar 44

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

In the Field

"F.O.Gibson" Brigadier,
Commanding 3 Cdn Inf Bde.

"E.F.R."

MEDICAL OFFICER'S CERTIFICATE

KR (CAN) PARA 597

I certify that I have this morning examined

No. 450471 Pte. Henderson G. E.

of West N.S.R. and in my opinion he is ——

fit to undergo Trial by Court Martial.

Station Yield

Date 14 Mar 44

"G.W. Wood, Maj., R.C.A.M.C."
Medical Officer

A

Army Form A 9

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at In the Field

on the 14 day of March 19 44 by order of

Brigadier T.G. Gibson

Commanding 3 Cdn Inf Bde

dated the 14 day of March 19 44

President

Major R.M. Horsey C & Y

Members

Capt. C.E. Taylor W.N.S.H.

Capt. G.C. Buerk R.C.A.F.C.

, ~~Judge Advocate~~

Trial of* A50471 Pte George Edgar Henderson
W.N.S.H.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that N/A is not available to serve owing to

N/A , waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. A.J.W. Dyer.

~~Counsel~~‡ or defending officer† Capt. C.B.C. Casbeau
W.N.S.H.

At 1105 o'clock the Trial commences.

The order convening the Court is read, and is marked A. , signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

[illegible] 1241 S. & H., Ltd. (A6771) Forms A9/2.

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Capt. H.C. Mitchell R.C.A.P.C.

Lieut. S.F. Mickerson M.N.S.R.

Charge-Sheet.

Instruction
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Question to the accused.

Not guilty.

Answer.

Are you guilty or not guilty of the second charge against you, which you have heard read?

Question.

N/A

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read?

Question.

N/A

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read?

Question.

N/A

Answer.

The accused having pleaded Guilty to N/A charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Instruction.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No Sir.

The prosecutor makes an opening address/hands in a written address which is read, marked , signed by the President, and attached to the proceedings.

The prosecutor proceeds to call witnesses.

First witness for prosecution. See record of evidence attached.

being duly sworn, is examined by the prosecutor.

The prosecution is closed.

Defence.

The accused advised of rights under R.P. 40.

Question to the accused. Do you apply to give evidence yourself as a witness ?

Answer. YES

Question. Do you intend to call any other witness in your defence ?

Answer. No.

Question. Is he a witness as to character only ? *Answer.* N/A

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence ?

Answer. The accused in his defence says†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused A50471 Pte George Edgar Henderson, W.N.S.R. not guilty of Desertion but guilty of absence without leave.

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Capt A.J.W. Dyer is duly sworn.

Question by the President. Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes. Documentary.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked C. A. D., signed by the President, and annexed to the proceedings.

Question by the President. Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes.

Question. Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes.

Cross-examined by the accused.

No.

[Instruction.—If in lieu of the notice of the service of the accused in a superseded corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment, as, e.g., where it has to be awarded by the Court the prosecutor should call the attention of the Court to the fact, and the Court should inquire into the nature and amount of the additional punishment.]

Question to the accused. Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

Pte. G.E. Henderson

Major Archibald being duly sworn:

On the 9 Dec 43 I was command. "A" Coy W.N.S.R. while we were stationed in Village of Rocca, At approx. 1030 hrs on date mentioned it was reported to me in Coy orderly room by No 9 Ptn "A" Coy, that Pte Henderson, G.E. was missing from his billets. The coy area was checked, also the R.A.F. But Pte. Henderson could not be located, the matter was then reported to Bn. HQ. Since that date Pte Henderson has not returned to "A" Coy, W.N.S.R.

No X exam.

Q. by Court --
Was Pte Henderson a member of "A" Coy.

Yes

Q- by Court--
I personally made a check of Coy area after being reported Pte Henderson missing

"R.M.H.

Capt R.V. Inman Being duly sworn:

Q. Prosecution:

I was acting Adjt at the time. I produce Certificate of Surrender -- Marked Ex A.

Q. Court:

I am on Posted strength W.N.S.R.

Accused advised of his rights under RR&C fn 2.

Pte Henderson being duly sworn states:

I joined this unit on Oct 8 1943, and was Posted to "A" Coy. At that time Capt. Smeltzer was in command "A" Coy. I asked for a transfer to "B" Coy and was told I would have to wait until we came to a rest area. We came to the rest area, and Capt. Smeltzer had been evacuated and Mr. Doane was temp. Coy Command. I again asked for a transfer and was refused, the Ptn. I was in the men were all from N.Scotia and seemed to resent my being in that Ptn. I stayed with that Ptn. until coming to Rocca, when I became disgusted with it, and left; during my absence, I had the opportunity of going to North Africa and also a chance to return; there were some of my friends there that I wished to see and with the chance of transportation I went. When I reached N.Africa, when I reached Kroupe, Algeria, I was told there that C.B.H.D. had been moved

"R.M.H."

to Italy, then the question of getting back. I proceeded to Bleda Airfield at Algiers to try and make a return trip to Italy. But could not make the ride. I also tried to make a ship across, I failed there so I done the only thing, I surrendered myself.

Q. Pros.

I come from the Province of Ontario.

Q. Pros.

The Pilot that I left from Taranto with was supposed to go to Tunis and then to Bleda, he was making regular trips between Bleda, Tunis, Italy. When I got to Bleda I couldn't locate him.

Q. Pros.

Did you ever serve with a Maritime unit previous to Oct 3,1943.

I was in C.B.H.D. with W.C.S.B.

Q. Pros.

What troubles did you have whilst at C.B.H.D.

None, sir.

X exam Def.

Why were you refused a transfer in "A" Coy.

A - I do not know.

X Exam Def -

When you arrived at Rocca you were fed up with "A" Coy. Did you ask to be paraded before the Coy Comr.

Answer -- No.

"R.M.H."

X. exam Def.

So you just went A.W.L. without trying to get the matter cleaned up.

Ans. Yes.

Re Exam. Q.

At the time you went absent was Mr. Doane your Coy. Command.

Ans. No.

Q. At this time was Mr. Doane still in the coy.

Ans. Yes, sir.

Q. It was Mr. Doane that refused your transfer.

Ans. Yes sir

Q. Court.

It was always my intention to return to W.M.S.R. as I had arranged with the Pilot of the Plane.

Summing up by Pros.

I think the charge 12(1)(a) that the Points being covered by the witnesses and that the Pros. has proven the accused guilty.

Summing up by Defence.

The accused is charged of Desertion but by the evidence taken down, there is no doubt in my mind that the accused fully intended to return to this unit. I submit to the Court the Plea that the accused be found not guilty.

"R.W.H."

RECORDED AT CMHQ IN AB 160 III-92

F36

Correspondence to be PINNED here.

CANADIAN SECTION
1 CDN CORPS
A REY SECTION
29 MAR 1944
G.H.Q. 2nd ECHELON

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twelfth day of March, 1944.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint xxxx
*(1. Three Officers to form the Court.)
*(2. A Field Officer as President.)
for the following reasons, namely:—]

PROCEEDINGS REVIEWED
W. C. Buck Lieut
28 Sept 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

70

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	H M Horsey	Cdn'l & York R

Members.

Rank.	Name.	Regiment.
Captain	C B Taylor	Fus [illegible]
Captain	G C Buck	R.C.R.C. [illegible] R
Waiting Lieut	S K Nickerson	Fus [illegible]

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed H.M. Horsey Brigadier
Commanding 3 Cdn Inf Bde
Convening Officer.

F36

2

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A50471 Pte George Edgar HENDERSON, Seaf HQR	First Charge Sec 12(1)(a)	Not Guilty.	Not Guilty of Desertion but Guilty of Absence without leave To be imprisoned without hard labor for 18 Months. 14 Mar 44 D.R.B. Storey Major	Confirmed Mar

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) [illegible] Brigadier (Signed) D.R.B. Storey Major
Commanding 3 Can Inf Bde
Convening Officer (e) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

3

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14 day of March 44, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. The officers under instruction)

*Omit if not applicable.

were duly sworn.

Signed this 14 day of March 1944

D.R.B. Storey Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 768 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this / day of / 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 16 day of Mar 1944.

[illegible] Brig
Confirming Officer.

Promulgated and extracts taken in the case of A50471 Pte George Edgar Henderson Seaf HQR.

(*a*) (Dated) 20 Mar 44 (Signed) [illegible] Capt. Actg Major A.A.G. M.S.D.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23079) W.4613-800 30 000 2-43 A.R.E.W.Ltd Gp.698

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at On the Field on the 14 day of March 1944 by order of Brigadier I. H. Gibson Commanding 3 Cdn. Inf. Bde. dated the 14 day of March 1944

President.

Major R. M. Storey C. I. C.

Members.

Capt. W. E. Taylor N.N.S.R.

Capt. H. C. Busk R.C.A.P.C.

, ~~Judge Advocate.~~

Trial of* A 50471 Pte George Edgar Henderson N.N.S.R.

The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

The Court satisfy themselves that N.A. is not available to serve owing to

N.A., waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. A. J. W. Dyer.

~~Counsel~~‡ or defending officer† Capt. L.O.L. Cochran N.N.S.R.

At 1105 o'clock the Trial commences.

The order convening the Court is read, and is marked A, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

20557. Wt.W4182/2021. 10,000 sets. 12/43. E. & H., Ltd. G657/11. Forms A9/2.

B

The President, members ~~and judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Capt. N. B. Mitchell R.C.A.P.C.
Lieut D. K. Hickerson W.N.S.R

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the ~~first~~ charge against you, which you have heard read? *Question to the accused.*

NOT GUILTY *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

N.A. *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

N.A. *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

N.A. *Answer.*

The accused having pleaded Guilty to N.A charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

B. 2.
D.S.H.

CHARGE SHEET

The Accused, A50471 Pte George Edgar HENDERSON, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, C.M.F., on Active Service, is charged with:-

1st CHARGE
Sec 12 (1) (a)
Army Act.

when on Active Service, DESERTING HIS MAJESTY'S SERVICE,

in that he,

in the Field, at approx 1030 hrs 9 Dec 43, did absent himself from the West Nova Scotia Regiment, until surrendering himself to the Military Police at ALGIERS at approx 2030 hrs 23 Jan 44. (Total time absent: 45 days 10 hrs).

In the Field
11 Mar 44

F.E. Hiltz
(F E Hiltz) Maj
T/Com West N S R.

TO BE TRIED BY FIELD GENERAL COURT/MARTIAL

In the Field

D.C. Gibson Brigadier,
Commanding 3 Can Inf Bde.

MEDICAL OFFICER'S CERTIFICATE

KR (CAN) PARA 557

I certify that I have this morning examined

No. A50471 Pte MacGregor G A

of West N S R and in my opinion he is

fit to undergo Trial by Court Martial

Station Trial

Date 14 Mar 44

Geo. W. Wood Maj RCAMC
Medical Officer

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No, Sir.

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. See record of evidence attached.

being duly sworn, is examined by the prosecutor.

D

The prosecution is closed.

Defence

The accused advised of rights under R.P. 40.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. YES,

Question. Do you intend to call any other witness in your defence?

Answer. NO.

Question. Is he a witness as to character only? *Answer.* N.A.

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused A. 5047 Pte. George Edgar Henderson, W.N.S.R, not guilty of desertion but guilty of absence without leave.

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

Proceedings on Conviction *before Sentence.*

*The Court being re-opened, the accused is again brought before it.

Capt & J. W. Dyer is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes Documentary

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked B & D, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* YES.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* YES

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* YES,

Cross-examined by the accused.

N. C.

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court requires that, in addition to any sentence of punishment to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* NO,

The Court is closed for the consideration of the sentence.

Pte. G.E. Henderson. 1

Major Archibald Being duly sworn.

On the 9 Dec. 43 I was commanding 'A' Coy W.O.S.R. while we were stationed in Village of Rocca. at about 1830 hrs on date mentioned it was reported to me in Coy orderly room by no 4 Plon. 'A' coy. that Pte Henderson G.E. was missing from his billet. The coy area was checked, also the R.A.P. But Pte Henderson could not be found. The matter was then reported to Bn. H.Q. Since that date Pte Henderson has not returned to 'A' coy. W.O.S.R.

nil x exam.

Q. by court -
was Pte Henderson a member of 'A' coy.

yes

Q. by court. -
I Personally made a check of coy area after being reported Pte Henderson missing.

Capt R. V. Gunnam Being duly sworn

Q. Prosecution.

I was acting adjt at the time. I produce Certificate of Surrender - Marked Ex A

Q. Court.

I am on Posted strength W.N.S.R.

Accused advised of his rights under RP 40 (a)

Pte Henderson being duly sworn states

I joined this unit on Oct 4 1943, and was Posted to "A" coy. at that time Capt. Gorrell was in command. A coy. I asked for a transfer to "D" coy, and received. I moved down in war until we come to a rest area we come in the rest area, and Capt. Smith was killed, was evacuated and and. Drane was Comd. coy command. I again asked for a transfer and was refused. the Plm. I was in the men were all from N. Scotia and I served in same coy being in that Plm. I stayed with that Plm until coming to Rocca, where I became disgusted with it, and left. during my absence, I had the opportunity of going to North Africa and also a chance to return, those who went to my friends there that I wished I went. when I reached N. Africa I was I reached Bougie, Algeria I was told there that C.B.R.D. had been moved

in Italy. Then the question of getting back I proceeded to Bleda airfield at algiers to try and make a return trip to Italy. Pant could not make the ride. I also tried to make a stop across. I landed there so I done the only thing. I surrendered myself.

Q- Pros
I come from the Province of Ontario.

Q. Pros.
The Pilot that I left from Toronto with was sent Pond to go to Tunis and then to Bleda. he was making regular trips between Bleda - Tunis, Italy. when I got to Bleda I couldn't locate him.

Q - Pros. Did you enlist same with a Canadian unit
I was in C.B.R.D. with W.N.S.R. October 3 - 1943

Q Pros. what troubles did you have whilst at C.B.R.D.

none sir.

X examn Q: why were you reposted a Trooper in "A" coy

A - I do not know.

X examn Q: when you arrived at Rocca did you ~~did you~~ you were fed up with A coy Did you ask to be Paraded before the coy comm. Detachment — no.

IV

Q. Accd. So you just went A.W.L. without trying to get the matter cleared up.

Ans. yes. —

R.e Accd Q. at the time you went absent was Mr. Doane your Coy. Commd.

Ans. no.

Q. at the time was Mr. Doane still in the coy.

Ans. yes sir.

Q. it was not Doane that Reported your Desertion.

Ans. yes sir —

Q. Accd.

I it was always my intention to return to WNGR as I had arranged with the Pilot of the Plane.

Summing up by Pros.

I think the charge 12(1)(a) that the Points him covered by the witnesses and that the Pros. has Proved the accused guilty.

Summing up by Defence.

The accused is charged of Desertion and the evidence shows, there is no doubt in any mind that the accused fully intended to return in this unit & submit himself to the court the Plea that the accused be found not guilty.

Sgd

DUPLICATE.

Certificate under Army Act section 163 (1) (d). EXHIBIT A.

I, CAPT G.N. JONES, certify that No.A.301.71. Pte. Henderson. G., of the Nova Scotia Regt., The Royal Canadian Army, surrendered himself to No. 6920912. Cpl. Tweed. W., at ALGINET on the 25th. Day of January 1944, as a deserter ~~or absentee without leave~~ at 2040 hrs

Signed..... Capt.

O.C. 227 Lt C Provost Coy.

Commanding Officer of the person or portion of His Majesty's Forces to whom surrender was made.

LIST OF WITNESSES in the case of: A-50471 Pte George Edgar Henderson
West Nova Scotia Regiment.

PROSECUTION:

Major D McG Archibald,	West NSR
Capt R.V. Inman	RCAPC

DEFENCE: Nil

LIST OF EXHIBITS: Certificate of Surrender under Section 163 (1) (j)

Statement by the accused as to a defending officer:

If I am to be tried by Court Martial on charges now pending against me, I wish to have W. Holloway to act in my behalf.

In the Field
6 Mar 44

G.E. Henderson
(Signature of Accused)

This is to certify that I, A50471 Pte. Henderson G.E. West NSR, have been given free of charge, a copy of the Summary of Evidence, Charge Sheet, documents, etc., relative to my trial by Court Martial.

In the Field
6 Mar 44

G.E. Henderson
(Signature of Accused)

SUMMARY OF EVIDENCE in the case of A-50471 Pte George Edgar HENDERSON , West Nova Scotia Regiment, a soldier of the Canadian Army Overseas,CMF , on Active Service.

By order of Major F E Hiltz , T/Com', West Nova Scotia Regiment.

Evidence taken on oath.

First Witness for Prosecution — Major D. MacG Archibald, Officer Commanding "A" Coy, West Nova Scotia Regiment, having been duly sworn states :-

On the 9 Dec 43 when my company was stationed in the village of ROCCA at approximately 1030 hrs., Sgt Kennedy of No 9 platoon reported to me that Pte Henderson was absent from his platoon area. The company and the Bn areas were then searched and Pte Henderson could not be found. I reported his absence to Bn HQ. To my knowledge Pte Henderson has never returned to the Company.

Signed [signature]

The accused declines to cross examine this witness

Second Witness for Prosecution — Capt R V Inman,RCAPC, having been duly sworn states :-

"I am Capt R V Inman,RCAPC, posted to West NSR, I am at the present time acting in the capacity of Adjutant, West NSR. I produce as evidence Certificate of Surrender under Section 163 (1) (j) Army Act , relating to the accused A-50471 Pte Henderson, G E.

Signed [signature]

The accused declines to cross examine this witness

The accused having been duly cautioned as follows :- "Do you wish to make any statement or to give evidence upon oath ? You are not obliged to say anything or to give evidence unless you wish to do so, but what ever you say or any evidence you give will be taken down in writing and may be given in evidence ", declines to make a statement or to give evidence on oath.

Certified that Rule of Procedure 4 (c) (d) (e) & (f) have been complied with.

Taken down by me, in the Field this 6th day of March 1944 in the presence and hearing of the accused.

In the Field
6 Mar 44

[signature] Capt
Officer taking Summary.

M.F.M. 6
(A.F. B.122)
40/P.& /9136 (2965)

Supplementary Sheet

No. A50471 Name Hen'erson, G E | Sqn., Battery, or Company | Corps | Date of enlistment | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				ORIGINAL NOT AVAILABLE.					
Certifie' true copy from the regime-tal books i- my custo'y									

Officer i/c Regt'l record's.

(P.T.O.)

"D"

A-50471 Rank Pte Name George Edgar Harmerson Regiment West Nova Scotia Regt

1. The following is a fair and true summary of the entries in the regimental Conduct Sheet of the Accused:

Within last 12 months Since Enlistment

Supplementary sheet - No MFM 6 available

No of instances of gallantry or distinguished conduct. Nil

The accused is NOT under sentence at the present time

The accused has been under Close Arrest awaiting trial on the present charge for 24 days of which 0 days were spent in Hospital.

The present age of the accused is 24 years

SCHEDULE

Of convictions by Court Martial, of a summary character under Sec 47 of the Army Act, and of cases in which trial has been dispensed with of accused, No. A 50471 Rank Pte Name Harmerson G E of the West Nova Scotia Regiment.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is true extract from the regimental books in my custody.

Signed this 6th day of March 1944

(Officer i/c Regtl records
West Nova Scotia Regiment)

The above statement with schedule of convictions and of cases in which trial has been dispensed with) is marked.....signed by the president, and annexed to the proceedings.

CC-14

PTE HENDERSON J.B.

COUNTER NUMBER 166843

HOUR 23:05

OPERATOR'S INITIALS [illegible]

RELIEVING OPERATOR GG

CC-14

PTE HENDERSON J.B.

CC-14

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. A2a

Order convening the Court

On Active Service, this 6th day of April, 19 43

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn Corps, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers [redacted] appointed or detailed hereunder;

* Omit if not applicable.

[redacted]

RECEIVED 16 APR 1943 Judge Advocate Gen. Corps

58

President.

Rank.	Name.	Regiment.
Major	F.B. Davey	44 Cdn Gen Tpt Coy, RCASC.

Members.

Rank.	Name.	Regiment.
Captain	Capt. J.L. Berridge	to be appointed by C.C. 1 Cdn M.A.C. RCASC.
Lieutenant	H.G. Finch	to be appointed by O.C. 45 Cdn Gen Tpt Coy, RCASC.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

Signed (H.D.G. Crerar) Lieut-Gen.
Commanding G.O.C. 1 Cdn Corps.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-26133 Private John Bellis HENDERSON, 1st Canadian Light A.A. Regt Pl, RCASC.	First Charge A.A.Sec 20(2) (as per charge sheet att)	Not Guilty	Not Guilty	CONFIRMED.
	Second Charge (Alternative) A.A.Sec 40 (As per charge sheet att)	Guilty	Guilty	
	Third Charge A.A. Sec 15(1) (As per charge sheet att)	Guilty	Guilty To undergo detention for 30 days W.H.S. Crerar Lieut-Gen. President. 10 April 1943	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No.

(Signed) W.H.S. Crerar (H.D.G. Crerar) Lieut-Gen. G.O.C. 1 Cdn Corps. — *Convening Officer* (*c*)

(Signed) W.H.S. Crerar Lieut-Gen. Cdr Can Tpt Gp — *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

1

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10 day of April 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) N/A.
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this 10 day of April 1943.

W.H.S. Crerar
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 792 M.M.L. 1920.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison until further orders.~~

Signed this 13TH. day of APRIL 1943.

W.H.S. Crerar
(H.D.G. Crerar) Lt.-General.
G.O.C. 1 Cdn Corps. *Confirming Officer.*

Promulgated and extracts taken in the case of D26133 Pte Henderson J.B. 1 Cdn Lt A.A. Regt R.C.A.S.C.

(*a*) (Dated) 16 Apr 43 (Signed) A.E. Potter Capt. i/c Admin 1st Light A.A. Regt. R.C.A.S.C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B-2

CHARGE SHEET

The accused, D.26133 Pte. John Bellis HENDERSON, 1st Cdn Lt. A.A. Regt. Pl. R.C.A.S.C., a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE — When on Active Service

Sec. 20 (2) Army Act

WILFULLY ALLOWING TO ESCAPE A PERSON COMMITTED TO HIS CHARGE

In that he, at Three Bridges Station, at 1630 hours on 30 May 43, when conducting A.42035 Pte. Gray Wesley FULSOM, 1st Cdn Lt. A.A. Regt Pl. R.C.A.S.C., a person committed to his charge, from Dental Parade, wilfully allowed the said person to escape.

SECOND CHARGE (ALTERNATIVE) Sec. 40 Army Act

When on Active Service

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he, in the field, on or about 30 May 43, when in charge of A.42035 Pte. Gray Wesley FULSOM, 1st Cdn Lt. A.A. Regt Pl. R.C.A.S.C., an escort with instructions to conduct the said Pte. FULSOM to Dental parade and return him to his unit, failed to do so, and did not return to the said unit until on or about 2 Apr 43.

THIRD CHARGE — When on Active Service

Sec. 15 (1) Army Act

ABSENTING HIMSELF WITHOUT LEAVE

In that he, at Three Bridges Station, at 1630 hours, on 30 Mar 43, did absent himself without leave, till volunterily reporting to his unit at 1130 hours, on 2 Apr 43.
(Total time absent - 2 days, 18 hours, 30 minutes.)

A.A. Stevens Captain,
Officer Commanding,
1st. Cdn Lt. A.A. Regt. Pl. R.C.A.S.C.

In the Field
5 April 1943.

To be tried by Field General Court-Martial.

(H.D.G. Crerar) Lieut-Gen.
G.O.C. 1 Cdn Corps.

In the Field,
6th April, 1943.

'G'

MEDICAL INSPECTION

.....10.April.1943..... Date

.1st..COM..Lt..A.A..Bde!t..Pl..S.C.A.S.C..
(UNIT)

Certificate of Medical Inspection

I hereby certify that I have examined D/26133 Pte. Henderson, J.B. this date and find him medically ..fit..... to undergo trial by Court-Martial.

R M Taylor Lt.

Signature of Medical Officer

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a First General Court-Martial held at Perth

on the 10 day of April 1943 by order of

Lieut Gen. H.D.G. Crerar.

Commanding 1 Can. Corps

dated the 6 day of April 1943

President.

Major F.B. Davey
44 Can Gen Tpt. Coy R.C.A.S.C.

Members.

Capt J.L. Berridge
1 Can M.A.C. R.C.A.S.C.

Lieut H.G. Finch
45 Can Gen Tpt. Coy R.C.A.S.C.

Trial of* D. 26133 Pte. John Bellen Henderson
1 Can. D.A.A. Regt Can. R.C.A.S.C.

, ~~Judge Advocate~~.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. A.W. Peters, 1 Can D.A.A. Regt. Can. R.C.A.S.C.

Counsel‡ or defending officer† Lt. R.G. Savage, 1 Can D.A.A. Regt Can. R.C.A.S.C.

At 1545 o'clock the Trial commences.

The order convening the Court is read, and is marked A2, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? Answer. No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. Wt.W16859/78. 35,000 sets. 8/42. K. & H., Ltd. G627/11. Forms A 9/50.

B

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 16 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Guilty. *Answer.*

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

The accused having pleaded Guilty to ~~the~~ second and third charges, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No

~~The prosecutor makes an opening address (hands in a written address which is read, marked ~~ , signed by the President, and attached to the proceedings.)~~

The prosecutor proceeds to call witnesses.

First witness for prosecution. D26294 L/Cpl. McKelvey, R.H.
1 Coy. Rt. A.A. Regt. Pl. R.C.A.S.C.

~~being~~ duly sworn, is examined by the prosecutor.

On 30 Mar-43 I was Orderly Cpl. I took the sick parade of 1 Coy Rt. A.A. Regt. Pl.

After all the personnel had seen the M.O. I was informed that Pte Fulsom had to go to the Dentist. I put Pte Henderson as his escort, as he also was attending the Dentist and I returned to Unit lines with the rest of the sick parade.

Q. Do you recall the exact words you used in detailing Pte Henderson as escort for Pte Fulsom.
A. I told him he would act as Pte Henderson's escort
Q. Did you tell him nothing more than that he would act as escort
A. No sir.
Q. Did you see the accused at any time following this order.
A. No sir.
Q. When did you see him again.
A. On 2 Apr 43.

Cross-examined

Q. If you did not instruct Pte Henderson as to his duties as escort, how did you expect him to carry them out.
A. I thought he would know his duties and be

responsible for him until he got back.

Q. Were you sure of this.
A. I just took it for granted.
Q. Was the escort armed
A. No sir.

No re-examination
R.P. 83(b) complied with

Second witness for Prosecution } A 44170 Pte Whaley, J. H. 1 Edn Lt. A A Regt Plm RCASC
having duly sworn is examined by the Prosecutor.

As driver of the duty lorry I took the sick parade on 30 March. The accused was sent to Dental Clinic and I was to pick him up at Three Bridges at about 1130 hrs. I went back and waited but they did not come until about 1230 hrs. I was told by the accused that they had to go back to the Clinic in the afternoon and to pick them up at 1630 hrs. I went back at 1630 hrs. and could not find them. I waited until about 1810 hrs and then reported back to my Plm.

No cross-examination
R.P. 83(b) complied with

Third witness for Prosecution } F 92799 Sgt. Hilditch, T. H., 1 Edn Lt A A Regt. Plm RCASC
having duly sworn, is examined by the Prosecutor.

On the 2 Apr. 43 at appox. 1100 hrs, as senior Sergeant of my Plm. I was called to the Office of my CO. On entering the Office I saw the accused, Pte Henderson. My C.O. told me that Pte Henderson was to be placed under arrest.

Q. Did you see accused come into camp.
A. No sir. I did not know he had returned until I saw him in the Office.

No cross-examination
R.P. 83(b) complied with.

D

The prosecution is closed.

Defence.

R. P. 40(A) Complied with.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes.

Question. Do you intend to call any other witness in your defence?

Answer. Yes

Question. Is he a witness as to character only? *Answer.* No

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. ~~Have you anything to say in your defence?~~ N/A.

Answer. ~~The accused in his defence says:†~~

~~[hands in a written address which is read, marked signed by the President and attached to the proceedings.]~~ N/A.

Instructions.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

First witness for Defence } Capt A W Peters a.c. 1 Cdn Lt A.A. Regt Pln RCASC being duly sworn, is examined by the Defence

At 1100 hrs on 2 Apr 43 the accused came to my office and reported that he was voluntarily giving himself up. I detailed my senior N.C.O. to place him under close arrest.

Q. Was Pte Fulsom with him when he returned.

A. Yes.

No cross-examination
A.R. 83(b) complied with

Second witness for Defence. } D 26133 Pte Henderson, J.B. 1 Cdn Lt A.A. Regt Pln R.C.A.S.C. being duly sworn is examined by the Defence

On the 30 March 43 I attended sick parade and was sent on to the Dental Clinic. L/Cpl McKelvie told me to go with Pte Fulsom as an escort. After we were through with the Dentist we went to Three Bridges where we were to be picked up by the lorry. We told the driver that we had to go to the Dentist again that afternoon.

My teeth were aching so badly that I thought if I had a couple of drinks it might ease the pain, but I fully intended to return to my unit when the lorry came to pick us up at 1630 hrs.

After having a couple of drinks, the next thing I knew, I was in Croydon and it was quite late at night.

When we realized what we had done we were too scared to come back and then we thought, over and decided that our charge was only getting worse the longer we stayed away and we didn't want to get picked up so we came back and reported in to our C.O.

Q. Were you suffering from toothache when you went to the Dentist

A. Yes. I had been suffering all night

Q. Do you think Cpl McKelvie was aware of this when he placed you in charge of Pte Fulsom.

A. I don't think so.

Cross-examined.

Q. Do you remember anything between the Pub in

Three Bridges and getting to Croydon.

A. No sir.

Question by the Court.

Q. Was the prisoner with you all the time you were away.

A. Yes sir.

No re-examination
RP 83 (b) complied with.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*~~[The Court having been reopened, the accused is again brought before it, and the charge~~ ~~to which he has pleaded "Guilty" are read to him again.]~~

The accused Pte. John Bellis Henderson, D 26133
is found guilty of the second and third charges.

†The summary (or abstract) of evidence is read, marked CC - 1 signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The Defending Officer for the accused in mitigation of punishment says:—

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~

Called attention to the clean record of the accused also to the fact that he returned voluntarily, with the prisoner still in his charge

Instructions.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Yes.

Answer.

Evidence as to character.

First witness as to Character } D 26092 Cpl Carter. J.L.J. 1 Can Lt A.A. Regt Plm R.C.A.S.C. being duly sworn, states -

I have known the accused for close to seven years. I went to school with him and have been in the army with him for the past two and a half years. Pte Henderson worked for me quite often. I found him to be very smart and a reliable soldier in carrying out his duties. He is not the type of man who is a perpetual drunker and I don't think he realized what he was doing when he committed this offence as I have never had any trouble with him as far as his duties are concerned.

No cross-examination
RP. 83(6) complied with

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused D 26133 Pte John Bellis Henderson, Not guilty of the first charge.

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Capt O. W. Peters, 1 Cdn Bde Asst Pte Staff is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E 1 & 2 signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

[Instruction.—If by reason of the nature of the service of the accused in a disciplinary corps or otherwise, the finding of the Court renders him liable to any consecutive punishment or set-off which he will be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Cross-examined by the accused.

No.

Question to the accused.

Do you wish to address the Court? *Answer.* ~~Yes~~ No 7/41.

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused D26133 Pte John Beecher Henderson, 1 Cdn Lt AA Regt. Pln. R.C.A.S.C. to undergo detention for thirty days. *Sentence.*

[signature]
President

CC-1

SUMMARY OF EVIDENCE

Summary of Evidence in the case of D/26133 Pte. Henderson, John. Mellis., 1st. Cdn. Lt. A.A. Reg't. Pl. R.C.A.S.C., a soldier of the Canadian Army Overseas.

By the direction of the Commanding Officer, Summary of Evidence is taken on oath.

First Witness for the Prosecution

D/26294 L/Cpl. McKelvey, R.H., of the 1st. Cdn. Lt. A.A. Reg't. Pl. R.C.A.S.C., a soldier of the Canadian Army Overseas having been duly sworn states:

I am D/26294 L/Cpl. McKelvey, R.H., of the 1st. Cdn. Lt. A.A. Reg't. Pl. R.C.A.S.C. On the 30 March 1943 I was acting as Orderly Corporal and at approximately 0800 hours that date I arrived at the 1st. Cdn. Lt. A.A. Regiment R.A.P. with the sick parade. After all sick personnel had been examined by the M.O. and we were about to return to our unit lines, I was informed that A/42077 Pte. Fulsom, . . . a prisoner awaiting committance to detention barracks, and who was on sick parade, had to go to the dentist. I then detailed the accused, who was also visiting the dentist, to act as Fulsoms escort. I then returned with the balance of my sick parade.

(Signed) R H McKelvey
D/26294 L/Cpl. McKelvey, R.H.

The accused declines to cross-examine this witness.

Second Witness for the prosecution

A/44170 Pte. Whaley, J.W., of the 1st. Cdn. Lt. A.A. Reg't. Pl. R.C.A.S.C., a soldier of the Can. Army Overseas having been duly sworn states:

I am A/44170 Pte. Whaley, J.W., of the 1st. Cdn. Lt.A.A. Reg't. Pl. R.C.A.S.C. I drive the 15 Cwt. lorry that takes sick personnel to the M.O's. parade daily. On the 30 March 1943 I drove to Three Bridges Station where I was to pick up the accused and his prisoner between 1130 hours and 1230 hours after completing their visit to the dentist; I met these two soldiers about 1230 hours and they informed me that as it was necessary for them to go to the dentist again that afternoon, I could pick them up at 1630 hours at the same place. I returned at 1630 hours and they were nowhere to be found.

(Signed) A/44170 Pte. Whaley J.W.

The accused declines to cross-examine this witness.

SUMMARY OF EVIDENCE (Continued)

Third Witness for the prosecution

F/92799 Sgt. Wilchie, T.H., of the 1st. Cdn. Lt. A.A. Reg't. Pl. R.C.A.S.C., a soldier of the Cdn. Army Overseas having been duly sworn states:

I am F/92799 Sgt. Wilchie, T.H., of the 1st. Cdn. Lt. A.A. Reg't. Pl. R.C.A.S.C. I am senior N.C.O. of this Platoon and on the 2 April 1943 at about 1100 hours I was ordered by the O.C. to Place the accused and his prisoner in close arrest, as they had just reported in to the O.C. on their own volition.

(Signed) T.H. Wilchie
F/92799 Sgt. Wilchie, T.H.

The accused declines to cross-examine this witness.

The accused was then cautioned as follows: Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence.

I certify that the foregoing summary of evidence was taken down by me, in the Field, this third day of April 1943, in the presence and hearing of the accused and that Rules of Procedure 4 has been complied with.

(Signed) [illegible] Capt., R.C.A.S.C.

Field
3 Apr 43

E-2

M.F.B. 355
22M—5-41 (372-3)
1M—1-42 (1772-99-620)
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-26133	Pte.	Henderson, John Bellis	Fl. R.C.A.S.C.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and Squadron, Battery ~~Conduct Sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For ~~Absent without leave~~	times	times
For ~~Sec. 40—Discharging a pistol without proper authority~~	times	times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ A.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 3 days in ~~Air Force~~ military custody, making a total of 3 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 20 years old

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 14 Jun 1940

7. The service which the accused is allowed to reckon towards discharge is 2 years 9 months

8. The accused is entitled to reckon 2 yr. 9 months service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held ~~Air Force~~ the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

dated , and in his regiment (or corps), the rank of

dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit Regiment Name of

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		N/A		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7th day of April 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

"Old sheet destroyed 21/11/42"

E-1

No. D/2613 Name Henderson, J.B. Sqn., Battery, or Company 32 Cdn. A.A. Bde. Coy., Corps R.C.A.S.C. Date of enlistment 14/6/40 G.C. Badges Service or Proficiency

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. Character Good

Place	Date of offence	Rank	Cases of drunken case	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19/7/42	Pte.	Nil	A.A.Sec.40 Discharging a pistol without proper authority	Capt. W.J. Baillie Lieut. E.A. Millard	14 days f.f. & forfeiture of pay 20/7/42	20/7/42	V.E. Morris Capt.	

Certified true copy of C.F.A.6 as held by this unit

for A/Lt. Colonel,
Officer Commanding,
1st. Cdn. A.A. Group, R.C.A.S.C.

Officer in Charge

(F.T.O.)

SR-145

Mr. Henderson, J. H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B18570 Pte Vernon Hudson Henderson R Regt C

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 41	Not Guilty	Not Guilty	The court, being satisfied of the
2nd AA 40(alt)	Guilty	Guilty	course, accept the plea of guilty
3rd			of the second charge, the concurrence
4th			of the convening authority being
5th			signified by the prosecutor.
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) (1) HCA

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 20 days, of which 00 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for two years and to be discharged with ignominy from His Majesty's Service.

(Sgd) " H A Hanson " Maj — Judge-Advocate, if any. — 20 Jun 45 — Date awarded. — (Sgd) " R B Dale Harris " Lt Col — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

HCA

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally, AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) HCA

(1. AA 57A. Delete if not used.)

(Sgd) " H C Arrell " Lt Col
(H C ARRELL)
Commanding 4 Cdn Inf Bde
Confirming Officer.

Date 21 Jun 45

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B18570 Pte Henderson V.H.	23 Jun 45	" G H James " Capt R Regt C

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Recorded at CMHQ in HB160 5P-195

FIELD GENERAL COURT-MARTIAL

(CPA66 (to take place of W.A.A.F. A.C.I. 40/P & B/1668 (40/10)) 4/38B

Convened by Order of Lt Col H C Arrell A/Comd 4 Cdn Inf Bde dated 14 Jun 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B18570	Pte		Vernon Hudson	HENDERSON	R Regt C

certified true copy
[illegible]
Capt
Cdn Sec 1 Echelon HQ 21 A Gp

PROCEEDINGS RECEIVED 30 Jun 45 Cdn Sec 1 Ech HQ 21 Army Gp. R.A.O.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) GERMANY on (date) 20 Jun 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 35/12

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fmn ROs. For guidance on procedure when a variation in this form arises, see Forms for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3) H

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1035 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) H
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ as interpreter? Ans ~~...~~
~~The Interpreter is sworn.(1) Do you object to~~ as shorthand writer? Ans ~~...~~ H
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt Col	R B Dale Harris	6 Cdn Fd Regt RCA
Member	Major	J W Free	Camerons of C
Member	Major	W J Hunstein	6 Cdn Fd Regt RCA
Judge-Advocate	Major	H A Hanson	HQ 2 Cdn Inf Div
Prosecutor	Lt	G H Aiken	R H L I
Defending Offr	Lt	W E C Colter	R R C

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ~~...~~ before arraignment make(s) (no) ~~(a)~~ plea H
(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to MoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. H

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & D H

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

Maj B MacKenzie Calg Highrs not available and his place taken by m. member

VOL V Fol 92.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusal to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E.
5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s).~~ Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para. If submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans.....Do you intend to call witnesses on your behalf?
Ans.....Are they witnesses as to character only? Ans.....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. Letter from Lt. T. B. Russell read by Def Offr.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes Def Offr.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to speak on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.) see attached

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182. *RP* 46-50, 68, 116, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas Rl* 309, 2312, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and dispersal of accused after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFICER'S CERTIFICATE

(KR(Can)Para 557)

I certify that I have this day examined B18570

Pte Henderson V.H. RRofC and in my opinion he is fit~~xxxxx~~ to undergo trial by Court Martial.

Station _____

Date _____

"L Banas" Capt (Sgd)
Medical Officer

Unit

RBDH

FIELD GENERAL COURT-MARTIAL

(FA 66 (In lieu of AFA 3)
40/FA3/1927 (2048)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B18570	Pte		Vernon Hudson	HENDERSON	R Regt C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 14 Jun 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial". HCA

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.) HCA

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. HCA

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ HCA

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

Lt col (*Rank.*) R B Dale Harris (*Must be named. RP 106.*) 6 Cdn Fd Regt RCA (*Unit.*)

MEMBERS.

Maj J W Free Camerons of C

Maj (*Rank.*) W J Hunstein (*Named or detailed. RP 106.*) 6 Cdn Fd Regt RCA (*Unit.*)

HCA

WAITING MEMBER.

Maj (*Rank.*) J W Free (*Named or detailed, if any. RP 106.*) Camerons of C (*Unit.*)

JUDGE-ADVOCATE.

Major (*Rank.*) R A Hanson (*Must be named, if any. RP 106.*) 2 Cdn Inf Div (*Unit.*)

On Active Service in the Fd

in Germany (*Country.*)

" H C Arrell " (*Signed personally. RP 105 fn 2.*) Lt Col (*Rank.*)

(H C ARRELL)

Date 14 Jun 45

A/Commanding 4 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

RBDH

RBDH

CHARGE SHEET

The accused B18570 Pte Vernon Hudson HENDERSON, 1 Bn The Royal Regt of Canada, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, RAPE.
AA Sec 41

in that he

in the Field in Germany, on the night of 22 May 45 had carnal knowledge of Katharine VEITH, without her consent.

SECOND CHARGE (alternative) — WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLIN
Sec 40

in that he

in the field, in Germany, on the night of 22 May 45 fraternized with Katherine VEITH, not his wife, an inhabitant of Germany.

" H W Caldwell " Maj

In the Field
13 Jun 45

(H W Caldwell) Maj
A/Comd 1 Bn R Regt C

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

" HE Arrell " Lt Col

In the Field
14 Jun 45

A/Comd - Cdn Inf Bde.

Approved for trial KR (Can) 540.

"H A Hanson" Maj
DJA 2 Cdn Inf Div

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B18570 Pte HENDERSON Vernon Hudson 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas:

The accused is informed of his rights.

FIRST WITNESS: For the prosecution

Katharine Veith, spinster, resident of Hohebarg 37, Germany.

A statement of this witness' evidence purporting to be signed by her has been read over to the accused and is inluded in this summary and is marked as Exhibit "A".

I certify that the attendance of this witness cannot be readily procured owing to the expense and loss of time involved. The accused does not demand the attendance of this witness for the purpose of cross-examination.

" P A Tooker "

(P A Tooker) Capt
Officer Detailed to Take Summary.

SECOND WITNESS: For the prosecution

Hinrich Veith, married, resident of Hohebarg 37, Germany.

A statement of this witness' evidence purporting to be signed by him has been read over to the accused and is included in this summary and is marked exhibit "B".

I certify that the attendance of this witness cannot be readily procured owing to the expense and loss of time involved. The accused does not demand the attendance of this witness for the purpose of cross-examination.

" P A Tooker "

(P A Tooker) Capt
Officer detailed to Take Summary.

THIRD WITNESS: For the prosecution

Therese Veith, married, resident of Hohebarg 37, Germany.

A statement of this witness' evidence purporting to be signed by her has been read over to the accused and is included in this summary and is marked as Exhibit "C".

I certify that the attendance of this witness cannot be readily procured owing to the expense and loss of time involved. The accused does not demand the attendance of this witness for the purpose of cross examination.

" P A Tooker "

(P A Tooker) Capt
Officer detailed to Take Summary.

FOURTH WITNESS: For the prosecution

Hilde Veith, spinster, resident of Hohebarg 37, Germany.

A statement of this witness' evidence purporting to be signed by her has been read over to the accused and is included in this summary and is marked as exhibit "D".

I certify that the attendance of this witness cannot be readily procured owing to the expense and loss of time involved. The accused does not demand the attendance of this witness for the purpose of cross-examination.

" P A Tooker "

(P A Tooker) Capt
Officer detailed to take Summary.

FIFTH WITNESS: For the prosecution.

M50853 L/Cpl Leger E.H. No2 Provost Coy, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am M50853 L/Cpl Leger E.H. No 2 Provost Coy, I certify that on an identification parade held at 1100 hrs on the 26 May 45, Katharine Veith identified the accused H18570 Pte Henderson V.H., whom I now recognize, as one of the men who raped her, in her home on the night of 22 May 45.

The accused declines to cross-examine this witness.

" E H Leger "

(E.H. Leger) L/Cpl.

SIXTH WITNESS: For the prosecution

Major R.D. Thompson, 13 Cdn Fd Hyg Sec, an officer of the Canadian Army Overseas.

A statement of this witness' evidence purporting to be signed by him has been read over to the accused and is included in this summary and is marked as Exhibit "G".

I certify that the attendance of this witness cannot be readily procured owing to the exigencies of the service and to the expense and loss of time involved. The accused does not demand the attendance of this witness for the purpose of cross-examination.

" P A Tooker "

(P A Tooker) Capt
Officer Detailed to Take Summary.

SEVENTH WITNESS: For the prosecution

Dr Thiesen, German Medical Officer with the rank of Capt.

A statement of this witness' evidence purporting to be signed by him has been read over to the accused and is included in this summary of and is marked as Exhibit "F".

I certify that the attendance of this witness cannot be readily procured owing to the expense and loss of time involved. The accused does not demand the attendance of this witness for the purpose of cross-examination.

" P A Tooker "

(P A Tooker) Capt
Officer Detailed to Take Summary.

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or to give evidence on oath, or to call witnesses on his behalf at this point.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C)(D)(E)(F) and (G) have been complied with.

" P A Tooker "

(P A Tooker) Capt
Officer Detailed to Take Summary.

In the Field
9 Jun 45

Exhibit "A"
" P A Tooker " Capt

26 May 45.

Copy of Evidence

Katharine VEITH, single, resident: Hohebarg 37, born 15 Feb 23 in Hohebarg.

At approx 2330 hrs 22 May 45 when I was sleeping in my bed I suddently heard a noise at the door that aroused me. My parents got up to open the door. I heard how somebody outside told my parents that the daughters (my sister and I) should get up and I got up. I went into the kitchen and there were five soldiers of which there were one Negro and four white men. One of them who said he was an American asked me to sit next to him and when I did it, he put his arm around my shoulder and asked me to kiss him. I refused. Then he asked me to go outside with him. Then I wanted to run away and ran outside. One of the white men followed me. He dragged me into the house into the corridor and shut the door. He and the Negro pointed the pistol at my chest and asked me if I was willing, yes or no and I said yes. I was greatly afraid. Then they took me into the bedroom and on the point of a pistol they forced me to undress. I cried: "Don't shoot! Don't shoot!" The Negro went out. The other man took off his jacket, opened his trousers, lay down iwth me in bed and ~~xxxxx~~ had sexual intercourse with me. When he had finished, the Negro came in and did the same. After nim came a whiteman and raped me. After this one came a fat one (the driver of the car, then came in) and then the American. They all raped me, one after the other. then came the one who raped me first and the Negro and raped me a second time.
Then they left the house. I stopped in the bed and told my parents weeping what had happened.

signed "Katharine Veith"

26 May 45

Copy of Evidence

Katharine Veith, single, resident: Hohebarg 37, born 15 Feb 23 in Hohebarg.

At 1100 hrs 26 May 45 an identification parade took place and I saw several soldiers of whom I identified two with certainty and I think to have identified one of the five soldiers who entered our house by force during the night of 22 May 45 and raped me. The two soldiers whom I identified with certainty raped me twice.

signed: " Katharine Veith "

I certify herewith that above statements were made to me in my presence and that this is a true translation from the German originals.

" F L Browning "

Sgt - Interpreter
13041490 Sgt. Int.
2nd Cdn Provost Coy
2nd Cdn Inf Div CAO.

CERTIFIED TRUE & CORRECT COPY OF ORIGINAL DOCUMENT IN MY POSSESSION:

" P A Tooker "

(P A Tooker) Capt
Officer detailed to take Summary.

Exhibit "B"
" P A Tooker " Capt

Copy of Evidence 26 May 45.

Hinrich VEITH, married, resident: Hohebarg 37, born 17 Dec 1883 in Ardorf.

At approx 2330 hrs 22 May 45 I was aroused by vehement knocking at the door. I got up and opened the door and five soldiers came in. In front was a Negro who carried a bottle of Schnaps (brandy) and a pistol in his hands. They came directly into the kitchen and put the bottle and the two pistols on the table. My wife with me when I opened the door. By request of the soldiers my two daughters got up and dressed. The electric light was on in the kitchen. The soldiers sat down in the kitchen and at their request I gave them glasses and at their request I drank with them. Then my wife had to get some eggs and they fried eggs on the stove. In the meantime my two daughters came into the kitchen and were very scared by the soldiers who handled their pistols and aimed at objects in the kitchen. They ate and listened to the wireless. Then I went out to look for the horses that were running free as they left the gate open, when they drove through it. It was too dark and I gave up after a few minutes and went back into the house. One of the soldiers a short dark haired one was outside with me. When I got back I noticed that two soldiers (one of them was the Negro) and my daughter Katharine were not there. I saw one soldier standing in front of the bedroom door. That and voices I heard I heard in the bedroom made me think that two soldiers and my daughter Katharine were in the bedroom. I heard her cry. I could not come to the aid of my daughter because I was afraid they would shoot us. Besides, they wanted me to go to bed, My daughter Hilde was sick with fear and went several times to the barn. Then I saw how the soldiers relieved each other in the bedroom.. There were only two or three soldiers in the kitchen at any time.
At approx 0130 hrs they all left the house without saying anything. When my daughter Katharine was two years old she fell down from the stairs and was injured on her head and as a consequence of that she remained an idiot. In 1941, she was sterilized in accordance with the German laws of that time because she is idiotic.

signed; "Hinrich Veith"

26 May 45

Copy of Evidence
Hinrich VEITH, married, resident: Hohebarg 37, born 17 Dec 1883 in Ardorf.

At 1100 hrs 26 May 45 an identification parade took place and I saw several soldiers af whom I identified three soldiers of these who during the night of 22 May 45 entered my house and I saw two of whom I think they were there.

signed "Hinrich Veith"

I certify herewith that above statements were made to me in my presence and that this is atrue translation from the German originals.

" P L Browning. "
13041490 Sgt - Intepreter
P.L. Browning
2nd Cdn Provost Coy
2nd Cdn Inf Div CAO.

CERTIFIED TRUE & CORRECT
COPY OF ORIGINAL DOCUMENT
IN MY POSSESSION:

" P A TOOKER "

(P A TOOKER) CAPT
Officer detailed to Take Summary.

EXHIBIT "C"
" P A Tooker " Capt

Copy of Evidence

26 May 45

Therese VEITH, married, resident: Hohebarg 37, born 3 Aug 1886 in Middege.

At approx 2330 hrs 22 May 45 when we all were already in bed asleep, I was woken up by vehemently knocking at the door. I sat up in bed and I could see a car through the opened bedroom door and the window opposite. Then my husband and I went to open the door. Five soldiers came in and I went quickly into the bedroom where my two daughters Katherine and Hilde were in bed. I advised them to stop in bed. When I was going back into the kitchen a soldier came out of it and said in broken German: "Girls get up!" The two girls got up and my daughter Hilde called out: "Mother, stay with me! I am so afraid!" I remained with her till she had dressed and went with her into the kitchen. There were five soldiers of whom two were blonde, two dark haried and one a Negro. They were in the kitchen, my husband, and my two daughters and I. The electric light was on and I could see two pistols lying on the table and two rifles were leaning against the wall. I sat down and put my arm protectingly around my daughter Hilde. Her whole body was shaking with fear and I did everything to protect her who is the youngest as I realized I could not protect both my daughters. The soldiers drank of the Schnaps (brandy) they had brought with them. Then Hilde was sick and I went into the barn with her. When I came back I saw Katherine and my other daughter sitting between two of the soldiers and I saw that they kissed her. After a few moments Hilde was sick again and I went out with her again. When I came again the one who could speak German asked want was the matter with Hilde and I said that she was ill. The Negro got up and felt her forehead and pulse and said in broken German "Not ill, only fear". Then he said something in Eglis and they all laughted. Then they wanted something to eat and I got some eggs, fat and a frying pan and they fried eggs. They ate and I had to go out with Hilde again and again. Once Katherine came with us but one of the soldiers stopped her and didnot let her go into the kitchen again. I told Hilde back into the kitchen and there were my husband and three soldiers. I heard voices from the bedroom and amongst them I recongised my daughters voice who cried "Dont shoot" Then they changed over in the bedroom and I saw that two of the soldiers were inside twice.
That went on till 0130 hrs., the next morning when they left without saying anything and drove off in the car I had seen previously. I then went into the bedroom and saw my daughter Katharine sitting in bed and weeping vehemently. The bed was all messed up and soiled and she had on a slip and pettycoat.
As a consequence of an accident she had when she was very young, my daughter Katharine is idiotic and in 1941 and she was sterilized according to the German laws of that time.

signed " Therese Veith"

26 May 45.

Copy of Evidence
Therese VEITH, married, resident: Hohebarg 37, born 3 Aug 1886 in Middege.

At 1100 hrs 26 May 45, I attended an identification parade and out of severl soldiers I identified three of the five soldiers who entered our house by force during the night of 22 May 45 with certainty and saw one who I think was there.

signed " Therese Veith "

I certify herewith that above statements were made to me in my presence and that this is a true translation from the German originals.

" F L Browning "
13041490-Sgt. - Interpreter
F.L. Browning
2nd Cdn Provost Coy
2nd Cdn Inf Div CAO.

CERTIFIED TRUE COPY OF
ORIGINAL DOCUMENT IN
MY POSSESSION

" P A Tooker "

(P A Tooker) Capt
Officer detailed to take Summary.

Exhibit "D"
" P A Tooker " Capt

26 May 45

Copy of Evidence
Hilde VEITH, single, resident: Hohebarg 37, born 30 Jun 31 in Hohesbarge.

At approx 2330 hrs 22 May 45 when I was sleeping in my bed I was aroused by a noise at the door. I got up and dressed and lay on the bed like that. Through the open door I could see five soldiers go into the kitchen. I was scared and just when I had made up my mind to run away through the window one of the soldiers came in and told me to come into the kitchand and drink (Schnaps) brandy with them. He spoke in broken German. I obeyed and went into the kitchen where all five soldiers were as well as my father and mother and my sister Katharine. I refused to drink. The electric light was on in the kitche and I saw two pistols lying on the table, one rifle standing by the kitchen door and one by the window. I was greaty scared. I sat down with my parents on the bench.
One of the soldiers, a blond-one, kissed my sister Katherine. I was then sick with fear and went with my mother into the barn. When I came back I heard voices in the bedroom and I heard my sister Katherine, who was in the bedroom as well cry: "Dont shoot". I went quickly into the kitchen and there were two soldiers and my mother and I sat down again. Shortly afterwards my father came into the kitchen, who was outside to see to the horses. Then I could see how the soldiers relieved each other in the bedroom till they had all had their turn in going inside, two or three went twice. They left then the house and drove off in an Allied army car. I went after my mother into the common bedroom and I saw Katherine who was in bed weeping vehemently.

signed " Hilde VEITH "

26 May 45

Copy of Evidence
Hilde VEITH, single, resident: Hohebarg 37, born 30 Jun 31 in Hohebarg.

At 1100 hrs 26 May 45 I attended an identification parade and saw several soldiers of whom I identified four with certainity of the soldiers who during the night of 22 May 45 I entered our house by force. I saw one soldier who I thin took part in it.

signed " Hilde Veith "

I certify herewith that above statements were made to me in my presence and that this is a true translation from the German originals.

" F L Browning "
13041490 Sgt - Interpreter.
F.L. Browning
2nd Cdn Provost Coy
2nd Cdn Inf Div CAO

CERTIFIED CORRECT AND TRUE
COPY OF ORIGINAL DOCUMENT
IN MY POSSESSION:

" P A Tooker "

(P A TOOKER) CAPT
Officer Detailed to Take Summary.

EXHIBIT "E"

" P A TOOKER " CAPT

13 Cdn Fd Hygiene Section
R.C.A.M.C.

13 Hyg 10-1-3
26 May 45

A.D.M.S.
2 Cdn Inf Div

PHYSICAL EXAMINATIONS
Alleged rape case.

Veith Katharine
Date of birth 15-2-23

1. The a/m German girl who was allegedly raped refused to be medically examined by the undersigned in the presence of Capt Weinstock and a German nursing sister. She also refused to be examined by a German Medical Officer (Dr Thiessen Capt)

" R D Thompson " Major

(R D Thompson) Major RCAMC
V.D. Control Officer
for O.C. 13 Cdn Fd Hyg Sec.

CERTIFIED TRUE CORRECT COPY OF
ORIGINAL DOCUMENT IN MY POSSESSION

" PA Tooker "

(PA TOOKER) CAPT
Officer detailed to take Summary.

EXHIBIT "F"
" P A Tooker " Capt
26 May 45

Copy of Evidence

Miss Katharine Veith (VEITH) born 15 Feb 25, resident at Hohebarg was introduced to me for a medical examination. It is the case of a state after alleged rape by 5 (five) Canadian soldiers. In the presence of Major (DR.) Thompson and Capt Weinstock she refused twice to be examined. When I visted the family in commpay of Sgt Browning and L/Cpl Leger she could be persuaded by her mother to consent to a medical examination.
I found an old, vertical scar on the lower part of her body originating from the sterilization 4 years ago. (She is an idiot). There was no trace of any injury externally.

signed Dr. Thisen (THIESEN)
Stabsarzt (MO with the rank of Captain)

I certify herewith that this is a true translation from the German original.

" F L Browning "
13041490 Sgt - Interpreter
F.L. Browning
2nd Cdn Provost Coy
2nd Cdn Inf Div CAO.

CERTIFIED TRUE & CORRECT COPY OF
ORIGINAL DOCUMENT IN MY POSSESSION

" P A TOOKER "

(P A TOOKER) CAPT
OFFICER DETAILED TO TAKE SUMMARY

17 June 1945

This is to state that Privat Henderson V.H. B18570 was competent and reliable in the discharge of duties, both in and out of action, and has always tried to carry out the tasks, asked of him in a soldierly way.

" L B Russell " Lt.
Pl Comdr #9 PL.
Royal Regt of Can.

STATEMENT IN MITIGATION ON FRATERNIZATION CHARGE

PTE HENDERSON

The accused B1857 Pte Henderson V.H. is 24 years of age - he joined the Cdn Army Active in Sept 41, came overseas in Jan 1942, and came into action in the European operational zone as an infantryman on 6 Jul 1944 and has been in action ever since.

In this case, it is submitted that the court must put out of its mind any reference to sexual intercourse, in the summary of evidence, was much as the statement to that effect was made by a person already found incompetent of giving evidence, so that on a plea of not guilty no reference to intercourse could have been placed before the court. The only facts to which the accused is pleading guilty are those which place him for a couple of hours in a German household, whether he had gone to procure eggs, during which time he drank some schnapps and fried some eggs. It is submitted that these facts can hardly be said to disclose a very serious charge of the non fraternization order.

Having served in the Cdn Army for over 3½ years a considerable portion of which was served overseas without a single serious offence, we now find the accused, as the result of a few minutes indiscretion, in a portion where he is liable to punishment for having been friendly with certain members of the local German civilian population. It is a well known fact that the Cdn soldier, is instinctively friendly, and the mere publication of an order, with its incidental sanctions, cannot be expected to change his nature overnight, Rather the effect of the order is to punish the soldier, who has risked his lefe for his country, for following his hereditary inclinations, not to punish the people who are responsible for his having to be in this country in the first place. No mere regulations can quench the naturally gregarious Cdn spirit and that fact is so well recognized that the non frat order has recently been modified so that fraternization with German children is no longer a contravention of it. It is generally accepted that this is only the first of a series of modifications in the order. It is also generally recognised that the Russian & Polish troops are not expected by their superiors to adhere to the letter of the non frat law. They have even gone so far as to authorize German - Russian football matches - the British papers have taken up the matter strongly, and accordingly it is probably only a matter of time until the orders will be altered to permit considerable latitude in connection with familiarity with German citizens. Were it not for the non frat order, the accused would stand completely discharged. It is submitted that it would be scandalous if the accused were, at some future time, to be undergoing a protrated sentence of imprisonment when, due to alterations in the non frat order, other soldiers were doing with impunity the same acts of which the accused is now pleading guilty.

Finally, the accused is very young - he is not a criminal in the accepted sense of the word and his army record discloses only a few minor offences. He has already spent 20 days in custody. Accordingly I would urge the court to bear in mind the words of MML P 60, "In deliberating on their sentence, a court martial should remember that the object of awarding punishment is the maintenance of discipline and that the proper amount of punishmentto be inflicted is the least amount by which discipline can efficiently be maintained."

E3

The J.A. advises the Def Offr that he now has the opportunity to call any witness to prove matters alleged in mitigation. The Def Offr said he understood this and declined.

Exhibit "B" RHDH

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Court-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
B18570	Pte	HENDERSON V.H.	1 R Regt C

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, pre-eminence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

m Strike out if not applicable

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court-martial or a civil court:-

For Sec.9(2).Army.Act..... ...1... times

For Sec.15(1)Army.Act..... ...9... times

For .... times

For .... times

2. Previous convictions of the Accused by a court martial or a civil court are set out in the Schedule overleaf.

3.m ~~xxxx

Exhibit "B" RBDH

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Court-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
...B18570...	Pte	HENDERSON V.H.	1 R Regt C

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, precedence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

* Strike out if not applicable

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For Reg.9(2).Army.Act ....1... times

For Reg.15(1)Army.Act ....2... times

For .... times

For .... times

2. Previous convictions of the accused by a court martial or civil court are set out in the Schedule overleaf.

3.* ~~xxxx

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended

NIL

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 20th day of June 45

" A C Gillespie "

(A C Gillespie) Lt
OFFICER IC RECORDS 1 R Regt C

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B185/0 Pte Vernon Hudson Hendersen R Regt C.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	As 41	Not guilty	Not guilty
2nd	As 40(alt)	Guilty	Guilty
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

Sen cumr, being satisfies of the jurisdiction of the courts, and on the plea of guilty & the same charge, the concurrence of the remaining authority being signified by the president

Nil At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296?)

Time in confinement awaiting present trial—a total of 20 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : To be imprisoned with hard labour for two years and to be dismissed with ignominy from His Majesty's Forces.

(Sgd) [illegible] Maj. — Judge-Advocate, if any. — 26 Jun 45 — Date awarded. — (Sgd) RB Dale Harris — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Nil

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 371(D) fn 6.466(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 57, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

Nil ~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

Date 21 Jun 45 — (Sgd) (HC ARRELL) — A/Commanding 4 Cdn Inf Bde — Confirming Officer.

Pte

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B 185/0 Pte Henderson VH	23 Jan 45	[illegible] Capt R Regt C

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 8 JUL 1945 CMHQ

RECORDED AT CMHQ IN AD 160 5P 145

CPA96 (12) 1661 — AFAH 407/1 & B/1698

FIELD GENERAL COURT-MARTIAL

4388

Convened by LT COL H C ARRELL A/Comd 4 CDN INF BDE dated 14 Jun 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B18570			Vernon Hudson	HENDERSON	R Regt C

PROCEEDINGS REVIEWED 6 July 45 [illegible] Capt. WITNESS

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED DJAG 21 Army Gp Cdn Sec

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) GERMANY on (date(s)) 26 Jun 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes", as to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3) Nil

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1035 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2) Nil

(1. KR Can 557. 2. AA 46(6), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to ..... as interpreter ? Ans .....~~ Nil

~~The interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt Col	RB Dale Harris	6 Can Fd Regt RCA
Member	Maj	FW Free	Canadian Y.C.
Member	Maj	W.S. Kennedy	6 Can Fd Regt RCA
Judge-Advocate	Maj	[illegible]	HQ 4 Can Inf Bde
Prosecutor	Lt	C H Aitken	RHQ 1
Defending Offr	Lt	N S C Wilde	ARC

Questions by President : Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 1 were not followed. See D/ p 2.)

A8. The accused ..... before arraignment make(s) (no) ~~no~~ plea. (1) Nil

(1. If a special plea is made for separate trial on one or more charges (RP 62(C), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or on bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

Nil

A9. The accused is (~~not~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule. Nil

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B1.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

~~I may have a re-assignment by reasons not available and to plead~~ taken by us Members.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No.(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part 1 of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the pleas of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para. If submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 42 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character on oath, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CA A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part 1 of the Schedule is dated and signed.(2)

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(7), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans Letter from CO TB Bn read by Offr.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldiers having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *AFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes (Ref Offr).(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*) See attached

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 809, 1323, RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 809, 1323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

TO WHOM IT MAY CONCERN

DATE 10 June 45

This is to certify that I have this date examine B 18570
(regt'l no)

Pte. Henderson V.H. of R.R. of C. and found him fit/~~unfit~~ to

undergo trial by Court Martial.

L. Sauvé, Capt
RCAMC

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apprnt, A/R or A/Apprnt	Full Christian Names.	Surname.	Unit.
B18570	Pte		Vernon Hudson	HENDERSON	R Regt C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 14 Jun 45 endorsed by me, [redacted], "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [redacted]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lt Col (Rank.)	R B Dale-Harris (Must be named. RP 106.)	6 Cdn Fd Regt, RCA (Unit.)

MEMBERS.

Maj	J W Free	Camerons of C
Maj (Rank.)	W J Hunstein (Named or detailed. RP 106.)	6 Cdn Fd Regt RCA (Unit.)

WAITING MEMBER.

Maj (Rank.)	J W Free (Named or detailed, if any. RP 106.)	Camerons of C (Unit.)

JUDGE-ADVOCATE.

Major (Rank.)	H A Hanson (Must be named, if any. RP 106.)	2 Cdn Inf Div (Unit.)

On Active Service in the Fd

in GERMANY (Country.)

(H C ARRELL) (Signed personally. RP 105 fn 2.)

LT COL (Rank.)

Dat 14 Jun 45

A/Commanding 4 CDN INF BDE

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 90 (In lieu of AFA 3) 4C/P & E/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused, No B18570 Pte Vernon Hudson HENDERSON, 1 Bn the Royal Regt of Canada, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
AA Sec 41

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY RAPE

in that he

in the Field, in GERMANY, on the night of 22 May 45 had carnal knowledge of Katharine VEITH, without her consent.

SECOND CHARGE
(alternative)
AA sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, in GERMANY, on the night of 22 May 45 fraternized with Katharine VEITH, not his wife, an inhabitant of GERMANY.

IN THE FIELD
13 Jun 45

(H W Caldwell) Maj
A/Comd - 1 Bn R Regt C

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

IN THE FIELD
14 Jun 45

A/Comd - 4 Cdn Inf Bde

approve for trial
KR (Ad) SAC
Nothing maj
Yes I can try as
RJM

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No B-1357 Pte HENDERSON, Vernon Hudson, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas; 4

The accused is informed of his rights.

FIRST WITNESS Katharine Veith, spinster, resident of Hohebarg 37, Germany.

For the Prosecution

A statement of this witness' evidence purporting to be signed by her has been read over to the accused and is included in this summary and is marked as Exhibit "A."

I certify that the attendance of this witness cannot be readily procured owing to the expense and loss of time involved. The accused does not demand the attendance of this witness for the purpose of cross-examination.

(P.A. Tooker) Capt,
Officer Detailed to Take Summary.

SECOND WITNESS Hinrich Veith, married, resident of Hohebarg 37, Germany.

For the Prosecution

A statement of this witness' evidence purporting to be signed by him has been read over to the accused and is included in this summary and is marked as Exhibit "B."

I certify that the attendance of this witness cannot be readily procured owing to the expense and loss of time involved. The accused does not demand the attendance of this witness for the purpose of cross-examination.

(P.A. Tooker) Capt,
Officer Detailed to Take Summary.

THIRD WITNESS Therese Veith, married, resident of Hohebarg 37, Germany.

For the Prosecution

A statement of this witness' evidence purporting to be signed by her has been read over to the accused and is included in this summary and is marked as Exhibit "C."

I certify that the attendance of this witness cannot be readily procured owing to the expense and loss of time involved. The accused does not demand the attendance of this witness for the purpose of cross-examination.

(P.A. Tooker) Capt,
Officer Detailed to Take Summary.

FOURTH WITNESS Hilde Veith, spinster, resident of Hohebarg 37, Germany.

For the Prosecution

A statement of this witness' evidence purporting to be signed by her has been read over to the accused and is included in this summary and is marked as Exhibit "D."

I certify that the attendance of this witness cannot be readily procured owing to the expense and loss of time involved. The accused does not demand the attendance of this witness for the purpose of cross-examination.

(P.A. Tooker) Capt,
Officer Detailed to Take Summary.

FIFTH WITNESS M-50853 L/Cpl Leger, E.H., No 2 Provost Coy, a soldier of the Canadian Army Overseas, having been duly sworn, states:

For the Prosecution I am M-50853 L/Cpl Leger, E.H., No 2 Provost Coy. I certify that on an indentification parade held at 1100 hrs on the 26 May 45 Katharine Veith identified the accused, No B-18570 Pte Henderson, V.R. whom I now recognize, as one of the men who raped her, in her home on the night of 22 May 45.

The accused declines to cross-examine this witness.

E H Leger
(E.H. Leger) L/Cpl.

SIXTH WITNESS Major R.D. Thompson, 13 Cdn Fd Hyg Sec, an officer of the Canadian Army Overseas.

For the Prosecution A statement of this witness' evidence purporting to be signed by him has been read over to the accused and is included in this summary and is marked as Exhibit "E."

I certify that the attendance of this witness cannot be readily procured owing to the exigencies of the service and to the expense and loss of time involved. The accused does not demand the attendance of this witness for the purpose of cross-examination.

P A Tooker
(P.A. Tooker) Capt,
Officer Detailed to Take Summary.

SEVENTH WITNESS Dr Thiessen, German Medical Officer with the rank of Capt.

For the Prosecution A statement of this witness' evidence purporting to be signed by him has been read over to the accused and is included in this summary and is marked as Exhibit "F."

I certify that the attendance of this witness cannot be readily procured owing to the expense and loss of time involved. The accused does not demand the attendance of this witness for the purpose of cross-examination.

P A Tooker
(P.A. Tooker) Capt,
Officer Detailed to Take Summary.

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or to give evidence on oath, or to call witnesses on his behalf at this point.

I certify that the foregoing Summary of Evidence, consisting of TWO pages, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

P A Tooker
(P.A. Tooker) Capt,
Officer Detailed to Take Summary.

IN THE FIELD
9 Jun 45.

EXHIBIT "A"

.....P.A. Tooker. Capt.....

26 May 45.

Copy of evidence.
Katharine VEITH, single, resident: Hohsberg 37, born 15 Feb 23 in Hohsberg.

At approx. 2330 hrs., 22 May 45 when I was sleeping in my bed I suddenly heard a noise at the door that aroused me. My parents got up to open the door. I heard how somebody outside told my parents that the daughters (my sister and I) should get up and I got up. I went into the kitchen and there were five soldiers of which there were one Negro and four White men. One of them who said he was an American asked me to sit next to him and when I did it, he put his arm around my shoulder and asked me to kiss him. I refused. Then he asked me to go outside with him. Then I wanted to run away and ran outside. One of the Whitemen followed me. He dragged me into the house into the corridor and shut the door. He and the Negro pointed the pistol at my chest and asked me if I was willing, yes or no and I said yes. I was greatly afraid. Then they took me into the bedroom and on the point of a pistol they forced me to undress. I cried: "Don't shot! Don't shoot!" The Negro went out. The other man took off his jacket, opened his trousers, lay down with me in bed and had sexual intercourse with me. And when he had finished, the Negro came in and did the same. After him came a Whiteman and raped me. After this-one came a fat-one (the driver of the car, they came in) and then the American. They all raped me, one after the other. Then came the one who raped me first and the Negro and raped me a second time.
Then they left the house. I stopped in the bed and told my parents weeping what had happened.

signed: Katharine Veith.

26 May 45.

Copy of evidence.
Katharine VEITH, single, resident: Hohsberg 37, born 15 Feb 23 in Hohsberg.

At 1100 hrs, 26 May 45 an identification parade took place and I saw several soldiers of whom I identified two with certainty and I think to have identified one of the five soldierz who entered our house by force during the night of 22 May 45 and raped me. The two soldiers whom I identified with certainty raped me twice.

signed: Katharine Veith.

I certify herewith that above statements were made to me in my presence and that this is a true translations from the German originals.

(sgd). F.L. Browning.....
Sgt. - Interpreter,
13041490, Sgt. Int.
F.L. Browning.
2nd Cdn. Provost Coy.
2nd. Cdn. Inf. Div. CAO.

CERTIFIED TRUE & CORRECT COPY OF
ORIGINAL DOCUMENT IN MY POSSESSION:

.....P.A. Tooker.....
(P.A. Tooker) Capt,
Officer Detailed to Take Summary.

EXHIBIT "B"

.....P.A. Tooker Capt....

26 May 45

Copy of evidence.

Hinrich VEITH, married, resident: Hohebarg 37, born 17 Dec 1883 in Ardorf.

At approx. 2330 hrs., 22 May 45 I was aroused by vehement knocking at the door. I got up and opened the door and five soldiers came in. In front was a Negro who carried a bottle of Schnaps (brandy) and a pistol in his hands. They came directly into the kitchen the door. My request of the soldiers my two daughters got up and dressed. and put the bottle and the two pistols on the table. My wife was with me when I opened The electric light was on in the kitchen. The soldiers sat down in the kitchen and at their request I drank with them. Then my wife had to get some eggs and they fried eggs on the stove. In the meantime my two daughters came into the kitchen and were very scared by the soldiers who handled their pistols and aimed at objects in the kitchen. Then I went out to look for the horses that were running free as they left the gate open when they drove through it. It was too dark and I gave up after a few minutes and went back into the house. One of the soldiers, a short, dark-haired one was outside with me. When I got back I noticed that the soldiers (one of them was the Negro) and my daughter Katharine were not there. I saw one soldier standing in front of the bedroom door. That and voices I heard I heard in the bedroom made me think that two soldiers and my daughter Katharine were in the bedroom. I heard her cry. I could not come to the aid of my daughter because I was afraid they would shoot me. Besides, they wanted me to go to bed. My daughter Hilde was sick with fear and went several times to the barn. Then I saw how the soldiers relieved each other in the bedroom. There were only two or three soldiers in the kitchen at any time.

At approx. 0130 hrs. they all left the house without saying anything.

When my daughter Katharine was two years old she fell down from the stairs and was injured on her head and as a consequence of that she remained an idiot. In 1942 she was sterilized in accordance with the German laws of that time because she is idiotic.

signed: Hinrich Veith.

26 May 45

Copy of evidence:

Hinrich VEITH, married, resident: Hohebarg 37, born 17 Dec 1883 in Ardorf.

At 1100 hrs, 26 May by an identification parade took place and I saw several soldiers of whom I identified three soldiers of those who during the night of 22 May 45 entered my house by force and I saw two of whom I think they were there.

signed: Hinrich Veith.

I certify herewith that above statements were made to me in my presence and that this is a true translation from the German originals.

(sgd). F.L. Browning.....
1300Hrs0 Sgt. - Interpreter.
F.L. Browning
2nd. Cdn. Provost Coy.
2nd. Cdn. Inf Div. CMP.

CERTIFIED TRUE & CORRECT COPY OF
ORIGINAL DOCUMENT IN MY POSSESSION:

.....P.A. Tooker.....
(P.A. Tooker) Capt,
Officer Detailed to Take Summary.

EXHIBIT "C"

P.A. Tooker Capt.

26 May 45

Copy of evidence.
Therese VEITH, married, resident: Hebebers 37, born 3 Aug 1886 in Middege.

At approx. 2330 hrs., 22 May 45 when we all were already in bed asleep, I was woken up by vehemently knocking at the door. I sat up in bed and I could see a car through the opened bedroom door and the window opposite. Then my husband and I went to open the door. Five soldiers came in and I went quickly into the bedroom where my two daughters Katherine and Hilde were in bed. I advised them to stop in bed. When I was going back into the kitchen a soldier came out of it and said in broken German: "Girls get up!" The two girls got up and my daughter Hilde called out: "Mother, stay with me! I am so afraid!" I remained with her till she had dressed and went with her into the kitchen.
There were five soldiers of whom two were blonde, two dark-haired and one a Negro. They were in the kitchen: my husband, my two daughters and I. The electric light was on and I could see two pistols lying on the table and two rifles were leaning against the wall. I sat down and put my arm protectingly around my daughter Hilde. Her whole body was shaking with fear and I did everything to protect her who is the youngest as I realised I could not protect both my daughters. The soldiers drank of the Schnaps (brandy) they had brought with them. Then Hilde was sick and I went into the barn with her. When I came back I saw Katherine my other daughter sitting between two of the soldiers and I saw that they kissed her. After a few moments Hilde was sick again and I went out with her again. When I came back again the one who could speak German asked what was the matter with Hilde and I said that she was ill. The Negro got up and felt her forehead and pulse and said in broken German: "Not ill, only fear." Then he said something in English and they all laughed. Then they wanted something to eat and I got some eggs, fat and a frying pan and they fried eggs. They ate and I had to go out with Hilde again and again. Once Katherine came with us but one of the soldiers stopped her and didnot let her go into the kitchen again. I told Hilde back into the kitchen and there were my husband and three soldiers. I heard voices from the bedroom and amongst them I recognised my daughter's voice who cried: "Don't shoot!" Then they changed over in the bedroom and I saw that two of the soldiers were inside twice.
That went on till 0130 hrs., the next morning when they left without saying anything and drove off in the car I had seen previously. I then went into the bedroom and saw my daughter Katherine sitting in bed and weeping vehemently. The bed was all messed up and soiled and she had on a slip and pettycoat.
As a consequence of an accident she had when she was very young my daughter Katherine is idiotic and in 1941 she was sterilized according to the German laws of that time.

signed: Therese Veith.

26 May 45.

Copy of evidence.
Therese VEITH, married, resident: Hebebers 37, born 3 Aug 1886 in Middege.

At 1100 hrs., 26 May 45, I attended an identification parade and out of several soldiers I identified three of the five soldiers who entered our house by force during the night of 22 May 45 with certainty and saw one who I think was there.

signed: Therese Veith.

I certify herewith that above statements were made to me in my presence and that this is a true translation from the German originals.

(sgd). I.I. Provine.....
13044490, Sgt. - Interpreter.
P.L. Fleming
2nd. Cdn. Provost Coy.
2nd. Cdn. Inf. Div. CAO

CERTIFIED TRUE & CORRECT COPY OF
ORIGINAL DOCUMENT IN MY POSSESSION:

P.A. Tooker
(P.A. Tooker) Capt,
Officer Detailed to Take Summary.

EXHIBIT "D"

P.A. Tooker Capt

26 May 45

Copy of evidence.
Hilde VEITH, single, resident: Hehebarg 37, born 30 Jun 31 in Hehebarg.

At approx. 2330 hrs, 22 May 45 when I was sleeping in my bed I was aroused by a noise at the door. I got up and dressed and lay on the bed like that. Through the open bed room door I could see five soldiers go into the kitchen. I was scared and just when I had made up my mind to run away through the window one of the soldiers came in and told me to come into the kitchen and drink (Schnaps) brandy with them. He spoke in broken German. I obeyed and went into the kitchen where all five soldiers were as well as my father and mother and my sister Katharine. I refused to drink. The electric light was on in the kitchen and I saw two pistols lying on the table, one rifle standing by the kitchen door and one by the window. I was greatly scared. I sat down with my parents on the bench.
One of the soldiers, a blond-one, kissed my sister Katherine. I was then sick with fear and went with my mother into the barn. When I came back I heard voices in the bedroom and I heard my sister Katherine, who was in the bedroom as well, cry: "Don't shoot!" I went quickly into the kitchen and there were two soldiers and my mother and I sat down again. Shortly afterwards my father came into the kitchen who was outside to see to the horses. Then I could see how the soldiers relieved each other in the bedroom till they all had had their turn in going inside, two or three went twice.
They left then the house and drove off in an Allied army car. I went after my mother into the common bedroom and I saw Katherine who was in bed weeping vehemently.

signed: Hilde Veith.

26 May 45

Copy of evidence.
Hilde VEITH, single, resident: Hehebarg 37, born 30 Jun 31 in Hehebarg.

At 1100 hrs., 26 May 45, I attended an identification parade and saw several soldiers of whom I identified four with certainty of the soldiers who during the night of 22 May 45 entered our house by force. I saw one soldier who I think took part in it.

signed: Hilde Veith.

I certify herewith that above statements were made to me in my presence and that this is a true translation from the German originals.

....(sgd). F.L. Browning.....
1304890 Sgt. - Interpreter.
F.L. Browning.
2nd. Cdn. Provost Coy.
2nd. Cdn. Inf. Div. CAO

CERTIFIED TRUE & CORRECT COPY OF
ORIGINAL DOCUMENT IN MY POSSESSION:

P.A. Tooker

(P.A. Tooker) Capt,
Officer Detailed to Take Summary.

EXHIBIT "E"

P.A. Tooker Capt.

13 Cdn Fd Hygiene Section
R.C.A.M.C.

13 Hyg 10-1-3
26 May 45

A.D.M.S.
2 Cdn Inf Div

PHYSICAL EXAMINATIONS
Alleged rape case.

Veith Katharina
Date of Birth 15 - 2 - 23

1. The n/m German girl who was allegedly raped refused to be medically examined by the undersigned in the presence of Capt Weinstock and a German nursing sister. She also refused to be examined by a German Medical Officer (Dr Thiessen Capt).

(sgd) R.D. Thompson Major
R.D. Thompson
V.D. Control Officer
for O.C. 13 Cdn Fd Hyg Sec.

CERTIFIED TRUE & CORRECT COPY OF
ORIGINAL DOCUMENT IN MY POSSESSION:

P.A. Tooker

(P.A. Tooker) Capt.
Officer Detailed to Take Summary.

EXHIBIT "F"

26 May 45.

Copy of evidence.

.....P.A. Tooker Capt...

Miss Katharine Veith (VEITH), born 15 Feb 23, resident at Hamelburg was introduced to me for a medical examination. It is the case of a state after alleged rape by 5 (five) Canadian soldiers. In the presence of Major (Dr.) Thompson and Capt. Weinstock she refused twice to be examined. When I visited the family in company of Sgt. Browning and L/Cpl. Leger she could be persuaded by her mother to consent to an medical examination.
I found an old, vertical scar on the lower part of her body originating from the sterilization 4 years ago. (She is an idiot). There was no trace of any injury externally.

signed: Dr. Thiesen (THIESEN)
Stabsarzt (M.O. with the rank of Captain)

I certify herewith that this is a true translation from the German original.

..(sgd). F.L. Browning.....
13044490 Sgt. - Interpreter
F. L. Browning
2nd. Cdn. Provost Coy.
2nd. Cdn Inf. Div. CAO.

CERTIFIED TRUE & CORRECT COPY OF
ORIGINAL DOCUMENT IN MY POSSESSION:

.....P.A. Tooker.....
(P.A. Tooker) Capt,
Officer Detailed to Take Summary.

LIST OF WITNESSES FOR THE PROSECUTION:

(1) Katharine Veith
(2) Hinrich Veith
(3) Therese Veith
(4) Hilde Veith
(5) M-50853 L/Opl Leger, E.H.
(6) Major R.D. Thompson
(7) Dr Thiesen

LIST OF EXHIBITS:

(A) Statement of Katharine Veith
(B) Statement of Hinrich Veith
(C) Statement of Therese Veith
(D) Statement of Hilde Veith
(E) Statement of Major R.D. Thompson
(F) Statement of Dr Thiesen

CANADIAN ARMY

11 June 1918.

This is to state that Private Henderson W.H., No. B.15370, was competent and reliable in the discharge of duties, both in and out of action, and has always tried to carry out the tasks, asked of him in a soldierly way.

W.B. Purnell Lt.
A/Adjt. 7th.
Royal Highlanders

Statement — mitigation on fraternization charge.
(Pte Henderson)

The accused # B-1757 Pte Henderson V H is 24 years of age — he joined the Can Army active in Sept 41, came overseas in Jan 1942, and came into action in the Sicilian operations where he was an infantryman on 6 July 1943 and has been in action ever since.

In this case, it is submitted that the court must put out of its mind any reference to sexual intercourse, ~~mentioned~~ in the summary of evidence, inasmuch as the statement to that effect was made by a person already found incompetent to give evidence, so that on a plea of not guilty the reference to intercourse could then be replaced by the correct. The only facts to which the accused is pleading guilty are those which appear in the charge, namely, that he drank some schnaps and fired some shots. It is submitted that these facts can hardly be said to disclose a very serious breach of the non-fraternization order.

Having served in the Can Army for 3½ years a considerable portion of which was served overseas without a single ~~conviction~~ offence, we now find the accused as the result of a few ~~minutes~~ indiscretion in a position where he is liable to punishment for having been friendly with certain members of the local German civilian population. It is a well-known fact that the Can soldier is instinctively friendly, and the mere publication of an order, with its accidental sanctions, cannot be expected to change his nature overnight. Rather, the effect of the order is to punish the soldier, who has risked his life for his country, for following his hereditary inclinations, not to punish the people who are responsible for his having to be in this country in the first place. No such regulations can quench the naturally gregarious Can spirit, and that fact is so well recognized that the non-fraternization order has recently been modified so that fraternization with German children is no longer be contravention of it. It is generally accepted that this is only the first of a series of modifications in the order. It is also gradually recognized that the Russian & Polish troops are not expected by their superiors to adhere to the letter of the non-fraternization law

they have won your so far as to authorise German-Russian football matches. The British papers have taken up the matter strongly, and accordingly it is probably only a matter of time until the orders will be altered to permit considerable latitude in connection with fraternising with German citizens. Were it not for the non-frat. order, the accused would stand completely discharged. It is submitted that it would be scandalous if the accused were, at some future time, to be undergoing a protracted sentence of imprisonment when, due to alterations in the non-frat order, other soldiers were doing with impunity the same acts of which the accused is now pleading guilty.

Finally, the accused is very young - he is not a criminal in the accepted sense of the word and his army record discloses only a few minor offences. He has already spent 28 days in custody. Accordingly, I would urge the court to bear in mind the words of M.M.L. P 60:

" In deliberating on their sentence, a court martial should remember that the object of awarding punishment is the maintenance of discipline and that the proper amount of punishment to be inflicted is the least amount by which discipline can efficiently be maintained."

Ex. Sue Jo. admits that they offer has now had the opportunity to see any witness to prove matters alleged in litigation. She they offer sues by undersigned his and attorney.

Exhibit R

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-18579	Pte	Henderson, V.H.	1 R Regt C

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers hereinstated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Sec 9 (2) Army Act ____ 1 ____ times.

For Sec 15(1) Army Act ____ 9 ____ times.

For ____ ____ times.

For ____ ____ times.

Date of first entry in Field Conduct Sheet 11-11-41

Date of last entry in Field Conduct Sheet 21-1-45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time undergoing sentence for ____ by ____ undergoing on the ____ day of ____

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 20 days in military custody, *i.e.*, Nil days in open arrest, 20 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 24

6. The date of his attestation [illegible] is 17-9-41

7. The service which the accused is allowed to reckon is 3 yrs. 9 mos

8. The accused is [illegible]

9. [illegible] The accused has served continuously without [illegible]

Date of Promotion

In the [illegible]

In the [illegible]

In the [illegible]

†State the military decorations (if any) held by accused.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

13404 54,000 7/41 A.& E.W.Ltd. Gp.686 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		Nil		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 20th day of June 45.

(A.C. Gillespie) Lt.,
Officer IC Records, 1 R [illegible] C.

No B-18570 Name HENDERSON, V.H. Sqn. Battery, or Company 30th L.A. Battery Corps R.C.A. (A) Date of enlistment 17-9-41 GC Badge Service or Proficiency Pay MFM 6 (AFB 122) 40/P&R/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc C. Smythe | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Exhibition Barracks, Toronto	11-11-41	Gnr.		A.W.L. 0600 hrs. 11-11-41 to 0815 hrs. 11-11-41	A/L/Bdr.D.I. McMillan & A/L/Bdr. LeDrew, W.V.	1 day F & A Forfeit duty pass & all leave for 2 weeks. Admonishment.	12-11-41	C. Smythe	
Brantford	1942 4 Jan	Gnr		A.W.L. from 2359 hours 4-1-42 until 2355 hours 5-1-42 (23 hours, 56 min)	Opl. Beattie Pte Runnals	1 days C.B.	1942 6 Jan	Lieut. W.J. Proctor	Forfeits 1 days pay under F.R.I. Art 149
Petawawa	14-4-42	Gnr.		Furlough granted from 31-3-42 to 13-4-42 Warrant #A103131 AWL from 0630 hrs 14-4-42 until 1315 hrs 14-4-42 (6 hrs 45 mins) A.A. Sec. 15 (1)	L/Bdr.J.J. Shaw L/Bdr.Duval	1 days F&A 3 days C.B.	15-4-42	Major C. Smythe	Total forfeitures 2 days P&A FR&I 149

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Petawawa	5-5-42	Gnr		AWL 0630 hrs 5-5-42 until 1130 hrs 5-5-42 Time 5 hrs 30 min (AA - 15(1)	L/Bdr Auld L/Bdr Tanner	Awarded 7 days C.B.	6-5-42	Connie Smythe, Major 66 36 LAA Bty RCA	
Mary Hill, B.C.	4-9-42	Gnr		AWL from 1700 hrs 4-9-42 to 0130 hrs 6-9-42 (1 dy 8 hrs 30 mins)	Bdr. H. Pitman	9 days Detention	18-9-42	Major C. Smythe	Total forfeiture 11 days P&A under FR&I Art 149.
Petawawa				Embarkation Leave granted from 23-9-42 to 29-9-42 Warrant No A.186					
Petawawa	30-9-42	Gnr.		Disobeying a lawful command Sec. 9(2) A.A.	Major J.D. Watt	10 days detention	3-10-42	H.M. Dow Lt-Col.	Forfeits 10 days P. & A. Art. 149 (1)(b) F.R.&I.
Petawawa	19-10-42	Gnr.		A.W.L. from 0600 hrs. 19-10-42 until 1300 hrs. 23-10-42 (4 days 7 hrs.) Sec.15(1)A.A.	Documentary	14 days C.B. 14 days summary forfeiture of P. & A.	24-10-42	Lt-Col. H.M. Dow	Forfeits 5 days P. & A. under F.R. & I.
C.A.C.				F.L. with M allow & F.T.M.		3-10 Dec 42			

MFM 6
(AFB 122)
10/P&R/136 (3436)

No B-18579 Name HENDERSON, V.H. | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 17-9-41 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2. | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	14 May 43	Gnr.		A.W.L. from 0600 hrs 14-5-43 to 1600 Hrs 14-5-43 Total 10 hrs A.A. 15(1)	Documentary	14 days C.B.	15/5/43	Lt-Col H.M. Dow	Forf 1 days pay F&I 149 (1)(a)
C.A.C.	11 June 43	Gnr.		A.W.L. 20 mins.	Documentary	7 dys. C.B.	12 June 43	Conn Smythe Major C. Smythe M.C.	
Field	21 Jan 45	Pte		AWL from 2359 hrs 21 Jan 45 to 1100 hrs 8 Feb 45 (17 days 11 hrs 1 min) (AA 15(1))	Cpl Carl	28 days pay 28 days FP	9 Feb 45	W.R. McQueen Major	16 days auto forf 149 1(a) 28 days pay F&I 149 2

CERTIFIED TRUE & CORRECT COPY OF ORIGINAL DOCUMENT IN MY POSSESSION:

(A.C. Gillespie) Lt,
Officer IC Records, 1 R REGT C.

(PTO)

Exhibit "C"

No B18570 Name HENDERSON V.H. Sqn, Battery, or Company 30 L.A.A. Corps R.C.A.(A) Battery Date of enlistment RBDH 17-9-41 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 407/P&S/136 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc C. Smythe | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Exhibition Barracks Toronto	11-11-41	Gnr		AWL 0600 hrs 11-11-41 to 0815 hrs 11-11-41.	A/L/BdrD.I. McMillan A/L/Bdr W.V LeDrew	1 d.p. & forf all leave for 2 weeks & duty pass. Admonishment.	12-11-41	C. Smythe	
Brantford	4-1-42	Gnr		AWL from 2359 hrs 4-1-42 until 2355 hrs 5-1-42 (23 hrs 56 mins.)	Cpl Beattie Pte Runnals	1 days C.B.	6-1-42	Lieut W.J. Proctor	F 1 d.p.
Petawawa	14-4-42	Gnr		AWL from 0630 hrs 14-4-42 until 1315 hrs 14-4-42 (6 hrs 45 mins) AA Sec 15(1)	L/Bdr J.J. Shaw L/Bdr Duval	1 days P & A 3 days C.B.	15-4-42	Major C. Smythe	TF 2 days P& A
FURLOUGH GRANTED FROM 31-3-42 to 13-4-42 WARRANT #A103131									
Petawawa	5-5-42	Gnr		AWL 0630 hrs 5-5-42 until 1130 hrs 5-5-42 (AA 15(1)	L/Bdr Auld L/Bdr Tanner	7 days C.B.	6-5-42	Major C. Smythe	
Mary Hill BC	4-9-42	Gnr		AWL from 1700 hrs 4-9-42 to 0130 hrs 6-9-42 (1 dy 8 hrs 30 mins)	Bdr Pitman	9 days detn	12-9-42	Major C. Smythe	TF 11 d p & a (PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
EMBARKATION	LEAVE	GRANTED 23-9-42 WARRANT NO A186							
Petawawa	30-9-42	Gnr		AASec9(2)Disobeying a lawful command.	Major J.D. Watt	10 days detn	3-10-42	H.M.Dow Lt Col	F 10 d p & a
Petawawa	19-10-42	Gnr		AWL from 0600 hrs 19-10-42 until 1300 hrs 23-10-42 (4 dys 7 hrs) Sec 15 (1) A.A. P.L. with M allow & F.T.W.	Documentary 3-10 Dec 42	14 days C.B. 14 days summary forf pay & all	24-10-42	Lt Col H M Dow	F 5 d p & a
C.A.O. Field	14-5-43	Gnr		AWL from 0600 hrs 14-5-43 to 1600 hrs 14-5-43 (T 10 hr) AA15(1)	Documentary	14 days C.B.	15-5-43	Lt Col HM Dow	F 1 d. p. & a.
C.A.O.	11-6-43	Gnr		AWL. 20 mins.	Documentary	7 days C.B.	12-6-43	C Smythe Major	
Field	21-1-45	Pte		AWL from 2359 hrs 21-1-45 to 1100 hrs 8-2-45 (17 dy 11 hrs 1 min) AA 15 (1)	Cpl Carl	28 days pay	9-2-45	WB McQueen Major	10 d forf 28 d.p.
			CERTIFIED	TRUE & CORRECT COPY OF ORIGINAL DOCUMENT IN MY POSSESSION " A C GILLESPIE " (A C GILLESPIE) LT OFFICER IC RECORDS 1 R REGT C					

NN-34
PTE HENDERSON K.G.

K-42830 Pte. Kenneth Gordon HENDERSON
Seaforth of C. - 1 C.I.R.U.

NR-34

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 9th day of AUGUST, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "G" GROUP CANADIAN REINFORCEMENT UNITS C.A.(O), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* [I am unable to appoint:—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

for the following reasons, namely:—]

*Omit if not applicable.

8 Wksdvs to fill Gaps
27 Sep 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	S.A. GERVAN	1 C.A.S.C.R.U.

Members.

Rank.	Name.	Regiment.
~~Capt. L.E. Reg~~ — ~~Fus Bde~~ —		
A Captain	to be detailed by O.C.	5 C.I.R.U.
~~Lieut. D.C. Gord~~ - ~~Seaforths of Canada~~ -		
A Lieutenant	to be detailed by O.C.	1 C.I.R.U.
~~Lieut D.S. Murray~~ - ~~2nd Lieut~~ —		
A Lieutenant	to be detailed by O.C.	1 C.I.R.U.

Waiting Member

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed R. Stewart Lough Brigadier

Commanding "G" Gp Cdn Rft Units
Convening Officer. C.A.(O)

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
K-42830 Pte. Kenneth Gordon HENDERSON Seaforth of C. 1 C.I.B.U.	First Charge A.A. Sec 15(1)	Guilty	To undergo detention for a period of 60 days 10 Aug 43 [illegible] Pres	Confirmed [illegible]
SEE CHARGE SHEET ATTACHED				

*Question to be asked of accused, if he pleads not guilty (K. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [signature] Brigadier (Signed) [signature] President.
Commanding "O" Gp Can Mft Units 1 C.A.S.C. R.U.
Commanding Officer (a) C.A.(S)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10th day of Aug 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. ~~The witnesses~~
*(3. ~~The Interpreter~~)
*(4. ~~The officers under instruction~~)

*Omit if not applicable.

were duly sworn.

Signed this 10th day of Aug 1943

[signature]
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 162 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

Signed this day of 19 .

~~*President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barracks, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 11 day of Aug 19 .

[signature]
Confirming Officer.
K-42830 Pte. Henderson, K.G.
S.H. of C. - 1 C.I.B.U.

Promulgated and extracts taken in the case of
Promulgated in D.O. 149 d/13 Aug 43
(a) (Dated) 11 Aug 43 (Signed) [signature] COLONEL COMMANDING C. I.B.U.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The Accused No. K-42830 Pte. Kenneth Gordon HENDERSON, of the Seaforth Highlanders of Canada, on the Strength of 1 Canadian Infantry Reinforcement Unit a soldier of the Canadian Army (Overseas) is charged with:

FIRST CHARGE
Section 15(1)
ARMY ACT

When on Active Service, Absenting himself without leave,

in that he

At No. 1 Canadian Base Reinforcement Depot, absented himself without leave from 0800 hrs on the 16th day of June 1943 until surrendering himself to the Military Police at London at 2345 hrs on the 28th days of June 1943.

Total Absence: 12 Days 15 Hours 48 Minutes

Colonel
(C.W. Dewey) Commander,
1 Cdn. Inf. Reinf. Unit.

Barossa Barracks,
Aldershot, Hants,

9 day of August 1943.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

10 Aug 43

9 Aug 43.

(J.R. Stewart Lough) Brigadier,
Commanding,
"G" Group Cdn Rft Units, C.A.(O).
Convening Officer.

Medical Officers Certificate
K.R.Can para 557

I certify that I have this morning examined No. K42830 (Rank) Henderson K.G. (Name) and in my opinion he is fit to undergo trial by court Martial.

Station. 1 C.I.R.U.

Date. 10 Aug 43.

(Medical Officer)

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT
ON THE DAY OF 1943

The accused ~~K.42830.R.A. Kenneth Gordon Andrew~~ Unit. ~~Algonquin~~ Regiments of Canada I.C.I.R.V.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Major A.A. Carman ....Unit. I.C.A.S.C.R.V.

Members Capt. L.E. Fox .....Unit. Gen. list S.C.I.R.V.

Lieut. D.C. Grant .....Unit. Regiments of Canada I.C.I.R.V.

The officers under instruction are duly sworn:-

.....Unit.....

.....Unit.....

Prosecutor ~~Lieut J.A. Haydon~~ .....Unit. ~~Canadian Scottish~~ I.C.I.R.V.

Defending Officer Lieut A.H. McMullen Unit. Calgary Highlanders I.C.I.R.V.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
(b) Calls witnesses as to character.
(c) Calls witnesses in mitigation of punishment.
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Plea of mitigation of Punishment in the case of K#28330 Pte. Sanderson, E. G.

The accused pleads guilty to the charge of AWOL but has rather a peculiar story to relate in support of this.

For some time he has been having family trouble in that he wished a divorce from his wife and apparently could get but little satisfaction in this matter. Through unofficial sources he heard that if a soldier went AWOL his allowance that were assigned to his dependents automatically ceased. As he figured the Regiment to be only training for a scheme he took the opportunity provided to put this theory into effect.

Later, whilst in Scotland he heard that the Regt was moving and not wanting to be left behind he immediately reported to his Base at Brookham, to find that he was too late. There he surrendered himself in London.

The accused enlisted in the Active Service Force in Canada in July 1940 and has had no crimes since his arrival in England.

Since surrendering himself he has spent 46 days in custody and has gone through the proper channels to effect the necessary divorce from his wife through the Canadian Legion.

10 Aug 43

Commanding Officer

MEMORANDUM

K.42830 Pte. Kenneth, Gordon HENDERSON.
F.G.C.M.

It was noted by the court that exhibit "A" which is the certificate under Sec 163 (I) (J) of the A.A. described the accused as being K.41630 whereas he was otherwise described as K.42830. The accused was then recalled and in the presence of the Prosecution and the Defending Offr this defect was pointed out. The remainder of the certificate was also read to him and it was then pointed out to him that to remedy this defect might mean the necessity of an adjournment for a few days. On the other hand it was explained to him that he would have the privilege of admitting the certificate in that he was the person described therein. It was carefully explained to him by the court that he had nothing to fear and there was no promise of anything to be gained. Also that he did not have to make any explanation or statement. He was then given the opportunity of consulting with the Defending Offr and on his advise admitted that statement and its contents as true with the exception of the number which is apparently a typographical error.

President.

CERTIFICATE UNDER THE ARMY ACT, SECTION 156 (1) (a)

I, ...Capt. W. Petts, D.A.P.M. London Area..... certify that

Reg. No. J-41830. Rank, etc. ...HENDERSON, F.G.....

REGIMENT ...Seaforth Highlanders of Canada, 1.C.R.C.....

UNIT .....

ATTACHED AT .....

Surrendered himself to Sgt. J-59113 Rank, L/Cpl. Name, THOMAS, H.....

of the No. 6 Army Provost Company, Canadian Provost Corps.....

on the 28... day of June .....1943 , at 2345..... hours ..28 June 43..

.....AS AN ABSENTEE WITHOUT LEAVE .....

at the time of his surrender he was wearing (Military Uniform) ~~civil clothes~~.

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer of the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army in whose custody the above named person is taken on surrender.

(State the post appropriate).

.....
Officer i/c Detention Room.
No. 6 Cdn. Provost Coy.

Ex B

FIRST ORDER ISSUED

REAR PARTY 1 CANADIAN BASE REINFOCREMENT DEPOT
Part II Orders issued by
CDN SEC GHQ 2nd ECHELON DET AT CAN RECORDS

No. 1
5 Aug 43

"B" OTHER RANKS

1. STRENGTH DECREASE

(ak) S.O.S. to 1 C.I.R.U. w.e.f. 17 Jun 43 whilst A.W.L. from 0800 hrs 17 Jun 43
Auth ESD/0043 d/27 Jul 43
K-57140 Pte. Anderson, F.C.

(al) S.O.S. to 1 C.I.R.U. w.e.f. 31 May 43 whilst A.W.L. from 0800 hrs 31 May 43
Auth - ESD/0044 d/27 Jul 43.
D-81961 Pte. Powell, W.D.

(ap) S.O.S. to 1 C.I.R.U. w.e.f. 14 May 43 whilst A.W.L. from 14 May 43.
Auth - ESD/0049 d/27 Jul 43.
B-38186 Pte. Desjardins, F.A.

(aq) S.O.S. to 1 C.I.R.U. w.e.f. 30 May 43 whilst A.W.L. from 0600 hrs 30 May 43
Auth - ESD/0050 d/27 Jul 43.
M-11234 Pte. Downs, A.I.

(ar) S.O.S. to 1 C.I.R.U. w.e.f. 16 Jun 43 whilst A.W.L. from 2359 hrs 16 Jun 43
Auth - ESD/0051 d/27 Jul 43.
M-12439 Pte. Furniss, A.

(at) S.O.S. to 1 C.I.R.U. w.e.f. 16 Jun 43 whilst A.W.L. from 0800 hrs 16 Jun 43.
Auth - ESD/0053 d/27 Jul 43.
K-42830 Pte. Henderson, K.G.

(au) S.O.S. to 1 C.I.R.U. w.e.f. 29 May 43 whilst A.W.L. from 2200 hrs 29 May 43
Auth - ESD/0055 d/27 Jul 43.
C-8394 Pte. Hoag G.G.

(av) S.O.S. to 1 C.I.R.U. w.e.f. 13 Jun 43 whilst A.W.L. from 1000 hrs 13 Jun 43
Auth - ESD/0056 d/27 Jul 43.
M-16186 Pte. Parks, N.O.

(bj) S.O.S. to 1 C.I.R.U. w.e.f. 21 Jun 43 whilst A.W.L. from 0800 hrs 21 Jun 43
Auth - ESD/0075 d/27 Jul 43.
M-11906 Pte. Purnell, L.J.

(cg) S.O.S. to 1 C.I.R.U. w.e.f. 12 Jun 43, whilst A.W.L. from 2300 hrs 12 Jun 43
Auth - ESD/110 d/28 Jul 43.
H-17405 Pte. Graham, J.C.

(cn) S.O.S. to 1 C.I.R.U. w.e.f. 21 Jun 43 whilst A.W.L. from 0800 hrs 21 Jun 43
Auth - ESD/118 d/28 Jul 43.
L-12423 Pte. Rydichuk, M.

(ds) S.O.S. to 1 C.I.R.U. w.e.f. 31 May 43 whilst A.W.L. from 0830 hrs 31 May 43
Auth - ESD/131 d/28 Jul 43.
K-63227 Pte. Lester, J.H.

(dd) S.O.S. to 1 C.I.R.U. w.e.f. 5 Jun 43 whilst A.W.L. from 2359 hrs 5 Jun 43
Auth ESD/135 d/28 Jul 43
L-51478 Pte. McKenzie, D.A.

(de) S.O.S. to 1 C.I.R.U. w.e.f. 19 Jun 43 whilst A.W.L. from 2230 hrs 19 Jun 43
Auth - ESD/140 d/28 Jul 43.
M-31004 Pte. Watson, R.A.

(dg) S.O.S. to 1 C.I.R.U. w.e.f. 25 Jun 43 whilst A.W.L. from 1330 hrs 25 Jun 43
Auth - ESD/143 d/28 Jul 43.
K-63206 Pte. Stinson, J.C.W.

(dh) S.O.S. to 1 C.I.R.U.w.e.f. 23 Jun 43 whilst A.W.L. from 0600 hrs 23 Jun 43
Auth - ESD/144 d/28 Jul 43.
K-85359 Pte. Stuart-Scholefield, C.C.

1. STRENGTH DECREASE (Continued)

(dl) S.O.S. to 1 C.I.R.U. w.e.f. 13 Jun 43 whilst A.W.L. from 1030 hrs 13 Jun 43
Auth - ESD/146 d/28 Jul 43
B-38207 Pte. Moyer, B.D.

(eh) S.O.S. to 1 C.I.R.U. w.e.f. 11 Jun 43 whilst A.W.L. from 2359 hrs 11 Jun 43
Auth - ESD/98 d/27 Jul 43.
L-12908 Pte. Barabash, P.

(sgd) W.J.C. Johnston, Lieut.
Officer i/c
Cdn Sec, G.H.Q., 2nd Ech Det, at Can Records

CERTIFIED TRUE COPY OF EXTRACTS FROM REAR PARTY 1 CANADIAN BASE REINFORCEMENT DEPOT PART II ORDERS ISSUED BY CDN SEC, G.H.Q., 2nd ECH DET AT CAN RECORDS.

H.F. Atkinson .....Capt.
(H.F. Atkinson) Records Officer,
1 Canadian Infantry Reinforcement Unit.

JPT/WIN

SUMMARY OF EVIDENCE

In the case of K.42830 Pte. Henderson, K.C., of the Seaforth Highlanders of Canada, on the strength of 1 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army (Overseas).

By direction of the Commanding Officer, this summary of evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

Captain P.C.Seaby, Canadian Infantry Corps, on the strength of 1 Canadian Infantry Reinforcement Unit, having been duly sworn, states:

"I am Captain P.C. Seaby, Canadian Infantry Corps, on the strength of 1 Canadian Infantry Reinforcement Unit. I produce certificate under the Army Act Section 163(1) (J) purporting to be signed by W. Fern, Captain, D.A.P.M., London Area, which relates to the accused, whom I now recognize. This document is marked exhibit "A" and is duly initialled by me for purposes of identification. I also produce certified true copy of Rear Party 1 Canadian Base Reinforcement Depot Part II Order No. 1, issued by Canadian Section General Headquarters 2nd Echelon Detachment at Canadian Records, dated 5th August 1943, and purporting to be signed by W.J.C. Johnston, Lieut., officer in charge of Canadian Section General Headquarters 2nd Echelon Detachment at Canadian Records, showing that K.42830 Pte. Henderson, K.C. absented himself without leave from 0800hrs on the 16th of June, 1943. This order is marked exhibit "B" and is duly initialled by me for purposes of identification. This document relates to the accused, whom I now recognize."

The accused declines to cross-examine this witness.

P.C. Seaby, Captain,
P.C. Seaby, Cdn Infantry Corps.

The accused having been duly cautioned in accordance with Rule of Procedure 4(e) reserves his defence.

I certify that the foregoing summary of evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c), (d), (e), (f), and (g) have been complied with.

(J.E. Turner) Captain,
Officer taking Summary.

Albuhera Barracks,
Aldershot, Hants.,

9th day of August, 1943.

M.F.M. 6
(A.F. B.172)
40/P & /8136 (2965)

No. K42830 Name HENDERSON K.G | Sqn., Battery, or Company | Corps C.I.C. | Date of enlistment 28-7-40 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet: Nil | No. and date of last drunk: Nil | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of court dispersing with trial	By whom awarded	Remarks
Colwood camp	7-5-42	Pte		AA Sec 15(1) AWL 0900 hrs 7 May 42 until 0815 hrs 16 May 42.	DO 119 d/ 19-5-42	72 hrs. detn.	19-5-42		9 days pay FR&I 149(1)a)

Certified true copy from MFM 2(Triplicate consisting of One Sheet 29 Jul 43.

10 Aug 43
F.O. Newman Sqn Ldr
Pres

(Officer having custody of original document)

(P.T.O.)

M.F.R. 155
22M—5-41 (573-3)
H.Q. 1772-99-620
A.F.R. 20C

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
K42830	Pte	Henderson K.G.	1 C.I.R.U.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and Squadron Battery Conduct sheets or ~~Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A. Sec. 15 (1)	times	1 times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of ~~summary awards~~ under Section 47 of the ~~Air Force Act~~ Army Act ~~and dispensations~~ with trial under A.A. 73 A.F.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for ~~beginning on the~~ day of

4. The accused has been in confinement awaiting trial on the present charges, for ~~nil~~ days in civil custody, and 43 days in ~~Air Force~~ military custody, making a total of 43 days in custody, of which ~~nil~~ days were spent in hospital.

5. The present age of the accused according to ~~his record of service~~ is attestation paper is 26 yrs. 310 days.

6. The date of ~~his commission~~ specified in ~~his record of service~~ is attestation paper is 28 Jul 40

7. The service which the accused is allowed to reckon towards discharge is 2 yrs 362 days.

8. The accused is entitled to reckon above service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military military possession of or entitled to). State any air force decoration or reward. military

10. (If the accused is a ~~warrant officer.~~) The accused before he was made a warrant officer last held Air Force the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Unit

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

172

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10 day of Aug 10/43

Asst Records Officer, 1 CIRU

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked A and C signed by the president, and annexed to the proceedings.

10 Aug 43

Pres.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Albuhera Barracks, Aldershot, preliminary to my Court Martial. I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

Dated at Aldershot, Hants., this 9 day of Aug 1943. Signature: K G Henderson

I hereby request that the Convening Officer appoint an officer to represent me at my trial.
I desire the services of _____ if he is available.

Signature: K G Henderson

5 T. 14

Pte. Henderson, FB.

RECORDED AT CMHQ IN AB 160, p 37-14

RECEIVED 22 SEP 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA81) 40/P & S/1699 (6/44) 4/38B

Convened by Order of Brigadier K G Blackader DSO, MC, ED Comd D Gp CRU dated 11 Sep 45.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-37040	Pte	Thomas Burton	HENDERSON	CIC 10 Cdn Repat Dep

PROCEEDINGS REVIEWED

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date*) 12 SEP 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnm RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.~~(1) Do you object to C 9687 Sgt BOUCHARD as shorthand writer? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO, SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D L REDMAN	HQ CRU
Member	CAPT	M P DOSTALER	2 REPAT
Member	LIEUT	W K PUGH	2 REPAT
~~Judge Advocate~~			
Prosecutor	CAPT	I D MAIN	10 REPAT
Defending Offr	LIEUT	L BOCK	10 REPAT

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) (~~at~~) plea ..... (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*K*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)

(1. *RP* 37(*B*). 2. *RP* 37(*C*) *fn* 6. 3. *RP* 25(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E.
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin each further Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO - SIR (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~no~~ (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1) NOTE - ATT
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not ~~establish a prima facie~~ case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge~~(s).(4)
(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. Give Evidence. Do you intend to call witnesses on your behalf?
Ans. Yes Sir. Are they witnesses as to character only? Ans. NO - SIR
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOTE ATT
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1, 3, 5, 7 and 9 charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO - SIR
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~(copies)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 13 and Ex C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes Def Offr. NOTE ATT (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A., if any~~.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F-37040 Pte Thomas Burton HENDERSON - CIC - 10 Can Repat Dep

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)
1st ~~AA Sec 18(4)~~	NOT GUILTY	GUILTY
Alternative 2nd ~~AA Sec 40~~	" "	NOT GUILTY
3rd ~~AA Sec 18(4)~~	" "	GUILTY
Alternative 4th ~~AA Sec 40~~	" "	NOT GUILTY
5th ~~AA Sec 18(4)~~	" "	GUILTY
Alternative 6th ~~AA Sec 40~~	" "	NOT GUILTY

(Space for use as required for further charges, accused charged jointly, special findings, etc.)

	PLEA	FINDING
7th: AA Sec 18(4)	NOT GUILTY	GUILTY
Alternative 8th: AA Sec 40	"	NOT GUILTY
9th: AA Sec 18(4)	"	GUILTY
Alternative 10th: AA Sec 40	"	NOT GUILTY

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which Nil days were spent in hospital.(2)

(2. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

10 months detention for a period of One (1) year.

(Sgd) ..... Judge-Advocate, if any.

12 SEP/45 Date awarded.

(Sgd) ..... President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567 577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks for a longer period~~ (1. AA 57A. Delete if not used.)

Date 13 Sep 45

(Sgd) ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F 37040 Pte Thomas Burton HENDERSON	Promulgated 14 Sep 45 Extracts taken DO 45 d/17 Sep 45 (O.C. "A" Wing) 10 Can Repat Dep	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CHARGE SHEET

The accused, F37040 Private Thomas Burton HENDERSON, Canadian Infantry Corps, on the strength of 10 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHEN ON ACTIVE SERVICE, Stealing property belonging to a person subject to military law,

Section 18(4) Army Act

in that he,

In the Field, at "C" Wing, 10 Canadian Repatriation Depot, on or about 29 Aug 45 stole one pair of socks, one towel and one pair of underwear shorts the property of Capt W.L. Percival, att 10 Cdn Repat Depot, a person subject to military law.

SECOND CHARGE (ALTERNATIVE) — WHEN ON ACTIVE SERVICE, Conduct to the Prejudice of Good Order and Military Discipline,

Section 40 Army Act

in that he

In the Field at "C" Wing, 10 Canadian Repatriation Depot, on 30 Aug 45, was improperly in possession of one pair of socks, one towel, and one pair of underwear shorts, the property of Capt W.L. Percival, att 10 Cdn Repat Depot

THIRD CHARGE — WHEN ON ACTIVE SERVICE, Stealing property belonging to a person subject to military law,

Section 18(4) Army Act

in that he,

In the Field, at "C" Wing, 10 Canadian Repatriation Depot, on or about 29 Aug 45 stole one tobacco pouch and one handkerchief the property of Capt G.G. Aldous, att 10 Cdn Repat Depot, a person subject to military law.

FOURTH CHARGE (ALTERNATIVE) — WHEN ON ACTIVE SERVICE, Conduct to the Prejudice of Good Order and Military Discipline,

Section 40 Army Act

in that he

In the Field at "C" Wing, 10 Canadian Repatriation Depot, between 30-31 Aug 45, was improperly in possession of one tobacco pouch and one handkerchief, the property of Capt G.G. Aldous, att 10 Cdn Repat Depot

FIFTH CHARGE — WHEN ON ACTIVE SERVICE, Stealing property belonging to a person subject to military law,

Section 18(4) Army Act

in that he,

In the Field, at "C" Wing, 10 Canadian Repatriation Depot, on or about 29 Aug 45 stole one pair of brown striped undershorts the property of Lt J.H. Poole, att 10 Cdn Repat Depot, a person subject to military law.

SIXTH CHARGE (ALTERNATIVE)

Section 40 Army Act

WHEN ON ACTIVE SERVICE, Conduct to the Prejudice of Good Order and Military Discipline,

in that he

In the Field at "C" Wing, 10 Canadian Repatriation Depot, on 30 Aug 45, was improperly in possession of one pair of brown striped undershorts the property of Lt J.H. Poole, att 10 Cdn Repat Depot

SEVENTH CHARGE

Section 18(4) Army Act

WHEN ON ACTIVE SERVICE, Stealing property belonging to a person subject to military law,

in that he,

In the Field, at "C" Wing, 10 Canadian Repatriation Depot, on or about 29 Aug 45 stole one pair of fox puttees and one pair of black socks the property of Capt H.E. Kent, att 10 Cdn Repat Depot, a person subject to military law.

EIGHTH CHARGE (ALTERNATIVE)

Section 40 Army Act

WHEN ON ACTIVE SERVICE, Conduct to the Prejudice of Good Order and Military Discipline,

in that he

In the Field at "C" Wing, 10 Canadian Repatriation Depot, on 31 Aug 45, was improperly in possession of one pair of fox puttees and one pair of black socks the property of Capt H.E. Kent, att 10 Cdn Repat Depot

NINTH CHARGE

Section 18(4) Army Act

WHEN ON ACTIVE SERVICE, Stealing property belonging to a person subject to military law,

in that he,

In the Field, at "C" Wing, 10 Canadian Repatriation Depot, on or about 29 Aug 45 stole one pair of brown woollen socks the property of Capt R.W. Richards, att 10 Cdn Repat Depot, a person subject to military law.

TENTH CHARGE (ALTERNATIVE)

Section 40 Army Act

WHEN ON ACTIVE SERVICE, Conduct to the Prejudice of Good Order and Military Discipline,

in that he

In the Field at "C" Wing, 10 Canadian Repatriation Depot, on 31 Aug 45, was improperly in possession of one pair of brown woollen socks the property of Capt R.W. Richards, att 10 Cdn Repat Depot

W.S. Murdoch

(W.S. Murdoch) Col
Comd
10 Cdn Repat Dep

IN THE FIELD
5 September 1945

To be tried by Field General Court Martial.

(K G Blackader) Brig
Comd D Gp CRU

IN THE FIELD
11 Sep 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 1e, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-37040	Pte		Thomas Burton	HENDERSON	CIC 10 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 11 Sep 45 endorsed by me, (~~original number of charge sheet~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to order that the accused should be tried by any~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) [illegible] as I, (b) a Pte Offr as Prosecutor, for the reasons stated on the attached Extract~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I have appointed as Judge Advocate the officer whose name is set out below.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
LT COL	D L REDMAN, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by Comd	2 Cdn Repat Dep
Lieutenant	to be detailed by Comd	2 Cdn Repat Dep

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	~~[illegible]~~	

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 11 Sep 45

K G Brackader
(Signed personally. RP 105 fn 2.)
(K G Brackader)
Brigadier (Rank.)
Commanding D Gp CRU
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (See overleaf for oaths and notes for use on trial.)

Medical Officer's Certificate. 40/2
K.R. (Can.), para 557.

I certify that I have this morning examined No. F37040
Pte Henderson B. of No. 10. C.R.D.
and in my opinion, he is fit to undergo trial by Court Martial.
Station. Field.
Date. 12 Sept. 45 (Sgd.) Pat Bt Randolph
(Medical Officer)
(Canadian Reinforcement units Routine Order No. 3, para 27, d/6 Jan 42)

Medical Officer's Certificate. 40/2
K.R. (Can.), para 557.

I certify that I have this morning examined No. F37040
Pte Henderson B. of No. 10 C.R.D.
and in my opinion, he is fit to undergo trial by Court Martial.
Station. Field
Date. 12 Sept. 45 (Sgd.) Capt RAMC
(Medical Officer)

(Canadian Reinforcement units Routine Order No. 3, para 27, d/6 Jan 42)

TRIAL OF

F-37040 PTE HENDERSON TB CIC - 10 CDN REPAT DEP

PROSECUTION

FIRST WITNESS

CAPT WL PERCIVAL, RCAMC, att to No 10 Cdn Repat Dep, sworn, states:-

Q. Were you attached to No 10 Repat Dep, "C" Wing on or about 30 Aug 45?
A. Yes, Sir, for about ten days.

Q. During that period did you miss certain articles?
A. Yes, Sir, quite a number of things - chocolate bars, underwear, socks, one towel and one of the things that made me very mad is that I lost a fruit cake which had come from home. There was also money that was missing.

Q. Did you take any steps to check up as to why these things were missing or as to whom might have taken them?
A. We had been missing things regularly, almost every day. On 30 Aug, we came in at noon-hour and we noticed that some things had gone, presumably during the last three hours. We went and saw the secretary of the mess committee and he called a kit inspection and we went through the kits of all the batmen, all the cooks and all the persons that had access to our kits in any way. When we went through the kits of all the other batmen we found nothing but when we came to the accused's kit, we found all sorts of things belonging to other officers as well as to myself. The accused was present during this kit inspection. We went into his room and the accused was there; we started to go through his kit. We found a pair of socks of mine which had my name on them. I recognized them as mine because I had sown a tag on them with my initials personally. These socks were right in the accused's kit amongst some socks which I presume were his own. We also found a towel of my own with a laundry mark on it, "PERL", which is the laundry mark for my name, "Percival"; in addition there were some underwears; I had one suit which just came over from Canada but which had not any name on it. I have an exact duplicate of these underwears. There was also a pair of underwears which he was wearing which were mine at the time we caught him.

Q. Do you recognize the accused in this Court?
A. Yes, Pte Henderson sitting over there (pointing to the accused).

Q. Are these the socks which you claim are yours?
A. Yes, Sir, and this is the small tag which I had sown on personally (pointing to a tag with the initials WLP on it); the initials are still there.

(SOCKS MARKED EX 1 BY THE COURT)

Q. Do you recognize these? (pointing to some underwears which the Pros Offr hand over to the witness)
A. Yes this is the suit of underwear which we found in the kit of the accused and which belongs to me; they are acutally shorts. These are also two suits of shorts of mine. When the accused was taken to the guard-room, he was stripped and searched in my presence and he was wearing this pair of underwear.

I asked him as I noticed them immediately inspite of their filthy condition if they were his and he said, "These are mine, these are my underwear." and I asked him if he was sure to which he replied, "Yes, I'm sure they are mine." I said "That's a funny thing, is your name Percival?"

(UNDERWEAR MARKED EX 2 BY THE COURT)

The witness said:-

This is my towel with the letters, "PERL", on it. It was found in the accused's kit all of which was laid out on his bed. We asked the accused where he got it and he gave a very indefinite answer.

(ONE TOWEL MARKED EX 3 BY THE COURT)

Q. Did you give the accused permission to borrow this kit?
A. I have never given any batman any permission to use my kit. I also never gave him my clothes to wash as he was not my batman.

Q. How many officers were there in that room?
A. Capts Aldous, Kent, Richards and myself, and Lt Poole.

CROSS-EXAMINED

Q. Did you see the accused take any of these articles?
A. No, Sir.

Q. Would you say that the only reason which led you to believe that the accused took these items is because they were found in his kit?
A. No, that is not the reason entirely, well I think it is because when I found him wearing my underwear and said they were his.

Q. Do you as a rule when you put a new or clean pair of underwear see if your name is on them?
A. I always know that I am putting on my own underwear.

Q. Is it sufficient for you to know they are the same type each time you put it on?
A. I always know they are my own.

Q. During the kit inspection when you were checking the accused's kit, was it on his bed or in his kit bag?
A. Some parts of his kit were on his bed, in his kit bag and some were in the cupboard.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

SECOND WITNESS

Capt GG ALDOUS MC, 48N RNR of Canada, att to No 10 Cdn Repat Dep, sworn, states:-

Q. On or about the 30 Aug were you missing certain articles ofkit?
A. Yes, Sir, I was missing a tobacco pouch.and some other articles. Prior to 30 Aug, I didn't notice that I had much missing but some of the other lads that were in my room with me had noticed that their kits had been opened and they did complain to the mess secretary and on Aug 30 when I came back at noon I found that my bed-roll had been tampered with and then I found that my tobacco pouch [redacted] was held.

After the kit inspection was over, several articles had been found in the kit of Pte Henderson whom I recognize in this Court as the accused (pointing at the accused). We accompanied the accused to the guard-room and at that time I asked the accused if he had a tobacco pouch and he said, "No." We came to the guard-room and he threw my tobacco pouch on the guard-room table.

Q. Can you identify the tobacco pouch?
A. Yes, it is the only pouch that I know like that. The pipe fits in the end. (The witness shows where the pipe fits in the end of the pouch) I had previously been looking for it. Previous to that I asked the accused if he had any tobacco pouch and hesaid, "None at all".

(TOBACCO POUCH MARKED EX 4 BY THE COURT)

The witness continues:-

That's all that happened on 30 Aug. On the next day, Capt Richards went down in the morning to the guard-room where I accompanied Him. Capt Richards had been missing several articles too. We was not present on 30 Aug. We examined the accused's kit. We went through it and that's when a handkerchief of mine came to light. It was picked up in the accused's kit by Capt Richards and he asked me if it was mine; I said, "Yes, it's mine." It had the initial "A" in the corner. This initial was embroidered. I recognize the handerkerchief as mine in this Court (pointing at a handkerchief on a table in the court-room)

(ONE HANDKERCHIEF MARKED EX 5 BY THE COURT)

Q. Did you have any other conversation with the accused?
A. No, Sir.

Q. Did you know the accused?
A. Yes, he is sitting over there in this chair (pointing to the accused)

Q. Did you know him before the 30th of Aug?
A. No, Sir.

Q. Did the accused have any reason to borrow your handkerchief or your tobacco pouch?
A. No, Sir; he was not my batman and I gave nobody permission to take these things.

CROSS-EXAMINED

Q. You say one of your handkerchiefs was found in the accused's kit?
A. Yes, Sir.

Q. Would you say that the only reason which led you to believe that the accused took this handkerchief is because it was found in his kit?
A. I have no idea at all, Sir. I think he took it because it was found in his kit.

Q. How many officers are there sleeping in your room?
A. Four others besides myself.

Q. Do either of these officers, Capt Poole or Capt Richards, sleep near you?
A. Yes, Lt Poole sleeps about four feet away from me, that is his bed is about 4 feet away from mine.

Q. Is it possible that at any time you could have placed some of your clothing on Lt Poole's bed?
A. No, as I keep all my clothes in my bed-roll.

Q. Is it possible that some of your kit could have found their way on Mr Poole's bed?
A. They could, yes.

Q. How long was your tobacco pouch missing?
A. I don't know how long it was missing; the last time I packed it away in my bed roll was on 30 Aug. I found it was missing on 30 Aug before the kit inspection.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (B).

THIRD WITNESS

LT JP POOLE MC, 4 BN RWR of CANADA, att to No 10 Cdn Repat, "C" Wing, sworn, states:-

Q. Were you stationed at 10 Repat around 30 Aug 45?
A. Yes, Sir.

Q. In "C" Wing?
A. Yes, Sir.

Q. Did you miss certain articles around that time?
A. Yes, a couple of pairs of grey socks and a suit of brown striped shorts, size 32, broadcloth material. They had never been worn.

Q. After these articles were missing did you take any steps to see if they could be located?
A. We informed the mess secretary and on 30 Aug there was a kit inspection of Pte Henderson's kit. The accused, Pte Henderson whom I recognize in this Court was my batman, was present at this kit inspection. We found the shorts in question.

Q. Can you identify the shorts? (showing the witness a pr of sh
A. Yes, these are my shorts; on them is marked size 32 on) orts) this tag (showing the tag with the "32" on it). I am now wearing the twin set of shorts to these.

(ONE PAIR OF BROWN STRIPED SHORTS SIZE 32 MARKED EX 6 BY THE COURT)

The witness continues:-

. They were given to me two months ago; I brought them over from the Continent.

Q. Did you give the accused permission to wear them?
A. Most definitely not.

Q. Did you give them to be laundered?
A. Most definitely not.

Q. When did you last see them?
A. Two weeks previous. I packed them in my kit bag and on 29 Aug I went to get them and they were gone.

~~IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (B)~~

CROSS-EXAMINED

Q. You recognized only one item amongst the accused's kit which belonged to you?
A. Yes, Sir.

Q. Did you see him take the shorts?
A. No, Sir.

Q. Why did you believe he took them?
A. Because of the fact that he had access to my kit and because of the fact that he had them in his kit and the fact that they were new shorts and that they didn't need to be washed.

Q. The fact that he had access to your kit leads you to believe that he took them?
A. Yes.

Q. How long has he been your batman?
A. From 22 Aug 45 to 30 Aug.

Q. How did you leave your laundry for him to pick up?
A. It was tied together and left on the bed; I wrapped up my laundry in a shirt; there was no list made of the laundry at all.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (B).

FOURTH WITNESS

CAPT ME KENT MC, 3 BM CH OF C, att to No 10 Cdn Repat Dep, sworn, states:-

Q. Were you att to "C" Wing at 10 Repat around 30 Aug 45?
A. Yes, Sir.

Q. On or about that time, did you miss certain articles?
A. I lost some money. One day I changed battle-dress and left some money behind and an issue watch and I missed both the watch and the money and after not being able to find it I didn't think I had lost any kit.but I found that I had lost some dress black hoses and a pr of fox puttees.

Q. Did these articles turn up eventually?
A. After the three offrs came back from the inspection on 30 Aug, I had a conversation with them and as a result of that conversation, I went to the unit guard-room and found the accused wearing my puttees; they are khaki puttees, Sir. I asked him if he had anything of mine and he said, "No.". I said, "Turn out your kit", as I was really looking for the watch. I told him to take my puttees off and he said they were not mine.

Q. Did he take off the puttees?
A. Yes.

Q. How could you tell they were yours?
A. The string that ties them is badly frayed about 2 to 3 inches at the end. Then I recognize in the kit a pr of black hose which were mine; they had been dyed from khaki to black by my batman.

Q. Are these your puttees?
A. Yes, there is a knot at the end too.

(ONE PAIR OF FOX PUTTEES MARKED EX 7)

Q. Are these your hose or socks?
A. Yes, Sir, they have been dyed from khaki to black.

(ONE PAIR OF DRESS BLACK SOCKS MARKED EX 8 BY THE COURT)

Q. Is the accused in this room?
A. Yes, Pte Henderson sitting over here (pointing to the accused).

Q. Was he your batman?
A. Yes, he was looking after me and three other officers.

Q. Did you ever give him permission to use your puttees?
A. No.

Q. Did you ask him to wash your socks?
A. No, he had no reason to wash them and they came off my excess kit which I had left in Aldershot before going to the Continent. He had no reason for laundrying them as they were clean and I had just gotten them from the pack store.

CROSS-EXAMINED

Q. Did you see the accused take these articles?
A. No.

Q. How can you identify the puttees?
A. There is a knot in the tape; I don't think anyone else does that.

Q. Do you think that this type of puttees is available in the army stores or in civilian stores?
A. They are available I think in the first place in civilian stores providing you have three coupons. They are not a government issue.

Q. Are these puttees restricted to one regiment?
A. No, anyone who has the coupons can buy them, Sir.

Q. Any offr in the Cdn Army could have fox puttees in his possession?
A. Yes, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (B).

FIFTH WITNESS

CAPT RW RICHARDS, HQ CRU, att to No 10 CDN REPAT DEP, sworn, states:-

Q. Were you att to "C" Wing, No 10 Repat around 30 Aug 45?
A. Yes, Sir.

Q. During this period did you miss certain articles of your kit?
A. Yes, about ten days preceding the 30th of Aug 45, I was missing socks and various articles from my kit which had been ransacked. I noticed on several occasions that my personal belongings had gone. On 30 Aug other officers in our room noticed that some articles were missing and I reported this matter to Mr Thomas, the mess secretary. On 31 Aug I visited the guard-room where Pte Henderson was detained along with Capts Aldous, Kent, Richards and Mr Poole. At that time the personal kit of the accused was searched.

by the Provost and laid out on a table in the guard-room. The accused was present. I found a pair of socks which were mine amongst the accused's kit. They were knitted by mother and they had a mark on them where they had been an identification tag.

Q. How long did you have these socks?
A. Since May 44.

Q. Are these your socks?
A. Yes.

(SOCKS MARKED EX 9 BY THE COURT)

Q. Do you know the accused?
A. Yes, I recognize him in this room(pointing to theaccused).

Q. Can you identify him in this room?
A. Yes, I just pointed out to him.

Q. Was he your batman?
A. No he was not my batman.

Q. Had the accused any authority to touch your kit or tamper with it?
A. None whatsoever.

Q. Did you give him permission to wash your clothes?
A. No, Sir.

CROSS-EXAMINED

Q. You said you recognized a pair of socks in the accused's kit as being yours, is that right?
A. Yes, Sir.

Q. Did you see him take them?
A. No, Sir.

Q. Have you a batman in "C" Wing?
A. Yes, Sir.

Q. Did he ever do laundry for you?
A. Yes.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (B)

THE PROSECUTION IS CLOSED

- DEFENCE -

FIRST WITNESS

The accused, sworn, states:-

Q. How old are you?
A. 18.

(THE DEF OFFR SHOWS THE COURT A BIRTH CERTIFICATE AS TO THE ACCUSED'S AGE)

Q. Will you tell your record to the Court?
A. I joined the Merchant Navy in 42 and made approx 20 trips between Halifax and Manchester, Eng. In 44, I got out of the Navy and went home and joined the Army. My cat is 1 across the board and 3 under "I".

Q. Were these articles really found in your kit during the kit inspection?
A. Yes, Sir.

Q. How did they get there?
A. They could have been mixed up with the laundry in the officers' room or in the closet in the batmen's room.

Q. Have you seen the fox puttees before?
A. Yes, Sir; I borrowed these puttees from Lt Horwood and I wore them for the night. I meant to return them back to him but he pulled out too soon.

Q. Did you know where he went?
A. No, Sir.

Q. How did you have the tobacco pouch?
A. I took the tobacco pouch and went to fill my pipe with it. In themeantime a kit inspection was called and I didn't have time to return it.

Q. How long did you have it?
A. The same day as the day of the inspection.

Q. Q. Did you see the jockey shorts that the first witness
A. produced, the ones you were wearing?
Yes.

Q. Have you similar shorts?
A. Yes. I had one pair when I was in the guard-room but it was taken by mistake by some of the other boys when they were hanging on the line.

Q. In your job as batman is the officer's laundry done along with yours?
A. Yes.

Q. As a result did you put yourown washing with that of the officers?
A. Sometimes I did, sometimes I didn't.

Q. What is the washing condition in "C" Wing Officers' Mess?
A. Not too bad.

Q. What is the condition for drying clothes?
A. It is pretty stuffy. Sometimes there is not enough lines; sometimes you have to put them on thehedges to dry.

CROSS EXAMINED

Q. When you joined the Merchant Navy, how long did you sign for?
A. For a trip because when you go back to the port you are going to you have to sign again.

Q. Why did you leave the merchant navy?
A. I wanted to ~~come~~ over here and meet my half-brother.

Q. You state that you took Captain Aldous' pouch to fill your pipe, did he give you permission to do that?
A. No, Sir.

Q. Did you check through your own kit periodically?
A. No, Sir, because I knew where everything is in my kit.

Q. Will you tell the Court why these shorts which didn't belong to you were in your kit?
A. The laundry could have been mixed up with my own kit.

Q. Why would you have laundry from three officers you didn't bat for?
A. Maybe they got mixed up in their own rooms, Sir.

Q. You know that you are only supposed to carry issue kit with you?
A. Yes, Sir.

Q. How would you have a pair of brown shorts?
A. It might have been mixed up with their laundry because I don't know the shorts.

Q. Getting back to the tobacco, you just saw the pack and you decided to take the tobacco?
A. No, Sir, I just decided to fill my pipe.

Q. You were going to take the tobacco which belonged to somebody else?
A. Yes, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (B).

SECOND WITNESS

D-838633 PTE JEH LABELLE, "C" Wing, 10 Cdn Repat Dep, sworn, states:-

Q. Are you employed as a batman in "C" Wing, 10 Repat?
A. Yes, Sir.

Q. For how long?
A. 1½ to 2 months, Sir.

Q. Will you tell the Court the conditions forwashing and drying clothes there?
A. Yes, it is pretty crowded on the drying lines; we have sometime to put some laundry on the hedges. Some week we have only two days of nice weather.

Q. Have you had any experience of any laundry getting mixed up?
A. It happened to myself when I lost a shirt; it was a shirt belonging to one of the officers and I brought it in my room and some other batman asked me for it and I gave it to him. I must have picked it up by mistake.

Q. Will you tell the Court where your laundry was kept before it was washed?
A. Sometimes it was kept in the washing room or we would bring it in our own room. There is a closet in the batman's room to keep laundry.

Q. Would you say they could get mixed up in the closet?
A. They could be.

Q. In your estimation would you say that some of these articles, which were found in the accused's kit, could have got in the accused's kit?
A. It could be, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (B).

THE DEFENCE IS CLOSED.

STATEMENT BY THE DEF OFFR ON THE FINDINGS

In summarizing, the defence for the accused would like to bring out a few facts and go over the case once more. Now, I divided the case up in three sections; first is the section which envelopes all the articles of clothing;

There has been no proof given by anyone that the accused was seen taking these articles. The defence has shown that there was a possiblity for a batman to have in his possession articles not belonging to him and not necessarily to officers that he bats for. In this case they could have been mixed up in the officers' room; also they could have been re-arranged or mixed up in the closet in the batmen's room. As far as the puttees are concerned, I tried to point out that the puttees could belong to any officer. I don't know how much proof there is in the identification. However, the accused says that he got them from Lt Norwood and he has since left the camp. The question of the tobacco pouch is self-explanatory. The accused needed some tobacco and went and got the tobacco pouch; in the meantime there is a kit inspection called. I'd like to read one para of the MML to the Court. (The Def Offr quotes para 50, p. 118 of the MML to the Court).

STATEMENT BY THE PROSECUTING OFFICER TO THE COURT

I contend that it is not necessary for the prosecution or the Court to prove that the accused has actually been seen taking the articles to find him guilty of stealing the said articles. The accused, while he had not admitted that he stole anything, has admitted that he took the tobacco and pouch without permission of the officer, the owner. As far as the fox puttees are concerned, it is very unusual, unless he were in a rifle bn, to have such puttees; he has no right to wear them in the first place; he also could have returned the puttees by returning them to some officers, friends of Lt Norwood. The only witness that the defence called was one to prove that certain articles of officers' kits get mislaid. There has been indication in this case that these articles were in the cupboard; they were all found in the accused's kit; if they had been found in the cupboard, it would be a different story. The articles were all private and personal articles made by commercial firm. I think that the accused has been in the army long enough to know that he is only allowed to have army kit in his kit; the accused knew that the articles were not his by the identification tags and initials on the articles and he made no effort to return them or to attempt to find their owner; he said he knew they were not his in certain cases and he said that on oath.

In making plea of mitigation for F-37040 Pte HENDERSON, T.B., I would ask the Court to consider this man's background and record of War Service.

F-37040 Pte HENDERSON, T.B. was born on 18 Aug 27 and only last month turned 18. He stopped school at the age of 11, having reached Grade V, because his family could not support him. He worked at odd jobs from the age of 11 to 13. At age 13 he started at regular work and shovelled coal for six months prior to employment in a Fish Plant. At age 14 he joined the Merchant Navy and made over twenty trips on the Halifax - Manchester run through U-Boat infested waters. At age 16 he joined the Army, giving his age as 18. His mother re-married when he was a baby and he has lived in a house with six other children of varying ages, and as his father's occupation was Merchant Seaman, and away from home for long periods, he did not get proper upbringing and training. The poor financial condition of the home made it necessary for his mother to seek employment in a factory in order to keep the family alive. She worked until failing health prevented her from doing so. Recently Pte HENDERSON, T.B. has been trying to finance a serious operation which she requires. His PULHEMS are 2Z lllll2l. With his lack of training and low mentality, I submit that the Court cannot demand the same standard from this boy as it would of a normal soldier.

I submit to the Court that this youth's age and background be given every consideration and that he be dealt with as leniently as possible.

L. Bock Lt

(L. Bock) Lt
Defending Offr

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F57040	Private	Thomas Burton HENDERSON,	Canadian Infantry Corps 10 Cdn Repat Dep

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number in words in the conduct sheets, provision being given in the most serious offence in each series and to any recognized special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA Sec 15(1)	2 times	2 times.
For AA Sec 40	3 times	3 times.
For ~~[illegible]~~	~~[illegible]~~	~~[illegible]~~
For ~~[illegible]~~	~~[illegible]~~	~~[illegible]~~
For ~~[illegible]~~	~~[illegible]~~	~~[illegible]~~

~~Number of instances of [illegible] or distinguished conduct.~~

~~or~~

~~There are no entries in the [illegible] sheets of the accused.~~

2. ~~The accused has not been [illegible] previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~or The accused [illegible] present time is under sentence for~~ beginning on the ~~[illegible]~~ day of

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 13 days in military custody, making a total of 13 days, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service ~~attestation~~ is 20 yrs

6. The date of his ~~[illegible]~~ attestation specified in his record of service ~~attestation~~ is 10 May 44

~~7. The service which the accused is allowed to [illegible] reckoned towards discharge or transfer to the reserve is~~

~~8. The accused is entitled to deferred pay [illegible] in respect of service.~~

~~9. The accused is entitled to reckon [illegible] service for the purpose of determining his pension, etc.~~

10. The accused is in possession of, ~~or entitled to, a [illegible] decoration or military award (or is in possession of or entitled to (state any military [illegible] or reward)~~. C.V.S.M. & Clasp

~~11. (If the accused is a warrant officer.) [illegible] before he was made a warrant officer last held the regimental rank [illegible]~~

~~12. (In the case of an officer.) The accused held [illegible] army the rank of (date) and in his regiment (or corps or department) [illegible] of district~~

(*18648) Wt.20248/3602 75,000 12/40 A.& E.W.Ltd. Gp.698

CXB

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. F37040 Rank Pte Name Henderson T.B. of 10 Can Repat Dep Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
F.G.C.M.	29 May 45	(1) AA Sec 22 - Escaping (2) AA Sec 15(1) AWL 1 day 30 mins.	60 days detn	20 days

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 6th day of 12th Sept.

Capt. ADJT.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:

In the rank of ..... years, ... Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years, ...

(INSTRUCTION.—*If any entry in any of the above paragraphs cannot be added from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.*)

No. F37040 Name HENDERSON T H | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 10 May | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/130 (5418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Previous sheet destroyed wef 10 Nov 44 in accordance with R.O. 319(5)(a) "D Burn Lt"									
Donated Blood - 14 Dec 44.									
Field	18 Jan 45	Pte		AA Sec 40 - Improperly dressed	Docy	3 days C.B. 3 days pay	9 Feb 45	Maj J.W. Smeltzer	
Field	15 Apr 45	Pte		(1) AA Sec 15(1) AWL from 2200 hrs 15 Apr 45 until appr in Brighton at 1000 hrs 19 Apr 45. Cost of ret £0-11-11. Abs 3 days 12 hrs (2) AA sec 40	Docy	21 days F.P. 21 days pay FR&I 149.1.b. Cost of ret £0-11-11	23 Apr 45	Lt-Col AM Young	4 days pay FR&I 149.1.a Cost of ret £0-11-11

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Apr 45	Pte		AA Sec 40 Failed to answer name on defaulters' Parade	Docy	Admonished	30 Apr 45	Capt EA Haines	
Field	16 May 45	Pte		AA Sec 15(1) AWL from 0800 hrs 16 May 45 to 0800 hrs 18 May 45 Abs 2 days.	Docy	28 days detn	21 May 45	Maj A.C. Ross	2 days pay FR&I 149.1.a.
Field	21 May 45	Pte		(1) AA Sec 22 - Escaping (2) AA Sec 15(1) AWL 1 days 30 min	Docy	60 days detn	29 May 45	F.G.C.M.	28 days pay FR&I 149.1.b. 2 days pay FR&I 149.1.a.
				20 days remission of sentence.					
				Certified true copy - 5 Sep 45 Offr having custody of original document.					

SUMMARY OF EVIDENCE

Summary of Evidence in the case of F37040 Private Thomas Burton HENDERSON, Canadian Infantry Corps, on the strength of No 10 Canadian Repatriation Depot, a soldier of theCanadian Army Overseas.

By direction of the Commanding Officer the Summary is taken on oath.

FIRST WITNESS: for the Prosecution — Capt W.L. Percival, Royal Canadian Army Medical Corps, attached to No 10 Canadian Repatriation Depot, an officer of the Canadian Army Overseas, having been duly sworn, states:

I am Capt W.L. Percival and am attached from No 1 C.G.H.U. to No 10 Cdn Repat Dep. I live in a room with Capt G.G. Aldous, Capt H. E. Kent, Capt R.W. Richards and Lt J.H. Poole. The accused, F37040 Pte Henderson T.B., whom I now recognize, was a batman for Lt Poole and Capt Kent up to the 30th Aug 45. The door to the room is not locked at any time. I have noticed since coming to 10 Cdn Repat Dep quite a number of personal articles disappearing from among my belongings almost every day. These articles included chocolate bars, socks, underwear, a towel, and money. On the 30 Aug 45 I noticed again that articles were missing: even from an old grip which I keep locked, but which can be readily opened by a would-be theif. Several other offrs who are living in the same room also had missed new articles, and it was decided to call a kit inspection. On 30 Aug 45, the kit of the accused was examined in my presence and I noticed a pair of socks which were mine, and were identifiable by a small tag of cloth in which my initials were still visible, and which I personally had sewn on. Further search revealed a towel shown to be mine by the word "P.RL" printed on it by laundry markings. There were also two pairs of underwear shorts which did not have my name in them, but I am able to produce exact duplicate in size and make, which are my own. I know these are my own underwear. When the accused was searched by the Unit R.P.'s I noticed the underwear which he was wearing looked familiar in spite of the filthy condition they were in. I asked the accused if they were his. He said, "Those are my underwear, I know they are mine". I asked him if he was sure they were his and he said, "Yes, I am sure they belong to me". I then pointed out to him that my name was clearly printed on the underwear in indellible ink and asked him, "Is your name Percival by any chance?". The accused had nothing to say so I placed the underwear in question with the other evidence. The other articles which I have missed have not yet been found. I produce the pair of socks, the towel and the last mentioned underwear shorts which are tied together and marked Exhibit "A".

W.L. Percival Capt
(W.L. Percival) Capt

The accused declines to cross-examine this witness.

SECOND WITNESS For the Prosecution — Capt G.G. Aldous M.C., 4 Bn R.W.R. of Canada, attached to No 10 Canadian Repatriation Depot, an officer of the Canadian Army Overseas, having been duly sworn, states:

I am Capt G.G. Aldous of the 4 Royal Wpg Rifles and at present attached to "C" Wing, No 10 Cdn Repat Dep. I live in a room with Capt W.L. Percival, Capt H.E. Kent, Capt R.W. Richards and Lt J.H. Poole. The accused, F37040 Pte Henderson T.B., whom I now recognize, was batman for Lt Poole and Capt Kent up to the 30 Aug 45. At approx 1230 hrs on the 30 Aug 45, I returned to my quarters and found that my bed-roll had been tampered with. I checked my kit and found several articles

missing. These included my tobacco pouch, some shirts and Handkerchiefs. As several other Offrs had also missed article s of clothing, a kit inspection of the accused was called at which I was requested to be present. I did not find any clothing I could identify. I then accompanied Pte Henderson, who was under escort, to the Unit Guard Room where he was searched by the Unit Provost. My tobacco pouch was produced by the accused from his pocket at this time. I now produce the tobacco pouch marked Exhibit "B". Then on the morning of 31 Aug 45, I accompanied Capt R.W. Richards while he checked Pte Henderson's kit. At this time one of my handkerchiefs with my inital "A" embroidered on one corner was found in the accused's kit. I now produce this handkerchief marked Exhibit "C".

(G.G. Aldous) Capt

The accused declines to cross-examine this witness.

THIRD WITNESS — Lt J.H. Poole, M.C. 4 Bn R.W.R. of Canada, attached to No 10 Canadian Repatriation Depot, an officer of the Canadian Army Overseas, having been duly sworn, states:

For the Prosecution

I am Lt J.H. Poole of the 4 Royal Wpg Rifles and attached to No 10 Cdn Repat Dep. I live in a room with Capt W.L. Percival Capt H.E. Kent, Capt G.G. Aldous, & Capt R.W. Richards. On 29 Aug 45 on looking through my kit bag, I found that two or three pairs of grey socks as well as a suit of brown striped under shorts size 32 were missing. On 30 Aug 45, I attended a kit inspection of the equipment of F37040 Pte Henderson T.B. whom I now recognize and who is my batman as well as the batman for Capt Kent, and found the shorts, brown stripped amongst his personal kit. The shorts in question have never been worn and are of a broadcloth material. Laundry taken on the 28 Aug 45 by the accused definitely did not contain the shorts in question as I personally checked my laundry on the 28 Aug 45. I produce the shorts marked Exhibit "D".

(J.H. Poole) Lt

The accused declines to cross-examine this witness.

FOURTH WITNESS — Capt H.E. Kent M.C., 3 Bn C.H. of C., attached to No 10 Canadian Repatriation Depot, an officer of the Canadian Army Overseas, having been duly sworn, states:

For the Prosecution

I am Capt H.E. Kent M.C. of 3 Bn C.H. of C and attached to No 10 Cdn Repat Dep. I live in a room with Capt G.G. Aldous, Capt W.L. Percival, Capt R.W. Richards and Lt J.H. Poole. The accused, F37040 Pte Henderson T.B., whom I now recognize, was batman for Lt Poole and myself up to the 30 Aug 45. On the morning of the 31 Aug 45, I went to the Unit Gd Room and found the accused in the possession of 1 pair of fox puttees and 1 pair of black socks which I identify as mine. I now produce the pair of black socks and the fox puttees which are tied together and marked Exhibit "E".

(H.E. Kent) Capt

The accused declines to cross-examine this witness.

FIFTH WITNESS — Capt R.W. Richards, HQ CRU, attached to No 10 Canadian Repatriation Depot, an officer of the Canadian Army Overseas, having been duly sworn, states:

For the Prosecution

I am Capt R.W. Richards of H.Q. CRU, and attached to No 10 Cdn Repat Dep. I live in a room with Capt H.E. Kent, Capt G.G. Aldous, Capt W.L. Percival and Lt J.H. Poole. The accused, F37040 Pte Henderson T.B., whom I now recognize, was batman for Lt Poole and Capt Kent up to the 30 Aug 45. On 30 Aug 45, at Fairmile Camp, I had noticed various articles had been missing from my kit, which had been ransacked. The kit of the accused was searched in front of me in the Gd Room of "C" Wing, No 10 Cdn Repat Dep on 31 Aug 45. A pair of my brown woollen socks were among his effects. The accused had never been employed as my batman and had no right to be in possession of my socks. I am positive the sockks mentioned are mine as they were specially knitted for me at home. I now produce the brown socks marked Exhibit "P".

R.W. Richards Capt
(R.W. Richards) Capt

The accused declines to cross-examine this witness.

The accused was cautioned as follows: Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but anything you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of THREE (3) pages was taken down by me in the presence and hearing of the accused and that rules of procedure 4 (c) (d) (e) and (f) have been complied with.

P.A.R. Blaker
(P.A.R. Blaker) Capt
Offr detailed to take Summary

IN THE FIELD
5 September 1945

LIST OF WITNESSES

In the case of F37040 Pte Henderson T.B., CIC, on the strength of No 10 Cdn Repat Dep

FOR THE PROSECUTION

1.	Capt W.L. Percival		R.C.A.M.C. attached to No 10 Cdn Repat Dep
2.	Capt G.G. Aldous	M.C.	4 Bn R.W.R. of Canada attached to No 10 Cdn Repat Dep
3.	Lt J.H. Poole	M.C.	4 Bn R.W.R. of Canada attached to No 10 Cdn Repat Dep
4.	Capt H.E. Kent	M.C.	3 Bn C.H. of C attached to No 10 Cdn Repa tDep
5.	Capt R.W. Richards		H. CRU attached to No 10 Cdn Repat Dep

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

In the case of F37040 Pte Henderson T.B., CIC, on the strength of No 10 Cdn Repat Dep

EXHIBIT "A" - One pr of socks, towel and underwear socks.

EXHIBIT "B" - One tobacco pouch

EXHIBIT "C" - One handkerchief

EXHIBIT "D" - One pair of underwear shorts

EXHIBIT "E" - One pair of black socks and one pair of fox puttees.

EXHIBIT "F" - One pair of brown socks.

5 Sep 45

This is to acknowledge that I have received, free of charge, the following papers in connection with my forthcoming trial by F.G.C.M.

1 Copy of Charge Sheet
1 Copy of Summary of Evidence
1 List of Witnesses
1 List of Exhibits

Henderson T.B.
(F37040 Pte Henderson T.B.)

5 Sep 45

I, F37040 Pte Henderson T.B. wish to have an officer defend me at my forthcoming trial by F.G.C.M. I desire the services of Any Officer... if he is available.

Henderson T.B.
(F37040 Pte Henderson T.B.)

12 Sept 45.

Henderson

Read from the bench

Exs 1 to 9 inclusive admitted

Findings to stand & adopt of

10 cdn Report to be read by me

subject to further order.

L. A. Lamarche

Promulgator

5K-99.

Pte. Henderson, T. B.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F-37040 Pte Thomas Bernard HENDERSON — CIC — 3 CITR

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 22	GUILTY	GUILTY	
2nd AA Sec 15(1)	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in case of kit see RP 44 fn 6.)

At present under sentence for 28 days Detention beginning on (date) 21 May 45(1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of N/K days, of which N/K days were spent in hospital.(2)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :
To undergo detention for a period of sixty (60) days.

(Sgd) ..... 29 May 45 (Sgd) ..... President. (RP 45, 50)
Judge-Advocate, if any. Date awarded.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(1). Sentence back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1)
(1. AA 57A. Delete if not used.)

Date 30 May 45 (Sgd) K Blackader
(K. G. BLACKADER) Brig
Commanding Comd-13 Cdn Inf Trg Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F37040 Pte Thomas Bernard HENDERSON	Promulgated 31 May 45 Extracts Taken DO 135 d/Jun 45	A C Ross Major (A.C. Ross) Major 2 i/c 3 Depot Bn - 3 CITR

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AS 160 - 3 X - 44

FIELD GENERAL COURT-MARTIAL

CPA96 (To lieu of APA81) 40/P & B/1600 (6/44) 4/38B

Convened by Order of Brigadier K G Blackader Comd 13 CITB dated 28 May 45
DSO, MC, ED

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprmt, A/rank or A/apprmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprmt, A/R or A/Apprmt.	Full Christian Names.	Surname.	Unit.
F-37040	Pte	Thomas Bernard	HENDERSON	CIC 3 CITR

PROCEEDINGS REVIEWED
J Reid Lt-Col Asst Judge Advocate General
12 June 45
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 29 May 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresser, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 36, 63-70, 73, 74, 94, 103, 119, 121.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) ~~is~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1020 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Can 557. 2. AA 46(5), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused : Do you object to ..... as interpreter ? Ans .....
~~The Interpreter is sworn.~~(1) Do you object to S/SGT SINCLAIR A.H. as shorthand writer ? Ans N.O
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans N.O.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	LT-COL	D.L.	REDMAN	HQ CRU
Member	CAPT	J.A.	MALIBERTE	4 CITR
Member	LT	E.A.	KEENAN	3 CITR
~~Judge-Advocate~~				
Prosecutor	CAPT	A.R.	RICHARDS	3 CITR
Defending Offr	LT	T.F.	DOHERTY	3 CITR

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (b) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea .....(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(F), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*B*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA~~ if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his pleas of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO - I'M (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he [they] change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans..... Do you intend to call witnesses on your behalf? Ans..... Are they witnesses as to character only? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(7) (b), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO - I'M
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. BY MY DEFENCE NOTE AT (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(c), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F-37040 Private Thomas Bernard HENDERSON, Canadian Infantry Corps, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE: WHILE ON ACTIVE SERVICE, When in lawful custody, escaping,

Section 22 Army Act.

in that he,

In the Field, when in lawful custody on 21 May 1945 at 1625 hours, when proceeding under escort to the Guard Room after being awarded 28 days detention did escape from his escort.

SECOND CHARGE: WHILE ON ACTIVE SERVICE, Absenting himself without leave,

Section 15 (1) Army Act.

in that he,

In the Field, absented himself without leave whilst undergoing detention from 1625 hours 21 May 1945 until apprehended by the Regimental Police in Aldershot, at 1655 hours 22 May 1945. Total absence: 1 day, 30 minutes.

IN THE FIELD
24 May 1945.

R D Whitaker
(R.D. WHITAKER) COLONEL
COMMANDER
NO 3 CDN. INF. TRG. REGT.

To be tried by Field General Court Martial.

K G Blackader
(K G Blackader) Brig
Comd
13 Cdn Inf Trg Bde

IN THE FIELD
26 May 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-37040	Pte		Thomas Bernard	HENDERSON	CIC 3 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(x) named above as the accused, being subject to military law, has(x) committed the offence(s) set forth in the Charge Sheet(x) attached and on (date) 28 May 45 endorsed by me, [redacted] " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; [redacted]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(x), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

LT COL (Rank.)	D L REDMAN, VD (Must be named. RP 106.)	HQ CRU (Unit.)

MEMBERS.

Captain	to be detailed by Comd	4 CITR
Lieutenant (Rank.)	to be detailed by Comd (Named or detailed. RP 106.)	3 CITR (Unit.)

WAITING MEMBER.

Captain (Rank.)	to be detailed by Comd (Named or detailed, if any. RP 106.)	1 CITR (Unit.)
[redacted] (Rank.)	[redacted] (Must be named, if any. RP 106.)	[redacted] (Unit.)

On Active Service in the Fd

in England (Country.)

Date 28 May 45

K G Blackader (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(K G Blackader)

Commanding 13 Cdn Inf Trg Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFAES 11(i) 19(e) of AFAS) 40/P & S/1697 (4651)

(See overleaf for oaths and notes for use on trial.)

Medical Officer's Certificate. 40/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. F 37040 Pte
Henderson J. of # 3 C.A.T.R
and in my opinion, he is Fit to undergo trial by Court Martial.
Station. Field
Date. 29 May 45 (Sgd.) [illegible]
(Medical Officer)

(Canadian Reinforcement units Routine Order No. 3, para 27, d/d Jan 42)

Medical Officer's Certificate. 40/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. F 37040 Pte
Henderson. T. of H. 3 C.I.T.R.
and in my opinion, he is fit to undergo trial by Court Martial.

Station. Field
Date. 29 May 45 (Sgd.) [signature]
(Medical Officer)

(Canadian Reinforcement units Routine Order No. 3, para 27, d/d Jan 42)

Pte. HENDERSON T.B. F 37040.

PLEA IN MITIGATION

President + members of the Court, the accused F 37040. Pte Henderson T.B. joined army on 10 May 44. at the age of 16 years. Came overseas in Nov. 44. He has been doing trgn since then and has volunteered for service in the Far East.

In view of his good crime sheet and that he may be able to partake of action in the Far East he ask the court to be as lenient as possible in considering it's finding.

T.T. Dunn. Lt
3 C.I.T.R.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of F-37040 Private Thomas Bernard Henderson, (CIC)., on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary is taken on oath.

FIRST WITNESS: For the Prosecution.

C-31734 Cpl. Richer, L., (SD&GH)., C.O.C., R. & D. Wing, No 3 C.I.T.R. , a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am C-31734 Cpl. Richer, L., (SD&GH)., C.O.C., R.& D. Wing, No 3 Cdn. Inf. Depot Bn., No 3 C.I.T.R. At approximately 1625 hours 21 May 1945 I was escorting F-37040 Pte. Henderson, T.B., the accused whom I now recognize, to the Guard Room. The accused was walking in front of me down the stairs of the barracks carrying his blankets and kit on his head. Upon reaching the foot of the stairs he threw this equipment backwards over his head and bolted. I was delayed a short time getting over the equipment, but chased the accused until he managed to get away in the streets of Aldershot. I reported the matter to C.S.M. Alderson, J. of R. & D. Wing.

Cpl. L. Richer C-31734
C-31734 Cpl. Richer, L.

The accused declined to cross-examine the witness.

SECOND WITNESS: For the Prosecution

C-53014 Sgt. Beavis, R.J., (SD&GH)., Sgt. i/c Regimental Police, No 3 C.I.T.R., a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am C-53014 Sgt. Beavis, R.J., (SD&GH)., R.H.Q., Sgt. i/c Regimental Police, No 3 C.I.T.R. At approximately 1650 hours 22 May 1945 I was on patrol with two of the Regimental Police when I saw the accused F-37040 Pte. Henderson, T.B. whom I now recognize, near the Red Lion Pub, on Ash Road, Aldershot. He started to run down a side street. We chased him to the end of the road where he was apprehended by L/Cpl. Johnson, R. of the Regimental Police. I ordered him brought to the Guard Room where he was turned over to the N.C.O. in charge.

C 53014 Sgt. Beavis R.J.
C-53014 Sgt. Beavis, R.J.

The accused declined to cross-examine the witness.

THIRD WITNESS: FOR the Prosecution

Lieut. J.A. Madill, (L & R. Scot)., on the strength of No 3 Cdn. Inf. Trg. Regt., having been duly sworn, states:

I am Lieut. J.A. Madill, and am A/Adjutant of No 3 Cdn. Inf. Depot Bn. I produce the following documents pursuant to Overseas R.O. 5352 which have been read over and shown to the accused F-37040 Pte. Henderson, T.B., whom I now recognize and identify, and which are attached hereto as Exhibits.

EXHIBIT "A" Certified True Extract from No 3 Cdn. Inf. Trg. Regt Part II Daily Order No 127 dated 24 May 1945, relating to the accused.

J.A. Madill Lieut.
(J.A. Madill, Lieut.

Summary of Evidence (Cont'd)

Third Witness (Cont'd)

The accused declined to cross-examine the witness.

The accused was cautioned as follows: Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of Two (2) pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

IN THE FIELD
24 May 1945.

(E.B.J. Howard) Lieut.
Officer detailed to take Summary.

Ex "A"
EBA

No 3 CANADIAN INFANTRY TRAINING REGIMENT

LAST ORDER	PART II DAILY ORDERS	THIS ORDER
No 126	Issued by	No 127
23 May 1945	COLONEL W.D. WHITAKER, D.S.O. COMMANDER	24 May 1945

17. PUNISHMENTS (Cont'd)

(f) On 21 May 45, awarded 28 days detention and forf of 28 days pay for an offence under AA Sec 15 (1), A.W.L. from 0800 hrs 16 May 45 until 0800 hrs 18 May 45 (absent 2 days).
Forf 28 days pay under FR&I 149 (1) (a)
Forf 28 days pay under FR&I 149 (1) (b)
Total forf of 30 days pay
F-37040 Pte. HENDERSON, T.B. CIC.

D.G. Kennedy Lieut.
for(J.B. Stratton) A/Major
Regimental Adjutant
No 3 Cdn. Inf. Trg. Regt.

Certified True Extract

24 May 1945.

Officer having custody of original record.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F-37040	Pte.	Henderson, T.B.	No 3 C.I.T.R.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 617, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, provision being given to the most severe offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec 40	3 times	3 times.
For A.A. Sec 15 (1)	2 times	2 times.
~~For [illegible]~~	~~times~~	~~times~~
~~For [illegible]~~	~~times~~	~~times~~
~~For [illegible]~~	~~times~~	~~times~~

~~Number of occasions of gallantry or distinguished conduct.~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, *or*

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 71 of the Army Act, are set out in the schedule annexed to this statement.~~

~~The accused is not under sentence at the present time, or~~ The accused at the present time is under sentence for 28 days (Detention) AWL beginning on the 21 day of May 1945

4. The accused has been in confinement, awaiting trial on the present charges, for ..... days in civil custody, and 7 days in military custody, making a total of 7 days days, of which ..... days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 19 years

6. The date of his ~~attestation~~ specified in his ~~attestation paper~~ record of service is 10 May 1944

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 year

~~8. The accused is entitled to deferred pay or gratuity in respect of [illegible] service~~

~~9. The accused is entitled to reckon [illegible] service for the purpose of determining his pension~~

~~10. The accused is in possession of, or entitled to, no military decoration or military award~~ (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

~~If the accused is a non-commissioned officer the accused has not been under a sentence of imprisonment [illegible]~~

~~[illegible]~~

~~[illegible]~~

[illegible] WL34976/1730 20,000 10/43 A.& E.W.Ltd. Gp.666
[illegible] WL34976/1730 12,000 5/44 " "

E & B

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. F-37040 Rank Pte. Name Henderson, T.B. of No 3 CITR. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		Nil Amadill Lieut a/Adj.		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 29 day of May 1945.

Amadill Lt. a/Adj.

(INSTRUCTION.—*If any matter in any of the above four paragraphs cannot be stated from the regimental books the paragraphs must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraphs concerned amended accordingly.*)

No. F37040 Name HENDERSON TB | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 10 May 44 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136 (5418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
		Previous sheet destroyed w.e.f. 10 Nov 44 in accordance with R.O. 319(5)(a) "D Burns Lt" Donated Blood 14 Dec 44							
Field	18-1-45	Pte		AA Sec 40 Improperly dressed	Docy	3 days C.B. 3 days pay	9-2-45	Maj J.W. Smeltzer	
Field	15 Apr 45	Pte		AA Sec 15(1) AWL from 2200 hrs 15 Apr 45 until apprn in Brighton at 1000 hrs 19 Apr 45. Cost of ret £0-11-11. Abs 3 days 12 hrs. AA Sec 40	Docy	21 days F.P. 21 days pay FR&I 149.1.b. Cost of ret £0-11-11	23 Apr 45	Lt-Col AM Young	4 days pay FR&I 149.1.b Cost of ret £0-11-11

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Apr 45	Pte		AA Sec 40 Failed to answer name on defaulter's Parade	Docy	Admonished	30 Apr 45	Capt E.A. Haines	
Field	16 May 45	Pte		AA Sec 15(1) AWL from 0800 hrs 16 May 45 to 0800 hrs 18 May 45. Total absence 2 days.	Docy	28 days detn	21 May 45	Major AC Ross	2 days pay FR&I 149.1.a. 28 days pay FR&I 149.1.b.

Certified True Copy - 25 May 45

Officer having custody of Original Record.

LIST OF WITNESSES

In the case of F-37040 Pte. Henderson, T.B., (SD&GH)., on the strength of No 3 Cdn. Inf. Trg. Regt.

For THE PROSECUTION

1. C-31734 Cpl. Richer, L. (SD&GH)., No 3 C.I.T.R.
2. C-53014 Sgt. Beavis, R.J. (SD&GH)., No 3 C.I.T.R.
3. Lieut. J.A. Madill L&R.Scot)., No 3 C.I.T.R.

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

In the case of F-37040 Pte. Henderson, T.B., (SD&GH)., on the strength of No 3 Cdn. Inf. Trg. Regt.

EXHIBIT "A" Certified True Extract from No 3 Cdn. Inf. Trg. Regt Part II Daily Order No 127 dated 24 May 1945.

24 May 1945.

This is to acknowledge that I have received free of charge, the following papers in connection with my forthcoming trial by FGCM.

1. Copy of Charge Sheet
1. Copy of Summary of Evidence
1. List of Exhibits
1. List of Witnesses.

Henderson T.B.
F-37040 Pte. Henderson, T.B.

No 3 CANADIAN INFANTRY TRAINING REGIMENT (C.A.)(O)

3D/11

Date 24 May 1945. 194

I, No. F-37040 (Rank) Pte. Henderson, T.B. (Name) wish to have an Officer defend me at my forthcoming trial by Court-Martial.

I desire the services of any officer if he is available.

(Sgd) Henderson T.B.

55-109.

Gov. Henderson. V

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D118481 Gnr Vernon Henderson

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 18(4)	Not guilty	Guilty	
2nd	AA 40 (act)	Not guilty	Not Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in/oss of kit see RP 44 fn 6.)

At present under sentence for ____ beginning on (date) ____ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of six (6) months.

(Sgd) [signature] Judge-Advocate, if any. May. Date awarded. 31 Aug 45 (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ____ (Sgd) ____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks for the period mentioned.~~(1)

(1. AA 57A. Delete if not used.)

Date 7 Sept 45 (Sgd) [signature] Brig

Commanding CRA 3 Cdn Inf Div

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D118481 Gnr HENDERSON V.	7 Sept 1945	[signature] A.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 17 SEP 1945 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160 55-109

FIELD GENERAL COURT-MARTIAL

CFAMS (To Bau of A/Pers) 40-P & S/1600 (6144) 4/38B

Convened by Order of Brigadier JG Clarke Comd 3 Cdn Inf Div dated 7 Aug 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D 118461	Gunner		Vernon	HENDERSON	14 Fd Regt RCA

PROCEEDINGS REVIEWED 18 Sept 45 [signature] Capt. REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland. on (date(s)) 31 Aug 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for words and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-73, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1045 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 562(c). Delete, if not applicable.)

A5. President to accused: Do you object to ____ as interpreter? Ans ____

The Interpreter is sworn.(1) ~~Do you objects to ____ as shorthand writer? Ans ____ The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 23, 71, 98, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj.	F P. Boothe	3 Cdn A Regt RCA
Member	Capt	R M Idelle	4 LAA Regt RCA
Member	Lieut	W. McDonnell	12 Fd. Regt RCA
Judge-Advocate	Maj	E. B Bull	DJA - 3 Cdn Inf Div
Prosecutor	Lieut	R F Lucas	14 Cdn Fd Regt RCA
Defending Offr	Capt.	D C M°Lean	12 Cdn Fd Regt RCA.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 2.)

A8. The accused ____ before arraignment make(s) (no) ~~and~~ plea ____ (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP chad. Insert in AB rank and name of the accused making the plea.)

~~A9. The Court (is closed) and (resumes) at 1530 hrs. Cf proceedings at 1530 hrs. Court resumes at 1045 hrs.~~

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB 160 Vol 62 p 63

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B--PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete plea/s or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty has (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C--PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D--PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No sir (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (any) (no) opening address.(1) Nil
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the both charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the both charge(s), ~~and allowed on the charge(s)~~, and that, accordingly, the trial will proceed ~~on the former, but the accused is (are) found Not Guilty on the latter charge(s)~~.(4) Nil Nil
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. No sir Do you intend to call witnesses on your behalf ? Ans. Yes Are they witnesses as to character only ? Ans. No
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the first charge(s), being subject to confirmation, will be promulgated later.(1) ~~On the President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2) Nil Nil
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E--PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans. I would like to make a statement but not call witnesses (see p 17)
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 6, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3) Nil Nil Nil
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes I have my Pay Book. (2) Nil
(1. RP 37(C), 46(D). 2. Address, if any recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

I certify that I have thid day examined

No D-118481 Rank Gnr. Name Henderson, V.

14 Field Regiment RCA (CDA)

and that in my opinion he is.....Fit..... to undergo trial

by Field General Court Martial.

Signed in the Field this

.....31st.....day of.....August.....1945.

[illegible] Field Regiment RCA (CDA)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D118481	Gunner		Vernon	HENDERSON	14 Fd Regt RCA

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 29 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	F.I. SCOTT	3 ATk Regt RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by OC	4 LAA Regt RCA
Lt	To be detailed by OC	12 Fd Regt RCA

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	To be detailed by OC	3 ATk Regt RCA

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Major	E.B. BULL	DJA 3 Cdn Inf Div

On Active Service in the Fd

in HOLLAND (Country.)

(Signed personally. RP 105 fn 2.) (D.G. Clarke) Brigadier (Rank.)

Dat 29 Aug 45

Commanding CRA 3 Cdn Inf Div CRA

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 65 (In lieu of AFA 3) as F & E/1707 (6143)

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused D 118481 Gunner Vernon HENDERSON, 81 Field Battery, 14 Field Regiment RCA (CDA), a soldier of the Canadian Army Overseas, is charged with:-

WHEN ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he

In the Field at UTRECHT at approximately 2215 hrs on 19 Aug 45 stole two packages of Sweet Caporal cigarettes and two tins of pipe tobacco, the property of D 3967 Gnr GOULET Y, 14 Field Regiment RCA (CDA), a person subject to military law.

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

(ALTERNATIVE)

in that he

In the Field at UTRECHT at approximately 2215 hrs on 19 Aug 45, was in improper possession of two packages of Sweet Caporal cigarettes and two tins of pipe tobacco, the property of D 3967 Gnr GOULET, Y, 14 Field Regiment RCA (CDA),

C.G. Benson

Signed in the Field (CG BENSON) MAJOR RCA
this 25 day of August 1945. A/Comd 14 Field Regiment RCA (CDA)

Approved with A.R. Kay SVO DJA

To be tried by F.G.C.M.

H.R. Clarke.

29 Aug 45 (LG Clarke) Brigadier
CRA 3 Cdn Inf Div CDA

Furth. witness for Prosecution

K. 68912 Gnr. Duncan. W A
14 Can Fd. Regt. R.C.A.
being duly sworn, is examined by the Pros:—

Q Are you as above. A Yes. Q Were you orderly clerk for 81 Fd. Bty. A I remember the night of 19 Aug 45. Q On this night Gnr. Goulet & I caught the accused & another soldier Gnr. White going thro' the kit of Gnr. Goulet. At approx 2215 hrs I stepped out of Q M stores & saw that room was tampering with the 81 Bty orderly room window & looking in cautiously. I observed what I thought came from the 81 Bty orderly room so I turned back into Q stores & called to Gnr. Goulet to come with me. On approaching the building we saw the light came not from orderly room but from Bty Comds office which was just next door to orderly room. We saw thro the window Gnr. White & the accused standing in front of a locker which was open & which contained Gnr. Goulets equipment. Gnr White had in his hand a brown leather shoving kit & the acc. who was standing on White's left, had in his hand a large pack which I thought he was in process of opening. Gnr Goulet went into the Bty Comds office immediately & I unlocked door in orderly room to see if anything had been touched in there. Nothing had been disturbed so I went into the battery Comds office. Gnr Goulet asked the acc & Gnr White for an explanation why they were there & what they

were doing. The acc answered that he thought the equipment was officer's equipment & not Goulet equipment. Gnr. Henderson was then made to turn the contents of his pockets on the floor & there was nothing there that Gnr Goulet claimed as his. Gnr. Goulet & myself then made the acc search white from whose shirt pocket was removed 3 packages of cigarettes & one pipe & nailfile came from white's pocket. Lying on the floor at accused's feet was a large pack which was open and the contents looked as though they had been rummaged thro. Lying beside the pack on the floor were a pair of brown socks. On the table was the shaving kit which I had seen previously in white's hand when I looked thro' window. Gnr. Goulet left the room & returned with R.O.C & R.O.S. He left room because I phone did not work Sgt. Rowley, the Bty O.S came down & talked with R.O.S & R.O.C & then placed Gnrs White & acc. under arrest. I sleep normally in Bty office. I had a clear view thro' Bty Comdrs office as windows were not fogged at all, but had fallen in and were very wet & there were clear places where you could see thro quite clearly. Gnr. Goulet said home in the presence & hearing of acc that the acc had some pipe tobacco of his, but I did not see any on acc. I did see two flat tins of Edgeworth tobacco in Goulets cupboard.

The acc. was sober in my estimation.

XX

I had a thorough look around Orderly room. I may have been 2 minutes in there. It may have been less or it may have been more than 2 minutes. When I went into Comdr. Office, Henderson was standing ~~at the~~ beside the locker & almost the same position as when he was when I saw him from outside Grs. White was half sitting on table on other side of room. Gnr. Goulet was midway between the two. Goulet was arguing with both men when I came in. I noticed a fleck of fresh blood on each corner of the mouth of Henderson. I couldn't say if Goulet & Henderson had been fighting. When I first came in they were still arguing. Acc. kept repeating that he thought it was office kit. I didn't search Henderson. We told him to turn his pockets out. Remember the Summary of Evidence. It is true that I compelled search by making him feel himself. I am satisfied he had nothing on him. When I entered room I did not hear Goulet accuse acc of stealing pipe tobacco. I heard that after I entered room. At time I came in Goulet was in front of cabinet, & while he was arguing with them he was rummaging some of his kit. The acc. had no right to be in the office.

H. The acc. has not been R. P. 86 (b) complied with

Second entries for Prosecution

D 3967 Gnr. Goulet J. 14 Cdn 7d Regt RCA being duly sworn is examined by Pros:

I am as above. I am employed as DR & Room Orderly in 81 Bty offices & Bty Comds's office. I remember the night of 19 Aug 45. On that evening at approx 2015 hrs Gnr. Duncan & myself saw a light which I thought came from battery office. However on getting outside we saw that it came from Bty Comds office right next to Bty office. On passing in front of office I could see Gnr. Henderson, the acc, and Gnr White who were standing thro' my bit. Immediately went inside & into the office & asked the acc what he was doing there. He ~~would~~ said "I didn't know it was your stuff. I thought it was an offis's stuff." I searched the acc & on his person I found 1 tin of Players Gold Leaf pipe tobacco & also 1 tin of cut Golden Bar pipe tobacco & two packages of sweet Caporal cigarettes. All these were inside his shirt. After I finished searching the acc. I provided ~~to search~~ acc search White and found on White some of my property. I asked Gnr Duncan to contain the guardroom & as he could not reach them. I went & got the OC & ROS who came back with me. The two tins of tobacco were of ordinary type. I had 1 tin of Players Gold Leaf pipe tobacco & 1 tin of cut Golden Bar

pipe tobacco and two packs of sweet Capnal cigarettes in my cupboard. There were also three packages of Macdonald Export cigarettes in my cupboard. There was also in the cupboard 1 package of old Virginia pipe tobacco. There were two packages of Edgeworth pipe tobacco in my small pack. I had last seen these articles that same evening after supper approx 1900 hrs. The Players Gold Leaf pipe tobacco + Cut Golden Bar tobacco + cigarettes were on the shelf in the cupboard at 1900 hrs. When I came in at 2215 hrs the two tins of tobacco, ie the Players Gold Leaf + the tin of Cut Golden Bar pipe tobacco, two packages of Sweet Cap. cigarettes, 3 packages of Macdonald Export cigarettes, a pipe and a nail file and also 50 Players cigarettes were missing, when I checked. On acc. of person I found 2 tins of pipe tobacco. These tins produced I believe to be the two tins I found on acc.

2 tins of tobacco produced + marked exhibits "A" + "B", initialed by Pres.

Exhibits "A" + B look identical with the two tins I had in my cupboard at 1900 hrs + which were not in my cupboard at 2215 hrs or shortly afterwards.

The two packages of Sweet Capnal cigarettes which I found on acc were identical in all respects to the two packages I had in my cupboard which were missing. I smoked these cigarettes after I took them away from

acc. When the tobacco & cigarettes were removed from acc I don't know whether Gns. Duncan was present or not. The acc is just a member of the Bty as far as I'm concerned. acc had absolutely no yat tobe in Bty Comdr. Office, as it is out of bounds to personnel of battery who are not on duty. I am the room orderly. I was supposed to sleep in Bty Comdr. Office, but I had not as yet moved in my bed. That is why my hat was there. When I came into room the acc seemed to be quite sober. When I removed the 2 lbs of tobacco from acc they were placed on table in Bty Comdr's office

XX

Beside the tobacco which I say was stolen I had, on shelf in cupboard, ~~2 packages~~ 1 package of old Virginia pipe tobacco & in my small pack I had two packages of Edgeworth tobacco. The tobacco said to be stolen was all on shelf beside the package of old Virginia. I felt inside of acc's shirt. I remember seeing through his shirt. I don't remember seeing his pockets, but I believe I told him to empty his pockets, but I'm not sure. I don't remember whether Gn Duncan was in room. I don't remember asking Henderson to put his own pockets. I just saw them when missing from cupboard. Acc looked very surprised when I came in. I ran in. acc's mouth was swollen. I hit ~~Gunner~~ acc. I went into room, and asked the

acc. what he was doing. He did not give any reply for a moment, then he said "I did not know it was your stuff, I thought it was officials stuff" He also said he was sorry. I looked in the cupboard & I could see my cigarettes & pipe tobacco were missing & my pit was down floor & in bottom of cupboard. Then I hit the accused. The acc. did not put up a fight. Then I took off the articles off acc I hit white too I don't remember if I hit White before or afterwards I took articles off accused. I could see lumps in accuseds shirt. Most likely I told acc to empty his pockets. After I put cigarettes & pipe tobacco on table a lot of things happened & Jim Duncan was around. I remember asking acc to search White; this was after placing pipe tobacco on table I remember there were a few things on floor ~~after~~ I told Anderson to empty White's pockets. ~~I don't remember if~~ I couldn't say for sure if Duncan asked me if anything in pile on floor belonged to me. The Edgeworth were not on shelf in cupboard. I saw them when I checked my ~~pit~~ case what was missing. I saw acc in canteen earlier sitting down drinking beer. I couldn't say whether they were sober or not. At the summary of Evidence I did say that earlier in the evening they were not sober. I was under oath. I do not wish to

Cont'd. that answer, but I didn't mean to say that when I saw them in Pyt Canteen that they were drunk, but whether they were sober, drunk in Canteen I don't know. When I saw acc in office in my opinion he was sober, but had been drinking. I had no quarrels with acc before this. I don't know acc as a member of Bty. I have no feelings against him. Acc. told me that he was on report days next morning in the Bty Comdr's office.

J.A.

The acc did not object to tobacco & cigarettes being taken off him by me. He did not claim them. I don't think Klein was in room when I took tobacco off his person.

Court

After he said he didn't know it was my stuff, he said he was sorry. He was repenting of the fact in the cupboard, I think.

R.P. 83(b) complied with.

This witness for Prosecution

D7516 Sgt Rowley W.C. 14 Can Fd Regt R.C.A. being duly sworn, is examined by Pros:—

I am as above. On 14 Aug 45 I was Orderly Sgt. At about 2245 hrs I heard about a disturbance downstairs. I went to Bty Orderly room & met Gnr. Goulet, ~~who is present & hears my answer~~ & had a conversation with him. I saw the accd I went into Bty Comdrs office & saw a kit bag opened up & contents on floor & a couple of packages of cigarettes on bench. I spoke to R.O.D & then placed accd under close arrest. The accd appeared to be sober when I placed him under arrest. The accd was in the mess when I saw him.

No XX

Court.

Goulet & Duncan were sober.

R.P. § 3(b) complied with

The prosecution is closed.

Submission of No Prima Facie case.

There are two witnesses one of whom is reliable & one who is not so reliable. Duncan says when he entered room Goulet was still dancing with acc. Duncan then states that he was ordered to empty pockets & empty pockets on floor. He also stated he assisted in search of Henderson.

Goulet's recollection is very hazy. He also had a fight with acc - reluctant to tell about it. He then claims he found articles on accused. It seems weird that these articles were not seen by Duncan. Goulet was not sure if acc was made to empty pockets or not. Goulet contradicted himself on Condition of acc in car here. Goulet most unreliable. Goulet probably inflamed & not impossible that he tried to plant articles on acc. Taking into acc. comparable reliability

Answer of Pros.

Goulet was confused on certain points. But the main points on which case rests, he is quite definite. He had previously seen articles & when he searched he put in presence of acc they were missing & on person of acc he found identical articles. Ample support evidence.

No reply by Def Off.

J.A. advises the Court on prima facie case.

The Ct is closed.

See Recd Form D para D-4.

First witness for Defence

D 135708 Gnr. Enright W.G. 14 Cdn Fd Regt. R.C.A. being duly sworn, is examined by Maj Offr.

I was in reg canteen on 19 Aug 45. I recognize the acc. He was in canteen. I was seated at his table. Acc. was drinking beer first & then open a bottle he had a bottle of blueish liquid which he had a drink of. I believe one person said it was a concoction of methylated spirits. I left at approx 9 O'clock. I didn't notice if acc. was drinking this liquid when I left, but I know he was still drinking beer. I couldn't say if anything was left in bottle when I left. I would say acc. was feeling very good when I left.

XX. I am not a personal friend. I have known him since we both were in Hoves. I have had a few beers with him. I don't know him well enough to know if he is type liquid upsets easily. I can't say that I've seen him had too much. It takes a lot of beer in reg canteen to upset a person. There was no label on bottle. It could have been a medicine bottle or a same bottle. It was a fairly small bottle. Approx held 12 to 14 oz. They were drinking it right. I know of no drinks of a blue color. When I last saw acc I wouldn't say he was drunk. He was still carrying on a conversation.

R.P. 83 (6) complied with.

Dr's witness for Defence

G 16095 Gnr. McKinnon, P.B.
14 Can Fd Regt being duly sworn is examined by Def Offr:-

I saw acc. in wet canteen on night of 19 Aug 45. I was at same table. The acc. was drinking what looked like methylated spirits. He had been drinking beer. I left about 9 o'clock. At that time acc. was under influence of liquor.

XX. I have known acc. about a month. I have never gone out with him. I say he was under the influence because I saw him drink several drinks of this liquid. I would not say he was drunk but his actions looked as though he was under influence. - Talking freely. He had a slight stagger when he was walking. I think he went to laundry once. - He had a slight stagger. - There were no other indications.

R.P. 83 (b) complied with.

Closing address by Kly Off.

The only evidence addduced by Crown in support of the chages is evidence of Goulet. The reliability of this witness must be seriously questioned in view of not only his manner in answering questions, but also the fact that the evidence he gave in connection with the sobriety of the acc. did not agree with evidence he had previously given in Summary of Evidence. Also it seems that Gnr. Goulet got into a short fight with acc. before the claims to have found certain of his possessions on acc's person. It might well be Goulet became inflamed & pretended he found certain articles on acc's which were not actually there. The evidence of Gnr Duncan would seem to be reliable & seems to support this contention. Duncan claimed when he called Bty Comds. office Goulet was still questioning the two men. It would seem thereafter that the fight had just subsided & that Gnr. Goulet was preparing to search the two men. In fact Duncan's evidence states that acc was made to turn out his pockets on floor & that his body was felt over nothing was hidden — and in fact nothing was found. Duncan also stated that he did not see anywhere in room, the 2 tins of tobacco & cigarettes allegedly found on accused. The only tobacco he saw in room were 2 tins of Edgeworth which he saw in cupboard.
In view of this evidence I believe the Court must come to conclusion that acc is not guilty of both chages. Gnr. Henderson on the evening before leaving for Canada apparently decided to have a celebration in course of which he was eventually found in drunken condition in his Bty

Coroner's office. As the evidence of the prosecution has not proved the acc was in possession of articles which did not belong to him, the acc. should be found not Guilty.

4

Closing address of Pros

Two witnesses saw acc in Bly Condis room when he had no right to be. Two witnesses saw him going thro a kit in that room. Goulet swears that he found the tobacco & cigarette corresponding to that was missing from his kit on the person of the acc. Then were then hands altogether & it would be a great coincidence if they happened to correspond to the then missing hands. Hen can did not recall seeing the loss of tobacco & cigarettes but that is not unlikely in the excitement. All then witnesses state the acc to be sober. Goulet was neither a friend nor enemy of acc & it is exceedingly farfetched to believe that he would try to frame him. The only defence is that of drunkenness which could be a reason but not an excuse. ~~The acc made no complaint of~~

~~time of assault~~

Summing up by J.A.

(1) Function of J.A to advise on law - Ct. sole judge of fact
(2) Opinion of fact by J.A to be disregarded.
(3) Fact charge read & analyzed - Reg. v Spicer:-
    (a) acc stole property
    (b) believing a Gould, a person subject to mil. law.
(4) Theft defined - & each element, ie "taking" - "fraudulently", "of any right", "intent to permanently deprive" etc discussed
(5) Second charge read & discussed - possession, if any, proper & improper for Ct, & then if improper, whether to pay value of good order AND mil discipline.
(6) Alternative charge - cannot be found guilty of both, but can be found NG of both
(7) Special pleas for rational mistake discussed
(8) Doctrine of recent possession explained - & M.M.L p.124 & read.
(9) Drunkenness defined & whether defence or not - M.M.L p.24 & 186 read.
(10) Credibility of witnesses & right of Ct to believe or disbelieve witnesses.
(11) Ct. May Case & evidence before Ct & to pay particular attn to defence evidence & submissions
(12) Burden of proof on prosecution - "golden rule" - reasonable doubt discussed & defined - If Ct satisfied of innocence or reasonable doubt of guilt MUST acquit
(13) Mr. Pros. any thing any possible matter upon which you wish me to advise the Ct? Ans no
(14) Same question to Pros Ans no.
(15) Same question to Maj Byfe. Ans. no

At

On the afternoon of the 19th of August I bought a bottle of what is known over here as ouzo, which I proceeded to drink in celebration of my good fortune, for on the 20th of August, which was the next morning I was on repatriation draft. I had waited over four years for that eventful day, the day I would be released from the army. I was feeling in a very **** spirits, and in a mood for more celebration, so I headed for the grosscantine, where I met quite a few of the boys I knew, and who knew I was on draft, they all insisted on buying me a drink. Two boys from 12th field bde whom I do not know gave me three drinks of gin. Needless to say I accepted all drinks, buying quite a few myself. Later I met Gnr White in the canteen after a few rounds of beer, Gnr White ordered a bottle of methylated spirits, then and running to be any other kind here around, I good naturedly and very fondly accepted the invitation. I remember drinking the first bottle and going for a second one, but I don't remember finishing the second bottle. I awoke the next morning,

not to find my self on draft, but on the guard room charged with theft. I cannot understand even with my mind crazed with poison alchohol, why I would ~~stoop~~ lower, and degrade my self by stooping so low, after hearing my statment, and the evidence against my self for review. I ask the court to take into consideration the fact that I have given over four years of the best part of my life to the army, and want only to get home, where I can live more like a normal life, with my wife and child.

DU7481 Leon V. Henderson

Statement in Mitigation

There is little I can add to statement of acc. I would like to draw attention of Court to fact that when acc. joined army he could hardly write his own name. During term in Army he has learned how to read & write but has studied arithmetic & spelling. His conduct sheet is not clear, the only ones are AWL & loss of Pit. Surely serving no good purpose, to punish a man with a long prison term, who on night before leaving for Canada, decided to celebrate, became drunk & eventually found in a room accused with theft. He has never been charged with dishonesty during his career in Army. Surely he must be treated as leniently as possible for guilty so drunk & not realizing what he was doing. Heavy prison sentence would make civil life more difficult, but also seriously affect life of wife & child waiting so long for his return. Already the acc. has had to write to his wife to say that his return that looked so close, must now be delayed because of this trial. I hope the Court may find it possible to make this delay as short as possible.

J.T.

Exhibit "A"

is a unopened tin said to contain pipe tobacco and marked "Players Gold Leaf Pipe Tobacco" on a blue label.

Exhibit "B"

is an unopened tin said to contain pipe tobacco and marked "Cut Golden Bar pipe Tobacco" on a blue label.

Exhibits "A" & "B" were released by authy of Maj. E. B. Bull, DJA - 3 Can Inf Div under C.R.O (21 Army Gp) 25 para 20(c) and exhibits from proceedings & returned to owner D 3467 Gnr. Goulet J - 14 Can Fd Regt RCA under direction of Competency authy under AA 75.

E. B. Bull Maj
DJA
3 Can Inf Div.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D 118481	Gunner	Vernon HENDERSON	14 FIELD REGIMENT RCA (CDA)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Sec 15 (1) AA — 11 times.

For Sec 24 (2) AA — 1 times.

For ____ — ____ times.

For ____ — ____ times.

Date of first entry in Field Conduct Sheet 10 MAY 45 24 Aug 45.

Date of last entry in Field Conduct Sheet 16 JUL 45

2. ~~[illegible]~~

*3. ~~[illegible]~~

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 12 days in military custody, *i.e.*, NIL days in open arrest, 12 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 27 yrs

6. The date of his attestation is 10 JUL 41

7. The service which the accused is allowed to reckon is 4 yrs 1 mon

Dtate the military decorations (if any) held by accused.

8. The accused is in possession of CVSM & Clasp

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

		Date of Promotion.
In the substantive rank of	N/A	N/A
In the war substantive rank of	N/A	N/A
In the acting rank of	N/A	N/A

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

[21114] W1.4670/906 300,000 4-42 A.& E.W.Ltd. Gp.698
[21460] W1.12956/1673 80,000 8-42 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
Field General	England JUN 43	Sec 15 (1) AWL 58 days 22 hrs	120 days detn	30 days remission of sentence
Field General	Field 27 Mar 45	Sec 15 (1) AWL 19 days 15 hrs 1 Min	45 days detn	14 days remission of sentence

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 25th 31st day of August 1945

(HG BURRITT) Lieut RCA
A/ Adjt 14 Field Regiment RCA (CDA)

No. D 118481 Name Henderson V. Sqn., Battery, or Company — Corps C.I.C. Date of enlistment 10 Jul 41 G.C. Badge — Service or Proficiency Pay — M.F.M. 6 (A.F.W. 7.)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature (O.C. Company, etc.) — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial with trial	By whom awarded	Remarks
Previous sheet destroyed w.e.f. 10 Jan 42 in accordance with R.A.319 (5) a									
Field	24/8/42	Pte		A.A. sec 15 (1) AWL 2 days	Documentary	20 days F.P. 20 days pay	29/8/42		Forf 22 days pay
Field	16/10/42	Pte		A.A. Sec 15 (1) AWL 13 hrs	Sgt. Anderson	7 days F.P. 7 days pay			forf 8 days pay
Field	28/3/43	Pte		A.A. Sec 15 (1/ AWL 58 days 22 hrs	Documentary	120 days det. stpge pay 3-10-½			forf 18½ days pay
Field	29/5/43	Pte		A.A.Sec 24 los of kit	Sgt. Stirling	stoppage of 2-7-6			

P.T.O.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
									Forf 17 days pay
									total 41 days pary
Field	19/11/43	Pte		AA Sec 15 (1) AWL 12 days 5 hrs	Documentary	27 days pay	3/12/43		
Field	3/1/44	Pte		AA Sec 15 (1) AWL 24 hrs	Documentary	14 days C.E.	5/1/44	Lt Col McGowan	Forf 1 days pay forf 3 days pay total 10 days pay
Field	6/5/44	Pte		AA Sec 15 (1/ AWL 2 days 3 hrs	Documentary	7 days pay	8/5/44	Capt DE Calkin	forf 3 days pay total 10 days pay
Field	25/12/44	Pte		AA Sec 15(3) AWL 1 day 21 hrs	Documentary	8 days pay	28/12/44	Lt Col Safrenne	Forf 7 days pay total 10 days pay
Field	4/1/45	Pte		AA Sec 15 (1) AWL 18 days 14 Hours	Documentary	25 days F.P. 25 days pay	23/1/45	Maj A.C.Rose	for 19 days pay total forf 47 days p For 20 days pay
Field	27 mar 45	Pte		AA Sec 15 (1 AWL 2359 hrs 2 Mar 45 until 1500 hrs 19 Mar absent 19 days 15 hrs 1 min	Documentary Released	45 days detn 26 Apr 15 days remission	2 Mar 45	FGCM	FEI 119 (1) b

MFM 6
(AFB 122)
40/P&S/136 (3438)

No D 118485 Name Henderson V. | Sqn. Battery or Company | Corps R.C.A. | Date of enlistment 10 Jul 41 | GC Badges | Service or Proficiency Pay | Character

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	10 May 45	Gnr.		WOAS AWL from 0820 hrs 10 May 45 until 0845 hours 17 May 45 (absent 7 days 25 mins) AA Sec 15 (1)	Documentary	14 days pay	19 May 45	Lt. Col H.E. Brown	Forf 8 days pay FR&I 149 (1) a forf 14 days pay FR&I 149
Field	16 Jul 45	Gnr		WOAS AWL from 0900 hrs 16 Jul 45 until 1430 hrs 16 Jul 45 (Absent 5 hrs 30 Mins	Documentary	7 days pay	18 Jul 45	Lt. Col. W.J. Brigger	Forf 7 days pay FRI 149

CERTIFIED TRUE COPY

C.G. Benson Maj

(PTO)

Summary of evidence in the case of D 118481, Gnr. Henderson, V. 14th Field Reg't. R.C.A., 81st Field Battery.

By the direction of the Commanding Officer, the summary of evidence is taken on oath.

First Witness: D 7516, Sgt. Rowley, W.C. 14th Field Reg't. R.C.A., 81st Field Battery.
having been duly sworn states:

That I, Sir, in the Field, on August the 19th, 1945, was B.O.S. At approximately 2245 hours, I heard there had been a disturbance downstairs. I went to investigate and I met Gnr. Goulet, who told me that he had caught Gnr. White and Gnr. Henderson stealing tobacco and certain articles from his kit. I saw his equipment strewn on the floo.
The Orderly Officer was there at that time and after talking it over with him I placed Gnr. White and Gnr. Henderson under close arrest. Sir.

Cross examined by the Accused:
Q. I would like to ask Sgt. Rowley who was acting as Orderly Sergeant, if at the time and place mentioned, we were noticeably under the influence of liquor?
A. Sir, They had been drinking. I think Gnr. White had been drinking, and and they had been drinking, but knew what they were doing.

W.C. Rowley

Second Witness: D 3967 Gnr. Goulet, Y. 14th Field Reg't. R.C.A., 81st Field Battery.
having been duly sworn states:

That I, Sir, in the Field, on August the 19th, 1945 at approximately 2215 hours, Gnr. Duncan, W.A. brought my attention to the fact that the lights were on in the 81 Battery Office. We immediately ~~xxxxx~~ went out and on getting nearer the building we found that the lights were coming from the Battery Commanders Office. Then I immediately went in the building and into the office and found Gnrs. White and Henderson who had in their hands my large pack and who were searching through it and on their persons I found cigarettes, pipe tobacco and other of my personal belongings such as my pipe, nail file, and that's all I found. I went over to R.H.Q. and informed the Orderly Officer of what had taken place. Then the Orderly Officer and the Orderly Sergeant came over.

Q. Why was your kit in the Battery Commanders Office?
A. Because I am the room orderly for the Battery Commanders Office and the Battery Orderly Room.
Q. Will you specify which articles that you state above, you found in the hands or on the person of Gnr. Henderson.
A. On Gnr. Henderson, I found two packages of Sweet Capsoral cigarettes and also two tins of pipe tobacco. That is all, Sir.

Cross examined by the accused:
Q. At the time and place mentioned, were we, Gnr. White and myself under the influence of liquor?
A. I had seen them in the Regimental Canteen, earlier in the evening and they were not sober.

Y. Goulet

Third Witness: K 68912, Gnr. Duncan, W.A. 14th Field Reg't. R.C.A., 81st Field Battery.

having been duly sworn states:

That I, Sir, in the Field, on the night of August 19th, 1945, at approximately 2215 hours, noticed that the light was showing from what I thought was the Battery Office. Being the clerk in charge of the Office, and knowing that the light should not be on, I called Gnr. Goulet, to go over with me and investigate. We found on approaching the office that instead, it was the Battery Commander's Office. We looked through the window, and could see Gnrs. Henderson and White rummaging through the personal equipment of Gnr. Goulet. Gnr. Goulet went into the office immediately, and I followed him on. Gnr. Goulet asked them what they were doing there, and they could give no reasonable answer. Both parties had articles of Goulet's kit on their person, namely cigarettes, pipe tobacco, pipe and nail-file. Gnr. Goulet then went over to H.Q. to inform the Orderly Officer.

Q. Will you specify which of the articles you found in the hands or on the person of Gnr. Henderson.

A. I found nothing in the hands or on the person of Gnr. Henderson, Sir.

Q. Did you search or assist in the search of Gnr. Henderson.

A. Yes Sir, Gnr. Henderson was made to take everything from his pockets and his body felt to see that nothing was hidden and there was nothing there.

Cross examined by the accused:

Q. At the time and place mentioned were we, Gnr. White and myself under the influence of liquor.

A. Sir, I would say that Gnr. White was under the influence of liquor, but not drunk, and that Gnr. Henderson may have been drinking, but that his actions and his speech at the time mentioned was coherent.

Gnr. Duncan, W.A.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused declined to make a statement.

Certified that the foregoing summary of evidence, consisting of two pages was taken down by me in the presence and hearing of the accused, and that rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

In the Field.
24 Aug 45.

T.C. Ross, Capt.
14th Field Reg't. R.C.A.
Officer detailed to take the summary.

I wish an officer to defend me at my trial
~~do not wish~~

by Field General Court Martial. If available, I wish to obtain the services of Capt RH EVANS, 2/13 Field Regiment RCA (CAOF).

V Henderson

(V HENDERSON)

List of Witnesses for the defence in the case of
D 118481 Gunner Vernon HENDERSON, 81 Field Battery,
14 Field Regiment RCA (CDA)

D 135708	Gunner ENRIGHT W S	14 Field Regiment RCA (CDA)
G 16095	Gunner McKINNON P B	14 Field Regiment RCA (CDA)
F 28437	Private WHITEWOOD W J	14 Field Regiment RCA (CDA)

List of Witnesses for the prosecution in the case of D 118481 Gunner Vernon HENDERSON, 81 Field Battery 14 Field Regiment RCA (CDA)

D 7516	Sgt	ROWLEY	W C	14 Field Regiment RCA (CDA)
D 3967	Gnr	GOULET	Y	14 Field Regiment RCA (CDA)
K 68912	Gnr	DUNCAN	W A	14 Field Regiment RCA (CDA)

List of Exhibits in the case of D 118481 Gunner Vernon HENDERSON 81 Field Battery, 14 Field Regiment RCA (CDA)

two packages of Sweet Caporal Cigarettes

two tins of pipe tobacco

FF-74

GNR HENDERSON v.

D-118481 Gnr. Henderson, V.
3 CARU.

FF.74

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this 1st day of June, 1943. (Order convening the Court.)

Whereas it appears to me, the undersigned, an officer in Command of "C" Group, Canadian Reinforcement Units, Cdn Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [and that it is not practicable to delay the trial for reference to a superior qualified officer]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [It not practicable to appoint—
*(1. The Officer Commanding the Unit)
*(2. A Field Officer as President)
for the following reasons, namely:—]

11 Jan 43

Notes.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	A.S. Pettapiece	H.Q., C.R.U.

Members.

Rank.	Name.	Regiment.
Captain	F.P. Phippen RCA	2 C.A.R.U.
Lieutenant	T.A. Williams RCA	3 C.A.R.U.
	Waiting Member	
Lieutenant	W.S. Hoodenyk RCA	3 C.A.R.U.

*Must be signed personally by the Officer actually in command at the time, and all alterations to the composition of the Court to be initialled by him.

*Signed [illegible] Brigadier
Commanding "C" Group, Cdn Rft Units.
Convening Officer.

Arthur S. Pettapiece Major

SCHEDULE

Number, Rank (*a*) Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-118481 GNR. HENDERSON, Vernon R.C.A. No. 3 Cdn Arty Rft Unit.	First Charge A.A. sec 15(1) Second Charge A.A. Sec 24(2)	Guilty Guilty	Guilty Guilty Sentenced to undergo detention for a period of one hundred and twenty (120) days and to be put under stoppages of pay until he has made good the sum of 2s 6d and £2-7-6d in respect of the cost of apprehension and return and loss of kit respectively. 3 Jun 43. Arthur S. Pettapiece Major	Confirmed JCS

See charge sheet attached.

~~Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—~~

~~"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"~~

~~Answer (to be recorded on separate sheet if necessary).~~

(Signed) J C Stewart Brigadier (Signed) Arthur S. Pettapiece Major

Commanding "C" Group. C.R.U.
Convening Officer (c) *President.*

(*a*) Appointment, acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 3rd day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule

I also certify that :—

1. The members of the Court
2. ~~The witnesses~~
*(3. ~~The Interpreter~~)
*(4. The officers under instruction)

*Omit if not applicable.

were duly sworn.

Signed this 3rd day of June 1943.

Arthur S. Pettapiece, Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (*b*) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 4th day of June 1943.

J. C. Stewart
Confirming Officer.

J. C. STEWART, Brigadier,
Commanding "C" Group,
Cdn. Reinforcement Units.

Promulgated and extracts taken in the case of D 118481 Gnr Henderson V.

(*a*) (Dated) 30 121 4 7 June 43. (Signed) [illegible] Capt. R.C.A.
No. 3 CDN. ARTILLERY HOLDING UNIT

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(20704) W'1 47333/242 25,000 7/42 A.S.R. St. Ltd. Gp.483
(21795) W'1 19066/1329 40,000 7/42

CHARGE SHEET

The accused, D 118481, Gunner Vernon HENDERSON, "P" Training Wing, No. 3 C.A.R.U., a soldier of the Canadian Army Overseas, is charged with:-

1st Charge
Section 15(1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

In that he,

at Superior Camp, Ludshott, Hants., illegally absented himself without leave from 2359 hrs 28 Mar 43 until surrendering himself to P.C.(C.I.D.) Stapeley, at Croydon, at 2145 hrs on 26 May 43, incurring costs of apprehension and return to unit of Two Shillings and Six Pence (£0:2:6). Total absence 58 days, 21 hrs, 46 minutes.

2nd Charge
Section 24(2)
Army Act

WHEN ON ACTIVE SERVICE
LOSING BY NEGLECT HIS EQUIPMENT, CLOTHING AND REGIMENTAL NECESSARIES.

In that he,

at Huron Camp, Bramshott, Hants., on 29 May 43 was deficient of equipment, clothing and regimental necessaries to the value of Two Pounds, Seven Shillings, Six Pence and Half Penny, (£2:7:6½), which sum is 75% value of the vocabulary price of such articles which amounted to Three Pounds, Three Shillings, Five Pence and Half Penny, (£3:3:5½), in accordance with C.A.(C)R.O. 1398 as below listed:-

Articles		100% Value £	s	d	75% Value £	s	d
Boots, ankle, prs	1	1	1	6		16	11½
Drawers, woollen, prs.	1		8	3		6	2¼
Jacket, sweater	1		8	8		6	6
Shirts, angola, drab(2@9/2d.ea)			18	4		13	9
Towels, hand	1			11½			8¾
Vests, Gym.,	1		1	6		1	1¼
Vests, woollen	1		5	1		3	9¾
Drawers, cellular, prs.(2@2/0½pr)			4	1		3	0¾
Total		£ 3	3	5½	£ 2	7	6½

(B.R. Ker) Colonel,
Commanding,
No. 3 Cdn Arty Reinf Unit.

Huron Camp,
Bramshott, Hants.,
30 May 43.

To be tried by Field General Court Martial

Brigadier
Commanding "C" Group, Cdn Reinforcement Units
Convening Officer

Bordon, Hants.
1 June 43.

Arthur J. Bellegarde Major
President

3 JUNE 43

This is to certify that I have examined this date 3 June 43
D 118481 Gnr. HENDERSON, V. and found him fit to
undergo trial by Field General Court Martial.

J. Galbraith Capt.
Medical Officer, No. 3 C.A.R.U.

Arthur S. Pettapiece Major

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Kuran, Damascus, Brumpkit, Lebanon
ON THE 3rd DAY OF June 1943

The accused D.U.8421 Gnr. Hodgson S. ..... Unit. 3 C.A.R.U. .....

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by R.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President. Maj. A. S. Rattigan ..... Unit. H.Q.C.R.U. .....

Members. Capt. F.J.O. Eggen ..... Unit. 2.C.A.R.U. .....

Lt. T.S. Williams ..... Unit. 3.C.A.R.U. .....

The officers under instruction are duly sworn:-

Lt. J.D. Madill ..... Unit. 3.C.A.R.U. .....

Lt. D.H. Moore ..... Unit. 3.C.A.R.U. .....

Prosecutor Capt J.R. McCloy ..... Unit. 3.C.A.R.U. .....

Defending Officer Lt. D.H. Moore ..... Unit. 3.C.A.R.U. .....

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 353 and MFM 6.
The Court complies with R.P. 46(B). ~~MFB 676~~

Pursuant to R.P. 37 THE ACCUSED:-

~~(a) Makes a statement in mitigation of punishment.~~
~~(b) Calls witnesses as to character.~~
~~(c) Calls witnesses in mitigation of punishment.~~
(d) Addresses the Court by his Defending Officer.

The Court is closed to consider the sentence.

~~SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE AND~~ ADDRESS OF ~~ACCUSED OR~~ HIS DEFENDING OFFICER

Attached hereto.

Walter S. Rattigan Maj.

re statement in mitigation of punishment
in the case of D 118481 Gnr. Henderson, J.

The accused, having pleaded guilty to both charges, wishes me to make this statement on his behalf, before the Court adjourn to consider his punishment.

I would ask the Court to consider first the evidence submitted by the prosecution, namely Form A.F.B. 255, and Form A.F. A. 6. This evidence discloses but two minor offences in nearly two years of service. One offence was awarded an unusually severe punishment. I refer to the entry where 20 days Field Punishment and 20 days pay was awarded for an absence of only 1 day, 22 hours. Henderson tells me that this absence took place during a period of training and not at a time when he was in a position of responsibility such as on a gun site.

For the offences to which Henderson has just pleaded guilty, he makes no excuse other than being "fed up" due to reasons, some times within his control at other times not. He had had no leave in England since Dunkirk. Having come safely to Land at the end of March and being unable to get leave at the moment he went ahead and in due course surrendered himself in a soldierly fashion. He now stands before the Court ready to take his punishment as a soldier.

I ask the Court to give full consideration to this man's good record, his willingness to accept just punishment for his offence and his desire to return eventually to his unit to do his job as a soldier.

Lieut. R.C.A.
#3 C.A.A.A.

RECORD of the Declaration of a Court of Inquiry assembled at Huron Camp, Bramshott, Hants., on the 22nd day of April 19 43 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No. D 118481 Gnr. Henderson, V.

DECLARATION

The Court declare that D 118481 Gnr. Henderson, V. illegally absented himself without leave from Huron Camp, Bramshott, Hants., from 2359 hrs 28 Mar 43, is still so absent; and that on the 21st day of April 43 he was deficient and is still deficient of the following articles:-

ARTICLES			100% Value £	s	d	75% Value £	s	d
Boots, ankle	prs.	1	1	1	6		16	1½
Braces,	prs.	1		1	3½			11¼
Gloves, worsted	prs.	1		2	7½		1	11¼
Drawers, woollen	prs.	1		5	3		3	11¼
Jacket, sweater		1		6	9		5	0¼
Shirts, angola drab		2 @ 9/2d. ea.		18	4		13	9
Towels, hand		1			11½			8½
Vests, gym.		1		1	6		1	1½
Vests, woollen		1		5	1		3	9¾
Drawers, cellular	prs.	2 @ 2/0½d. pr.		4	1		3	0¾
		TOTAL	£ 3	7	4½	£ 2	10	5

30 May 43.
Certified true copy,

(J.R. McElroy) Capt., RCA,
Adjutant,
"F" Training Wing,
No. 3 C.A.R.U.

Names of President and Members:

President:- Capt. R.D. Falk, RCA, No. 3 C.A.R.U.

Member:- Lieut. R.G. Hepburn, RCA, No. 3 C.A.R.U.

Signature of Commanding Officer (H.W. Ker) Colonel,
Commanding,
No. 3 Cdn. Arty. Rein. Unit.

Certified true copy

Signature of Officer having custody of original record
(H.W. Keller) Lieut. R.C.A.

"A"

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

---

* Stations of Units and Depots are shown in the Monthly Army List.

† NOTE.—Special instructions apply in war for the disposal of absentees and deserters from the Army, who surrender to the civil police: e.g., such persons will be taken over from the civil authorities by the O.C. the nearest military unit or the O.C. Troops at the nearest military station. (A.C.I. 402, 1940).

(22743) W1.35000/181 25,000 10/42 A.B.E.W.Ltd. Gp.648
(15660) W1.4818/269 40,000 2/43 Forms/O.1617/12

I CERTIFY that the man whose personal description is given below surrendered himself to P.C.(C.I.D.) Stapeley at Surrey St., Croydon, at (hour) 9.45 p.m. on the Twenty-sixth day of May, 1943, as being No. D118481 (Rank and Name) Gnr. Henderson, Vernon No.3 C.A.R.U., a deserter (or absentee without leave) from Ludshott, Hants., and it appears to me from his confession that he is ~~a deserter or~~ absentee without leave.

*After the word " to " to be inserted the name and rank of the police officer concerned.

Age 24 Height 5 Feet 4 Inches

Complexion Fresh Hair Fair

Eyes Blue

Marks None visible

In uniform or plain clothes Plain clothes

Probable Date and Place of Attestation	10th July, 1941. Montreal, Canada.
Probable Date of Desertion or beginning of absence, and from what place	28th March, 1943. Ludshott, Hants.

J. Wood S.P.S.4th Z.

Signature of Officer of Police in charge of Station

METROPOLITAN POLICE CROYDON B Division

26th May, 1943. Date of Signature

Army Form O 1617
R.A.F. Form 1617

PART 2

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies only in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds

incurred by the ..... Police in the case

of No. .....

who surrendered to the Police at ..... on .....

Payable to .....

CERTIFIED that this statement of expenses is correct.

..... { Superintendent or Officer in charge of Police Station at .....

..... Date of Signature.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. H118481 Rank Pte Name Henderson, V Unit 3 C A R U
2 H A A Regt

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~

Return from Croydon

Date	Particulars	Amount		
28 May 42	Escorts return fare from LONDON To Croydon		1	8
	Prisoners single fare to LONDON From Croydon			10
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		2	6

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] CAPT.
FERN D.A.P.M.
LONDON AREA
Lieut.

Officer Issuing Railway Warrant and Expense Moneys
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:55
60/P & S/483

C
C4P

No.3.Canadian Artillery Reinforcement Unit.
Ca nadian Army (Overseas). 29th.May 1943.

D-118481 Gnr. Henderson V.

LIST OF DEFICIENCIES

			100% £ s. d.	75% £ s. d.
Boots,ankle prs.	1		1 - 1 - 6	16 - 1½
Drawers,woollen prs.	1		5 - 3	3 -11½
Jacket,sweater	1		6 - 9	5 - 0¼
Shirts,angola drab	2	@ 9/2d. ea	18 - 4	13 - 9
Towels,hand	1		-11½	- 8½
Vests,gym.	1		1 - 6	1 - 1½
Vests,woollen	1		5 - 1	3 - 9¾
Drawers,cellular prs.	2	@ 2/0½d. pr.	4 - 1	3 - 0¾
		TOTAL	£ 3 - 3 - 5½	£ 2 - 7 - 6½

I hereby certify that I have examined the kit of D-118481 Gnr.Henderson V. and find the above mentioned list of deficiencies.
Dated this 29th.day of May 1943.

Signed. D.Sterling Lt. A-57034
N.C.O.i/c. Kit-stores No.3.C.A.R.U.

I hereby certify that the kit of D-118481 Gnr.Henderson V. was completed on entering this Unit on the 19th. day of February 1943.

Signed. D.Sterling Lt A-57034
N.C.O.i/c. Kit-stores No.3.CA.R.U.

"D"

SUMMARY OF EVIDENCE IN THE CASE OF
D 118481, Gunner HENDERSON, V.
"B" Battery, "P" Training Wing,
No. 3 Cdn. Arty. Reinf. Unit.

The Commanding Officer directs that the evidence be taken on oath.

1st Witness for Prosecution — Capt. R.D. Palk, R.C.A., President of Court of Inquiry
Lieut. R.G. Hepburn, R.C.A., Member of Court of Inquiry

I, Capt. J.R. McElroy, R.C.A., Adjutant, "P" Training Wing, No. 3 C.A.R.U., the officer taking this Summary of Evidence, certify that owing to the loss of time and expense involved, the attendance of these witnesses cannot, in my opinion, be readily procured.

I now produce and read to you, a Certified true copy of the Declaration of a Court of Inquiry, held at Huron Camp, Bramshott, Hants., on the 22nd day of April 1943 which declared you to be absent without leave from 2359 hrs 28 Mar 43, and still absent at 2359 hrs 21 April 43. This Declaration is marked "A" and annexed hereto.

J.R. McElroy Capt

The accused does not require the presence of these witnesses for the purpose of cross-examination.

2nd Witness for Prosecution — S.P.S. 4"Z" N. Wood, of the Metropolitan Police, "Z" Division, Croydon.

I, Capt. J.R. McElroy, R.C.A., Adjutant, "P" Training Wing, No. 3 C.A.R.U., the officer taking this Summary of Evidence, certify that owing to the loss of time and expense involved, the attendance of this witness cannot, in my opinion, be readily procured.

I now produce and read to you, an Army Form O.1617, dated at Croydon on 26 May 43, purporting to be signed by the said S.P.S. 4"Z" N. Wood, stating that you surrendered yourself to P.C. (C.I.D.) Stapeley, at Croydon, at 2145 hrs on the 26 May 43. This Army Form O.1617 is marked "B" and annexed hereto.

J.R. McElroy Capt

The accused does not require the presence of this witness for the purpose of cross-examination.

3rd Witness for Prosecution — Capt. W. Fern, Officer Issuing Railway Warrant and Expense Monies, No. 6 Provost Coy., C.P.C., London.

I, Capt. J.R. McElroy, R.C.A., Adjutant, "P" Training Wing, No. 3 C.A.R.U., the officer taking this Summary of Evidence, certify that owing to the loss of time and expense involved, the attendance of this witness cannot, in my opinion, be readily procured.

I now produce and read to you an "Expense Voucher" Ref. KR & O (Can) 539, purporting to be signed by the said Capt. W. Fern, showing the expenses incurred in apprehending you and returning you to this unit to be Two Shillings and Six Pence (£0:2:6). This Voucher is marked "C" and annexed hereto.

J.R. McElroy Capt

The accused does not require the presence of this witness for the purpose of cross-examination.

(To page 2)

4th Witness for Prosecution

A 57034 A/Sgt. Stirling, S., N.C.O. i/c Kit Stores, No. 3 C.A.R.U., having been duly sworn, states:

"On the 29th day of May 43 I examined the "Kit" of D 118461 Gnr. Henderson, V., and found him to be deficient of equipment, clothing and regimental necessaries to the value of Two Pounds, Seven Shillings, Six Pence and Half Penny (£2:7:6½), which sum is 75% of the vocabulary price of such articles which amounted to Three Pounds, Three Shillings, Five Pence and Half Penny (£3:3:5½), in accordance with C.A.(C)R.O. 1398 as per list I am now presenting."

Stirling Sgt. A-57034

This list is marked ""D" and annexed hereto.

The accused declines to cross-examine this witness.

The accused having been duly cautioned in accordance with Rule of Procedure 4(e), reserves his defence.

Certified that Rules of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

I certify that the foregoing Summary of Evidence, consisting of One and a Half pages, was taken down before me in the presence and hearing of the accused this 29th day of May 1943, at "P" Training Wing, No. 3 Canadian Artillery Reinforcement Unit.

J.R. McElroy Capt

(J.R. McElroy) Capt., R.C.A.,
Adjutant,
"P" Training Wing,
No. 3 Cdn. Arty. Reinf. Unit.

Alton S. Pettapiece Major

M.F.M. 6
(A.F.B. 122)
40/P & S/136 (2ea?)

No. D116461 Name HENDERSON, V. | Sqn., Battery, or Company | Corps R.C.A. | Date of enlistment 10 July 41 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 10 Jan 42 - Last entry, NIL, No of cases of Drunkenness, NIL.					
Field	24 Aug 42	Gnr.		A.A.Sec.15(1)WOAS, AWL from 1045 hrs 24 Aug 42 to 0900 hrs 26 Aug 42.(Abs.1 day 22 hrs 15 mins).	Sgt.Doyle,F. L/Sgt.Ramsey L.	20 days F.P. with conjoint award of 20d.p. FRI 149(1)(b)	29 Aug 42	Lt.Col.A.E. McB Bell-Irving	Fts.2 days pay FRI 149(1)(a) Total ft're 22 days pay.
							Placed under stoppages of pay in the amount of fare London-Colchester		
Field	16 Oct 42	Gnr.		A.A.Sec.15(1)WOAS,AWL from 1900 hrs 16 Oct 42 to 0745 hrs 17 Oct 42.(Abs.12 hrs 45 mins).	Sgt.Anderson G.J. L/B.Brisco,B.	7 days Field P.with conjoint award of 7d.p. FRI 149(1)(b)	20 Oct42	Lt.col.A.E. McB Bell-Irving	Fts. 1 days p. FRI 149(1)(a) Total ft're 8 days pay.

CERTIFIED TRUE COPY OF ORIGINAL CONDUCT SHEET - 30 May 43.

(J.R. McElroy) Capt. R.C.A.
Adjt. "P" Trng. Wing, No. 3 C.A.R.U.

Arthur S. Bethune, Major

(P.T.O.)

M.F.B. 355
22M—5-41 (573-0)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D 116461	Gnr.	HENDERSON, Vernon	No. 3 C.A.R.U.

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A. Sec. 15(1)	Two (2) times	Two (2) times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Sec. 47 of the Army Act, A.A.s 73, Section 47 of the Army Act, and dispensations with trial under A.A. 73, are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

The accused at the present time is undergoing sentence for [illegible] beginning on the [illegible] day of [illegible]

4. The accused has been in confinement awaiting trial on the present charges, for seven days in civil custody, and [illegible] days in military custody, making a total of seven days in custody, of which [illegible] days were spent in hospital.

5. The present age of the accused according to his attestation paper is 25 years 119 days

6. The date of his attestation specified in his attestation paper is 10 July 41

7. The service which the accused is allowed to reckon towards discharge is 1 year 324 days

8. The accused is entitled to reckon 1 year 324 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or military reward

10. [The accused is a second offender.] The accused before he was made a warrant officer was held [illegible] previous [illegible] of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit, and in his regiment (or corps), the rank of dated dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number Rank Unit Regiment Name of

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 3 day of Sept 1947

R.G.MacKinnon Capt., RCA,
Records Officer, No.3 C.A.R.U.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

Arthur J. Pettypiece, Major

No. 3 CANADIAN ARTILLERY REINFORCEMENT UNIT
CANADIAN ARMY OVERSEAS

30 May 43

Commanding Officer,
No. 3 C.A.R.U.

F.G.C.M. - Gnr. Henderson, V.

1. It is respectfully requested that an Officer be appointed to defend me at my forthcoming trial by Field General Court Martial.

V. Henderson
(D 118481 Gnr. Henderson, V.)

SA-103

Pfc. Henderson, V.

RECORDED AT CMHQ IN AB 160, 54-103

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-118481 Pte Vernon HENDERSON - CIC - 3 CITR

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To undergo Detention for a period of Forty-Five (45) Days.

(Sgd) ..... 27 Mar 45 ..... President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be duly committed to prison or detention barracks as the Court may direct.~~ (1)
(1. AA 57A. Delete if not used.)

Date 27 Mar 45 (Sgd) R Blackader BMG
Commanding Comd 18 Cdn Inf Bde

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date. Promulgated	Signature of Offr.
D118481 Private Vernon HENDERSON	28 Mar 45	(A.M. Young) Lt.-Col. A/A.A.G.

Extract D.O. #2 dated 31 Mar 45.

Commanding, 3 CIDB.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of APAR) 40/P & B/1000 16(44) 4/38B

Convened by Order of Brigadier K G Blackader DSO, MC, ED Comd 13 CITB dated 26 Mar 45

RECEIVED 3 APR 1945 3 CDN INF BDE

ACCUSED.

(As to the trial of two or more charged jointly see AA 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-118481	Pte		Vernon	HENDERSON	CIC 3 CITR

PROCEEDINGS REVIEWED 9 Apr 45 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the TF in (country) England on (date(s)) 27 MAR 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95 for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1700 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... as interpreter? Ans .....~~
~~The Interpreter is sworn.(1)~~ Do you object to L/CPL SINGH as shorthand writer? Ans NO
The shorthand writer is sworn.(2)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO NO
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L. REDMAN	HQ CRU
Member	CAPT	J.P. COX	2 CITR
Member	LT	H.L. HENDMAN	4 CITR
~~Judge-Advocate~~			
Prosecutor	LT	MA CRAIG	3 CITR
Defending Offr	LT	J.A. MADILL	3 CITR

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans NO(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment make(s) (no) (a) plea ..... (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or on bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B".

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NC SIK (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(B), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1. 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42. 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NOT SIK
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 44 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(i) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s) and in mitigation of punishment ?(1) Ans Nothing (NOTE ATTD)(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(a), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 116, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, D11[illegible]41 Private Vernon HENDERSON, Canadian Infantry Corps, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE

Section 15 (1) Army Act

WHILE ON ACTIVE SERVICE, Absenting himself without leave,

in that he,

In the Field, Absented himself without leave from 2359 hours 27 February 1945 until 1500 hours 19 March 1945. Total Absence 19 days, 15 hours 1 minute.

(S.W. Thomson) Colonel
Commander
No 3 Cdn Inf Trg Regt

IN THE FIELD
21 March 1945

To be tried by Field General Court Martial.

(K G Blackader) Brig
Comd
13 Cdn Inf Trg Bde

IN THE FIELD
26 Mar 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-118481	Pte		Vernon	HENDERSON	CIC 3 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Mar 45 endorsed by me, (~~or on the dates mentioned in the charges~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior authority~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court (how by Offrs President, for the reasons I have stated below.)~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I (do) appoint a Judge Advocate to the Court (by name).~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

LT COL (Rank.)	D L REDMAN, VD (Must be named. RP 106.)	HQ CRU (Unit.)

MEMBERS.

Captain	to be detailed by Comd	2 CITR
Lieutenant (Rank.)	to be detailed by Comd (Named or detailed. RP 106.)	4 CITR (Unit.)

WAITING MEMBER.

Captain (Rank.)	to be detailed by Comd (Named or detailed, if any. RP 106.)	1 CITR (Unit.)

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

K G Blackader (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 26 Mar 45

(K G Blackader)
Commanding 13 Cdn Inf Brg Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAMS (To Dup of AFAS) 40/P & S/1807 (4691)

(See overleaf for oaths and notes for use on trial.)

Medical Officer's Certificate. 40/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. D 118 481
Pte Henderson V. of No. 3 C.I.T.R.
and in my opinion, he is fit to undergo trial by Court Martial.

Station Field
Date 27 March 45 (Sgd.) C. H. Sears Capt.
(Medical Officer)

(Canadian Reinforcement Units Routine Order No. 3, para 27, d/6 Jan 42)

Plea of mitigation for D118481 Pte Henderson V.

Pte. Henderson has pleaded guilty to the charge of being absent without leave, and is prepared to undergo his punishment. But I would like to point out to the court the circumstances that led to his offence.

He received word from his family doctor that his wife, living here in England, was dangerously ill from a nervous break-down. He asked for and was granted a mere 3 days compassionate leave. He found his wife in a far more serious state that he realized, and asked for an extension. This was granted, but he was given only an additional three days, but which time had to be spent in travelling back to his unit. Having endured similar sickness in the past in his family he was well aware how serious it might be for his wife, especially due to the fact that they have a five months old son.

Pvt. Henderson has been overseas well over three years, and during that period of time has had no serious crimes. He is categorized fully trained, and desires to be sent into action as soon as possible.

In addition Pvt. Henderson gave himself up voluntarily, and did not have to be arrested by military police.

J. Madill Lieut.
Defending Officer

E-3

SUMMARY OF EVIDENCE

Summary of Evidence in the case of D11#4#1 Private Vernon HENDERSON, Canadian Infantry Corps, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary is taken on oath.

FIRST WITNESS: Capt E.T. Stewart, General List, on the strength of No 3 Canadian Infantry Training Regiment, an officer of the Canadian Army Overseas, having been duly sworn, states:

For the Prosecution

I am Capt E.T. Stewart and am Adjutant of No 3 Cdn Inf Depot Bn. I produce, pursuant to Overseas R.O. 5352, the folllwing documents which have been read over and shown to the accused, D11#4#1 Pte Henderson V., whom I now recognize, and which are attached hereto as Exhibits "A". EXHIBIT "A" - Certified True Extract from No 3 Cdn Inf Trg Regt Part II Daily Order No 60 dated 6 Mar 45 which shows that the accused absented himself without leave from 2359 hrs 27 Feb 45.

(E.T. Stewart) Capt

The accused declines to cross-examine this witness.

SECOND WITNESS C65070 Cpl Wilkinson G.A., Stormont, Dundas and Glengarry Highlanders, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, having been duly sworn, states:

For the Prosecution

I am C65070 Cpl Wilkinson G.A., and employed as an R.P. on the Regimental Police of No 3 Cdn Inf Trg Regt. I was on duty at the Unit Guard Room when the accused D11#4#1 Pte Henderson V., whom I now recognize, reported to me at 1500 hrs 19 Mar 45. I placed him under close arrest.

(C65070 Cpl Wilkinson G.A.)

The accused declines to cross-examine this witness.

The accused was cautioned as follows: Do you wish to make a statement or to give evidence under oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you may say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of ONE page was taken down by me in the presence and hearing of the accused and that rules of procedure 4 (c) (d) (e) and (f) have been complied with.

(W.J. Aslin) Lieut
Officer detailed to take Summary

IN THE FIELD
21 March 1945

E+A

NO 3 CANADIAN INFANTRY TRAINING REGIMENT C A (E)

PART II DAILY ORDERS

LAST ORDER	Issued by	THIS ORDER
NO 59 5 MAR 45	COLONEL S W THOMSON, DSO, MC, COMMANDER	NO 60 6 MAR 45

17 (a) ABSENT WITHOUT LEAVE

AWL from hour and date shown

D11"4"1 PTE HENDERSON V "CIC" 2359 hrs 27 Feb 45

"D.C. Kennedy Lieut"
for (R.B. Forbes) Major
Regimental Adjutant,
No 3 Cdn Inf Trg Regt,
C A (E)

Certified True Extract - 21 March 1945

Officer having custody of Regimental Books.

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D11#4#1	Private	Vernon HENDERSON	Can Inf Corps (No 3 C.I.T.R)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should exactly agree with the number in entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Instruction.—If the charge is not drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec 15 (1)	3 times	7 times.
For A.A. Sec 24 (2)	times	1 times.
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

~~2. The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, ~~summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act~~ are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. ~~The accused at the present time is under sentence for~~

~~commencing on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 8 days in military custody, making a total of 8 days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 27 years.

6. The date of ~~his enlistment~~ attestation specified in his ~~attestation paper~~ record of service is 10 July 41.

~~7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~

8. The accused is entitled to deferred pay or gratuity in respect of service.

~~9. The accused is entitled to reckon service for the purpose of determining his pension~~

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). C.V.S.M. & Clasp.

~~11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the substantive~~ rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated ~~in his regiment (or corps or department) the rank of dated~~

(*25000) W1.24809/1750 20,000 10/43 A.& E.W.Ltd. Gp.698
(25000) W1.25064/1450 12,000 2/44 " "

EXB

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D11[illegible]1 Rank Private Name Henderson V. of No 3 Cdn Inf Trg Bn

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
F.G.C.M.	28 Mar 43. In the Field	A.A. Sec 15 (1) AWL 5[illegible] days 22 hrs.	120 days Detn stoppages £2-10-½	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27th day of March 1945

[illegible]

19 The accused has served as a non-commissioned officer continuously without reduction, to the present date.

In the rank of [illegible] Date of Promotion.

In the rank of [illegible] years [illegible]

In the rank of [illegible] years [illegible]

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through; except that in the case of a trial by field general court-martial the information may be obtained from rank convicted and the paragraph concerned amended accordingly.)

No. D-118458 Name HENDERSON, V Sqn, Battery, or Company — Corps C.S.C. — Date of enlistment 10 July 41 — GC Badges — Service or Proficiency Pay — 3/17 MFM 6 (AFB 122) 40/PAR/138 (5413)

Date of last entry in Company Conduct Sheet: NIL — No. and date of last drunk: NIL — Period not reckoning towards freedom from extra fine — Sheet No 1 — Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Character & Remarks
Tresco				sheet discharged w.e.f. 10 Jan 42 in accordance with A.C.I. 319(5)(a)					
Field	24/8/42	Pte		AA sec 15(1) AWL 2 days	Doc'y	20 days F.P. 20 days pay	29/8/42	D. BURNS LT.	FORF 22 days pay
Field	14/11/42	Pte		AA sec 15(1) AWL 13 hrs	Sgt Anderson	7 days F.P. 7 days pay			FORF 8 days pay
Field	28/3/43	Pte		AA Sec 15(1) AWL 58 days 22 hrs	Doc'y	120 days detn stop £2-10-2		F.G.C.M.	FORF 186 days pay
Field	29/5/43	Pte		AA Sec 24(3) loss of kit	Sgt Starling	Stoppage of £2-7-6			

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19/11/43	Pte		AA Sec 15(1) AWL 12 days 15 hrs	Doc'y	28 days pay	3/12/43		Forf 13 days pay Total 41 days
Field	3/1/44	Pte		AA Sec 15(1) AWL 24 hrs	Doc'y	1 day L.D.	5/1/44	Lt-Col Mc Tavish	Forf 1 days pay
Field	4/5/44	Pte		AA Sec 15(1) AWL 2 days 3 hrs	Doc'y	7 days pay	8/5/44	Capt D L Calder	Forf 3 days pay Total forf 10 D P
Field	28/12/44	Pte		AA Sec 15(1) AWL 1 day 21 hrs	Doc'y	8 days pay	28/12/44	Lt Col Defrenne	Forf 2 days pay Total forf 10 D P
Field	4/1/45	Pte		AA Sec 15(1) AWL 18 Days 14 hrs	Doc'y	28 days F P 28 days pay	23/1/45	Maj A C Ross	Forf 14 days pay Total forf 47 days pay

Certified True Copy 21 Mar 45

[illegible] Capt

Offr having Custody of Regtl Docs

LIST OF WITNESSES

In the case of D11#4#1 Pte Henderson V., CIC, on the strength of No 3 Cdn Inf Trg Regt.

FOR THE PROSECUTION

1.	Capt E.T. Stewart	No 3 Cdn Inf Trg Regt
2.	C65070 Cpl Wilkinson	No 3 Cdn Inf Trg Regt

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

In the case of D11#4#1 Pte Henderson V., CIC, on the strength of No 3 Cdn Inf Trg Regt

EXHIBIT "A" - Certified true extract from No 3 Cdn Inf Trg Regt Part II Daily Order No 60 dated 6 Mar 45.

21 March 1945

This is to acknowledge that I have received, free of charge, the following papers in connection with my forthcoming trial by F.G.C.M.

1 Copy of Charge Sheet
1 Copy of Summary of Evidence
1 List of Witnesses
1 List of Exhibits.

V. Henderson

(D11#4#1 Pte Henderson V)

Dr. A. H. GIFFORD,

TELEPHONE: LIVINGSTONE 3207

111, SELHURST ROAD,
SOUTH NORWOOD,
S.E.25.

Feb 26th 1945

This is to certify that Pte V. Henderson
6 Bungalow Road, S. Norwood
is urgently required at home - as
his wife is suffering from a
nervous breakdown.

A H Gifford.
MRCS: LRCP

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3 CANADIAN INFANTRY TRAINING REGIMENT (C.A.O.) 3D/11

21 March 1945 ..... 194..

I, No. D11[illegible]1 (Rank) Pte (Name) Henderson V. wish to have an Officer defend me at my forthcoming trial by Court Martial.

I desire the services of Lt. M.A. CRAIG. if he is available.

(Sgd.) V. Henderson

5 H-106

Pte Henderson. N. C.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F 96666 Pte William Erskin HENDERSON

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	NOT GUILTY	NOT GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial : a total of ..... days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court :

The accused was Released

(Sgd) ..... 5 DEC 45 .....

Judge-Advocate, if any. Date awarded. President. (M.M. 2)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.66(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date .....

Commanding .....

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

REPORT TO CMHQ IN AF 180 No 54-106

FIELD GENERAL COURT-MARTIAL (CFA16 (To take place of AFA8) 40/P & E/Legs (6144) 4/388)

Convened by Order of Col J A Wilson A/ Comd "E" Gp CRU dated 30 Nov 45

RECEIVED 17 DEC 1945 JAG BRANCH

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 96666	Pte	William Erskine	HENDERSON	1 Cdn Repat Dep

PROCEEDINGS REVIEWED

17 DEC 45 for Brady Maj

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 1 Dec 45

RECORD FORM A--OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RCs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2) ACCUSED ELECTED TRIAL BY COURT MARTIAL

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to ..... as interpreter ?~~ Ans .....

~~The Interpreter is sworn.~~(1) Do you object to £199499 Cpl O'NEILL J F as shorthand writer ? Ans No Sir

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 98(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	LT COL	D L REDMAN VD	HQ CRU
Member	CAPT	J E KNOWLES	3 CDN RUPAT DEP
Member	LIEUT	J E BAMFORD	3 CDN REPAT DEP
~~Judge-Advocate~~			
Prosecutor	LIEUT	H J TEWSLEY	1 CDN REPAT DEP
Defending Offr	LIEUT	H P THIRLWELL	1 CDN REPAT DEP

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dr p 2.)

A8. The accused ..... before arraignment make(s) (no) ~~(no)~~ plea.

..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 25(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 1c, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to Ref cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 2.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO - SIR .(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE-ATT
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. Give Evidence..... Do you intend to call witnesses on your behalf ? Ans. Yes SIR. Are they witnesses as to character only ? Ans. NO - SIR.
(1. *RP 113.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOTED ATT
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6). RP 45, 120(A).* 2. *AA 54(7). RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans.....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(3)
(1. *MFB 353 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans.....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 56(a). RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 58(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Accused elects trial by court martial

CHARGE SHEET

The accused, F96666, Pte. HENDERSON, William Erskin, No. 1 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
A. A. Sec 40

WHEN ON ACTIVE SERVICE, NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

IN THAT HE

in the field, on 10 Oct 45, due to his neglect was involved in an accident with WD Vehicle No. CM-1164543, causing damage to the said vehicle, to the extent of £47-13-9.

John R Barber

In the Fd
26 Nov 45.

(J.R. Barber) Lt. Col.,
A/Commanding Officer,
1 Cdn Repatriation Depot.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field
30 Nov 45

(J A WILSON) COLONEL
A/COMD
"B" Gp CRU

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 96666	Pte		William Erskin	HENDERSON,	1 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 30 Nov 45 endorsed by me, (~~A CONFIRMED OFFICER~~), "to be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior authority~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint any of those Offrs to fill the first, third Field Officer Position, for the reasons being as stated herein~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate at the trial mentioned hereunder~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt Col	D L REDMAN, VD		HQ CMU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by OC 3 Cdn Repat Dep	3 Cdn Repat Dep
Lt	To be detailed by OC 3 Cdn Repat Dep	3 Cdn Repat Dep

WAITING MEMBER.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 30 Nov 45

(Signed personally. RP 105 fn 2.)
(J A WILSON)
A/ Commanding "E" Gp CMU
Convening Officer.

COLONEL (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CF A96 (To Issue of AFAS) 40-P-26-6/1697 (6681)

(See overleaf for oaths and notes for use on trial.)

MEDICAL CERTIPICATE OF FITNESS FOR TRIAL

Date 5 Dec 45

NUMBER F96666 RANK Pte NAME Henderson W. E.

The a/m has this day been medically examined and found fit/~~unfit~~, to travel and to undergo trial by court martial.

R Bowman, Capt
M.O. No 4 Wing (B)
No 1 Cdn Repat Depot

TRIAL OF

F.96666 Pte William Erskine HENDERSON --- 1 Cdn Repat Depot

PROSECUTION

FIRST WITNESS

K.40935 Pte Rozander J., on strength of 1 Cdn Repat Depot (4 Wing), sworn, states:-

My job is with the Auxiliary Services in Ontario Camp and on the morning of 10th Oct 45 I was with Pte Henderson.

Q. Is Pte Henderson present now?
A. Yes, sir (Witness indicates accused).

We went to Hindhead to get the morning papers at approximately 0830 hrs on 10th Oct 45 in W.D. vehicle CM-164543. I was riding in the front seat and Pte Henderson was driving the vehicle. Upon returning from collecting the papers we passed a slow moving or stationary English van. When we passed and were turning into our left side of the road our vehicle went into a skid. The driver tried to straighten out but our vehicle went over the curb, struck a tree and then turned over into another tree about 10 or 15 yards away. There was no trouble with the English van. We were going approximately 35 to 40 miles an hour and the English van, if it was moving, was only going 5 or 10 miles an hour. This was down on the Portsmouth Road right in front of the Bramshot Hospital. The road was straight but the surface of the road was slippery.

Q. Was the road wet from rain?
A. No, sir, but as it was early morning the road was covered with a sort of mist.
Q. What type of vehicle was it?
A. It was a Ford Chad.
Q. What did you think made you skid?
A. Our tires were in poor shape. They were worn quite smooth and were baldheaded. After we got out of the car I went around one side of it and I noticed the front tire was flat and there was a hole in it although the fender was not jammed into it. If we had been speeding at all we would have landed up in the hospital pretty seriously hurt. He tried his best to stop and avoid the accident but could do nothing on account of the tires. I have been in the workshop quite a while and tires half as bad are condemned. Anybody who had the vehicle should not have loaned it out. He reported the tires to our Transport Sgt before the accident. Neither of us were hurt in the accident.

CROSS-EXAMINED

Q. You mentioned a curb on the side of the road. Is that a curb in the general sense of the word, such as you would find in city streets?
A. No, sir. There is only a cinder pathway on the side of the road and the road goes into a kind of a slant on the cinder pathway.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS

A-68012 Pte Jewell, M.D., on strength of 22 Canadian General Hospital, sworn, states:-

On the morning of the 10th Oct 45 I was proceeding on leave and was in front of No 22 Canadian General Hospital about 0810 hrs. I saw a station waggon coming down the road from Hindhead pull out to go by an English commercial vehicle which was proceeding in the same direction. The English vehicle was going about 15 miles an hour. When the Canadian station waggon pulled out to go by I saw it start to skid as it started to turn in in front of the vehicle. He was out of control and hit the concrete curb on the left side of the road. The station waggon grazed a tree and ended on its side beside me. The station waggon was travelling about 35. The condition of the road was fairly wet. It was a wide road.

Q. Were the English van and the station waggon the only two cars you could see?
A. Yes, sir, there was nothing else on the road.

CROSS-EXAMINED

Q. In connection with this curb. You mentioned a concrete curb. Can you describe it?
A. The road had an asphalt surface and as far as I remember the curb is seven or eight inches high but it slants up from the road.
Q. What caused the accident?
A. I could not say, but the tires were worn down smooth for one thing and they could not get much traction.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

THIRD WITNESS

Supervisor Sparrow, N.A., on strength of 1 Cdn Repat Depot (1 Wing) sworn, states:-

On the morning of 10 Oct 45 Pte Henderson was driving vehicle CM 164543 and was working for us picking up the papers. I saw the scene of the accident and took the measurements.

Q. What measurements did you take?
A. The measurements of the skid marks, from where they started to where they stopped at the curb, were 55 feet long.
Q. How wide was the road there?
A. The accident occurred in front of 22 Canadian General Hospit al on the Portsmouth Road. It was a straight road with possibly a slight slope downwards.

CROSS-EXAMINED

Q. This vehicle was on loan, was it not?
A. I borrowed this vehicle from the Senior Supervisor of Auxiliary Services and I expected to get another one to take its place in a day or two.
Q. What was the condition of the tires?
A. I noticed at the accident that they were completely bald and there was no tread on any of them.
Q. How long had you been using this vehicle?
A. Between a week and two weeks.
Q. Had you any trouble with it skidding before?
A. I did not notice it.
Q. Did you make any attempt to have the tires changed?
A. No, sir.

CROSS-EXAMINED (CONTINUED)

Q. Were any complaints ever made to you about the tires?
A. No, sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

PROSECUTION IS CLOSED

DEFENCE

FIRST WITNESS

The Accused, F-96666 Pte Henderson, W.E., 1 Canadian Repat Depot (4 Wing) sworn, states:-

On the morning of 10th Oct 45 I went into Hindhead for the papers. When I was returning an English van which was either stationary or slow moving was in front of me. I passed the van and as I was pulling into the left side of the road my vehicle went into a skid and I lost control of it. It seemed to me that the front tire was flat then, but I did not hear it blow out. The road from Hindhead up as far as the Hospital has a gravel surface and just near the Hospital they have been fixing the road and it is smooth with no gravel. The day after we borrowed the vehicle I reported the poor condition of the tires to the Transport Sergeant at 4 Wing 1 Canadian Repat Depot.

Q. What is his name?
A. Sgt Watt.
Q. Where is he now?
A. He has been repatriated to Canada.

He looked at them and told me he could not do much about them but just hang on to them with the vehicle.

Q. What caused the accident?
A. The condition of the road, the condition of the tires and the fact that the front left tire might have blown out.
Q. Was that the tire nearest to the part of the vehicle that hit the tree?
A. Yes, sir.
Q. When did you join the Army?
A. 1st May 1942. I landed in England on 8th December 1942 and went to the continent in August 1944.
Q. How were you employed during your time in the Army.
A. As a driver or dispatch driver.
Q. Had you ever driven a vehicle before you joined the Army?
A. Yes, sir, for three years.
Q. So you have had approximately seven years driving experience?
A. Yes, sir.
Q. Have you ever had an accident?
A. No, sir.
Q. What is your point score?
A. Between 90 and 100.
Q. Why have you not been repatriated?
A. I am getting married in February in England.
Q. How fast were you going when you passed the English van?
A. About 35 miles an hour.
Q. How fast was it going?
A. It was not going more than 15 miles an hour.

CROSS-EXAMINED

Q. You had been driving this vehicle before the morning of the accident?
A. Yes, sir.
Q. And you knew the tires were bald?
A. Yes, sir.
Q. The road was wet?
A. Yes, sir.
Q. Had you any trouble with the vehicle skidding before?
A. No, sir. I never drove it on a wet pavement before.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS FOR THE DEFENCE

G.23193 S/Sgt Watling, 122 LAD, RCOC, sworn, states:-

Q. Where are you employed in the Army?
A. In 122 LAD in Huron Camp.
Q. What is your official position?
A. I estimate damages of all wrecked vehicles in that area.
Q. What are your military qualifications?
A. Vehicle Mechanic MV.
Q. You say you examine all wrecked vehicles. Did you examine the Ford Chad, No CM 164543.
A. Yes, sir.
Q. In what condition did you find the tires?
A. There was a hole in the left front tire which was flat.
Q. What sort of a hole?
A. About three or four inches long. It could have been blown out or it could not have been.
Q. Can you describe the condition of the left front wheel of that vehicle?
A. The wheel was in good condition and there was no damage to it.
Q. Can you describe the condition of the left front fender?
A. It was dented some but not near the tire.
Q. Then neither the wheel nor the tire could have caused the hole in the tire.
A. No, sir, it would have been impossible.
Q. Where was the hole in the tire?
A. It was on the curve of the tire.
Q. In your opinion what could have caused a hole like that?
A. It could have been caused by different ways. It could have been a sharp rock, or something in the tire before the accident could have worked through the tube at that moment.
Q. Was this hole in the tire on the part of the tire which would contact the surface of the road?
A. The hole could have been made by something on the surface of the road. The majority of blowouts are on the side of the tires. Of course, if a tire hits something it could be cut anywhere

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B)

THE DEFENCE IS CLOSED

THE DEFENDING OFFICER ADDRESSES THE COURT

Mr President and Members of the Court

It is my opinion from the evidence that Pte Henderson was not guilty of negligence in that he did report the poor condition of the tires to the Transport Sergeant, having no success in having the situation remedied, the fact that he was not speeding which was brought forth by witnesses and the fact that the tire apparently blew out causing the vehicle to go out of control and into the accident. In my opinion he took all normal precautions and it may have been a blowout which caused his car to go out of control. It is clear from the evidence that all the tires on this vehicle were without tread. I suggest that had the tires had a proper tread on them this accident would not have happened. It may be that at this stage of this war it is necessary for our Army to run some of its vehicles with tires on which the tread has been worn, but if the Army decides to do this they must assume the loss created by accidents caused by tires in that condition. They should not ask the driver to pay such costs. In fact, it is fortunate that the driver and his companion were uninjured. It is the opinion of S/Sgt Watling, an expert, that the hole found in the front left tire was similar to the holes usually found in a tire which was blown out. There must be some explanation of why this car on a flat road suddenly went completely out of control, pulling to the left. The only reasonable explanation given is that it was caused by a blowout of the left front tire. In any event, can the court be sure beyond a reasonable doubt that this may not have been the cause of the accident. That is the problem the court has to decide.

THE PROSECUTING OFFICER ADDRESSES THE COURT

Mr President and Members of the Court

I would like to quote from para 2 of RO 3511 on speed limits, which reads: "Compliance with the above maximum speed limits will not absolve any driver from his obligation to drive with due care and regard for safety, having regard to prevailing conditions at the time." Now, here we have Pte Henderson driving a strange vehicle and he knows that the vehicle has poor tires. He is driving on a wet road which he knows is slippery. This road is at least 18 feet wide and is a regular through highway from London to Portsmouth. There is only one vehicle on the road. The road is perfectly straight and yet after Pte Henderson passes this vehicle he leaves a skid mark, travels 55 feet, strikes a tree and from striking the tree the vehicle topples on its side. Pte Henderson has been driving seven years and I contend that the condition of his car and the condition of the road certainly did not warrant him driving between 35 and 40 miles an hour. This subject of a tire blowing out, well, that could just as easily or more likely have happened after he went over the sidewalk and it is quite possible that he hit something rough on the other side of the sidewalk before striking the tree, and I personally don't think the tire was blown out when the vehicle went into the skid.

THE COURT IS CLOSED

Accused elects trial by Court Martial

SUMMARY OF EVIDENCE
In the case of

F-96666 Pte. Henderson W.E., 1 Canadian Repat.Depot.(4-Wing) a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this SUMMARY OF EVIDENCE is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

K-40935 Pte.Rozander J., on strenght of 1 Cdn.Repat.Depot. (4-Wing), having been duly sworn states;

I am K-40935 Pte. Rozander J. on strength of 1 Cdn.Repat. Depot.(4-Wing) employed by the Auxiliary Services. On the 10 th. Oct.45. at about 0820 hrs. I was riding in the front seat of W.D. vehicle CH-164543 driven by C-96666 Pte. Henderson W.E. We were returning from Hindhead with the morning papers, which we were taking to Ontario Camp 1 Cdn. Repat.Depot. We had just passed a slow moving English van in front of No.22 Canadian General Hospital, when we were turning back to the left hand side of the road the rear end of our vehicle began to slide on the slippery pavement. The vehicle then went over the cindercurb and sidewalk, struck a tree turned around and then rolled over against another tree. At the time of the accident our speed was aprox.35 miles per hour and the speed of the English van was about 20 miles per hour.

J. Rozander
K-40935 Pte.Rozander J.

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS

SECOND WITNESS FOR THE PROSECUTION

A-68012 Pte. Jewell M.D. on strength of 22 Canadian General Hospital, having been duly sworn states;

I am A-68012 Pte. Jewell M.D. on strength of 22 Canadian General Hospital. On Oct.10th.1945 at approx. 0810 hrs. as I was standing in front of 22 CGH. I saw the vehicle in in question pull out to pass an English van which was travelling at aprox. 15 miles per. hour. The pavement was wet and the Canadian vehicle started to skid it then went over the cinder curb and over the sidewalk and grazed a tree and ended on its side beside me. At the time of the accident I would say that the speed of the vehicle was approx. 35 miles per hour.

M. McDowell
A-68012 Pte. Jewell M.D.

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS

My

THIRD WITNESS FOR THE PROSECUTION

Supvr. Sparrow N.A. on strength of 1 Cdn. Repat. Depot. (1-Wing) having been duly sworn states;

I am Supvr. Sparrow of 1 Cdn. Repat. Depot. employed at the time of the accident as Aux. Service Supvr. at 1 Cdn. Repat. Depot. (4-Wing). I took the measurements after the accident that are shown on the accident report form submitted as exhibit "A". The vehicle involved in this accident was on loan from Aux. Service 4 Cdn. Repat. Depot. (B-Wing). The reason for this was that our vehicle was being replaced by another one, and in the mean time one had to be borrowed.

I N A Sparrow
Supvr. Sparrow N.A.

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS

QUESTION TO THE ACCUSED

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWERED BY THE ACCUSED

I have nothing to say.

I certify that the foregoing Summary of Evidence consisting of (2) pages was taken by me in the presence and hearing of the accused and that Rules of Proceedure 4(c), (d), (e), and (f) have been complied with.

H.S. Tewsley
(H.S.Tewsley) Lieut.

Officer detailed to take Summary of Evidence.

Bramshott, Hants.
23 Nov 45.

ACCUSED RECEIPT OF DOCUMENTS

I hereby acknowledge receipt of Charge Sheet and Summary of Evidence relative to my forthcoming trial by F.G.C.M.

W.E. Henderson

(F96666, Pte. Henderson, W.E.)

STATEMENT OF ACCUSED RE DEFENDING OFFICER

I hereby request that the Commanding Officer, 1 Con Repatriation Depot, detail a defending officer for my forthcoming trial by F.G.C.M.

W E Henderson

(F96666, Pte. HENDERSON, W.E.)

LIST OF WITNESSES

IN THE PROSECUTION

K40935, Pte. Rozander, J., 1 Cdn Repat Depot (4 Wing)

A68012, Pte. Jewell, M.D., 22 Cdn General Hospital.

Supvr. N.A. Sparrow, 1 Cdn Repat Depot (1 Wing)

IN THE DEFENCE

NIL

(H.S. Tewsley) Lieut.,
Officer detailed to take
Summary of Evidence.

LIST OF EXHIBITS

IN THE PROSECUTION — "A" - Road Accident Report - CMHQ 1000:42 with relative correspondence.

IN THE DEFENCE — NIL.

H. Tewsley

(H.S. Tewsley) Lieut.,
Officer Detailed to take
Summary of Evidence.

DD-37

TPR HENDERSON W.H.

B76205 Tpr Henderson W.H.
D Sqn 18th Cdn Armd C Regt

DD-37

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this Sixteenth day of April, 1943. (Order convening the Court.)

Whereas it appears to me, the undersigned, an officer in Command of HQ, 2 Cdn Corps, Canadian Army, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~(and that it is not practicable to delay the trial for reference to a superior qualified officer.)~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

~~*(I am unable to appoint~~
~~*(1. Three Officers to form the Court.)~~
~~*(2. A Field Officer as President)~~
~~for the following reasons, namely:-)~~

Proceedings Reviewed

11 May 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	W.H. Ellis	2 Cdn Corps Sigs RCCS

Members

Rank.	Name.	Regiment.
Capt.	R.J.C. Hughes	43 Cdn Gen Tpt Coy RCASC
Capt.	D.R. Burritt	34 Cdn Corps Tps Coy RCASC
	Waiting Member	
Lieut.	J.A. Fellows	2 Cdn Corps Sigs RCCS

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (A.E.D. Tremain), Brigadier, CCRA 2 Cdn Corps.
Commanding Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B76205 Tpr Henderson W.H., "D" Sqn., 18 Cdn Armd C Regt	First Charge A.A.sec 15(1)	Guilty	Guilty	I confirm the finding and sentence of the Court.
	Second Charge A.A.sec 24(2)	Guilty	Guilty	
	(See charge sheet attached)		To undergo detention for 90 days and to be put under stoppages of pay in the amount of $1/14/10 in respect of the cost of apprehension and to be put under stoppages of pay in the amount of 4 d in respect of the bill mentioned in the second charge 19 Apr 43	

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) [signature] (Signed) J. H. Ellis 17 Apr 43
(A.E.D.Tremain), Brigadier, Major
Commanding CCRA - 2 Cdn Corps
Convening Officer (*a*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the ~~17 April~~ seventeenth day of April, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. B. Certificate of President as to proceedings.

I also certify that :—

*Omit if not applicable.

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~) AHS
*(4. The officers under instruction)

were duly sworn.

Signed this 17th day of April 1943

J. H. Ellis Major
President of the Court Martial.

*See footnote (b) on page 762 M.M.L. 1929.

*I certify that the terms of *A.O.I. 576 of 1918 have been complied with. AHS C. Certificate in case of death sentences.

Signed this 17th day of April 1943

J. H. Ellis Major
President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. D. Confirmation.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

Signed this 19th day of April 1943

[signature]
Confirming Officer.
Brig adcn

Promulgated and extracts taken in the case of

(*a*) (Dated) 1 May 43 (Signed) 92 Beatties to A/Adjt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

371-67560/242 25,000 2/43 A.S.E.W.Ltd. Gp.688
371-19000/1359 40,000 7/42

CHARGE SHEET

The accused, B.76205 Tpr William Huntley HENDERSON, 18 Cdn Armd C Regt, a soldier of the Canadian Army Overseas, placed on Active Service, is charged with:-

FIRST CHARGE WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT
Sec 15 (1), LEAVE
Army Act.

In that he

in the field on 23 Jan 43, absented himself without leave from his regiment, 18 Cdn Armd C Regt, from 0600 hrs on said 23 Jan 43 until he surrendered himself at Central Police Office, Leeds City Police, at 1700 hrs, 5 Apr 43. Cost of apprehension and return to unit, £1-14-10.

SECOND CHARGE LOSING BY NEGLECT HIS EQUIPMENT, CLOTHING AND
Sec 24 (2), REGIMENTAL NECESSARIES
Army Act.

In that he

in the field on 12 Apr 43, was deficient of the following articles:-

		Vocabulary Price	Value of unexpired wear.
Combs, hair,	1	2d.	1d.
Pullthroughs,	1	6d.	3d.
Total		8d.	4d.

(R.W. Monnal) Lt-Col
Comd, 18 Cdn Armd C Regt.

In the Field,
13 Apr 43.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(A.E.D.Tremain), Brigadier
CCRA - 2 Cdn Corps

In the Field
16 Apr 43.

MEDICAL OFFICER'S CERTIFICATE

I certify that No. B.76205 Tpr HENDERSON, T.N., 12 Cdn Armd C.Regiment is fit to undergo trial by Court Martial.

17 Apr 43. Signature of Medical Officer.

T.H.E.

Accused B 76 205 Tpr WILLIAM HUNTLEY HENDERSON "D" Sqn, 1st Armd Car Regt.
(Number) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in ENGLAND on 17 APR 43
(Country) (Date)

	RANK	NAME	UNIT
PRESIDENT:	MAJOR	W.H. ELLIS	2 Cdn Corps Sigs RCCS
MEMBERS:	CAPT	R.C. HUGHES	43 Cdn Gen Tpt Coy
	CAPT	D.R. BURRITT	34 Cdn Corps Tpt Coy RCA
	WAITING		
	LIEUT	H.A. FELLOWS	2 Cdn Corps Sigs RCCS
PROSECUTING OFFICER:	LIEUT	E.F. BASTEDO	Lawyer? Ans Yes
DEFENDING OFFICER:	LIEUT	N.B. KEITH	Lawyer? Ans No

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs P 17(E), 22(A)).

The President, in closed court (R.P.22, fn 1), reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (A.A.49;R.P.105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (R.P.106)

The accused is (~~are~~) brought before the Court, and at 1015 hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can)557 (See CMHQ Circular Letter 173) that the accused is (~~are~~) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

~~President to accused:~~
~~Do you object to~~ _____ as interpreter? Ans___

~~The interpreter is duly sworn.~~

Do you object to _____ as shorthand writer? Ans___

The shorthand writer is duly ~~sworn~~. (Forms of Oath on Page "D")
The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (R.P.10)

President to accused:
Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans No

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (R.P.26-27 (Forms of Oath on Page "D")

The Charge Sheet(s) is (are) initialled by the President.

PAGE "A"

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. R.P.35(B) is complied with, by the President ascertaining that accused understands the nature of the charge/s (fn 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B)) and advising him to withdraw his plea if he thinks the accused ought to plead "Not Guilty" thereto.

2. President to accused:
Q. Do you desire to make any statement of the circumstances, in reference to the charge/s? (R.P.37(B) Ans No

(Statement, if any, not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon)

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (R.P.37(B)).

4. President to accused:
Q. Do you wish to make any statement in mitigation of punishment? (R.P.37(C). Ans NO

(Statement, if any, is recorded on separate sheet, initialled by the President and attached hereto. No cross-examination)

5. President to accused:
Q. Do you wish to give evidence yourself or call any witnesses as to character? (R.P.37(C). Ans Yes - Lieut Keith

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto)

6. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (M.F.M.6), signed in the manner required by A...163(1)(h) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings. (R.F. 46; Overseas R.O. 3131)

7. President to accused:
Q. Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)). Ans Yes No ~~~ (No cross-examination)
(Record address, if any, on separate sheet, initialled by the President and attached hereto)

8. The Court is now closed to consider sentence. (Record on Page 2 of A.F.A.8)
(Punishments, A.A.44, K.R(Can)563 - 566; one sentence only awarded, R.P.48). Sentence should be dated)

The sentence is not announced to the accused by the Court.

(Signature of President)

Accused B 76 205 Tpr WILLIAM HUNTLEY HENDERSON "D" Sqn, 1st Armd Con Regt
(Number) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in ENGLAND on 17 APR 43
(Country) (Date)

	RANK	NAME	UNIT
PRESIDENT:	MAJOR	W.H. ELLIS	2 Cdn Corps Sigs RCCS
MEMBERS:	CAPT	R.C. HUGHES	43 Cdn Gen Tpt Coy
	CAPT	D.R. BURRITT	34 Cdn Corps Tpt Coy RCA
		WAITING	
	LIEUT	W.A. FELLOWS	2 Cdn Corps Sigs RCCS

PROSECUTING OFFICER: LIEUT E.F. BASTEDO Lawyer? Ans Yes

DEFENDING OFFICER: LIEUT N.B. KEITH Lawyer? Ans NO

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs P 17(E), 22(A)).

The President, in closed court (R.P.22, fn 1), reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (A.A.49;R.P.105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (R.P.106)

The accused is (~~are~~) brought before the Court, and at 1015 hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can)557 (See CMHQ Circular Letter 173) that the accused is (~~are~~) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

~~President to accused:~~
Do you object to _____ as interpreter? Ans ___

The interpreter is duly ~~sworn~~.

Do you object to _____ as shorthand writer? Ans ___

The shorthand writer is ~~duly sworn~~. (Forms of Oath on Page ~~"D"~~)
The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (R.P.10)

President to accused:
Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans No

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (R.P.26-27 (Forms of Oath on Page "D")

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused has (has not) elected trial by Court Martial (A.A.46(8)).

(If special plea/s is/are made for separate trial on one or more charges (Rs P 62 (E), 108) or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.130, R.P.57), record such pleas and evidence (if any) on separate sheet/s to be initialled by the President and attached to the Proceedings.

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge Guilty

Second Charge Guilty

Third Charge

Fourth Charge

Fifth Charge

Sixth Charge

Seventh Charge

Eighth Charge

(For procedure on alternative charges, see R.P. 37, fn 2)

Further proceedings are recorded on Pages hereto attached.

PAGE "A"

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. R.P.35(B) is complied with, by the President ascertaining that accused understands the nature of the charge/s (fn 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B)) and advising him to withdraw his plea if he thinks the accused ought to plead "Not Guilty" thereto.

2. President to accused:
Q. Do you desire to make any statement of the circumstances, in reference to the charge/s? (R.P.37(B) Ans No

(Statement, if any, not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon)

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (R.P.37(B)).

4. President to accused:
Q. Do you wish to make any statement in mitigation of punishment? (R.P.37(C). Ans No

(Statement, if any, is recorded on separate sheet, initialled by the President and attached hereto. No cross-examination)

5. President to accused:
Q. Do you wish to give evidence yourself or call any witnesses as to character? (R.P.37(C). Ans Yes - Lieut Kent

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto)

6. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (M.F.M.6), signed in the manner required by .....163(i)(h) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings. (R.P. 46; Overseas R.O. 3131)

7. President to accused:
Q. Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)). Ans Yes [illegible] (No cross-examination)
(Record address, if any, on separate sheet, initialled by the President and attached hereto)

8. The Court is now closed to consider sentence. (Record on Page 2 of A.F.A.3)
(Punishments, A.A.44, K.R(Can)563 - 566; one sentence only awarded, R.P.48). Sentence should be dated)

The sentence is not announced to the accused by the Court.

(Signature of President)

FIRST WITNESS — Lt N.B. KEITH, 18 Cdn Armd C Regt, having been duly sworn, states:

During the time Tpr Henderson, W.H., served in the Sqn of which I am 2 i/c, his work and conduct were quite good. He had three very minor offences charged against him, but at all times he was willing, cheerful and obeyed his orders well. His appearance was excellent.

SECOND WITNESS — Capt K.F. GAREN, 18 Can Armd C Regt, having been duly sworn, states:

Sir, I present a statement as to character and particulars of service of the accused, B.76205 Tpr HENDERSON, W.H., of "D" Sqn, 18 Cdn Armd C Regt which is as of the date 17 Apr 45, and AFM.6 which is a certified true copy of the original record, held in my custody of this date.

J.H. Ellis major

Gentlemen:

1. When Tpr Henderson went on leave, it was not with the thought of remaining away or of overstaying that leave.

2. He was, however, "Browned Off" after having spent a number of weeks in a Blitz Tp. He had other worries: his father is a 100% pensioner from the last war and it was against his mother's wishes that he came over here.

3. Being young, just 21, and when on leave he tasted the joys of good living, gay times and plenty of rest, he was reluctant to leave them. He overstayed the first day and from there on the fear of punishment kept putting off his return. Every day made things that much worse, so that when he did turn himself in, it took plenty of courage.

4. When brought in by members of the Provost Corps, his appearance was still a credit to this Regt.

5. His kit was practically complete. This, combined with the fact that he wore his uniform during his entire absence, proves that he did intend to come back.

6. During the time the accused served with this Regt, he was found to be a good soldier and a cheerful, willing worker, well thought of by his fellow Tprs and NCOs. His appearance at all times was excellent.

7. Tpr Henderson has two wishes. The first - to get back to this Unit in time to get properly trained and go into action with them. Secondly - that his mother again receives the money assigned to her from his pay and which is badly needed at home.

8. Gentlemen, I ask that his sentence be as light as possible in order that he may achieve this. Thank you.

J. H. Ellis
Major
President

SUMMARY OF EVIDENCE

In the case of

R.76205 Tpr Henderson, W.H., 18 Cdn Armd C Regt, Canadian Army Overseas, charged with:

1. Absence without leave from 23 Jan 43 to 5 Apr 43.

2. Losing by neglect his equipment, clothing and regimental necessaries.

THE C.O. HAS DIRECTED THAT HER EVIDENCE BE TAKEN ON OATH.

FIRST WITNESS — R.77202 L/Sgt WOOD, J.H., 18 Cdn Armd C Regt, sworn, states:

"I am a Sgt in "D" Sqn, 18 Cdn Armd C Regt. On 23 Jan 43 I was Sqn Orderly Sgt and when making up my Absentee Report at 0900 hrs on that date, I found Tpr HENDERSON, W.H., had not returned from his nine days leave which expired at 0600 hrs that day. At 0700 hrs I found he had not turned in his pass the evening before, so I went to his hut, but was unable to find him. I placed Tpr Henderson's name on the Absentee Report, showing him as being absent from 0600 hrs, 23 Jan 43. I am well acquainted with Tpr Henderson, whom I recognize here as the accused."

The accused declines to cross-examine this witness.

L/Sgt Wood J.H.

R.77202 L/Sgt WOOD, J.H.

SECOND WITNESS — Capt K.F. GARTEN, 18 Cdn Armd C Regt, sworn, states:

"I am the Adjutant of the 18 Cdn Armd C Regt. On checking the Absentee Reports submitted daily by Sqns, I found Tpr HENDERSON, W.H., shown to be absent without leave on 23 Jan 43. On 17 Feb 43 Tpr Henderson had been absent without leave for a clear 21 days. In accordance with A.A. Sec 72, a Court of Inquiry was convened, the President being Maj R.S. STREET, and members Lt J.L. MacIVER and Lt J. JARDINE. The findings of the Court were approved by the C.O., 18 Cdn Armd C Regt, stating Tpr Henderson, the accused, illegally absented himself without leave in the Field, at 0600 hrs, 23 Jan 43, and did not return between that date and the date of the Court, 17 Feb 43, and was still so absent on that date. An inventory of kit was taken, and he was deficient in articles of vocabulary value of £10-6-11½ and a value of unexpired wear of £5-3-6. I produce here a certified true copy of original declaration, signed by the President and members of the said Court, setting out the above findings and kit deficiencies." (Marked Exhibit "A").

"On 11 Mar 43, an entry was made by Cdn Sec G.H.Q. 2nd Echelon in Part II Orders showing R.76205 Tpr Henderson W.H. struck off strength this Unit as a deserter, citing Court of Inquiry which also set out kit deficiencies amounting to £5-3-6. I produce here a certified true copy of this extract from these Part II Orders." (Marked Exhibit "B").

"On 10 Apr 43, I sent an escort to 9 Pro Coy at Milford to bring Tpr Henderson back to this Unit under Close Arrest. I produce here a document purporting to be signed

by a Capt WOOD, #6 Pro Coy, showing cost of apprehension and escort of the accused amounting to £1-14-10." (Marked Exhibit "C").

"I also produce a certificate purporting to be signed by A. STANSFIELD, Inspector, of Leeds City Police, Central Police Office, stating that Tpr Henderson, W.H., of this Unit surrendered himself while in uniform to that Headquarters at 5 p.m., 5 Apr 43." (Marked Exhibit "D").

The accused declines to cross-examine this witness.

K.F. Garen, Capt.

The above Exhibits referred to by the witness, produced, read over to the accused, and marked respectively, "A", "B", "C" and "D", signed by me, and attached hereto.

E.F. Bastedo, Lt.

THIRD WITNESS H.77099 S/QMS RAE, C.F., 18 Cdn Armd C Regt, sworn, states:

"I am S.Q.M.S., "D" Sqn, 18 Cdn Armd C Regt, and I am well acquainted with Tpr HENDERSON, W.H., whom I recognize as the accused. On 12 Apr 43 I inspected the accused's kit, and found that the only deficiencies in his kit that were shown on the Declaration marked Exhibit "A" and now shown to me, are as follows:

		Vocabulary Value	Value of an-expired wear.
Combs, hair,	1	3d.	1d.
Pullthroughs,	1	6d.	3d.
Total		8d.	4d.

The accused declines to cross-examine this witness.

H.77099 S/QMS RAE, C.F.

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence".

The accused: I desire to give evidence under oath.

The accused, R.76205 Tpr HENDERSON, W.H., 18 Cdn Armd C Regt, sworn, states:

"The evening before my leave finished, 22 Jan 43, I was in Leeds and got very tight and found myself A.W.L.

on the 23rd. I intended to return to my Unit shortly, but after 21 days I became afraid to return and did not nerve myself to return until early in Apr. Throughout this period I remained in uniform at all times, having at no time any intention of deserting. I finally decided to take my punishment and return to my Unit and consequently surrendered myself to the Police in Leeds. I admit being absent from 0600 hrs 23 Jan 43 to 1700 hrs 5 Apr 43. I also admit the kit deficiencies of one comb and one pullthrough."

Spr Henderson W.H.

S.76205 Spr Henderson, W.H.

The accused declined to call witnesses on his own behalf.

I certify that R.P. 4 has been complied with.

Taken by me in the Field, in the presence and hearing of the accused this 12th day of April, 1943.

E.F. Bastedo Lt.

E.F. Bastedo, Lt.

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 17th day of February 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipment, Instruments, Regimental Neces-aries, or Clothing of No. B-76205 Tpr. Henderson, W.H.

DECLARATION

The Court declare that No B-76205 Tpr. Henderson, W.H. of the 18th Cdn Armd C Regt (12 D) illegally absented himself without leave In the Field at 0600 hrs on the 23rd day of Jan 43 and that he did not return between that date and the date of this Court and that he is still so absent and on 17 Feb 43 an Inventory of Kit was taken and he was deficient, and that he is still deficient of the following

Articles:-

ARTICLES	No.	Vocabulary Price £	s.	d.	Value of Unexpired Wear £	s.	d.
Anklets, prs	1		3	2½		1	9
Trousers, Battledress	1	1	7	11		14	
Blouses, Battledress	1	1	7	8		13	10
Boots, ankle, prs.	1	1	1	6		10	9
Caps tank En.	1		3	10		1	11
Drawers cotton short prs.	2		4	1		2	
Dressing first field.	1		1	1			6
Greatcoats drab.	1	3	17	0½	1	18	6
Jackets sweater.	1		6	9		3	4
Brasses button.	1			2			1
Brushes boot polishing.	1			9			5
Brushes button.	1			8			4
Brushes hair.	1		1	1			7
Brushes shaving.	1		1	4			8
Brushes tooth.	1			4½			2
Combs hair.	1			2			1
Razors.	1		1	10½			11
Pullthroughs.	1			6			3
Braces left.	2		3	3		1	3
Cloths disinfecting facepiece.	1			1			1
Respirator A.C. container.	1		4	4		2	2
Facepiece Mk V.	1		8	6		4	
Haversack Mk VII.	1		6	6		3	
Outfits anti-dim Mk V.	1			2½			
Ointment Anti-gas No.2.	1		1	7			9
Eyeshields.	6		2	3		1	2
		10	6	11½	5	3	6

"R.S..Strutt..Maj.....President

Signed at..Field..... "J.L..McIver"..Lt.....Member

this 10th day of Mar 1943 "W..Jardine....Lt.....Member

Signature of Commanding Officer "H.F..Wenzel..Lt.-Col....

Certified true copy.....Capt. & Adjt.
18 Cdn Armd C Regt (12 D)
Signature of Officer having custody of original record

In lieu of M.F.B. 375
5M.5-40(5024)
Wy 1772-39-297

Exhibit "A" in the summary
Evidence in the case of B-76205
Thos. Henderson - Produced before me
this 12 day of 43
E T Bentley Lt.

Exhibit "B"

Extract from 18 Cdn Armd C Regt Part II Order No. 2, dated 11 Mar 43:

"STRENGTH DEDUCT

S.O.S. as a des. w.e.f. 1 Mar 43 having been dec. illegally absent by a Ct. Inq. from 0600 hrs., 23 Jan 43. Deficiencies in kit to the value of $5-3-6:-

R.76205 Tpr. HENDERSON, W.H."

CERTIFIED TRUE COPY

J.H. Gauer Capt.
(J.H. Gauer) Capt. & Adjt.
18 Cdn Armd C Regt.

Exhibit "B" in the Summary of Evidence in the case of Tpr. Henderson W.H. taken before me this 12th day of Apl 43

R.T. Bentley Lt.

J.H.G

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

(12929) W1.40807/337 20,000 12/39 A.& E.W.Ltd. Gp.698 Forms/O.1617/12

Robert Davis Summary of
Evidence & Th. Henderson W.H.
given 12 Apr 43
E Bowden Lt
J H E

I CERTIFY that the man whose personal description is given below surrendered himself to* Pc 335 Edwards

at Leeds at (hour) 5 0 pm on the 5th day of April 1943 as being No. B 76205

(Rank and Name) Trooper William Huntley Henderson

a deserter (or absentee without leave) from 18th Manitoba Armoured Car Regt

and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age	21	Height	6	Feet	3 Inches
Complexion	Pale	Hair	dark brn	Eyes	Blue
Marks	Old scar right forearm				
In uniform or plain clothes	Uniform				

Probable Date and Place of Attestation	15.9.38. Toronto, Ontario.
Probable Date of Desertion or beginning of absence, and from what place	23.1.43 Bramley nr Guildford. Surrey

A Stansfield Insp

Signature of Officer of Police in charge of Station.

LEEDS CITY POLICE - 5 APR 1943 CENTRAL POLICE OFFICE

Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the ..... Police in the case of

No. .....

who surrendered to the Police at ..... on .....

Payable to .....

NIL

CERTIFIED that this statement of expenses is correct.

A Stansfield Insp

Superintendent or Officer in charge of Police Station at Leeds Town Hall

LEEDS CITY POLICE - 5 APR 1943 CENTRAL POLICE OFFICE

Date of Signature.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. B-76205 Rank Tpr. Name Henderson, W.H. Unit 18 Man. Armd Car Regt

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ Unit From London from Leeds

Date	Particulars	Amount		
10 Apr. 43	Escorts return fare from LONDON To Leeds	1	8	6
	Prisoners single fare to LONDON From Leeds	Own ticket		
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares		6	4
	Total £	1	14	10

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Elwood Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:55
40/P & S/483

LIST OF EXHIBITS

in the case

of

B.76205 Tpr HENDERSON, William Huntley

EXHIBIT "A" Certified copy of Declaration of Court of Inquiry held 17 Feb 43 re absence without leave and kit deficiencies of B.76205 Tpr HENDERSON, W.H.

EXHIBIT "B" Certified copy of extract from Part II Orders striking B.76205 Tpr HENDERSON, W.H., off strength of 18 Cdn Armd C Regt.

EXHIBIT "C" Statement of expenses in apprehension and escort of B.76205 Tpr HENDERSON, W.H.

EXHIBIT "D" Army Form O-1617 re surrender of B.76205 Tpr HENDERSON, W.H., to Leeds City Police Force.

LIST OF WITNESSES

in the case

of

B.76205 Tpr HENDERSON, William Huntley

H.77202 L/Sgt WOOD, J.N.,
18 Cdn Armd C Regt,
Canadian Army (England).

Capt K.F. GARTH,
18 Cdn Armd C Regt,
Canadian Army (England).

H.77099 S.Q.M.S. RAE, G.F.,
18 Cdn Armd C Regt,
Canadian Army (England).

13 Apr 43.

I desire to be represented at my trial by

Lt. N.R. KEITH.

Tpr Henderson, N.H.

Tpr Henderson, N.H.

No. B.76205 Name HENDERSON, W.H. Sqn., Battery or Company } "D" Corps 3rd Armd Regt C A C Date of enlistment } 22 Apr 41 C.C. Badges } Tradesmen's Rates of Pay }

No. and date of last drunk } Period not reckoning towards freedom from extra fine } Sheet No. Signature O.C. Company, etc. } Character

M.F.M. 6 (A.F.B. 122) 8023M—11-41 (2468) H.Q. 1772-20-1652

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	11-6-41	Pte		Awarded 9 days C.B. and 1 day's pay. A.A. 15.					
Camp Borden	26-1-42	Pte		Awarded 14 days C.B. and forf 21 days' pay for A.W.L. Sec 15 (2) (a) A.A.					
Camp Borden	16-2-42	Pte		When on Active Service, Absent Without Leave from 1300 hrs. 16-2-42 until apprehended in Toronto, Ont., at 1510 hrs 21-2-42 by the Can Pro Corps. (Absent 7 days 2 hrs 10 mins)	Documentary	7 days C.B.	24-2-42	A.T. Dunbar, Major.	Forf 6 days pay under TRAL.

(P T O)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	6-4-42	Tpr		Sec 15(1) A.A. Absenting himself without leave from 0600 hrs 6th Apr 42 until apprehended in Brampton, Ont, at 1545 hrs, 16th Apr 42 by Chief of Police R.J. Boyle. (Absent 40 days, 12 hrs, 45 mins).	Documentary	28 days Det.	26-7-42	F. Brenner (Major) A/C/C/A/I/C	Stoppages of pay $7.00, forfeits 41 days' pay by CMAT.
Debert Camp	26-7-42	Tpr		Failure to appear at the place of parade appointed by his Comd offr. A.A. Sec 15 (2).	SSM McCOWAN, R.A.	2 days C.B.	27-7-42	R.S. Street (Lieut).	
Aldershot	7 Sep 42	Tpr		Neglect to the prejudice - left pistol in open, unlocked. A.A. Sec 40.	Sgt McCULLOCH	3 days CB.	7 Sep 42	R.S. Street (Capt).	
In the Field	14 Dec 42	Tpr		AWL from 2200 hrs 14 Dec 42 until 0100 hrs 15 Dec 42.	Cpl PHELPS	2 days C.B.	16 Dec 42	G.W. Miller, (Lt).	

CERTIFIED TRUE COPY OF THE ORIGINAL RECORD HELD IN MY CUSTODY.

(K.P. Baran) Capt & Adjt, 10 CDN Armd C Regt.

J.H.E

M.F.B. 355
12M—8-40 (6435-6)
H.Q. 1772-39-620

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B.76205	Tpr.	HENDERSON, W.H.	18 Cdn Armd C Regt.

1. The following is a fair and true summary of the entries in the ~~Provincial General~~ Regimental ~~or~~ squadron, ~~battery~~ Conduct Sheets ~~or Company's conduct sheet~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~or Air Force Act~~, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For Absence without leave	2 times	5 times
For Failure to appear at place of parade	1 times	1 times
For Neglect to the prej etc	1 times	1 times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~There are no entries in the conduct sheets of the accused~~

~~Note—If the charge is for drunkenness, the entries for drunkenness must be stated separately~~

2. The accused has not been previously convicted by Court Martial.

~~Previous convictions of the accused by a court-martial or a civil court, or summary awards under the Army Act~~ Section 47 of the Army Act and dispensations with trial under ~~A.A. 46 or 46A~~ not set out in the Schedule annexed to this statement

3. The accused is not under sentence at the present time

~~The accused at the present time is under sentence of~~ beginning on the ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for one days in civil custody, and eleven days in military custody, making a total of twelve days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 20 years, 10 months.

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 22 Apr 41.

~~7. The service which the accused is allowed to reckon towards discharge~~

8. The accused is entitled to reckon 1 year, 11 months service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or military reward (or is in possession of or entitled to). ~~State any military decoration or reward~~

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer held the regimental rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated , and in his regiment (or corps), the rank of dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17th day of Apr 43

Capt & Adjt, 18 Cdn Armd C Regt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

SK-14

Ste. Hendricus, P.E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F82631 Pte James Ernest HENDRICAN

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. Sec. 15 (c)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of Kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 3rd days, of which ..... days were spent in hospital. (1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of 90 days.

7th May 45. (Sgd) A.E. Lefroy Lt Col
(Sgd) ..... Judge-Advocate, if any. Date awarded. President. (RP 49, 50)
(See back of Convening Order as to disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders. (1)
(1. AA 57A. Delete if not used.)

Date 12 May 45 (Sgd) A.D. Hurd Lt Col
Commanding 2 C.B.R. Bde.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F82631 PTE JAMES ERNEST HENDRICAN	15 MAY 45	J.M. Christmas Lt-Col. Comdg, 1 Can Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

C Pam 241 d/14 Mar 45

RECEIVED 31 MAY 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

(Army Act, Section 71 (1) of AFA'01 (07 & 8 Geo. 5, c. 58)) 4/38B

Convened by Brigadier J.B.H. Laird Comd 2 C.B.R.Bde dated 2 May 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 82631	Pte	James Ernest.	Hendrican	North Nova Scotia Highrs att. "I" Cdn Disciplinary Centre.

PROCEEDINGS REVIEWED
J Christmas Capt
5 June 45
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 7 May 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~if any~~, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record address, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0915 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans~~
~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans~~
~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~if any sworn~~ and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major.	A.E. LEFROY.	Seaforth of C.	att. "I" Cdn Disc Centre
Member	Capt.	A. Fortier.	C.I.C.	att. "I" Cdn Disc Centre.
Member	Lieut.	K.A. McKenzie	Calg Highrs.	att. "I" Cdn Disc Centre.
Judge-Advocate	—	—	—	—
Prosecutor	Capt.	M.R.M. Dale	R.C.A.	att. "I" Cdn Disc Centre.
Defending Offr	Lieut.	W.L. Neville	F.M.R.	att. "I" Cdn Disc Centre.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Comm Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33)

A8. The accused F82631 Pte Hendrican before arraignment makes(s) (no) (a) plea(s).
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is informed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HQ 3 CDN INF DIV WAR DIARY VOL I PAGE

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 50, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B--PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President could, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interests the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No

(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para E1 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C--PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D--PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 41. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP* 115. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(2) (*b*), *RP* 45, 120(*A*). *2. AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E--PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (*g*) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB* 355 *or AFB* 296. *2. MFM* 6. *3. RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes, am undergoing punishment
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to give on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA~~, if any.(2)
(*1. Where several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 320, 563-566, *Overseas AO* 309, 2322, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *Where accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MFB 246 216

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined F 22631 (No.)
Tpr. (Rank) HENDRICAN - J. E (Name) and in my opinion he is
fit ~~unfit~~ to undergo trial by Court-Martial.

Station ~~1 Cdo Disp, Army Camp~~ (Sgd) (Medical Officer)

Date _____ Unit ~~1 Cdo Disp, Army Camp~~

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
P-82631	Pte		James Ernest	HENDRICAN	1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 2 May 45 endorsed by me, ~~or by an officer of my command~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial in order to obtain the services of a superior officer)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint Any three Offrs to form the Court, (b) as Fd Offr as President, for the reasons & being as stated hereunder.~~
(AA 49, RP 104(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	A. E. LEFROY ~~C. B. [illegible]~~ Seaforth of Can.	att. 1 Cdn Disciplinary Centre

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lt	To be detailed by OC 1 Cdn Disciplinary Centre	
Capt or Lt	To be detailed by OC 1 Cdn Disciplinary Centre	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	To be detailed by OC 1 Cdn Disciplinary Centre	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.) (J S H Lind) (Signed personally. RP 105 fn 2.) Brig (Rank.)

Dat 2 May 45 Commanding 3 Cdn Base Rft Gp Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

C H A R G E S H E E T

The accused, F-82631 Pte James Ernest HENDRICAN, North Nova Scotia Highlanders, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 0815 hrs 23 Mar 45 until apprehended at GHENT, Belgium at 0030 hrs 2 Apr 45.

(Total absence: 9 days 16 hrs 15 minutes)

Remanded for Summary of Evidence

In the Field
28 Apr 45

(J Medhurst) Lt col
Commanding
1 Cdn Disciplinary Centre

Remanded for Field General Court-Martial

In the Field
28 Apr 45

(J Medhurst) Lt col
Commanding
1 Cdn Disciplinary Centre

To be tried by Field General Court-Martial

2 May 45

(J S H Lind) Brig
Comd 3 Cdn Base Rft Gp

7 May 1945.

Plea of Mediation.

F-82631 Pte J.E. Hendrican.

Gentlemen:-

I would like to bring out a few facts gentlemen, for your consideration in pedging sentence of the accused that at present he is but 20 years old and has been on Active service since the beginning of 1943. Since that time he has had but two small offences of AWL 1 day & few hours as you can gentlemen he is not one of the perpetual offender type.

Furthermore gentlemen, the reason for his absence was that he had asked to be on draft 3 or four times, but never was put on. This time a draft left and away he was not on it, got discouraged and was easily influenced by an older friend to take leave seeing that he was doing nothing in C.B.R.D.

Therefore gentlemen I would ask you to consider these few facts and be extremely lenient in passing your sentence.

A/Sgt Lamb Lieut.
Defending Officer.
1 Can. Disciplinary Centre

Exhibit "A"

Summary of Evidence in the case of F-Sc63l Pte HENDRICAN JE, North Nova Scotia Highlanders, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave

By direction of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of extract from Part II Order No 85 dated 9 Apr 45

Exhibit "B" - Certificate of apprehension dated 2 Apr 45.

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C)(D)(E)(F) and (G) have been complied with.

M Rousseau Capt

(Maurice Rousseau) Capt

Officer detailed to take Summary of Evidence

Dated in the Field
8 Apr 45.

Exhibit A
In Lawrence Capt

TO:

PART II ORDER EXTRACT FORM

99/XX 34/X-CIC/1 (A5C3)

26 Apr 19 45

EXTRACTS FROM: Unit X-4 List (13 Bn) INF GEN UNALL

Part II Order No. 85 dated 8 Apr 45

ABSENT WITHOUT LEAVE

AWL from 0815 hrs 23 MAR 45 (1st Publication)

F 82631 Pte HENDRICAN JE

The following documents are { attached. Please acknowledge receipt. / required. Please forward same.

CERTIFIED TRUE COPY

Certified to be a true extract from the Regimental Books and documents in my custody.

A MacRae
Officer IC Records "C"
Cdn. Sec. 2 Ech. HQ. 21 A Gp.

Originating Clerk's Initials JWT

(A.J.MacRae) for
Officer in Charge Records "C"3
Canadian Section, GHQ, 2nd Echelon

ECH—6
40/P & S/1276 (4032)

Exhibit B
5-4/one/one
M. Rowan Capt

CERTIFICATE UNDER ARMY ACT, SECTION 53 (1) (j)

Certified that No. F.92621 Rank Pte. Name HENTSCHAN, J.E.
of the C.R.R.G. 41 Coy. NORTH NOVA SCOTIA HIGHRS Regt. No. G.38350
Rank L/C. Name Andrew M.W. was apprehended by 9 Sec. 2 Cdn. Lof C Pro. Coy.
Ghent Detachment at Ghent on 0030 hrs, on the 2nd.
day of April 1945 as an absentee without leave.

He was wearing Military Uniform at the time of his apprehension.
Civilian Clothes.

Place Ghent
Date 2 April

(C.Wood) Capt.
DAPM 2 C.M.R.G
Canadian Provost Corps

Exhibit 13

ARMY FORM B.296 (W.O.)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
[illegible]-8[illegible]31	Pte	HENDRICAN JE	ANS HIGHLANDERS

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For 15(1) AWL	2	2	times.
For 24\2)	1	1	times.
For 40	1	1	times.
For			times.

Date of first entry in Field Conduct Sheet 5 Feb 45

Date of last entry in Field Conduct Sheet 20 Mar 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for NIL

beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for No days in civil custody; and for 34 days in military custody, *i.e.*, No days in open arrest, 34 days in close arrest; of which No days were spent in hospital.

5. The present age of the accused is 20 years 1 month old

6. The date of his attestation is 20 Aug 43
~~calling up for military service~~

7. The service which the accused is allowed to reckon is

†State the military decorations (if any) held by accused.

8. The accused is in possession of†

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of [illegible]	
In the war substantive rank of [illegible]	
In the acting rank of [illegible]	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27853) Wt.24529/3404 £4,000 7/44 A.& E.W.Ltd. Gp.699 Forms/B.296(W.O.)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		No record of conviction by Court-Martial on MFM 6		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 7th day of May 45.

W A Wood Lt

3/17 MFM 6
(AFB 122)
40/PAM/126 (5413)

No. F82631 Name HENDRICAN JE | Sqn, Battery, or Company | Corps CIC | Date of enlistment 20 Aug 43 | OC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5/2/45	Pte		AA Sec 15(1) AWL from 2230 hrs 31/1/45 to 2220 hrs 2/2/45 total absence 1 day 23 hrs 50min		10 days FP 10 days Pay			Fts 2 dy py FR&I 149(1a)
Field	9/3/45	Pte		AA 24(2)					Fts 2 dayspay FR&I 149(2) 2 days pay FR&I 149 (1a)
Field	20/3/45	Pte		(1) 15(1) AWL from 1315hrs 16/3/45 to 2230 hrs 17/3/45(1 day 9hrs 15min) (2) AA 46		27 days pay			

Duplicate created from MFM 4 26 Apr 45 Record of Conduct in Canada prior to 10S Cdn Army O/S 21 Nov 44 not available
"F MACRAE" Officer ic Records C3 Cdn Sec 2 Echn HQ 21 A Gp

(PTO)

Certified copy of MFM 6 in my possession

Admin. Offr.
[illegible] Cdn Disciplinary Centre

LIST OF WITNESSES

N/A

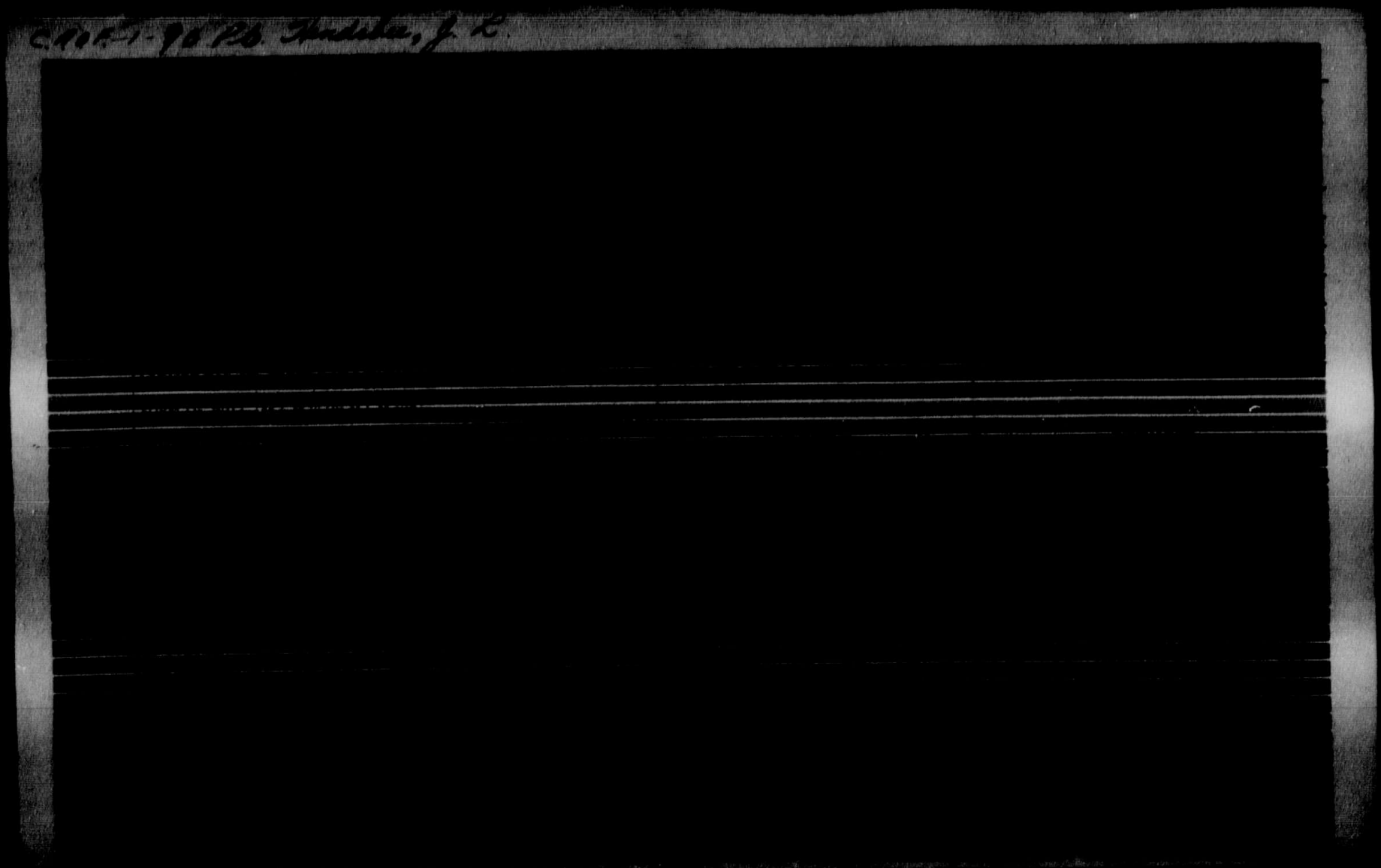
LIST OF EXHIBITS

Certified true copy or extract from Part II Order No. 89 dated 9 Apr 45	"A"
Certificate of apprehension dated 2 Apr 45	"B"

I, F-82631 Pte HENDRICAN Jr, acknowledge having received one copy of the Charge Sheet and one copy of the Summary of Evidence, free of charge on 28 Apr 45.

J. L. Hendrican

F-82631 Pte HENDRICAN Jr



SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F-56688 Pte Hendsbee, J.L.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Charge	Not Guilty	Guilty	
2nd	Charge	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~Al~~ present under sentence for ..... beginning on (date) .....
(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, ~~of which ..... days were spent in hospital~~. (1)
(I. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of 90 days

(Sgd) ..... Judge-Advocate, if any. 21 Jan 46 Date awarded. (Sgd) Lt Col President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For ~~de~~facto powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks, or further ordered (1).~~
(I. AA 57A. Delete if not used.)

(Sgd) W Mitchell (W J Mitchell) Brig
Date 25 Jan 46 Commanding 2/9 Cdn Inf Bde (A.O.F.) Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F56688 Pte Hendsbee J.L.	28 Jan 46	J Robertson Capt Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AR 168 B CHOF-1-96

FIELD GENERAL COURT-MARTIAL

CPA96 (To lieu of APA96 40/P & D/1698 (H1a)

3/388

Convened by Order of Brig W J Mgill Comd 2nd C I B dated 17 Jan 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-56688	Pte		James Lee	Hendsbee	3/NNS Highrs

PROCEEDINGS REVIEWED
5 Feb 46 D. Brody Maj.
REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS REVIEWED
Date 30 Jan 46
DJAG

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Germany on (date(s)) 21 Jan 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA if any, and Officer under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto. The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)
(I. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial (1). ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)
(I. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Lt A Hopper as interpreter? Ans No

The Interpreter is sworn.(1) ~~Do you object to ..... as shorthand writer? Ans ..... The shorthand writer is sworn.~~ (2)
(I. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)
(I. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~Judge if any, and Officers under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	B G Frost	3/SD Lt Highrs
Member	Capt	F L Archibald	3/HL Inf Bde
Member	Capt	A R Harington	3/SD Lt Highrs
Judge-Advocate			
Prosecutor	Lt	G H Graham	3/NNS Highrs
Defending Offr	Lt	C E Ellsworth	3/NNS Highrs

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(I. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Digest 33.)

A8. The accused Pte Hendsbee before arraignment makes(s) (no) plea (1)
(I. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~not~~ arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(I. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(~~sheet~~), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(3), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(4), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty to the ..... charge(s). The accused is (are) informed, and he (they) change(s) his (their) plea(s) to ..... charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may adjourn to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No (1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~an~~ no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 97(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and ~~that~~, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge(s).~~ (4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. No
Do you intend to call witnesses on your behalf ?
Ans. No
~~Are they witnesses as to character only ? Ans. .....~~

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*a*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President ~~announces the finding(s) of Guilty, and~~ states to the accused that the finding(s) of the Court on the first charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(3) (*c*), *RP* 43, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces statement(s) as to Character and Particulars of Service(2), and certified true copy (copies) of Conduct Sheet(s) purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex B respectively.(3)

(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. No (2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566. *Overseas AO* 309, 2321, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No. F56688 Private JAMES LEE HENDSBEE, 3/North Nova Scotia Highlanders, a soldier of the Canadian Army Overseas, is charged with:

First Charge
Sec 41
Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, COMMON ASSAULT,

in that he,

in the Field, in Germany, on the 30 Dec 1945 assaulted Dr. Herbert MULLER, by striking him with his fist.

Second Charge
Sec 19
Army Act

WHEN ON ACTIVE SERVICE, DRUNKENNESS,

in that he,

in the Field, in Germany, on the 30 Dec 1945 was drunk.

(D.F. Forbes) Lt. Col
Officer Commanding
3/Nth NS Highrs CAOF.

In the Field
10 Jan 1946.

To be tried by Field General Court Martial.

(WJ MEGILL) Brig
Comd, 2/9 Cdn Inf Bde CAOF

In the Field
17 Jan 46

FIELD GENERAL COURT-MARTIAL

CFA 66. (In lieu of AFAS) 66/FAS/1037 (2068)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-56688	Pte		James Lee	Headshee	3/Nth NS Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 Jan 46 endorsed by me, [illegible], "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5 [illegible]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	Fox B G	3/SD&G Highrs

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	Archibald F L	3/HLI of C
Capt	Herrington A R	3/SD&G Highrs

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	McGill G W	3/SD&G Highrs

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Germany (Country.)

Date 17 Jan 46

Wm Ste Brig (Signed personally. RP 105 fn 2.) (Rank.)

Commanding 7/9 Cdn Inf Bde C.A.F.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S REPORT

I certify that No. F56688 Pte. HENDSBEE J L
of C/Nth NS Highrs is in a fair state of health,
and able to undergo Trial by Court martial.

CAOF

Medical Officer
Captain, RCAMC

Station In the Field

Date 20 Dec 22 Jan 46

M. F. B. 246
28M—9-45 (7139-1)
H.Q. 1775-29-685

(11) 121.

First Witness for the prosecution:

Dr Herbert Muller, 20 Katharinen St, Oldenburg, having been duly sworn states: (through the interpreter)

I left the theatre on 30th of Dec 45, at appro 2100 hrs, with my brother and our two wives, to visit a restaurant on Wall St. The restaurant was closed and before the door there were two English soldiers. The soldiers accosted us and we did not understand what the soldiers wanted. Because I was afraid for the women I asked them to move away, and then go home. Then I went back to my brother to try to take him away but we were hindered. One of the soldiers seized me by the front of my coat. One of the soldiers asked the time, but I said I had no watch with me. One of the soldiers then seized my right hand and then my left hand. When he discovered a watch on my left hand, he seized it and put it in his pocket. Then the other soldier tried to do the same thing with my brother but my brother resisted and cried for assistance. Afterwards, I too cried for assistance. When I called for assistance the soldier who took my watch hit me in the face and broke my spectacles. Then two Provost soldiers approached and our two wives told the Provost what was happening. Then we were taken away by these two Provost soldiers. On the way my wife told one of the Provost that one of the soldiers had taken my watch. I was taken to the HQ and I gave my statement. The soldier was checked but they couldn't find the watch on him. Then my wife went with one of the Provost to the place where we met the two soldiers to see if they could find the watch. They found the watch there and about 15 metres from

the place they found my spectacles.

Ques by defence - Dr Muller, can you definitely identify this man as the man who struck you?

Ans. - No, I cannot definitely say, as it was pretty dark and the only place I really saw him was at the Provost HQ.

Ques by prosecution - When the Provost arrived on the scene was the soldier still molesting you?

Ans - They were not molesting me but they were molesting my brother.

Ques - How close was the soldier who was molesting you, to you, when the Provost arrived?

Ans - about 2 or 3 steps.

Ques - How close was your brother and the soldier molesting him, to you?

Ans - close to me, 2 or 3 metres.

Ques - Did the Provost conduct you and the soldier molesting you to their HQ?

Ans - One of the Provost soldiers took me and the soldier who molested me and my wife. The other Provost took my brother and the soldier who molested him and my brothers wife to the HQ.

Ques - Were you and the soldier kept separate from your brother and the other soldier?

Ans - Yes.

Ques - In the light of the Provost HQ could you recognize the soldier that accompanied you and the Provost to the HQ?

Ans: Yes it was the soldier who sits beside me.

(The soldier sitting beside the witness is Pte Hendsbee, James Lee).

Ques by the court:

Are you certain that the soldier escorted Weed you to the Provost HQ was the one that struck you?

Ans - yes, we were not separated and I am quite sure, he is the soldier, who molested me and took my watch.

R.P. 83(3) complied with

Second Witness for the Prosecution

Fritz Muller, 68 Achtern st Oldenburg, having been duly sworn states: (through the interpreter)

At approx 2100 hrs, 2 hrs after I left the theatre in company with my brother and our two wives to visit a restaurant on Mill st. We found the restaurant closed and we decided to go home. We were accosted by two soldiers at the door of the restaurant. I was afraid that our wives would be molested by the soldiers and I asked the soldiers to let our wives go home. My brother started away with the wives but came back after walking about 30 yards. I did not know what the soldiers wanted from me. I tried to continue on my way, but I was hindered by one of the soldiers. During the conversation one of the soldiers was with my brother and the other soldiers was with me. I beg the soldier to let me go but he seized me by the front of my coat. The soldier asked me for the time and I told him that I had no watch and I put my hand in my pocket. The soldier grabbed my arm and attempted to pull my hand from my pocket. Then I cried loudly for assistance. By the light of the window from across the street I could recognize the soldier who was molesting me. When I cried for assistance the soldier struck me in the face several times. (at least four times) My face was swollen, my eye was bloodshed and I had two bruises on my head.

I defended myself as well as I could, and then two Provost soldiers approached. We were taken to Provost H.Q. and gave them a statement. On the way to the Provost H.Q. my brother told me that the soldier who struck him had taken his watch, and during the fighting had lost his glasses. ~~The watch and glasses were later found~~ near the door of the ~~restaurant~~ ~~and~~ the red hair soldier was taller than the other one, and I noticed his complexion by the light of the window from across the street and later in the Provost H.Q. I could see the reddish complexion. It was the reddish hair soldier who had struck me.

Ques by defence

Q. Is the accused the soldier who had struck you? (Pointing to Pte Henderson)

A. No.

Q. At the time when your brother returned after escorting the two women up the street could you tell what was happening between the other soldier and your brother?

A. Not exactly, but I saw there must be something wrong.

Q. Did you see the other soldier strike your brother at any time?

A. No.

Ques by Prosecution

Q. What was the other soldier doing when the one soldier was molesting you?

A. At first both soldiers were with me but after my brother came back the other soldier went to my brother.

Q. Did the other soldier lay a hand on your brother?

A. I did not see him.

Q. During the whole trouble did the soldier who attacked you break off and attack your brother?

A. No

RP 86(5) complied with

Third Witness

H. 17615 Sgt. Baldwinson, J.B. - "B" Coy. 2/4 Bde. Prov. Coy. having been duly sworn states:-

On night of 30 Dec. 45 I was in the Orderly Room of 2/4 Prov. Coy. in Aldenbrugh. Two German women came rushing in and said their husbands were being assaulted by two soldiers. Cpl. Parles and myself immediately went with them to the scene of the fracas. Upon nearing the scene of the fracas I heard cries for help. Cpl. Parles was approx. 30 yds. ahead of me. When I got there, there were two soldiers and two civilians engaged in some sort of a fracas. I took the two soldiers and civilians back to the Orderly Room. The civilians said that the soldiers had taken a watch from them. I searched the soldiers and found no watch in their possession. Cpl. Parles then went back to the scene of the fracas where he found the watch on the street. Both the civilian men had a sweating on their cheeks. I could smell a slight odour of liquor on the two soldiers. I then placed the soldiers under arrest and had them escorted to the guard room. I obtained a written statement from the two civilian men.

Question by Defence

Q. Did you actually see a blow struck by either of the two soldiers?
A. No. I did not actually see a blow struck.

Question by Prosecution

Q. What order did you go to the Orderly Room in?
A. I escorted Dr. Muller and one soldier, and Cpl. Parles escorted the other soldier and the other civilian.
Q. Was the soldier that you escorted, closer to Dr. Muller at the scene of the fracas than the other soldier?
A. Yes Sir.
Q. When you came into the light of the Orderly Room did you recognize which of the two soldiers you had escorted?
A. Yes, Sir.

R.P. 83 (B) complied with

Fourth Witness. (61)

3149279 Cpl. Parker, J.B. "B" Sec. 2/4 Bdn. Mtr. Bty. having been duly sworn states:

On the night of 30 Dec 45 at approx. 2100 hrs. I was with Sgt. Baldwinson in the Orderly Room of 2/4 Mtr. Coy at Aldenburgh. Two women came running in & requesting our help that there were some trouble on the street in front of the cafe. As soon as we went onto the street we heard some commotion and cries for help. We all ran down the street in the direction of the noise. When I arrived at scene I noticed saw a soldier whom I now know as Pte. Fitzgerald in the act of striking a man. Fritz Muller I stopped the fight and we all proceeded to our Orderly Room. On the way Frau Muller told me about a watch being stolen from her husband by one of the soldiers. On arriving at the Orderly Room we searched the soldiers but did not find the watch in their possession. With Frau Muller I returned to the scene of the fight and with the aid of a flash light I found the watch about 10 yds from the entrance of the cafe. Further down the street I found a pair of spectacles which were broken belonging to Mr. Muller. Returning to the Orderly Room I took particulars from the soldiers, informed them of the charge and placed them under close arrest. They were taken to the guard-room and live-body receipts obtained. In my opinion both soldiers were slightly under the influence of liquor.

Questioned by Defence

Q. Did you see at any time one of the soldiers other than Pte. Fitzgerald strike one of the civilians

A. No Sir.

Questioned by Prosecution

Q. To whom did you escort back to the Orderly Room?

A. I escorted the whole group back, but more or less assisted Pte. Fitzgerald

Questioned by Court

Q. When did you first identify the soldier that you escorted back to the Orderly Room?

A. I could recognize the soldier from the light in a door-way across the street

K. P. 85(B) complied with

Closing address by Prosecution

Dr. Muller stated that he was detained and struck by a soldier. The Provost state that both Germans had swellings under the eyes which bares out Dr. Mullers statement. Fritz Muller states that the red-headed soldier who is Pte. Fitzgerald was engaged with him (Fritz Muller) during the whole time of the trouble. I therefore maintain that it follows that the accused (Pte. Hendobee) must have been the one that assulted Dr. Muller.

Closing address by Defence

According to the first charge the accused is charged with assulting Dr. Muller with striking him with his fist. We have heard three witnesses who were present at all or sometime during the alleged assault and not one of them stated that he saw an actual blow struck or an attempt made to strike Dr. Muller. The chief witness (Dr. Muller) whose evidence was contradicted by interpreter on certain points on being questioned by the Defence could not identify the accused as the soldier who struck him. Previous testimony of Dr. Muller would lead us to believe that if he were struck by a soldier it was one other than the accused. Taking these various facts into consideration I believe the accused has not been proven guilty as charged.

Plea in Mitigation of Punishment.

I, F 56688 Pte Hendsbee, J. L., joined the army on the 12 apr 43. came O/S on 1 aug 43 and went to Italy in Nov 43. There I joined the Seaforth Highlanders of Canada and served with them in Italy until Feb 45 when the unit moved to N.W.E. Served with them in N.W.E. until Sept. 45 when I was posted to the 3/N N S H. During my Army career I have been crimed only once. I am entitled to wear the C.V.S.M. and clasp. 1939-45 Star, Italy Star and the France - Germany Star. During action I was wounded twice. I beg the court to consider these facts when awarding punishment.

J L Hendsbee.

No. F56688 Name Hendsbee J.L. Sqn., Battery or Company — Corps CIC — Date of enlistment 12-4-43 — G.C. Badges — Tradesmen's Rates of Pay — M.F.M. 6 (A.F.B. 122)

No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 2 — Signature O.C. Company, etc. Major J.A. MacNaughton — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Old sheet destroyed 25-10-43 No entries. 2 May 1945	(J.A. MacNaughton) Major				
Granted 9 days P.L. & RA (UK) Varel, Germany	9 Sep 45	Pte		**1st Charge** - AA Sec 8(2) Using Threatening Language to his Sup. Offr.	Documentary L/Cpl Mein Pte Lamb SW	7 Days W.C. Forf Pay 14 Days C.B.	14 15	Lt-Col. D.F. Forbes	
				2nd Charge - AA Sec 40. Neglect etc. did not have in his possession MBM Pts I, II, & III nor his identity discs					
				CERTIFIED CORRECT AS OF 10 Jan 46 (H.M. Bushaback) Capt & Adjt 3/Nth N.S. Highrs CAOF					

(P.T.O.)

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F56688	Pte.	James Lee MENDSBEE	3/Nth NS Highrs CAOF

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 8(2) ..... 1 times

For AA Sec 40 ..... 1 times

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 9 Sept 45

Date of last entry in Field Conduct Sheet 9 Sept 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*~~3. The accused has not previously undergone imprisonment~~

~~or detention for a period exceeding three months.~~

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 11 days in military custody, *i.e.*, Nil days in open arrest, 11 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 22 years

6. The date of his attestation is 12 April 1943

7. The service which the accused is allowed to reckon is .....

†State the military decoration (if any) held by accused.

8. The accused is in possession of† CVSMx Clasp,39-45 Star,France Germany Star,Italy Star

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of N/A	
In the war substantive rank of N/A	
In the acting rank of N/A	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27601) W1.24929/3494 24,000 7/44 A.& E.W.Ltd. Gp.698 Forms/B.296/War/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N I L		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 10 th day of January 1946

(A/E Cannabeck) Capt & Adjt
5/Nth BS Highrs CAOF

Summary of evidence in the case of F 57204 Pte Fitzgerald G.J., 3/Nth NS Highrs, CAOF and F 56688 Pte. Hendsbee J. L., 3/Nth NS Highrs CAOF. 12 A

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS:

Dr. HERBERT MULLER, 20 Katharinen Street, Oldenburg, having been duly sworn states:

I am Dr. Herbert Muller, 20 Katharinen Street, Oldenburg. On the evening of the 30 Dec 45, at approximately 2100 hrs, I and my brother and our wives were coming out of the theatre and proceeding to the restaurant. When we reached the restaurant (Grosser Kaiser, Wall Street) two soldiers were standing in fron of the door. The soldiers spoke to us but we could not tell what they wanted. I escorted our wives a few steps farther up the street and I then returned and stood alongside of my brother. We wanted to proceed on our way but we were stopped as one of the soldiers grabbed my brother by the coat. Then one of the soldiers asked us what time it was. We claimed that we had no watches. The taller of the two soldiers (The taller is Pte. Fitzgerald G.J.....) was standing nearest to me and first pulled my right arm from my pocket and looked for a wrist watch and then did likewise with my left arm. As he discovered one on my left arm he tore it off and put it in his pocket. Then the other soldier tried to do the same with my brother but my brother offered resistance. We than called for help. When I called for help the tallest of the two soldiers struck me in the face breaking my glasses. In the dark I could not identify the faces of the soldiers but could distinguish the difference in neight. Military Police came and took the two soldiers, ourselves and our wives to their Headquarters. While we were proceeding to H.Q. I told my wife to tell the M.P. that the soldiers had taken my watch from me. My wife and the Military Police returned later to the restaurant and found my glasses lying broken near the door. The also found my watch several metres up the street.

Pte. Fitzgerald declines to cross examine this witness

Pte. Hendsbee declines to cross examine this witness.

.....
Dr. Herbert Muller,
20 Katharinen Street,
Oldenburg.

SECOND WITNESS:

FRITZ MULLER, 68 Achtern Street, Oldenburg having been duly sworn states:

I am Fritz Muller, 68 Achtern Street, Oldenburg. On the evening of the 30 Dec 45 at approximately 2100 hrs, my brother and I with our wives were proceeding out of the theatre to Kleiner Kaiserhof Restaurant on Wall Street. We came to the Restaurant, found the door locked, and as we turned around to go back we were stopped by two soldiers who were standing there. The soldiers took hold of us and we did not offer any resistance in order to give our wives chance

SECOND WITNESS CONT'D:

to get away. I wanted to follow our wives but the taller of the two soldiers took hold of me and held me back. He kept hold of me and was talking to me but I could not understand what he wanted. While this was going on my brother was being held by the other soldier but I could not see what they were doing. Then the soldier who was holding me asked me for the time. I told him I did not have a watch. The soldier then tried to pull my left arm from my pocket but I offered resistance. As the soldier became more persistant I called for help. When I called the soldier hit me in the face at least four times. The soldier let go of me when our wives, with two Military Police, came to the scene. I was not molested the whole time by the shorter of the two soldiers. When we were enroute to the Provost Headquarters, my brother told us in German that his watch had been taken from him and his wife told the Provost in English.

Due to my being struck in the face by the soldier I had a black eye which was painful for several days.

Pte. Fitzgerald declines to cross examine this witness.

Pte. Hendsbee declines to cross examine this witness.

.....
Fritz Muller,
68 Achtern Street,
Oldenburg.

THIRD WITNESS: B-149279 Cpl PAVLOS, J., 2/4 Provost Coy, having been duly sworn states:

I am B-149279 Cpl. Pavlos, J. of the 2/4 Provost Coy.

At approximately 2100 hrs, 30 Dec 45, I was in the Orderly Room of 2/4 Provost Coy, when two German women came running in telling us that their husbands were having trouble with two soldiers. Sgt Baldwinson and I immediately left with the women to the scene of the trouble in fron of the Kaiserhof Restaurant on Wall Street. We heard cries for help and on arriving at the scene I saw a soldier whom I now know to be Pte. Fitzgerald in the act of striking Fritz Muller. I stayed his arm and put a stop to the fracas. I ordered them all to accompany me to our Headquarters. As we were moving off Frau Muller told me that a wrist watch had been stolen from her husband. Arriving at our Headquarters the Sgt. and I searched the soldiers but could not find the watch. Then accompanied by Frau Muller I returned to the scene of the trouble with the aid of a flashlight found the wrist watch in question about 10 yards from the door of the restaurant. I also noticed that the wrist band was broken. A few yards farther away from the door I found Dr Muller's spectacles which were broken.

Back in the Orderly Room I took the soldiers'

THIRD WITNESS CONT'D:

particulars, informed them of the charges and placed them under close arrest.

Pte. Fitzgerald declines to cross examine this witness.

Pte. Hendsbee declines to cross examine this witness.

.....
B-149279 J. Pavlos, Cpl
2/4 Provost Coy.

FOURTH WITNESS: H-15615 Sgt. BALDWINSON, S.B., 2/4 Provost Coy, having been duly sworn states:

I am H-15615 Sgt. Baldwinsen S.B., of the 2/4 Provost Coy.

At appreximately 2100 hrs, 30 Dec 45, I was in the Orderly Room of 2/4 Provost Coy, when two German women came dashing into the Orderly Room asking us to come and help them, saying that their husbands had been assaulted by two soldiers. ~~Cpl,~~ Pavlos and I immediately proceeded with them to where the trouble was. When we got there I saw two soldiers and two civilians engaged in some sort of a fracas. The fracas ceased upon our arrival and the whole party accompanied us to the Orderly Room. One of the civilians claimed that one of the soldiers had taken a watch from him so we searched the soldiers but could find no watch on their person. We placed the soldiers, F 57204 Pte. Fitzgerald, G.J. and F 56688 Pte. Hendsbee, J.L., under arrest and had them escorted to their guard room. Both the German civilians had a swelling under the eye.

Neither Fitzgerald nor Hendsbee made any attempt to resist arrest.

When we were appreaching the fracas in the first place with the German women, we could hear the men calling for help.

I actually did not see either of the soldiers strike one of the civilians but did see Cpl. Pavlos prevent a blow being struck by holding one of the soldiers arms. In the darkness I could not distinguish which soldier it was.

I definately smelled alcohol on the soldier's breath but did not consider them drunk.

Pte. Fitzgerald declines to cross examine this witness.

Pte. Hendsbee declines to cross examine this witness.

.....
H-15615 S.B. Baldwinsen, Sgt.
2/4 Provost Coy.

FIRST WITNESS (Recalled):

Dr. HERBERT MULLER, 20 Katharinen Street, Oldenburg, (recalled cautioned that he is still under oath) states:

On the evening of the 30 Dec 45 at the time of the trouble, in the darkness I thought it was the taller of the two soldiers who was molesting me. The Provosts took the two of us, keeping us separate from the other two, to their Headquarters. I then noticed that my assailant was the blond soldier (Pte. Hendsbee.....). The Restaurant in question is the Kleiner Kaisernof.

Question: "Can you identify which of the two soldiers attacked you?"

Answer: "Yes, the blond one." (Pte Hendsbee.....)

Question: "Did you smell alcohol from the soldier?"

Answer: "No."

Pte. Fitzgerald declines to cross examine this witness.

Pte. Hendsbee declines to cross examine this witness.

.....
Dr. Herbert Muller,
20 Katharinen Street,
Oldenburg.

SECOND WITNESS (Recalled):

FRITZ MULLER, 68 Achtern Street, Oldenburg, (recalled cautioned that he is still under oath) states:

Question: "On the evening of 30 Dec 45, did you smell alcohol from your assailant?"

Answer: "Yes"

Pte. Fitzgerald declines to cross examine this witness.

Pte. Hendsbee declines to cross examine this witness.

.....
Fritz Muller,
68 Achtern Street,
Oldenburg.

THE ACCUSED WERE WARNED AS FOLLOWS:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused, F 57204 Pte. Fitzgerald G.J. having been duly sworn states: "On the night of the 30 Dec 45, at the time of the trouble I do not remember what I was doing, due to the fact that I had been drinking."

The accused does not wish to call any witnesses.

.....
F 57204 G.J. Fitzgerald, Pte.
3/Nth NS Highrs, CAOF.

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused, F 56688 Pte. Hendsbee J.L. having been duly sworn states: "On the night of the 30 Dec 45 I was drunk and remember nothing between 1800 hrs and when the Provosts asked me for my name and number at the Provost Headquarters at approximately 2130 hrs."

The accused does not wish to call any witnesses.

J L Hendsbee.
.....
F 56688 J. L. Hendsbee, Pte
3/Nth NS Highrs, CAOF.

I certify that the foregoing Summary of Evidence consisting of four pages, was taken down by me in the presence of the accused and that RP 4 (C), (D), (E), (F), and (G) (13) have been complied with.

In the Field
7 Jan 46.

G.H.Graham Lt.
.....
(G.H.Graham) Lieut.
3/Nth NS Highrs, CAOF.

LIST OF WITNESSES

PROSECUTION: Dr. Herbert Muller, 20 Katharinen St., Oldenburg

Fritz Muller, 68 Achtern St., Oldenburg

B 149279 Cpl. Pavles J.C. - "C" Sec, 2/4 Cdn Pre Coy.

H 14615 Sgt. Baldwinson S.B. - "B" Sec, 2/4 Cdn Pre Coy.

DEFENCE: NIL

(G.H.Graham) Lt. 3/Nth NS Highrs,
Summary Officer. CACF.

8 Jan 46.

Officer Commanding,
3/Nth NS Highrs CAOF.

Sir:

I desire to have an Officer detailed to defend me at my forthcoming trial by Field General Court Martial.

J L Hendsbee
.....
F 56888 J. L. Hendsbee, Pte.
3/Nth NS Highrs CAOF.

22-115

PTE HENERY F

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 82934 Pte Henery F. 1 Cdn Adm Tpt Coy

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	15(1) AA	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~Al present under sentence for ..... beginning on (date) .....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 4 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention provided of sixty (60) days.

(Sgd) ..... Judge-Advocate, if any. 11 Jun/44 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks and that he be released.~~ (1)

(1. AA 57A. Delete if not used.)

Date 14 Jan 44 (Sgd) J.E. Roberts Maj Gen Commanding J.O. Lieut-Col Deputy Judge Advocate Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B82934 Pte Henery F	14 Jan 44	[signature] Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

22-115

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFAA) 40/P & S/1408 (3004)

Convened by Order of Maj-Gen J H Roberts Comd 6 R U dated 11 Jan 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B82934	Pte	Frederick	Henery	1 Cdn Adm Tpt Coy

PROCEEDINGS REVIEWED

[signature] Lieut.

27 Jan 44 R22 4

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 11 Jun/44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Instr RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs as how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1)

The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 11.30 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Con 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... as interpreter? Ans.~~

~~The Interpreter is sworn.~~ (1) ~~Do you object to ..... as shorthand writer? Ans.~~

~~The shorthand writer is sworn.~~ (1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO-SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	Redman, D L	HQ, CRU
Member	~~Capt~~ DONALD LEE VAN KLEECK Lieut	~~Van Kleeck, D L~~	SCARBOROUGH, ONTARIO 1 Cdn Adm Tpt Coy
Member	Lieut	Martin, J E	5 CIR 2
~~Judge-Advocate~~			
Prosecutor	Lieut	Bedore, D R C	1 Cdn Adm Tpt Coy
Defending Offr	Lieut	Burgess, P E	1 Cdn Adm Tpt Coy

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans. NO.(1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~his~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~be JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO - SIR.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....Do you intend to call witnesses on your behalf? Ans.....Are they witnesses as to character only? Ans.....
(*1. RP 15. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans NO - SIR.....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans To make a plea for leniency on ground of youth NOTE-18 yrs
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP 140. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 127. When accused already under sentence of imprisonment or detention see AA 44(15), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B-82934 Private Frederick Henery, No. 1 Cdn. Adm. Tpt. Coy., R.C.A.S.C., a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE

Sec. 15(1) AA.

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

at Farnborough, Hants absented himself without leave from 2200 hrs, 5 Dec 43 until surrendering himself at unit guard room, at 1015 hrs, 7 Jan 44.
(Total time absent - 32 days, 12 hours, 15 minutes)

G.C. McArthur

(G.C. McArthur) Lt.Col.,
Commanding Officer,
No. 1 Cdn. Adm. Tpt. Coy.,
R.C.A.S.C. C.A.(O).

Farnborough, Hants
10 January 1944.

To be tried by Field General Court-Martial.

(J.H. Roberts) Maj-Gen.,
G.O.C.,
Cdn. Rft. Units.

In the Field
11 Jan 44.

FIELD GENERAL COURT-MARTIAL

CFA 95 (In lieu of AFAA) 40/FAR/1497 (2nd Rev)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-82934	Pte		Frederick	MEMERY	1 Cdn Adm Tpt Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 11 Jan 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

and I also appoint the Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	*(Must be named. RP 106.)*	(Unit.)
Lt-col	D.L.Redmen VD	HQ CIRU

MEMBERS.

(Rank.)	*(Named or detailed. RP 106.)*	(Unit.)
Capt	from and to be detailed by OC of	5 CIRU
Lieut	from and to be detailed by OC of	5 CIRU

WAITING MEMBER.

(Rank.)	*(Named or detailed, if any. RP 106.)*	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	*(Must be named, if any. RP 106.)*	(Unit.)

On Active Service in the Fd

in England (Country.)

(signed personally. RP 105 fn 2.) (J.M.Roberts)Maj Gen (Rank.)

Date 11 Jan 44 G.O. Commanding Cdn Rft Units

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for addns and notes for use on trial.)

No. 1. CDN. ADMINISTRATIVE TRANSPORT COMPANY R.C.A.S.C. C.A.(O).

Medical Officer's Certificate
K.R. (Can) Para 557

I certify that I have this morning examined No. B82934 Pte. Henery, F.
(rank) (name)

of No. 1 Cdn.Adm. Tpt. Coy.,RCASC and in my opinion he is fit to undergo
trial by Court Martial.

Station Farnborough, Hants.

Date 11 January 1944.

Sgd. A. Henery. Capt. R.C.A.M.C.
(Medical Officer)

NOTE E-3

Plea for Medigation in the defence of Pte. Henery, F., B-82934. I would like to call the attention of this Court to consider a few points in respect to Pte. Henery's conduct. He enlisted in the Army in May 1940 and has been overseas since August 1940. His conduct during this period has been a very good one considering his M.F.M. & which shows only a few, very minor offences and no A.W.L. charges since his enlistment. In considering this man's case I would like the Court to examine closely the reasons for this man's going A.W.L. and to be lenient in determining his sentence. This man has been with No.1 Cdn.Adm.Trt.Coy., for one year, employed as a D.M., and paid as such. About one and a half month's ago, this man ceased to be employed as a D.M., and was employed as a driver. Consequently, losing his D.M's pay. When this happened, Pte. Henery asked for a transfer to a Unit where he could be employed as a D.M., and draw Trades Pay. He was told that in view of the great shortage of drivers in this company, it would be of no use for him to submit his application for a transfer, because it would not be considered. The result being, like many men in the Army, even with the best conduct's, became discouraged and discontent and went A.W.O.L. In view of these facts which I think are worth considering, I would again ask the court to consider them, and be lenient to this man in determining his sentence, and recommend for him a transfer to a Unit where he could be employed in his trade and be happy in the service.

P.C. Bigwood Lieut
defending officer for Pte Henery F.
No. 1 CDN. ADM

NOTE E-3

statement by accused.

I drew trades pay as a D.M. since early 1941 25 cts per day about 6 mths ago I was taken off trades-pay. I didnt want the responsibility of one stripe. I also want my trades pay and want to be transfered to 1 Cdn Base where I have a chance to be sent to a 2nd unit as a D.M.

APP "A"

RECORD of the Declaration of a Court of Inquiry assembled at Lille Barracks, Farnborough, Hants., on the 27th day of December 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of B-82934 Pte Henery, F.

DECLARATION

The Court declare, that B-82934 Pte Henery, F. of No. 1. Cdn. Admn. Tpt. Coy., R.C.A.S.C., illegally absented himself without leave or other reasonable or sufficient cause at Lille Barracks, Farnborough, Hants, at 2200 hrs on 5 Dec. 43, and that he is still so absent, and that on the 27th day of December 43, he was deficient and is still deficient of articles which are a part of his Regimental Necessaries and Equipment according to the list as shown in evidence to the value of £9-0-4

LIST OF DEFICIENCIES

	Cost Price	75% of Cost
Blouses Battle Dress (2)	£ 2- 7- 0	£ 1-15- 3
Trousers Battle Dress (Prs)(2)	2- 8- 3	1-16- 2
Boots, Ankle	1- 4- 5	0-18- 4
Brushes, Button	0- 1- 2	0- 0-10½
Cap, Field Service	0- 2- 6	0- 1-10½
Greatcoat	2-10- 7	1-17-10
Comb, hair	0- 0- 2	0- 0- 1½
Housewife	0- 0- 9	0- 0- 7
Knife, Clasp	0- 3-10	0- 2-10½
Blouses, Denim	0-10-11	0- 8- 2
Trousers, Donim	0-11- 3	0- 8- 4½
Socks, (Prs)(3)	0- 5- 0	0- 3- 9
Jerkins, Leather	1- 5-10	0-19- 4½
Gloves, M.T.	0- 9- 0	0- 5- 9
TOTAL	£ 12- 0- 8	£ 9- 0- 4
LESS 25%	3- 0- 4	
75% of cost	9- 0- 4	

Names of President and Members: Capt. P. MacMurdo
Lieut. P.E. Bergeron
Lieut. D.R.C. Bedson

Certified True Copy:

A G Henderson Capt& Adjt.,
No. 1. Cdn. Adm. Tpt. Co'y.,
R.C.A.S.C. C.A. (O).
Officer having custody of original record

APP "B"

CERTIFICATE OF SURRENDER UNDER SECTION 163 (1) J. A.A.

I Lt. Col. G.C. McArthur CERTIFY THAT NO. B-82934 RANK, PTE NAME: HEMERY, F. CO'Y; NO. I CDN. ADM. TRANS. CO'Y BN R.C.A.S.C. SURRENDERED HIMSELF, at regimental guard room TO NO.A-9134 RANK: A/L/CPL NAME: ROBERTS A.F. NO. I CDN. ADM. TRANS. CO'Y RCASC AT: 1015 HRS ON THE 7 DAY OF JANUARY 1944, AS A DESERTER OR ABSENTEE WITHOUT LEAVE.

Dressed in Military Uniform

PLACE: FARNBOROUGH, HANTS

DATE: 7 JAN. 1944

G. C. McArthur

(G.C. McArthur) Lt. Col.
Commanding Officer
No.1 Cdn. Administrative
Transport Company R.C.A.S.C.
C.A.(O).

Summary of Evidence in the case of B-82934 Pte. Henery, F., No. 1 Cdn. Admn. Tpt. Coy. R.C.A.S.C., a soldier of the Canadian Army Overseas.

FIRST WITNESS: Captain A. D. Hudson, No. 1 Cdn. Admn. Tpt. Coy, R.C.A.S.C., an officer of the Canadian Army Overseas, states:

As adjutant of No. 1 Cdn. Admn. Tpt. Coy, R.C.A.S.C. I submit a certified true copy of the declaration of a court of inquiry concerning the illegal absence of B-82934 Pte. Henery, F. (Marked App "A".)

I further produce a certificate of surrender under section 163 (1) J of the Army Act, purporting to be signed by Lt. Col. G.C. McArthur, Commanding Officer of No. 1 Cdn. Admn. Tpt. Coy. R.C.A.S.C. (Marked App "B")

The accused declines to cross-examine this witness.

A.D. Hudson Capt

SECOND WITNESS: B-85183 C.Q.M.S. Neill, T.H. No. 1 Cdn. Admn. Tpt. Coy, R.C.A.S.C., a soldier of the Canadian Army Overseas, having been duly sworn, states:

As quarter master sergeant of No. 1 Cdn. Admn. Tpt. Coy, R.C.A.S.C. I issued the regimental necessaries and equipment of Pte. Henery, F. to be checked on his return from AWL on 7 Jan 44. Deficiencies as per Pte. Henery's MBM I, Part III, were accounted for on MFM 513, and I certify that at this date there are no deficiencies in the regimental equipment of this soldier.

The accused declines to cross-examine this witness.

T.H. Neill

The accused was cautioned as follows: Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you may give will be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down in writing by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (D), (E), (F), and (G) have been complied with.

D.R.C. Hodson Lieut.
Officer detailed to take this Summary of Evidence

FAREBROOK, HANTS,
7 JAN 44

EXA

Summary of Evidence in the case of B-82934 Pte Henery P., No.1 Cdn. Administrative Transport Company R.C.A.S.C., a soldier of the Canadian Army Overseas.

First Witness Capt. A.C. Hudson, No.1 Cdn. Adm. Trans. Co'y R.C.A.S.C. an officer of the Cdn. Army Overseas, states:

"As Adjutant of No.1 Cdn.Adm. Trans. Co'y R.C.A.S.C. I submit a certified true copy of the Declaration of a Court of Inquiry concerning the illegal absence of B-82934 Pte Henery P. (marked Appendix "A")

I further produce a certificate of surrender under Section 163 (i)j of the Army Act, purporting to be signed by Lt. Col. G.C. McArthur, Commanding Officer of No.1 Cdn. Adm. Trans. Co'y R.C.A.S.C. (Marked Appendix "B")"

The Accused declines to cross examine this witness.

(Sgd) "A.C. Hudson"Capt.

Second Witness B-83183 C.Q.M.S. Neill T.H. of No.1 Cdn.Adm. Trans. Co'y R.C.A.S.C., a soldier of the Cdn. Army Overseas, having been sworn, states:

"As Quartermaster Sergeant of No.1 Cdn. Adm.Trans. Co'y R.C.A.S.C., I caused the regimental necessaries and equipment of Pte Henery P. to be checked on his return from A.W.L. on 7 Jan. 1944. Deficiencies as per Pte Henery's M.B.M. 1 Part 111 were accounted for on M.F.M. 513 and I certify that at this date there are no deficiencies in the regimental equipment of this soldier.

The accused declines to cross examine this witness.

(Sgd) "T.H. Neill

The accused was cautioned as follows: "Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you may give, will be taken down in writing and may be given in evidence".

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down in writing by me in the presence and hearing of the accused, and that Rules of Procedure 4(c) (d) (e) (f) and (g) have been complied with.

Farnborough, Hants
7 Jan. 1944.

(Sgd)"D.R.C. Bedson" Lieut
Officer detailed to take this
Summary of Evidence.

MFM 6
(AFB 122)
40/P&S/136-(3438)

No B82934 Name HENERY, F. | Sqn, Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 15-May 40 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet No | No and date of last drunk 1 20 Jan.42 | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
NO ENTRIES FROM PREVIOUS SHEET DESTROYED 15 Nov. 40 ON COMPLETION OF 6 MONTHS SERVICE									
Field	13 Dec. 41	Pte		Failing to comply with Orders, in that he at 1400 hrs 13 Dec.41 did leave his lorry unattended contrary to Standing Orders for drivers.	Cpl. Wilson,A.	7 days C.B.	13 Dec. 41	Capt. Begelar	
Field	29 Jan 42	Pte		Absenting himself without leave Sec.15(1) A.A. In that he absented himself without leave from 2300 hrs 29 Jan. 42 until 2345 hrs 29 Jan. 42. Drunkenness first Offence. In that at 2345 hrs 29 Jan. 42 was drunk.	L/Cpl. Pollock A.H.	Awarded 28 days F.P. Forfeiture of 28 days pay A.A.46(2)(d)	4 Feb. 42	Major DeGeer	Forfeits 28 days pay FR&I 149(1)b

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6 Mar 43	Pte		Conduct to the prejudice of good ~~xxxx~~ order and military discipline (Sec. 40 A.A.)			8 Mar. 43	Major Biglow	14 days pay FR&I 149(2)
Field	27 Nov. 43	L/Cpl		A.A. Sec. 11	Documentary	Severe Reprimand	27 Nov. 43	1 CBSC Pt. II Order 99 d/29 Nov 43.	

CERTIFIED TRUE COPY:
S.R.C. Tedam Lieut LIEUT. & RECORDS OFFICER
No. 1 Cdn. Adm. Tpt. Coy., R.C.A.S.C. C.A. (O)

11 Jan 44

OFFICER HAVING CUSTODY OF THE ORIGINAL DOCUMENTS.

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 11 th day of January 1944

D.R.C. Bedson
(D.R.C. Bedson) Lieut.& Records Offr.,
No.1 Cdn. Adm. Tpt. Coy.,
R.C.A.S.C. C.A.(O.)

Army Form B.2303.

Statement as to Character and Particulars of Service of Accused.

B-82934 Private FREDERICK HENERY of the No.1 Cdn. Adm. Tpt. Coy., R.C.A.S.C.

1. The following is a fair and true summary of the entries in the Regimental and ~~Company~~ Company Conduct sheet of the accused exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with:

	*Within last 12 months.	*Since Enlistment.
For A.W.L.	- times	1 times X
For Failing to comply with standing orders	- times	1 times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

or.

Previous convictions of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Ex 13

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for 2 RCO.
beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges

for N11 days in Civil Custody,

and 4 days in Military Custody.

Total 4 days.

Of which N11 days were spent in hospital.

5. The present age of the accused according to his ~~xxxxxxxxxxxx~~ attestation paper is 37

6. The date of his ~~xxxxxxxxx~~ attestation specified in his ~~xxxxxxxxxxxx~~ attestation paper is 15 May 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 years, 9 months, 27 days

~~8. The accused is entitled to deferred pay or gratuity in respect of~~ years' service.

9. The accused is entitled to reckon years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

	Date of Promotion.
In the rank of ,	years,
In the rank of ,	years,
~~In the rank of , ~~	~~years,~~

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or of the Dispensing Authority.	Punishment remitted.

D.D.&L.

(*Continued overleaf.*)

COUNTER NUMBER 167139

HOUR 8.30

OPERATOR'S INITIALS LL

RELIEVING OPERATOR LB

5 J- 9

Tyr. Henry 7.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B 82934 Spr. HENERY F

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15 (1)	not Guilty	Not Guilty AS CHARGED But Guilty of AWL	
2nd AA 40	not Guilty	Guilty	FROM 2300 hrs 13 MARCH 45 to
3rd AA 40	not Guilty	GUILTY	0900 HRS 14 March 45
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)

(1. Insert sentence being served, or delete if not applicable. See RP 46(A). Information should be found on MF B355 or MF B296.)

Time in confinement awaiting present trial—a total of 30 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or MF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : TO UNDERGO DETENTION FOR 90 DAYS

(Sgd) ..... Judge-Advocate, if any. 3 May 45 Date awarded. (Sgd) A Maclaren President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 577. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be put into ..... detention barracks until further ordered.~~

(1. AA 57A. Delete if not used.)

Date 4 May 45. (Sgd) [illegible] Major 2 i/c Pers Capt Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B 82934 Spr. HENERY. F	5 MAY 45	[illegible] Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No. (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~(an)~~ (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. No, SIR. Do you intend to call witnesses on your behalf ?
Ans. Yes, 1. Are they witnesses as to character only ? Ans. No, SIR.
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF AF5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B&(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the 1, 2nd and 3rd charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No SIR.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex 2 respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. YES SIR.
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MFM 6 (AFB 122) 40/P&S/136 (3438)

No B82934 Name Henery, F | Sqn. Battery or Company | Corps COPY RCE | Date of enlistment | GC Badges | Service or Proficiency Pay na | Character

Company Conduct Sheet Date of last entry in na | No and date of last drunk na | Period not reckoning towards freedom from extra fine na | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				(Supplementary sheet in absence of original)					
Field	15 Mar 44	Pte		AA 15(1) AWL from 0800 hrs 15 May Sgt Martin to 1928 hrs 16 May 44 (Absent 1 day 11 hrs 28 min)	Documentary	??????? Capt 21 days FP 21 days pay FRI 194(2)	16 May 44	???????? Lt-col.	Forf 2 days pay for absence FRI 149(1)(a)
Field	11 Sep 44	Spr		AA 15(1' WOAS: AWL in that he was absent from 2359 hrs 11 Sep 44 remaining absent until 0145 hrs 12 Sep 44 (Absent 1 hr 46 min)	Spr Hocknell Spr Mason	14 days CB Forf 14 days pay FRI 149(2)	13 Sep 44	(T.C.KEEFER) Major	
Field	1 Dec 44	Spr		AA 15(1) AWL in that he was absent from 2300 hrs 1 Dec 44 remaining absent until 2340 hrs 1 Dec 44 (Absent 40 min)	L/S Laird Spr Bowers	7 days CB 7 days pay FRI 149(2)	2 Dec 44	(HAS WEST) Capt.	

(PTO)

MFM 6 (AFB 122) 40/P&S/136 (3438)

No B82934 Name Henery, F. | Sqn. Battery or Company | Corps COPY RCASC | Date of enlistment 15 May 40 | GC Badges | Service or Proficiency Pay 1/1/43 | Character

Company Conduct Sheet Date of last entry in No | No and date of last drunk 29-1-42 | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
No entries from previous sheet destroyed 15-11-40 on Completion of 6 months service								CRO 319	
Field	12 Dec 41	Pte		Failing to comply with orders in that he at 1400 hrs 3 Dec 41 did leave his lorry unattended contrary to standing orders for drivers.	S/r Wilson, A TW Bigelon, Major	7 days CB	13 Dec 41	Capt Begelor	
Field	29 Jan 42	Pte		Absenting himself without leave Sec 15(1) AA in that he absented himself without leave from 2300 hrs 29 Jan 42 to 2345 hrs 29 Jan 42. Drunkenness first offence. In that at 2345 hrs 29 Jan 42 was drunk.	L/Cpl Pollock, AH	Awarded 28 days FP. Forf of 28 days pay AA 46(2)(d)	4 Feb 42	Major DeGeer	Forf 28 days pay FRI 149 (1)(b)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY OF REGIMENTAL DOCUMENTS IN MY CUSTODY:-					
				22 Mar 45					

(J.N. STEWART) Capt
A/Officer Commanding,
2 Cdn Fd Svy Coy, RCE
Officer having custody of
original documents.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5-3-43	Pte		Conduct to the prejudice of good order and military discipline AA 40	CSM Mace	14 days pay	8-3-43	Maj Bigelau	14 days pay FRI 149(2)
Field	27-11-43	L/Cpl		AA Sec11	Documentary	Severe Reprimand	27 Nov 43		1 CESC Pt II Order 99 d/29 Nov 4
Field	5 Dec 43	Pte		1st Charge: Sec 15(1) AWL from 2200 hrs 5 Dec 43 until surrendering himself at 1015 hrs 7 Jan 44. TTA 32 days 12 hrs 15 min. GUILTY To undergo det'n for a period of 60 days	Documentary	Forfiets 4 days pay FRI 149(1)c Forf 60 days pay FRI 149(1)b	15 Jan 44	FGCM	Forf 35 days pay 3 FRI 149(1)a
CONFIRMATION				Findings and sentence confirmed by Major General JH Roberts DSO MC GOC Cdn Rft Unit					
PROMULGATED				At Lille Bks, Farnborough Hampshire on 15 Jan 44. Under close arrest from 1015 hrs 7 Jan 44 until 11 Jan 44. Date of trial.					

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force

..... dated ....., and in his regiment (or corps), the rank of Unit

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion

In the rank of: ..... years.

In the rank of: ..... years.

In the rank of: ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number R58054 Rank AC2 Unit

Name HENSLEY, Frederick of S. Con Fd Svy Coy, RCE Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
FOCM	11 Jan 44 Lille Bks Farnborough Hants, England	AA 15(1) AWL from 2200 hrs 5 Dec 43 until 1845 hrs 7 Jan 44. (Absent 32 days 12 hrs 16 min)	60 days Detn Total forf 64 days pay	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26th day of April 1945 H. Clark Maj.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

Exhibit "A" Gilmour Pres

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1773-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
R82934	Sapper	HEMERY, Frederick	2 Cdn Fd Svy Coy, RCE

1. The following is a fair and true summary of the entries in the ~~Conduct sheets~~ Service and General Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For AWL - AA 15(1)	2	times	AWL - AA 15(1)	4 times
For Neglecting to obey orders AA 11		times	AA 11	2 times
For		times	Cond to the Prej AA 40	1 times
For		times	Drunkenness AA 19	1 times

Number of instances of gallantry or distinguished conduct None

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

~~or~~

Previous convictions of the accused by a court-martial ~~or a civil court, of summary awards~~ under ~~Air Force Act~~ Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement. A.F.A. 73

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for [illegible] beginning on the [illegible] day of [illegible]~~

4. The accused has been in confinement awaiting trial on the present charges, for no days in civil custody, and 30 days in ~~Air Force~~ military custody, making a total of 30 days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his record of service is 40 yrs ~~attestation paper is~~

6. The date of his ~~enlistment~~ attestation specified in his record of service is 16 May 40 ~~attestation paper~~

7. The service which the accused is allowed to reckon towards discharge is 4 11/12 yrs

8. The accused is entitled to reckon 4 9/12 yrs service for the purpose of determining his pension, etc.

9. The accused is in possession of ~~or entitled to no air force decoration, or air force reward (or is in possession of or entitled to)~~. State any ~~air force~~ military decoration or reward. ~~military~~ Cdn Volunteer Service Medal and Clasp

10. ~~If the accused is a warrant officer:~~ The accused before he was made a warrant officer last held ~~Air Force~~ the regimental rank of

RECORDED AT CMHQ IN AD 180

28 MAY 1945 C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFA66 (In lieu of AFA3) 40/P & S/1608 (1944) 4/38B

Convened by Order of Maj Gen G.R.D. FARMER Comd 2 Corps Comd dated 1 MAY 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-82734	Spr	FREDERICK	HENRY	1 Cdn FD Coy RCE

PROCEEDINGS REVIEWED 30 May 45 Ex Dep Judge Adv Gen Lieut

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Field (country) GERMANY on (date(s)) 24 May 45 at HQ 2 Cdn Inf Div 1 Cdn Sec 1 Cdn HQ 2 Cdn Corps 21 Army Gp

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 31/24

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnn KOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to as interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A.T. Maclaren	6 AA Regt RCA
Member	Captain	R.M. MacGibbon	6 AA Regt RCA
Member	Captain	K.B. Parkinson	DDST HQ 2 Cdn Corps
~~Judge-Advocate~~			
Prosecutor	Lieut	H.F. Keffer	2 Cdn FD Survey Co.
Defending Offr	Lieut	E.D. McCraig	1 Cdn Corps Survey Co.

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused B-82934 Spr. Frederick Henry before arraignment make(s) (no) ~~(or)~~ plea (s)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is closed and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2000 WOA W-P 94

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 33(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL CERTIFICATE

I certify that I have examined B82034, Spr Henery, Frederick, 2 Cdn Field Survey Company, RCE and find him physically fit to undergo trial by Field General Court Martial.

3 May 45

Medical Officer

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3)
40/PAM/1697 (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.82934	Spr.	Frederick	HENERY	2 Cdn Fd Svy Coy RCE

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 1 May 45 endorsed by me, (or by an offr of my staff for me)," To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G.F. MacLaren,	6 LAA Regt RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	R.M. MacGibbon	6 LAA Regt RCA
Captain	K.B. Parkinson,	DDAT Br. 2 Cdn Corps

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	N/A	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
	N/A	

On Active Service in the Fd

in Germany (Country.)

Date 1 May 45

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(G.R.D. Farmer)
Commanding RCAMC 2 Cdn Corps
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

B62934, Spr Frederick HENERY, 2 Cdn Field Survey Company, RCE, a soldier of the Canadian Army Overseas, is charged with:

First Charge
AA Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field absented himself without leave from 1830 hrs 13 Mar 45 until apprehended by P79090, Sgt Dares, CD, at 0900 hrs 14 Mar 45. (Absent 14 hrs 30 min)

Second Charge
AA Sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field between 1830 hrs 13 Mar 45 and 0800 hrs 14 Mar 45 improperly and without authority used Cdn Mil Vehicle No CM 5833498 for private purposes.

Third Charge
AA Sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field at approx 0800 hrs 14 Mar 45 was unfit for duty by reason of previous indulgence in alcholic stimulants.

J.C. Kuyper
(J.C. KUYPER) Major,
Officer Commanding
2 Cdn Fd Svy Coy, RCE

In the Field
In Holland
23 Apr 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

G.R. Farmer
(G.R.D. Farmer) Brigadier
DDMS 2 Cdn Corps

In the Field
1 May 45

Pros

D-3

Q3. First witness for Prosecution
K 92174 S/Sgt Barnes C.W. sworn
plates

Q1 What are your duties in this coy?

A- I am in charge of three sections and my duties - are that those of a disciplinarian in the platoon. The sections keep the duty roster

Q2 On night of 13th Mar were you on Comp

A Yes I was

Q3 Will you relate to the court the occurrences which took you were a witness at about 1830 hrs 13th March 45

A On evening March 13th I was warned that in future the guard on charge of the vehicle park would sign out any vehicle going out of the unit lines. After the guard was mounted on 13th March I instructed the Cpl of the guard to make up a roster for signing out vehicles this was done by him. At about 1830 hrs 13 Mar I saw the accused and Pte Cpl Mooney drive up to the guard tent. Later I went up to the guard commander and asked him if the accused had signed out. The guard commander said no because the accused had said he was not going outside of camp. I reported the incident to the accused section Sgt. Sgt Lecker who in turn reported it to his section officer Lieut Carson.

Q4 What prompted you to go to the guard tent

A- To see if the water had been made up checking the guard comds

Q5 Had you any reason to suspect the accused might have taken a vehicle from the park

A- No.

Q6 Had you seen where the jeep went after it left the guard tent

A Yes I saw it driving up to the orderly room beyond this I was unable to see it.

Cross examination -

Q Did you see the jeep leave the unit lines

A ~~Yes~~ No

Q2. Was the guard - the guard of the veh park or of the camp

A He was the guard of the camp

Q3 - If the veh had left the camp area - would the guard comdr, not have been a position to see it leave the camp area

A - Yes

Q - And the guard comdr - upon that a veh left the camp

A - No.

Q. Where did the veh driven by the accused come from

A - It came from the M/T lines where it had been parked part of the road. It was not in a car park but was parked in the unit lines of the ~~pla~~ section.

Question by the President of the Court

Q 1 Who instructed you re the signing out veh's from unit lines

A - I cannot remember exactly but I believe it was an officer or C.Q.M.S. Wallancourt

Q 2 Had this order been published in unit orders

A - No It was not published until later.

Q 3 What time was it when you checked the guard comdr after seeing the veh leave

A - Approximately 1840 hrs 13 March

RP 838 Complied A. Gow

97th Regt

Second witness
B114437 Spr Clancy S.L. 4 Topo Section
2 Cdn Hd Svy Coy RCE

B114437 Spr Clancy S.L. having been duly sworn states.

Questions by Prosecuting Officer

Q1- What are your duties in this Coy

A1 I am a topographical surveyor with the unit

Q2 - At approx 1800 hrs 13th March - were you in camp here.

A2. Yes I was

Q3- Will you tell the Court your movements at that time & so on

A3 I was with the accused during the afternoon and approx 1800 hrs I got into his jeep with him with the intention of going to the parking lot but we got as far as the guard tent. The guard corporal came out and asked Spr Henery where he & he was going. Spr Henery replied he was going to park it & he drove around behind the coy kitchen and stopped the veh near the shoemakers shop. I got out of the jeep there and that is all I know of the case.

Q4 When you got out of the jeep - did you say anything to Spr Henery

A No I can't remember anything definite

Q5 were you under the impression the accused was going to put the jeep back in the pl area

A5 - Yes I was

Q6 What was the condition of the accused

A6 He had been drinking heavily

Q 7 Were there any other persons around when you got off the jeep

A 7 No there was no one else around

Q 8 Was this the last time you saw the accused until the following day

A 8 Yes it was

Cross examination by defending officer

Q 1. Did you hear the jeep start off again after it had stopped at the shoemakers shop

A 1 - No I didn't

Q 2 - Were you on any trips earlier in the day with the accused

A 2 Yes I was

Q 3 Did you have permission to accompany the accused on this trip

A 3 Yes I had permission from my section officer Lieut Leach.

Q 4. Where did you go on this other trip

A - We went to Alnwick base centre to pick up S/Sgt Jewell returning from leave

Q 5 Who ordered the accused to make that trip

A 5 - I don't know

Questions by president of the Court

Q 1 - Do you know why the accused stopped at the shoemakers shop

A 1 - No I don't

Q 2 - Did you have any purpose in stopping there

A - No I went along for the ride

Questions by Members of the Coord Court

Q1 - When you stopped at the aboveship did you say anything to the accused

A1 - I can't remember saying anything deponent

RP 838 Complied with

This witness for the Prosecution

Luit Sanders M.B 2 btn 3d Brig Cycle Coy

Questions by the Prosecuting Officer

Q1 What position is you held with this Coy

A1 I am the section officer of #1 Type section

Q2 who can authorise the use of each on your section

A2 I can or in my absence my section officer

Q3 Was you authorise any type for your jeep 1 1/2 CM 58C 3498 on 13th March or 14th March

A3 - No

Q4 Was there any delay regarding the use of this jeep on 13th or 14th March

A4 - No

Q5 - was he accused - on your section on those dates

A5 - he had been relieving a driver from my section and he had not yet reported back to my section

Q6 Was the jeep in question allotted to the accused

A6 - Yes - he normally drove this jeep

Q7 - What means have you on the section for ascertaining for the presence or absence of personnel

A7 Parade roll are called for six parades at 800 and 1300 hrs daily

Wks are checked out at the company guards room.

Q8. On 13th parish were you aware that anything out of order concerning your Dpt & personnel. If so how did you find this out.

A8. On this night of 13th Parish my section sgt. Sgt Lecleres reported to me that the accused had taken a jeep out & brought to my section.

Q9. What action did you take.

A9. I walked to check up at the guard room & found the accused present. He was told to report to me at a time that was achieved.

Cross Examination by the defending officer

Q1. Had the jeep in question accompanied the accused in his attachment to 4 Tpt section

A. I can't quite remember but it is likely.

Q2. If the veh the accused were on attachment to 4 Tpt section & had not reported back, would you or the offr of 4 Tpt section authorise a trip during the period of the attachment

A2. The offr - 4 Tpt section would authorise the use of the veh.

Questions by the President of the Court

Q. Explain the circumstances under which the accused was with 4 Tpt section & what happened when he returned with them to Cyprus

A. On returning with 4 Tpt Section the accused placed restraint in 4 Tpt section - even t

nothing definite in this case given the accused by me for the ~~accused~~ him to return to 1 Tps Section Area.

Questions by the Prosecuting Officer

Q1. Do you recall if the accused was in Canada with 1 Tps Section in the 13th ~~Area~~ Raids.

A1 - No I don't remember.
RP 838 Complied with Sgt
Fourth witness for the Prosecution

CS 778 Sgt Larkin HH - 1 Tps Section 2 Con Sd Sig Coy RCE - have been duly sworn states

I am CS 778 Sgt Larkin HH of 1 Tps Section. As above I was in 13th Canada the Gde The guard Offr Capt Hanson asked me if I had authorized the journey by one of my section pers CM 833476. I replied negative and checked up & found one pers missing from reported for duty. Matter is in question Offrs Lt Hanson. I also called at reveille 1st Parade & the pers had not returned. The missing pers was one Broken by Spr Lenary.

Q1. Did you make a routine check of personnel on your section of the area 13th Raids. If so what was the result

A1 - Yes I made a check and one pers Spr Lenary was absent.

Q2. When you made a roll call on 13th Raids at 2300 hrs - did you endorse him on the Nominal roll.

A2 - Yes I did

Questions by Cross examining Officer

Q1. At the roll call 2300 hrs 13 Raids did you personally see him.

A1 - no sir I did not
Q2 - Did you check the tents for A2 Offrs
R3 - Would accused sleeping in one Tps section or two.

A3 He was sleeping in 4 Tofs section lines.

Q4 Was he sleeping alone in the 4 Section lines
A4 No he was sleeping with 2 Pte mates. He showed me where he was sleeping in the afternoon 13th March
Q5 Who were these Pte men
A5 Spr Hecks & Spr Clancy

Q6 When you checked to see if the jeep was present did you check the 4 Section lines or the ones of the Section
A6 I checked only 1 section lines.

Q7 When you were looking in the morning was [illegible] and you know the [illegible]
A7 No I just knew it was a jeep driven by Spr Heng

Q8 Did you order the accused to return to his 1 Tofs section lines from 4 Tofs section
A8 Yes I ordered him to do this during the afternoon 13th March

Questions by the Member of the Court

Q1 Did the accused report back to 1 Tofs section lines after running water to the jeep in the paig
A1 No he was ordered by the jeep to 1 section lines but he did not.
Q2 When did the jeep appear on 1 section lines
A2 I can't state exactly but sometime after dinner 13th March

No cross examination by the defending officer
RP 83B complied with

Fifth Witness for the Prosecution

C25804 Lt/Sgt Allain W.T. Sworn Examined by Lt Col Lawry Prosecutor duly sworn states.

Same C25804 Lt/Sgt Allain W.T. 2 Cdn Tk Bty RCE

On 14th Mar there was a party of men going on leave & I was detailed by them to ~~~ Duty Lt/Sgt On the way down about 5 miles from Camp I noticed a jeep with Brig equipment on it. The jeep was on the left hand side of the road & appeared to be stuck. I stopped my vehicle went to investigate & found Spr Henery trying to get the jeep back on the road. I told him to wait until I came back & he would. I returned about 10 minutes later & pulled the jeep out. As the jeep would not be driven I immobilized it & left Spr Henery to look after it until I came back with some help. I then proceeded to HQ & informed the O.C. of the matter then went back to the scene with the M.T. Lt/Sgt Blanes & a mechanic & 2 escorts, taken up armed on the scene Lt/Sgt Blanes put Spr Henery under close arrest & we pulled the jeep back to camp.

Questions by Prosecuting Officer

Q1. ~~~ What time did you arrive back in camp

A1 - About 1930 hrs on 14th March.

Q2 - What was Spr Henerys condition when you found him

A1 - He had been drinking and in my opinion was not capable of carrying out his duties

Questions by the Members of the Court

Q1. Did Spr Henery give explanation for being in that state with the jeep at approx 9945 hrs 14th March

A1 - He ~~~ did not

Q2 Did you recognize the vehicle as one belonging to your unit

A2 - Yes I did.

K.R 52B Complied with

Sarah Wilson

F 17670 Sgt Davis CB 4th Section 2 Can Std Army Coy RCE having been duly sworn states

I am F 17670 Sgt Davis CB 4th Section 2 Can Std Army Coy RCE - at approx 1830 hrs 17th March 45 Sgt Adair reported to me he had found a man in the Maple Leaf area 2 bottles Gpl O'Connor & 2 Spr Egert with Sgt Adair & took up the accused. Immediately I arrived there I searched the hut and found 3 bottles of liquor. I then got the statement of accused which was read to him & he admitted it was true.

The prisoner offered damages to the two bottles pulled on the note upon his release.

Questions by the Presenting Offr.

Q1 What was the condition of the accused when you searched him.

A1 He looked very tired & smelled heavily of liquor

Q2 Was the jeep one of yours or not jeep with test 3 numbers on it.

A2 yes it was.

Q3 Do you recall the W/D Nos

A - No but the last 3 numbers of the W/D Nos were 498.

Q4 - What section did the jeep belong to

A - No 1 Opn Section

Cross examination by defending Officer

Q1 On 13th March did you order the accused to make a trip with this jeep.

A1 I ordered him & made a trip to Petrovyka to pick up leave personnel sometime during the morning 13th March.

Q2 When you found the accused on morning 14th March could he stand up & walk properly

A - Yes he could.

Q3 Were you speaking to him if so did he reply & in a rational manner

A - Yes he talked clearly.

Q4 Could the smell of liquor come from his breath or his clothes

A 4 - From his breath.

Q5 If the jeep had been in a pit could you have smelled it & the accused

A 5 - No. R.S.O.B. complied with

Seventh witness

C 25750 CQMS Vaillancourt CH - H2 section 2 Can Td Svy Coy RCE - having been duly sworn states

Sworn C 25750 CQMS Vaillancourt CH H2 section 2 Can Td Svy Coy RCE

On the 14th March I was acting CSM & called the 0800 hr parade & Sgt Heney was absent. At approx 1030 hrs the OC Major Kuiper sent me down to check up on Sapper Heney when I got to the ground I found Sgt Heney sleeping. I kicked him & looked at him closely and reported back to the OC that I did not think Sgt Heney was capable of carrying out his duty as he smelled very strongly of liquor.

Cross examination by defending officer

Q When you first reported to you that Sgt Heney was AWL

A On 0800 hr parade 14th Sgt Heney was absent on parade.

Q Was there a latter roll call a regular occurrence on the 14th.

A. There was both the section officer as the Coy was often divided and there was a certain amount of fighting to do.
R.P. 83B Complied with

The above-said Charity heard duly sworn
by Hallas

Hasson Officer Warden

D.6. B/14437 Spr Clancy S.L. 2 Con Tn
Army Coy RCE - Recalled

Cross-exd by the Defending Officer

Q On the night 13th March who shared your tent
A. If I had been there Spr Hicks - I wasn't I was AWL
Q Was he accustomed to the habit of sleeping in that tent
A No. - he had never slept there

Q Where did he usually sleep
A He slept in his own proper tent a short distance away
R.P. 83B Complied with

B/12713. Spr Hicks SM. 2 Con 2d Army Coy RCE
4 Tpt Section having been duly sworn

Cross-exd by defending Officer

Q On nite 13th-14th March did you sleep in your regular tent
A. Yes I did
Q Who shared the tent with you
A Sapper Clancy
Q Where was the accused sleeping
A He usually behind our tent in his own proper tent
Q Was the accused in his tent on the nite 13th March
A I don't know.
R.P. 83B Complied with

Summary for the Prosecution.

Summing the case up under the heading of the three charges, the prosecution offers the following and Memoranda Con Vehicle

① AWL Charges - The charge reads AWL from 1830 Hrs 13 Mar 45 to 0900 Hrs 14 Mar. At 1810 Hrs 13 Mar Staff Sgt Barnes saw the accused driving a jeep, after the jeep left the guard room the S/Sgt saw the accused move off in a long a road which could lead either to the highway or H.Q at the camp rear. There is no evidence to prove that the accused or the vehicle was seen from that time until 0900 the following morning when he was apprehended by Sgt Davis about 5 miles from camp.

Sgt Locker gave evidence to the effect that the accused and the jeep were not in the lines at 2300 hr roll call. Lt Hansen and Sgt Locker state that they authorized no trips for the A/M between 1830 13 Mar 45 and 0900 Hrs 14 Mar 45. The morning of 14 Mar the jeep belonging to HQ Co and Sgt Herring was apprehended by Sgt Davis after he had been informed of their whereabouts by S/Sgt Allaire. The prosecution contends that the evidence proves beyond doubt that the accused was AWL between the times mentioned and that during that time he misused one vehicle, number Con Veh CM 5833498.

② Charge of being unfit for duty at 0800 14 Mar is substantiated by S/Sgt Allaire and Sgt Davis who both stated that they would not trust the accused to drive a vehicle. Similarly the previous evening Sgt Herring stated that the accused had been drinking heavily. This was at 1830 Hrs. At 1030 Hrs 14 Mar 45 Capt Davis Vaillancourt stated that the accused was still not in a condition to be founded & that was for all the A/M witnesses smelled liquor on the accused's breath. The jeep was damaged when found leading to the assumption that the accused was not capable.

A. Kaffer Lieut

Summing up of defence.

I – With regard to charge 1 – AWOL

There is no evidence to show that the accused was AWOL on the 0900 hrs 14 May 45. Sgt Leckie was not aware of which tent in A Sec lines the accused slept. He stated on checking the tents at 2300 hrs, he (Sgt Leckie) checked a tent in A Sec lines. This tent was occupied by Spr Clancy and Hicks – NOT by the accused. The accused slept in a tent of his own next to the tent checked.

He missed NO duties until 0900 hrs parade, and it was impossible for him to attend this parade as it was ordered at 0745 hrs (approx) he remained with some vehicles 5 miles from Camp.

Just as he was on the count was NOT guilty of AWOL but guilty of a minor charge – exceeding Camp limits.

II Charge 2 dealt with the unauthorised use of military vehicle. The court must realise the fact that NO one saw the vehicle leave Camp. It NOT 7030 was even checked, by anyone, a jeep by Sgt Leckie. Though whether the jeep being sought was Cnf 5833498 the sergeant can not say, as he only, apparently, counted his jeeps. It in all likelyhood was in Camp in the wrong lines.

The accused woke next morning in Camp, and had a terrific hangover. So, he went down the road 5 miles to a bootlegger he knew. Whether he or someone else took the jeep through the bush – can NOT be proven. Though admittedly he was found by the vehicle in the morning.

Also with reference to the evening of 13 May. Sgt Barnes stated the guard Commander told him, to the best of his knowledge the vehicle went to the Camp area. Yet, Sgt Leckie states the guard Commander, at approx the same hour, reported to him a Jeep was missing. This evidence is Contradictory!

III Charge 3 – Unfit for duty due to previous alcoholic indulgence. By Chap IV, Sec 15, sub sect IV of MIML states: "Opinion is NOT evidence."

F-3

Plea of Mitigation –

I wish the Court will take into account the great number of days spent in close arrest – some thirty days.

E. D. Quaig Lt

Summary of Evidence in the case of B82934, Spr Henery, Frederick, 1 Topo Section, 2nd Field Survey Company, RCE, a soldier of the Canadian Army Overseas, is charged with:

First Charge - Absenting himself without leave in that he was absent from 1830 hrs 13 Mar 45 until apprehended by F79090, Sgt Dares, CS at 0900 hrs 14 Mar 45 (Absent 14 hrs 30 min). (AA 15(1))

Second Charge - Conduct to the prejudice of good order and military discipline in that he between 1830 hrs 13 Mar 45 and 0800 hrs 14 Mar 45 improperly and without authority used Cdn Mil Vehicle No CM 5833498 for private purposes. (AA 40)

Third Charge - Conduct to the prejudice of good order and military discipline in that he at approx 0800 hrs 14 Mar 45 was unfit for duty by reason of previous indulgence in alcoholic stimulants. (AA 40)

By direction of the Commanding Officer the evidence is taken on oath.

First Witness K92174, S/Sgt Barnes, GW No 2 Platoon, 2 Cdn Field Survey Coy, RCE sworn states:

I am K92174, S/Sgt Barnes, GW of 2 Platoon, 2 Cdn Fd Svy Coy, RCE. At 1810 hrs 13 Mar 45 I had warned the guard commander to check and sign out any vehicles leaving the camp area. At about 1830 hrs 13 Mar 45 I saw accused and Spr Clancey drive up to the guard tent in a jeep and stop. I asked the guard commander (L/Cpl Dodds) whether accused had signed out because it looked from where I was standing that the accused had driven out of camp. I told the guard commander to report to me the time accused returned. I reported the incident to Sgt Leckie (the Section Sergeant of the accused).

The accused declines to cross examine the witness.

G.W. Barnes

Second Witness B114437, Spr Clancey, SL of 4 Topo Section, 2 Cdn Field Survey Company, RCE sworn states:

I am B114437, Spr Clancey, SL of 4 Topo Section, 2 Cdn Fd Svy Coy, RCE. About 1800 hrs 13 Mar 45 I got in the jeep with the accused and rode past the guard tent. The guard commander stopped us and asked where we were going. Accused told him we were just going to park the jeep in 1 Pl MT Lines. We got to the shoemaker's tent in HQ Area and stopped. I got out of the jeep and did not see accused until the next morning. Accused was under the influence of liquor while I was with him in the jeep.

Question - Is shoemaker's tent in HQ Area on the route from guard tent to 1 Pl MT Lines?

Answer - No 1 Pl, as far as I know, had vehicles with HQ vehicles therefore my answer is yes.

Question - Did you see or speak to anyone other than Spr Henery when you stopped at the shoemaker's tent?

Answer - No one that I can remember.

Question - Where did accused go with jeep after you got out?

Answer - I don't know.

Question - What was the accused doing the last time you saw him?

Answer - He was just sitting there when I turned my back on him and walked away.

The accused declines to cross examine the witness.

Third Witness B40294, L/Cpl Dodds, JA, 4 Topo Section, 2 Cdn Field Survey Company, RCE sworn states:

I am B40294, L/Cpl Dodds, JA, 4 Topo Section, 2 Cdn Field Survey Company, RCE. I was guard commander from 1800 hrs 13 Mar 45 until 1800 hrs 14 Mar 45. Shortly after guard mounting S/Sgt Barnes instructed me to sign out and in all vehicles leaving or entering the camp area. At 1830 hrs 13 Mar 45 accused and Spr Clancey drove up in a jeep from the direction of 2 Platoon HQ and turned left past the guard tent. I stopped them but did not sign the vehicle out since accused told me he was going to park the jeep in 1 Pl MT Lines. I did not observe the WD No. of the jeep nor bother to observe whether they were going to 1 Platoon MT Lines. Shortly after this S/Sgt Barnes told me to report to him the time that accused returned with the jeep. A jeep was towed in about 0930 hrs 14 Mar 45 by Sgt Dares who handed over accused to me under close arrest.

Question - was accused under the influence of liquor when he drove the jeep away?

Answer - I could not say whether he was drunk or sober.

The accused declines to cross examine the witness.

J.G. Dodds

Fourth Witness B26788, L/Cpl MacLennan, RM, 1 Topo Section, 2 Cdn Field Survey Company, RCE sworn states:

I am B26788, L/Cpl MacLennan, RM of 1 Topo Section, 2 Cdn Field Survey Company, RCE. The accused is in my Section and vehicle CM 5833498 is a vehicle belonging to 1 Topo Section. At about 1800 or 1830 hrs 13 Mar 45 my section sergeant asked whether I knew of any section vehicles going out. I didn't know, so we walked around the camp area and found jeep 1T3 (CM 5833498) missing. I did not see this vehicle until 0900 hrs 14 Mar 45. Accused was the driver assigned to this vehicle. At about 0900 hrs 14 Mar 45 I accompanied Sgt Dares to a point on the "Maple Leaf Down Route" (about 5 miles from camp) where we found the missing jeep. I found that all survey equipment on the jeep was intact. I saw Sgt Dares pull out three liquor bottles from the back of the jeep but couldn't say whether they were full or empty.

Question - Had the trip of this jeep 1T3 been sanctioned by anybody?

Answer - Not to my knowledge.

Question - Did you see accused anywhere in camp between 1830 hrs 13 Mar 45 and 0900 hrs 14 Mar 45?.

Answer - No sir.

The accused declines to cross examine the witness.

R. MacLennan

Fifth Witness C25804, L/Sgt Allain, WJ, 2 Cdn Field Survey Company, RCE duly sworn states:

I am C25804, L/Sgt Allain, WJ, of 2 Cdn Field Survey Coy, RCE. At approximately 0745 hrs 14 Mar 45 I took leave personnel to OSS along Maple Leaf Down Route. About 5 miles from camp I noticed a jeep with survey equipment and tactical number 431 stuck on the left hand side of the road. Recognizing this as a unit vehicle I stopped my vehicle to investigate. The rear left wheel had sunk in a filled-in fox hole and accused was trying to get the jeep out of the hole with the help of two civilians. Being in a hurry I

told accused to remain there and that I would be back shortly to pull his jeep out. I returned about 20 minutes later, pulled the jeep out, parked it on the side of the road and immobilized it. I told the accused to remain with the equipment until I returned with some help to tow the jeep in. I returned to HQ and reported the incident. About 0830 hrs Sgt Dares and I with three other men went back to tow the jeep in. Sgt Dares placed accused under close arrest. Accused smelled heavily of liquor and did not appear to be capable of performing any duties. The jeep was damaged so it could not be driven but had to be towed back. We returned to camp at about 0900 hrs.

Question - Did you notice what the WD No. of the jeep was?

Answer - No sir. All I noticed was that it was a unit jeep.

Question - What do you mean when you say accused was incapable of performing any duties?

Answer - Accused being a driver, I would not have driven with him as a passenger and felt safe.

The accused declines to examine the witness.

Wm Allain

Sixth Witness F79090, Sgt Dares, CB, HQ Section, 2 Cdn Field Survey Company, RCE sworn states:

I am F79090, Sgt Dares, CB of HQ Section, 2 Cdn Field Survey Company, RCE. At about 0830 hrs 14 Mar 45 L/Sgt Allain told me that he had found accused and a missing jeep on the Maple Leaf Down route. I immediately took L/Sgt Allain, L/Cpl MacLennan and two sappers with me and went to pick up accused. On arrival I searched the jeep and found three full bottles of liquor in the back of the jeep. Accused came out of a nearby farmhouse. He smelled heavily of liquor. The WD No. of the jeep was CM 5833498. It suffered damage to the extent that the bottom pulley on the motor was bent and the fan belt broken. I do not know what time it was when we got back to camp.

Question - Would you say accused was drunk when you picked him up?

Answer - No sir. He smelled of liquor, looked tired and sleepy as if he had been up all night but I wouldn't say he was drunk.

Question - Are these the three full bottles of liquor that were found in the jeep?

Answer - Yes sir.

The accused declines to cross examine the witness.

C B Dares

The 2 full bottles of cognac and 1 full bottle (unlabelled) referred to by the Witness, Sgt Dares, CB, produced, shown to the accused, label affixed, marked Exhibit 'A' and signed by me.

R D Howard Lieut.

Seventh Witness C26750, CQMS Vaillancourt, EM, HQ Section, 2 Cdn Field Survey Company, RCE sworn states:

I am C26750, CQMS Vaillancourt, EM, HQ Section, 2 Cdn Field Svy Coy, RCE. I was acting CSM during 13 and 14 Mar 45. At about 1030 hrs 14 Mar 45 I went to see the accused in the guard tent. He was sleeping and smelled very strongly of liquor. In my opinion he was unfit for duty. I reported this to the CO.

The accused declines to cross examine the witness.

E H Vaillancourt

Eighth Witness Lieut MB Hansen, Offr i/c 1 Topo Section, 2 Cdn Field Survey Company, RCE sworn states:

I am Lieut MB Hansen, Offr i/c 1 Topo Sec of 2 Cdn Field Survey Company, RCE

Question - Who can authorize the use of a vehicle in your section?

Answer - Myself only, or in my absence, my Section Sergeant.

Question - Did you authorize any trip for Jeep CM 5833498 (1T3) on 13 or 14 Mar 45?

Answer - No.

Question - Was there any duty requiring use of Jeep CM 5833498 (1T3) on the 13 or 14 Mar 45.

Answer - No.

Question - What is the military relationship between yourself and the accused?

Answer - He is on strength of 1 Topo Sec, 1 Platoon of which I am Section Officer.

Question - What means have you in your Section of accounting for the presence, or otherwise, of personnel and vehicles?

Answer - Morning parade and 1300 hrs parades for personnel. Vehicles leaving camp are checked out and in at the guard room. If any vehicle is found to be missing and the fact brought to my attention I report it to the guard room and ask them to be on the lookout for it.

Question - Were you aware of anything abnormal in your section on the night of 13 Mar 45?

Answer - Sgt Leckie reported to me that Spr Henery had taken a jeep out.

Question - What action did you take?

Answer - I told Sgt Leckie to check with the guard room and report to me the time that Spr Henery returned.

The accused declines to examine the witness.

M B Hansen Lt

Ninth Witness C25798, Sgt Leckie, HA, 1 Topo Section, 2 Cdn Field Survey Company, RCE sworn states:

I am C25798, Sgt Leckie, HA of 1 Topo Section 2 Cdn Fd Svy Coy, RCE. About 1900 hrs 13 Mar 45 the Cpl of the guard (L/Cpl Dodds) came to me and asked me whether I had authorized a journey for one of 1 Topo Section's jeeps. I had not authorized one so I immediately checked up and found Jeep CM 5833498 (1T3) missing. I reported it to Lieut Hansen, my Section Officer.

Question - Who in your Section can authorize a journey for one of your Section Vehicles?

Answer - Only the Section Officer and myself, and I always see him before I authorize one.

Question - Did you authorize the use of Jeep CM 5833498 (1T3) on either 13 or 14 Mar 45.

Answer - No.

Question - Was there any necessity for Jeep CM 5033490 (1T3) being out of unit lines on either the 13 or 14 Mar 45.

Answer - No.

Question - Did you make a routine check of the personnel in your section on the night of 13 Mar 45?

Answer - Yes, at 2300 hrs I found the accused to be absent.

The accused declines to cross examine the witness.

The accused was cautioned as follows:

Question - Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer - I do not wish to make any statement.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence consisting of 5 pages was taken down by me in the presence of the accused and that RP 4(C),(D),(E) and (F) have been complied with.

In the Field

23 Apr 45

(R.D. HONAN) Lieut,
3 Cdn Field Survey Company, RCE
Offr detailed to take Summary

52-114

L/Cpl. Henery, G. F.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-38084 L cpl George Francis HENERY - CIC 11 Cdn Repat Dep

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn h.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 23 days, of which 17 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To be Reduced to the Ranks and to forfeit all Corrs Pay for a period of Forty-Five (45) Days.

(Sgd) ..... Judge-Advocate, if any. 18 Oct 45 Date awarded. (Sgd) ..... President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks for another offence.~~ (1. AA 57A. Delete if not used.)

Date 20 Oct 45 (Sgd) K G Blackader (K. G. BLACKADER) Brig
Commanding Comd D Gp CRU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C 38084 Lieut. George Francis Henery	22 Oct 45	J. Forman Capt Comd Offr

11 CMD Part II Order 11 Cnd Repat Depot No 78 d/24 Oct 45.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 54-114

FIELD GENERAL COURT-MARTIAL

(AFAM6 (In lieu of AFAM) 40/P & R/1600 (R144) 4/38B)

Convened by Order of Brigadier K G Blackader Comd D Gp CRU dated 16 Oct 45
DSO, MC, ED

RECEIVED NOV 1945 G. BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appt.	Full Christian Names.	Surname.	Unit.
C-38084	L cpl	George Francis	HENERY	CIC 11 Cdn Repat Dep

PROCEEDINGS REVIEWED
1 Nov 45 R. J. Brody Lt
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ..... on (date) 18 Oct 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr~~, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RoE. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted;(2) accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans ~~No~~
The Interpreter is sworn. [redacted] object to WX 6908 Pte R. Newton R.A. as shorthand writer? Ans No Sir
The shorthand writer is [redacted]
(1. RP 72. Degree, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt Col	R.L. REDMAN V.D.	HQ CRU
Member	CAPT.	E.G. GRANT	10 REPAT DEP
Member	LIEUT.	R.G. WENSLEY	11 REP DEP.
~~Judge-Advocate~~			
Prosecutor	LIEUT.	G.W. DUBOSE	1 AHC
Defending Offr	LIEUT.	J.G. BEALAC	11 REP

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea .....(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ ~~(separately)~~ arraigned on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A9a to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is sworn and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 13

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO-SIR.(5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

~~B3. The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by comparing with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have not been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(*1. RP* 115. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 42, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(3) (*b*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO-SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB* 355 *or AFB* 296. *2. MFM* 6. *3. RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans MYSELF AND MY WIFE-AT HOME.(2)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which should affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-564. *Overseas RO* 309, 2323. *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No. C.38084 L/Cpl. George Francis HENERY, Canadian Infantry Corps, 11 Canadian Repatriation Depot, C.A.O., is charged with:

CHARGE
Sec.15(1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he, in the Field, absented himself without leave from 11 Canadian Repatriation Depot from 1000 hours 11 Aug 45 until surrendering himself at 11 Canadian Repatriation Depot at 1900 hours 26 Sep 45.

Total absence 46 days, 9 hours.

Colonel
(J.D. FORIN) ED
Officer Commanding
11 Canadian Repatriation Depot

In the Field,
28 September, 1945.

To be tried by Field General Court Martial.

(E G Blackader) Brig
Comd D Gp CRU

IN THE FIELD
16 Oct 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C-38084	L Cpl		George Francis	HENERY	CIC 11 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 15 Oct 45 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
LT COL	D L REDMAN, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by Comd	10 Cdn Repat Dep
Lieutenant	to be detailed by Comd	11 Cdn Repat Dep

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) (Rank.)

(K G Blackader)

Date 16 Oct 45 Commanding D Gp CRU

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

18 Oct, 1945.

I certify that No. C 38084 L/Cpl George Francis HENERY, 11 Canadian Repatriation Depot is in 3rd state of health and is fit to undergo trial by Court Martial.

R Bernard ..... Capt
RCAMC 11 Can. Repat Depot

investigating the matter & the accused was in such a state of mind that he decided he no longer wished to go home. And as he was carrying a considerable sum of money with him he went absent in order to avoid Canadian draft. When he thought his draft had left he returned to camp and surrendered himself.

I realize the accused was wrong to go AWL gentlemen but I believe it was on the impulse of the moment I suppose he must pay the price for his error. Please take into consideration the state his mind must have been in and also remember his fine military record. I leave it with you gentlemen to pass judgement.

Lt/Col
Depending Officer
11 Elec. Repl. Depot

Pte. [illegible] Morgan No C 38081 L/Cpl Henry

Gentlemen L/Cpl Henry joined the Canadian Army on the 30th July 1941 at Ottawa and arrived in the United Kingdom in November of the same year leaving behind him a wife and child. He went to France on the 15 August [illegible] and did not return to England until July of this year. His entire army career has been on the whole excellent. If you study his A.F.B.s you will find he has committed two offences since he has been in the army and both of these were minor acts against the military law.

L/Cpl Henry up until June of this year was quite contented with his lot as a soldier in the armed forces and did his work to the best of his ability as his record will show. In June all mail from his wife in Canada ceased and despite his urgent enquiries he has received no

SUMMARY OF EVIDENCE

In the case of No. C.38084 L/Cpl. George Francis HENNERY, Canadian Infantry Corps, 11 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas.

The Commanding Officer Directs that the evidence be taken on Oath.

WITNESS: Captain R.G. TAIT, CIC, 11 Canadian Repatriation Depot having been duly sworn states:

I am the assistant Regimental Adjutant, 11 Canadian Repatriation Depot. I produce the following documents pursuant to Overseas R.O. 5352.

(a) M.F.B. 375 certified true copy of Record of Declaration of Court of Inquiry. EXHIBIT "A"

(b) Certificate of Surrender. EXHIBIT "B"

(each of the above documents shown and read over to the accused, marked as indicated and attached hereto).

I recognize and identify the accused, No. C.38084 L/Cpl. George Francis HENNERY as the person to whom these documents relate.

R G Tait Capt.

The accused declined to cross-examine this witness.

Question to the accused:--

Do you wish to make any statement or to give evidence upon Oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by accused:--

I have nothing to say.

The accused declined to call any witnesses for the Defence.

I certify that Rules of Procedure 4 (C) (D) (E) and (F) have been complied with and that the foregoing summary of evidence consisting of 1 page was taken down by me in the presence of the accused on the 28th. September, 1945.

E.J. McCormick Capt.

E.J. McCormick, Capt. 11 Canadian Repatriation Depot, Officer detailed to take the summary of evidence.

In the Field,
28th. September, 1945.

EXA

RECORD of the Declaration of a Court of Inquiry assembled at 11 Can. Repat. Depot on the 10th. day of September 1945., for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. C.38084 L/Cpl. HENERY, G.F.

DECLARATION

The Court declare that No. C. 38084 (Regt'l No.) Pte.(A/L/Cpl) (Rank) HENERY, G.F. (Full Name) 11 Canadian Repatriation Depot (Unit) illegally absented himself without leave from 11 Canadian Repatriation Depot at in the Field (Place) at 1000 hours on the 11th day of August, 1945. that he is still so absent, and that on the 10th September, 1945. he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE
(as set out overleaf)			

G R Cowie Capt President
(Name) (Rank) (Unit)

Signed at 11 Can. Repat. Depot J Richardson Lt Member
(Name) (Rank) (Unit)

this 12th day of September, 1945. [illegible] Member
(Name) (Rank) (Unit)

Signature of Commanding Officer [illegible] Comd Offr
(Name) (Rank) 11 Can Repat Depot (Unit)

Certified true copy [illegible]
(Name) (Rank) (Unit)
(Signature of Officer having custody of original record)

Adm Offr
11 Can Repat Depot

E Hubert Capt
E M Reed Lieut
Witness
Statement
Summary
Findings

Article		Vocabulary Price	Less 25%
Blouses, Battle Dress	1	6.50	4.88
Boots, Ankle, prs.	2	11.64	8.73
Greatcoat, Drab	1	11.55	8.66
Jersey, Pullover	1	1.79	1.34
Trousers, Battle Dress	1	6.55	4.91
Badges, Cap	1	.09	.07
Brushes, Cloth	1	.48	.36
Combs, Hair	1	.04	.03
Fork, Table	1	.07	.05
Holdall	1	.19	.14
Knives, Clasp	1	.86	.65
Knives, Table	1	.15	.11
Spoons	1	.09	.07
Towels, Hand	2	.68	.51
Water Bottle & Carrier	1	1.19	.84
Braces Right & Left, prs.	1	.30	.23
Haversack	1	1.79	1.34
Pack	1	1.84	1.38
Straps, shoulder	1	.32	.24
Straps, Web, Supporting	2	.26	.20
Mess Tins	1	.32	.24
Capes, A.G.	1	2.64	1.98
Mugs Drinking	1	.17	.13
Total			$37.08

CERTIFICATE OF SURRENDER OF ABSENTEE
to portion of His Majesties Forces in
accordance with sec 163 (j) and ORO 2371

I Colonel J.D. Forin, ED, Officer Commanding 11 Canadian Repatriation Depot, certify that No. C.38084 L/Cpl. George Francis HEMERY, Canadian Infantry Corps, on the strength of 11 Canadian Repatriation Depot, surrendered himself to No. K.63215 Sgt. HENSCHKE, W., Canadian Infantry Corps, on the strength of 11 Canadian Repatriation Depot, at 1900 hours 26 Sep, 1945, at 11 Canadian Repatriation Depot, in the Field, AS AN ABSENTEE WITHOUT LEAVE. At the time of his surrender he was wearing military uniform.

J.D. Forin
(J.D. FORIN) Colonel
Officer Commanding,
11 C'an Repat Depot.

In the Field,
28 Sep, 1945.

E.W. Comuck Capt
Exhibit "B"
Officer detailed to
take summary
of evidence

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C.38084	L/Cpl.	George Francis HENERY	11 Can. Repat. Depot.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct inscribed in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Absence Without Leave — 1 times.

For Neglect to obey orders - Excessive Speed AA 11 — 1 times.

For ____ — ____ times.

For ____ — ____ times.

Date of first entry in Field Conduct Sheet 19 Jun 43

Date of last entry in Field Conduct Sheet 17 Dec 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf. NIL.

*Strike out if not applicable.

~~3. The accused has not been awarded any good conduct badges, or any decorations or rewards for gallantry or distinguished conduct.~~

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 23 days in military custody, *i.e.*, NIL days in open arrest, 23 days in close arrest; of which 17 days were spent in hospital.

5. The present age of the accused is 33 yrs.

6. The date of his attestation ~~[illegible]~~ is 30 Jul 41

7. The service which the accused is allowed to reckon is ____

†State the military decorations (if any) held by accused.

8. The accused is in possession of† Can Vol Serv Medal and Clasp., 1939-45 Star, France & Germany

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously since without reduction, to the present date—

	Date of Promotion.
In the substantive rank of Lance-Corporal	28 Apr 45
In the war substantive rank of	
In the acting rank of	

EX B

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*29072) Wt.30721/9701 25,000 9/44 A.& E.W.Ltd. Gp.699

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 18th day of October [illegible] (Major & Adjutant)
[illegible] Depot
Offr. having custody of original records

3/17 MFM 6
(AFB 122)
40/P&S/136 (7019)

NoC 38084 Name HENERY G.F. | Sqn, Battery, or Company | Corps Cdn Inf Corps | Date of enlistment 30-7-1941 | GC Badges | Service or Proficiency Pay | Character

Sheet No.1

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	19-6-43	Pte		AWL from 2315 hrs 19 Jun 43 to 0730 hrs 20 Jun 43. (8 hrs 15 mins)		4 days Pay	21 Jun 43 17 Dec 43		Forf 1 days Pay
Field	17-12-43	Pte		A.A.11 - Excessive Speed					

Certified that this is a true copy of M.F.M. 6 as of 18 Oct. 45

.....MAJOR & ADJUTANT

Officer having custody of Original Records.

(P70)

I, No. C.38084 L/Cpl. George Francis HENERY, 11 Canadian Repatriation Depot, acknowledge that I have this day at 1630 hours been served with the following documents free of charge: (a) Copy of Summary of Evidence and (b) Copy of Charge Sheet both in connection with my forthcoming trial by Field-General Court Martial.

In the Field,
28 Sep, 1945.

G F Henery L/Cpl.

I, No. C.38084 L/Cpl. George Francis HENERY, 11 Canadian Repatriation Depot, acknowledge that I have been informed that the convening officer may appoint or apply for the services of an officer holding legal qualifications to act as prosector at my trial by Field-General Court Martial and I have been advised of my rights to retain counsel. I do not intend to retain the services of counsel but desire to have a defending officer assigned to represent me at my said trial. I desire the services of Lt. K. V. La Rush if he is available for this purpose. I waive the 7 days notice mentioned in Rule of Procedure 89 (B)

In the Field,
28 Sep, 1945.

G F Henery L/Cpl.

LIST OF EXHIBITS

See Summary of Evidence

LIST OF WITNESSES

For the Prosecution - See Summary of Evidence

For the Defence - NIL

STATE OF TRAINING OF ACCUSED

No. C.38084 L/Cpl. George Francis HENERY, 11 Canadian Repatriation Depot is a fully trained soldier.

MEDICAL CATEGORY OF ACCUSED

No. C.38084 L/Cpl. George Francis HENERY, 11 Canadian Repatriation Depot is Category "A" and was born in 1912.

Lieutenant to be detailed by Comd 11 Cdn Repat Dep

Commanding Officers concerned will be responsible for the warning and attendance of the respective accused personnel, their escorts, prosecuting and defending Officers and any necessary witnesses at the appointed time and place.

Commanding Officer, 11 Cdn Repat Dep will be responsible for the preparation of the Court-room and the providing of Court orderlies at the appointed time and place.

The completed proceedings will be forwarded to Headquarters D Group.

Signed this .....16th..... day of .....October..... 1945.

R B [illegible]
~~Staff Captain~~
for Commander D Gp CRU

DISTRIBUTION:-
Pres - Lt Col DL Redman, VD - HQ CRU
Comd 10 Cdn Repat Dep
Comd 11 Cdn Repat Dep
File (2)

SN-140

Pte. Henley, D.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D654893 PTE DONAT HEALEY OF R22OR

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. SEC 40	NOT GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44. special findings see RP 44 and MML p 753, and in lass of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 29 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO UNDERGO 60 DAYS DETENTION

(Sgd) ..... Judge-Advocate, if any. June 14/45 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further order.(1) (1. AA 57A. Delete if not used.)

(Sgd) J. R. J. Mitchell Lt. Col.

Date 16 June 45 A1 Commanding 3 Con Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

Duly promulgated 17 June 1945 [signature] Lt Col DAAG

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, SN 2190

RECEIVED 17 JUL 1945 CANADIAN M.H.Q.

CFAA96 (In lieu of AFA33) 40 P.M.S. (1698 804)

FIELD GENERAL COURT-MARTIAL

Convened by Order of LT. COL. J.A. NESBITT Comd 3 CON. INF. BDE. dated 12 JUN. 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D654893	PTE.	DONAT HENLEY		R22eR

PROCEEDINGS REVIEWED [illegible] 17 Jul 45

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held at No. 1 CANADIAN CORPS REINFORCEMENT UNIT on (date) JUNE 14/45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(a) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to D 54893 PTE ALBERT A.R.22A as interpreter? Ans NO.

The Interpreter is sworn.(1) ~~Do you object to ..... as shorthand writer? Ans .....~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	O.J. PRICE MC	WEST. N.S.R.
Member	CAPT	D.R. BEWS	WEST. N.S.R.
Member	LT.	D.B. SCOTT	48 HIGHRS. OF C.
Judge-Advocate			
Prosecutor	LT.	M.P. MENARD	R 22e R.
Defending Offr	CAPT	A. DUBE	R 22e R.

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dr p 3.)

A8. The accused D654893 PTE DONAT, HENLEY before arraignment make(s) (no) (a) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 36, 35(A), 113), or in bar of trial (RP 38), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB160 Value

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. As to responsibility of President to accused see RP 50, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83, 85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination : and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. RP 37(E). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO.(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~(any)~~ (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st charge ~~charge(s)~~.(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 1st charge, ~~and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, ~~make a statement, or do neither~~ ? Ans YES. Do you intend to call witnesses on your behalf ? Ans YES. Are they witnesses as to character only ? Ans NO.
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is ~~(are)~~ recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the 1st charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. AA 54(2) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on ~~one or more of the charges~~, THE CHARGES the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : ~~Do you wish to give evidence yourself or to call any witnesses as to your character~~ ? (1) Ans No. ~~Delete on trial~~
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.(2)~~
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty at one trial. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, RP 48. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

D654893

D... R 22 R.

Pte Wembley

for the field

14-6-45

Gpt Phelps Latin

FIELD GENERAL COURT-MARTIAL

CFA35 (In lieu of AFA3)
40/FAN/1697 (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D654[illegible]3	Pte	Donat	HENLEY	R 22e R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 Jun 45 endorsed by me, [illegible] "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ([illegible])
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	C J Price MC (Must be named. RP 106.)	West NSR (Unit.)

MEMBERS.

Capt	D R Bews	West NSR
Lt (Rank.)	D B Scott (Named or detailed. RP 106.)	48 Highrs of C (Unit.)

WAITING MEMBER.

Lt (Rank.)	R Caron (Named or detailed, if any. RP 106.)	R 22e R (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

Date 12 Jun 45

(Signed personally. RP 105 fn 2.)

Lt-Col (Rank.)

A/Commanding 3 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused, No D-654893, Private Donat METLEY, on the strength of the Royal 22nd Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SECTION 40
ARMY ACT

WHILST ON ACTIVE SERVICE, NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE.

in that he,

in the Field, Holland, at approximately 1455 hours on the 16th day of May, 1945, so negligently handled a rifle as to cause it to be discharged and thereby killed No D-66163, Private LEBAULT M., of the Royal 22nd Regiment, Canadian Army Overseas.

In the Field
22nd May 45.

(G.A. Tarcot), Lt/Col
Commanding
Royal 22nd Regiment

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
29 May 45

(J P E Bernatchez), Brigadier,
Commanding 3 Cdn Inf Bde.

12 Jun 45

(J Aird Nesbitt), Lt-Col
A/Comd 3 Cdn Inf Bde

(1)

List of witnesses for the Prosecution

In the case of D654893, Pte Hunley D enal, of the Royal 22 Regiment

E 101420 Cpl Langevin J.P.
N 156765 Pte Guertin R
Capt. P Goldstein R.C.A.M.C.

1st witness E 101420 L/Sjt. Cpl. Langevin J.P. ~~swing sworn, was stat~~ ~~P~~

Q - Do you recognize the accused.
A - yes (pointing to the accused D654893 Pte Hunley D)
Q What happened 16 May 45 with reference to the accused.
A. I was in my room when I heard a shot. I came out of the room and saw Pte Legault on his back, he was wounded on the right side. I told the guard to phone for the M.O. - While the MO was coming I applied first aid. - time of the accident was 1445 hrs. Pte Hunley came out and told me the shot came from his rifle while he was cleaning it. - I placed him (Pte Hunley D) under close arrest. - The day before the accident I examined Pte Hunley D's rifle and found it empty - I told him his rifle must be loaded and to do so.
Q Do you know anything else about the accident
A. He (Pte Hunley D.) showed me where he was when the shot went off. I stood where the accused was and I could see out the door.
Q How long has Pte Hunley D been in D Coy
A I do not know

3/ Q. ~~Was Pte Hanley ever seen in action~~ Have you ever been in action with Pte Hanley
A No ~~he hasn't~~.
Q What were you doing in that house
A I was in charge of a 12 man guard guarding No 1 post for 6 hrs.

---

no questions from the Defence. ~~B.C. 938 cancelled~~

2nd witness. N156965 Pte Curtis R. having been duly sworn states as follows.

Q Do you recognize the accused
A Yes (pointing to accused Pte Hanley D).
Q Will you tell the Court what happened on the 16 May 45
A. Around 3 o'clock just before Pte Hanley D was to go on guard that were in the barrack room - I was standing about 2 feet from him and he was standing sideways to the door. - He picked up his rifle and was manipulating the bolt of his rifle which was at an angle of about 45 degrees. - suddenly a shot went off and I froze on the spot - then I heard someone yell "He's fallen" and then the Cpl and myself both went out of the barracks to the fellow who was shot - and then we started to apply first aid with field dressings Cpl. Langevin told a fellow to go and phone for the MO and then we took a blanket to cover his body and another one to keep the sun away from him - when the doctor arrived he was dead.

Q when he (Pte Hanley) was manipulating his bolt was he talking to you

A no

Q How many times did he case spring.

A I don't know.

Q From where the accused was standing could he see the deceased

A I don't know.

Q Did you have any specified place to put your rifles

A no we hadn't just put them anywhere.

Defence

Q could you say definally that the shot came from Pte Hanleys rifle

A Not definately sir

Q was the shot near you

A Yes very close.

R.P. 83 B. conducted visit.

2nd witness Capt P. Goldstein RCAMC attached R 22 R.

Having been duly sworn states

Q could you tell the court what happened on the 16 May 45.

A. On the afternoon of the 16 May 45 I was called to an out post of Q Bay — when I arrived there I found Pte Legault dead — He had a large hole about 3 inches in diameter in front of the right chest exposing the lung and

7. a small hole below the left shoulder blade.

R. P. 83 D ~~complies with~~.

The defending offr submits that the evidence for the prosecution does not establish a prima facie case against the accused on the following reasons.

1. Pte Henley is accused under AA sec 40 of having been neglectful in that he ~~he~~ negligently handled his rifle.

Neglect according to AA sec 40 NOTE Ammendment Number 20 June 1942 must be blameworthy and I fail to see where the prosecution proved the accused blameworthy.

1st witness of prosecution ~~by~~ Sjt Langwin did not see anything relating to this charge. of negligently handling a rifle simply saw the results of it

2nd witness Pte. Curtain R. saw the accused holding his rifle properly and preparing it to go on his tour of duty at 2 oclock.

I cannot see anything blameworthy in that. — Unfortunately an accident happened but we are not dealing with the results but simply with the fact that Henley has done something blameful and this has not been proved. So I ask of the court to dismiss the charge.

~~without any fee~~ off

1st witness for the defence.

D654893 Pte Henley Donat Royal Regt.

~~Having no duty as an orderly.~~

Q before the 8-9 May 45 what was your job

A Rifleman

Q after 8-9 May what was your job

A I was a Sentry man and was told to turn my rifleman in to C.Q.M.S.

Q who was your pl cmdr at the time

A Lt Girard

Q When did your return to your job as rifleman

A around the 12 May 45 I got a new rifle

Q when you went back to your job as rifleman did you get your own rifle back

A no - I got another one - not the same rifle as before.

Q Until the day of the accident did you keep ammunition in your rifle

A no - never kept a rounds in the rifle

Q Were you checked on this account the day before the accident and by whom

A ~~The~~ I was told to leave my rifle by Cpl. Langevin

Q Did you obey that order

A No - I meant to but put it off and forget about it.

Q On the day of the accident did you have any ammunition in your rifle

A No I did not have a rounds in it and checked it at noon the day of the accident

Q On the day of the accident where did you put your rifle

6. A: I had it ~~behind~~ behind the door (Q)

Q Will you tell the court what happened the day of the accident

A It was close to 3 o'clock and the Cpl told me to hurry and get to my post. - The door was open and I pushed it back to get my rifle and then got mixed and took the wrong rifle there were two rifles behind the door I opened the bolt and closed it and in so doing must have squeezed the trigger the shot must have made the rifle jump up as I was holding it with the muzzle down to the ground I thought it was my own rifle and my rifle was not loaded. - When the shot went someone called that someone was hit - I put my rifle down and went outside and helped apply first aid

Q Did you know Pte Legault.

A Since I've been with the Reg. Pte Legault was one of my best friends.

Cross examination by Prosecutor

Q Did you look in the direction your rifle was pointed before manipulating the bolt. (Q)

A ~~No~~ I did not look. Legault ~~I~~ closed the bolt and did not realize ~~the~~ anyone ~~in~~ front of me.

A. (Yes I was looking down
Q after you took your rifle did you check to see if it was loaded before closing the breech
A ~~I don't know when it happened~~ I just opened + closed the breech - ~~I do not know~~ I do not remember whether I checked or not.

R.P. 83 B. ~~complied with~~.

2nd witness for Defence.

E12041 Sgt. Girard A. - Pl Sgt.
~~Having been duly sworn states~~
Q Do you know the accused and can you point him out to the court
A Yes. (points to Pte Hanley)
Q How do you happen to know him
A He has been in my pl. since 24 Apr 45
Q What was his job in your pl.
A He was a rifleman but I changed him to a mortarman -
Q To what day was he on the mortar
A On the 17 of May I told him to put his mortar away and take a rifle for guard duty.
Q During the time the accused was in your pl what kind of a soldier was he.
A. He always did his job like a soldier and never complained
Q ~~were~~ Do you know if accused and Regault were friends
A as far as I knew everyone in my platoon were good friends

8/. Lt Sgt Langevin recalled by the Court

Q- Did you examine the accused's rifle after the accident

A Yes - and there was an empty casing in the rifle and there were no loaded cartridges in it.

Q Could you say if the rifle belonged to anyone other than the accused

A I couldn't say as no one claimed it.

Q Do they keep a record of the numbers of weapons issued

A I don't think so at that time

Q Did the mechanism work on the rifle

A Yes - the magazine was off but the mechanism worked.

R.P. 83 B complied with. JJL

Special Plea for the defence.

According to his pl cond the accused has always been a good soldier - An accident happened to him - according to the prosecution he negligently handled his rifle - not one witness came in this court to prove that fact - On the contrary The Guertin a witness of the prosecution states the accused was holding his rifle properly - The accused himself confirmed this statement under oath - It has been proved the accused had a new rifle The accused was sure there was no ammunition in his own rifle - Lt Sgt

9. Lainguin himself said the day before he checked the accused for not having ammunition in his rifle – The accused took a rifle to go on guard duty – By mistake he took the wrong one just the same he was careful enough to keep it in a proper position – Of course he does not remember all the details of what happened – while manipulating his belt the muzzle of the gun was lifted a little – The victim was standing on a lower floor outside of the view of the accused and unfortunately was hit – Do you think you can really find guilty of such an accident a man who has always been a good soldier especially when he knew that the victim was one of his best friends.

10/ The court is addressed by the prosecution.

Gentlemen of the court.

The charge reads as follows (see charge) The witnesses for the prosecution have stated & proved that on 16 May 45 the accused killed Pte Legault with a rifle while in the process of cleaning it - It was stated that just prior to take his post as a sentry the accused took his rifle and manipulated the bolt which caused the rifle to be discharged thereby killing Pte Legault - While manipulating the rifle it was stated that the accuseds rifle was pointing in direction of the door at an angle of 45° It was stated that from the spot the accused was standing at that time he could see outside and therefore he must have seen Legault if not There is negligence on the part of the accused One cannot ~~safely~~ manipulate a rifle without first taking the necessary safety precautions is certainly to look around to see if anybody is standing near - another precaution prior to cleaning a rifle is to make the ease springs four or five times and upon being satisfied there are no more bullets in the magazine Then pull the triggers - The accused only manipulated his bolt once and then pulled the triggers - There again is negligence - He states he does not remember whether he checked the rifle or not - there again is negligence on the part of the accused.

The defence was based on the fact

11/ that the accused made a mistake in
taking a wrong rifle - well isn't that negligence
in itself - Nobody apparently made a claim
for the rifle with which Henley shot Legault.
Did the defence prove it was not his rifle
Well Gentlemen the prosecution is
now closed an it is up to the court to
decide upon the finding of this Court Marshall
I thank you.

IV

2. Plea of Extenuation of Sentence by the defending officer.

The accused has a clean conduct sheet. His Pl. Sgt testified to the fact that he was a very good soldier. He is already very much affected by the fact that the victim of the accident was one of his best friend. I asked the court to be as lenient as possible

- .. -

A. Kabré Capt

10/ The court is addressed by the prosecution.

Gentlemen of the court.

The charge reads as follows (see charge) The witnesses for the prosecution have stated & proved that on 16 May 45 the accused killed Pte Legault with a rifle while in the process of cleaning it - It was stated that just prior to take his post as a sentry the accused took his rifle and manipulated the bolt which caused the rifle to be discharged thereby killing Pte Legault - While manipulating the rifle it was stated that the accuseds rifle was pointing in direction of the deer at an angle of 45° It was stated that from the spot the accused was standing at that time he could see outside and therefore he must have seen Legault if not There is negligence on the part of the accused One cannot ~~safely~~ manipulate a rifle without first taking the necessary safety precautions as certainly to look around to see if anybody is standing near - another precaution prior to cleaning a rifle is to make the ease springs four or five times and upon being satisfied there are no more bullets in the magazine then pull the triggers - The accused only manipulated his bolt once and then pulled the triggers - There again is negligence - He states he does not remember whether he checked the rifle or not - there again is negligence on the part of the accused

The defence was based on the fact

witness for prosecution in the case of
D654983 Pte Hurley D - Royal 22 Reg

1st witness.

SUMMARY OF EVIDENCE

In the case of No D-654833, Private Donat HENLEY, of the Royal 22nd Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken under Oath.

First Witness for the Prosecution — E\101420, Cpl Langevin J.P., of the R22eR., having been duly sworn, states as follows/

On 16 May 45, I was in charge of No I guard post of "C" Coy; There were twelve men under my command and the accused whom I now recognize, was one of them; At approx 1455 hrs, I was in my sleeping quarters when I heard a shot; I immediatly got out and found No D-66163, Pte Legault M, R22eR lying on on the ground in front of the door; He was badly wounded on the right side of his chest; I asked for somebody to call the doctor and immediatly proceeded to give first aid to Legault; He died a few minutes later. I was told by the accused that he was cleaning his rifle when a shot went ont; I placed him under close arrest and later he was escorted to the Regt guard room. I had instructions from the OC "C" Coy, whom we were under command that all weapons were to be loaded; I notified all my men about this. I once examined the accused rifle that day and noticed that it was empty; I had to tell him that he would have to load it before going on duty;

The accused declines to cross examine this witness.

Langevin J.P. .....Cpl

Second Witness for the Prosecution — M-156365, Pte Guertin R., of the R22eR, having been duly sworn, states as follows:

On 16 May 45, I was on duty at No 1 Guard post of "C" Coy. At about 1455 hrs, I was in the sleeping quarters of the guard room in compeny with the accused, whom I now recognize. The latter was getting ready to take his turn of duty at 1500 hrs and he started to clean his rifle. As he was manipulating the bolt of his rifle, I heard a shot coming from the rifle of the accused. The muzzle of the rifle was pointing in direction of the open door of the room at an angle of about 45°. I cannot certified if the accused could see outside the house by the open door from the position he was when the round was fired. Hearing the shot, I fromze on the spot until I heard somebody sa ying: He has fallen". Thinking it was a joke, I runned to the door and found No D-66163 Pte Legault M., R22eR. The accused and Cpl Langevin also arrived running and Cpl Langevin applied first aid to Legault, assisted by the accused and myself. Pte Legault M., died a few minutes later. We had no specified place to lay our rifles while not on duty.

The accused declines to cross-examine this Witness

.....Pte

In the case of No D-654893, Private Donat HENLEY, of the Royal 22nd Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken under Oath.

Third Witness for the Prosecution — Capt I. Goldstein, RCAMC., of the R22eR., having been duly sworn, states as follows:

At approx 1500 hrs 16 may 45, I was called to proceed to No 1 Guard post of "C" Coy. There I found No D-66163, Pte Legault M., lying on his back in front ofthe guard room. He was already dead. He had a large wound, about 3 inches in diameter, front of right chest, exposing the lung and a small wound below left scapula. Pte Legault M., had a pocket watch in his right breast pocket of which only a part was found. I presume that the remainder of the watch was driven into the chest by the impact of the bullet. The bullet went into its exit through the left posterior chest.

The accused declines to cross-examine this Witness

Capt Goldstein Capt.

The accused was then warned in French as follows: "Do you wish to make a statement or to give evidence on Oath? You are not obliged to say anything or to give any evidence unless you wishto do so, but whatever you may say or any evidence you may give will be taken down in writing and may be used in evidence.

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of two pages was taken down by me in presence and hearing of the accused and that Rules of Procedure 4 (c), (d), (e) and (f) have been duly complied with.

W.F. Leonard Lt.
Officer detailed to take the Summary of Evidence.

In the Field
22nd May 45.

Conduct A

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-654893	Private	Donat HENLEY	Royal 22nd Regiment

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. ~~The following is a fair and true summary of the entries in the Field Conduct Sheet~~ of the accused, exclusive of convictions by a court martial or a civil court :—

For ..... times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. ~~The accused at the present time is under sentence for~~ .....

~~beginning on the~~ ..... day of .....

4. The accused has been awaiting trial on the present charges for n/a days in civil custody; and for 29 days in military custody, *i.e.*, n/a days in open arrest, 29 days in close arrest; of which n/a days were spent in hospital.

5. The present age of the accused is 26 years old

6. The date of his ~~attestation~~ calling up for military service is 17 Aug 44

7. The service which the accused is allowed to reckon is 272 dys

†State the military decorations (if any) held by accused.

8. ~~The accused is in possession of~~†

9. ~~*If the accused is a warrant officer or N.C.O.*~~ The accused has served continuously without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of	.....
~~In the acting rank of .....~~	.....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21181) W1/2670/668 100,000 1/45 A & E W Ltd. Gp.698
(22459) W1/2926/1873 80,000 9/45 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 14 day of Jan 43

Adjt Infantry Coy
Offr i/c original documents.

MFM 6
(AFH 122)
40/PAB/136 (3438)

No. D. 654893 Name HENLEY D. Sqn. Battery or Company | Corps C.I.C. | Date of enlistment 17 Aug 44 | GC Badges n/a | Service of Proficiency Pay n/a

Date of last entry in Company Conduct Sheet n/a | No and date of last drunk n/a | Period not reckoning towards freedom from extra fine n/a | Sheet No 1 | GC Signature Company, etc B. L. Browne Maj. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified true copy of original dated 14 June 45					
				[illegible] Lt					
				Offr i/c original document.					

Exhibit B

(PTO)

108-V

Gen. HENNING, D W

108-V

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Seventh day of January, 1943.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery 2 Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.] RCT

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint:— RCT

*(1. Three Officers to form the Court.)
*(2. A Field Officer as President.) } RCT

for the following reasons, namely:—] RCT

In my opinion, military exigencies, namely the dispersion of units, and difficulties of communication, and other difficulties, render it inexpedient to observe the provisions of these rules inconsistent with Appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

* Omit if not applicable.

26 Jan 43

120

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may above be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.		
Rank.	**Name.**	**Regiment.**
Major	F.J. Gilmour	R.A. 2 Cdn Div

Members.		
Rank.	**Name.**	**Regiment.**
A Major or Senior Captain	To be appointed by C.O. 5 Cdn Fd Regt., R.C.A.	
A Captain or Lieutenant	To be appointed by C.O. 3 Fr A.A. Regt., R.C.A.	
Waiting Member	To be appointed by C.O. 6 Cdn Fd Regt., R.C.A.	

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed R.O. Lee Brigadier.

Commanding R.C.A. 2 Cdn Div.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
H12191 Gunner HENNING, Douglas William, 5 Cdn PG Regt R.C.A.	FIRST CHARGE A.A. Sec 15(1) When on Active Service, absenting himself without leave etc. (see charge sheet attached)	Guilty.	Guilty	
	SECOND CHARGE A.A. Sec. 24(2) When on Active Service absenting himself without leave etc. (see charge sheet attached)	Guilty	Guilty	
	THIRD CHARGE A.A. Sec. 22. When on Active Service did escape lawful custody etc. (see charge sheet attached)	Guilty	Guilty	Confirmed R.C. Dees Brig
	FOURTH CHARGE A.A. Sec. 15(1) When on Active Service absenting himself without leave etc. (see charge sheet attached)	Guilty	Guilty	
	FIFTH CHARGE A.A. Sec 24(2) When on Active Service losing by neglect public property issued to him for use etc. (see charge sheet attached)	Not Guilty	Guilty except that he did not lose all articles listed see Page 3 attached for further details + sentence 16 Jany '43 H Cochrane Major	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) R C Dees (Signed) H Cochrane Major
(R.C. Dees) Brigadier.
Commanding R.C.A.s 2 Cdn Army
Convening Officer (c) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10th day of January '43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) ~~duly sworn~~
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 10th day of Jan'y 1943.

H Cochrane Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this ~~14~~ day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 11th day of Jan 1943.

R C Dees Brigadier.
Confirming Officer.
G.R.A. 2 Cdn Army

Promulgated and extracts taken in the case of H12191 GNR. HENNING, D.W.

(*a*) (Dated) 12 JAN. 43 (Signed) Geo Whittaker, Lieut RCA

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE-SHEET

The accused, No.H.12191 Gunner HENNING, Douglas William, 6 Cdn Field Regiment, Royal Canadian Artillery, a soldier of the Canadian Army, Overseas, is charged with;

FIRST CHARGE
Sec.15(1)A.A.

Absenting himself without leave,

in that he

at WILMINGTON, SUSSEX at or about 2245 hours, 29 Apr 42, absented himself without leave until his return at 2245 hours 3 May 42. (Absent 3 days).

SECOND CHARGE
Sec.15(1)A.A.

Absenting himself without leave,

in that he

at WILMINGTON, SUSSEX, absented himself without leave from 1100 hours, 4 May 42, until apprehended by civil authorities in civilian clothes at CARLISLE, SCOTLAND, on 30 May 42.

THIRD CHARGE
Sec.22 A.A.

Did escape lawful custody,

in that he

did escape the lawful military custody of Canadian Provost Corps at or about 0800 hrs on 1 Dec 42 on Charing Cross Road, LONDON.

FOURTH CHARGE
Sec.15(1)A.A.

Absenting himself without leave,

in that he

at CHARING CROSS ROAD, LONDON, at or about 0800 hrs, 1 Dec 42, absented himself without leave until 1410 hours 2 Dec 42, when he surrendered himself to the Guard Room at No.1 C.A.R.U. (Absent 30 hours 10 mins.)

FIFTH CHARGE
Sec.24(2)A.A.

Losing by neglect public property issued to him for his use

in that he

In the Field on 1 day of June 1942 was deficient the following items of public clothing issued to him for his use;

Description of Articles	No.	Price of Articles	Total
Anklets, web	1	£ 0-4-4	£ 0-4-4
Badges, cap	1	0-0-4½	0-0-4½
Blouses, serge	1	1-2-6	1-2-6
Trousers, serge	1	1-0-6	2-1-0
Boots, ankle prs	1	1-2-6	1-2-6
Braces, prs	1	0-1-6	0-1-6
Brasses, button	1	0-0-2	0-0-2
Brushes, hair	1	0-2-6	0-2-6
Brushes, boot, blacking	1	0-0-8½	0-0-8½
Brushes, boot polishing	1	0-2-1	0-2-1
Brushes, button	1	0-1-2	0-1-2
Brushes, cloth	1	0-2-3	0-2-3
Brushes, shaving	1	0-1-2	0-1-2
Brushes, tooth	1	0-0-5	0-0-5
Cloak or Greatcoat drab	1	2-8-6	2-8-6

Description of Articles	No.	Price of Articles	Total
Comb, hair	1	£ 0-0-2	0-0-2
Discs, identity, with cord	2		
Dressings, first field	1	0-1-1	0-1-1
Forks	1	0-0-4½	0-0-4½
Gloves, woollen, khaki, prs	1	0-1-11	0-1-11
Housewives	1	0-0-7	0-0-7
Knife, clasp and lanyard	1	0-2-10	0-2-10
Knife, table	1	0-0-10	0-0-10
Blouses, denim	1	0-12-9	0-12-9
Trousers, denim, prs	1	0-11-9	0-11-9
Razors	1	0-0-5½	0-0-5½
Shirts, flannel, khaki	2	0-10-0	1-0-0
Shoes, canvas, prs	1	0-2-2	0-2-2
Socks, prs	1	0-1-11	0-1-11
Spoon, table	1	0-0-4½	0-0-4½
Towels, hand	2	0-1-0	0-2-0
Drawers, cotton	2	0-2-2	0-4-4
Shirts, cotton, under	2	0-2-4	0-4-8
Shirts, gym	1	0-2-11	0-2-11
Bags, ration	1	0-0-2½	0-0-2½
Belts, waist	1	0-3-6	0-3-6
Bottles, water Mk IV	1	0-2-2	0-2-2
Braces	2	0-1-9	0-3-6
Carriers, waterbottle	1	0-1-11	0-1-11
Haversacks	1	0-8-6	0-8-6
Helmets, steel	1	0-9-0	0-9-0
Packs	1	0-8-½	0-8-½
Straps, shoulder	2	0-1-11	0-3-10
Straps, web, supporting	2	0-1-4	0-2-8
Tins, mess	1	0-1-8	0-1-8
Bottles, oil	1	0-0-7	0-0-7
Goggles, bren carrier	1	1-10-0	1-10-0
Jerkins, leather	1	0-8-6	0-8-6
Gloves, M.T.	1	0-0-4½	0-0-4½
Pull Through	1	0-19-½	0-19-½
Respirators, A/G, complete Mk IV	1	0-10-0	0-10-0
Sheets, Ground, Mk VIII	1	0-0-5½	0-0-11
Ointments, #2 Jars	2	0-12-3	0-12-3
Capes, A/G	1	0-0-9	0-0-9
Wallet, A/G	1	0-0-4½	0-2-3
Eyeshields, A/G	6		£ 17-12-11½

In the Field
30 Dec 42

S.H.Dobell
(S.H.Dobell) Lt.Col.
C.O. 6 Cdn Fd Regt., R.C.A.

To be tried by Field General Court Martial.

Signed
this 5 Jan 43

P.C.Tees
(P.C.Tees) Brig.
C.R.A. - 2 Cdn Div.

Defending Officer in the case of H.12191 Gunner HENNING, Douglas William, 6 Cdn. Field Regiment, R.C.A. will be Lieut. T.M.Hunter, 6 Cdn Field Regiment, R.C.A.

Medical Officer
6th Cdn Fd Rgt.

10 Jan 43

I cert'fy that I have this day examined H12191 Gnr.Henning,D.W.
and find him fit and able to undergo trial by Field General Court
Martial.

J. E. Burch

(J.E.Burch)Major
Medical Officer
6th Cdn Fd Rgt.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a FIELD GEN Court-Martial held at IN THE FIELD on the 10th day of JANUARY 1945 by order of BRIGADIER P.C. TEES

Commanding RCA 2 CDN DIV

dated the 7 day of JANUARY 1945

President. MAJOR F.J. GILMOUR
H.Q. 2 CDN DIV

Members.

CAPT. G.A. RUTHERFORD
5 CDN FD. REGT RCA.

LIEUT. R.C. MARTIN
3 LT A/A REGT RCA.

, ~~Judge Advocate~~

~~Trial of~~* ~~K. 16 01~~ H-12191 GUNNER HENNING. Douglas William
6 CDN Fd. REGT. RCA.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that is not available to serve owing to~~

, ~~waiting member takes his place as a member of the Court~~.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† LIEUT D.F. BURROWS - 6 Cdn Fd. Regt RCA.

Counsel‡ or defending officer† LIEUT T.M. HUNTER, 6 Cdn Fd Regt

At 10 o'clock the Trial commences.

The order convening the Court is read, and is marked "A", signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

NO SIR.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. Wt.W14629/78. 35,000 sets. 5/40. E. & H., Ltd. 9467/11. Forms A 9/55.

B

The President, members and ~~judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Lt R M Leathem 5th Gd Regt RCA
Lt J M Ross 3rd LAA Regt RCH

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? Guilty

Question to the accused.

Answer.

Are you guilty or not guilty of the second charge against you, which you have heard read? Guilty

Question.

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read? Guilty

Question.

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? Guilty

Question.

Answer.

are you guilty a not guilty of the 7 fold charge
guilty except as to 23 articles tostes.

The accused having pleaded Guilty to 1, 2, 3 & 4* charge, the provisions of Rule of Procedure 35 (B) are here complied with.

J Jackmore
maj

Instruction.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No Sir

~~The prosecutor makes an opening address (hands in a written address which is read, marked _____, signed by the President, and attached to the proceedings.)~~

The prosecutor proceeds to call witnesses.

First witness for prosecution. Lt. D.F. Burrows 6th Edn Fd. Regt. RCA

being duly sworn, is examined by the prosecutor.

The following 9 articles listed on the charge sheet have since been recovered

Straps shoulder	2		0	3 10
Belts Waist	1		0	3 6
Carriers Waterbottle	1		0	1 11
Badges Cap	1		0	4 4½
Brushes shaving	1		0	1 2
Brushes Tooth	1		0	0 5
Razors	1		0	0 5½
Combs	1		0	0 2
Braces	1		0	1 6

They should not be charged as deficiencies against the accused.

No Cross Exam.

2nd witness for Pros. No 12136 B.Q.M.S. Robson J 13th Bty, 6 Can Field Regt RCA duly sworn

B.Q.M.S. O'Donnell hands the prisoner B.Q.M.S of the 13 Bty. When I took over from him he had on over his own a kit bag marked with the Regt

Number of the accused & containing some kit & clothing. None of which is listed or enumerated in the 3rd charge against the accused. In the latter part of May & part of June 142 more articles of web were taken in to the which had been found in a vehicle which the accused had driven. They were:

Braces, referred to in charge as straps shoulder	2	£	0	3 – 10
Belts Waist.	1	£	0	3 – 6
Carriers water Bottle	1	£	0	1 – 11

Those 3 items are included in the list of articles set out in the evidence of the first witness:

The ~~kit~~ articles referred to in Mr Burrows charge were not those charged against the accused

Inspector Gunner Hemming ~~equipment~~ on his return about Dec 5th 1942 & all he had was Badges Cap, Cart, Razor, Brushes, Shaving Brush & Tooth Brush, & he had no other articles & equipment. According to my records all the articles listed in the charge sheet except those set out in Mr Burrows evidence are charged against the accused & there is no record of any of them being taken in to stores when examined. It is quite possible for another ~~person~~ to take in a webbing kit - it is usually done by an ordinary sgt.

J F Wilmour
Major
Pres

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No.

Question. Do you intend to call any other witness in your defence?

Answer. Yes

Question. Is he a witness as to character only? *Answer.*

No.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence? Yes.

Answer. The accused in his defence says†

[hands in a written address which is read, marked

signed by the President and attached to the proceedings.]

Nil

H. Salmon
Major
Pres

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

D 2

First Witness for Defence.

2110569 Gunner Gordon Stahl, 13th Bty. 67th Regt RCA. duty mess

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

I know accused. When Henning left in May his kit was left on his bed. No body made any attempt to look after it so I spoke to QMS O'donnell & he told us to bring it up to the Bty QMS Store.

There was suit of Battle dress Serge, a suit of Oilskins. 1 pr of Boots, some underwear, a number of pair of socks, 1 large kit bag, a big pack, numerous brushes, pack, knife spoon mess tin & cup. 2 flannel shirts, 1 pr canvas shoes, one towel, water bottle & case all his web webbing (ammo pouches respirator & small pack) steel helmet, battle jerkin, We loaded these on the truck & the driver put them in the stores. I don't remember who was the truck driver he was from B.H.Q. Mess Sgt. I was by the truck when the equipment was handed in. I think it was B.Q.S O'Donnell to whom it was handed but I am not certain it was him. I got no receipt.

J Gordon
Gnr
No.

CC

Proceedings on Plea of Guilty.

* To be struck out in case on plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused #12191 Gunner D.W. Kennard is found guilty of

†The summary (or abstract) of evidence is read, marked signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. Def. Officer No my Defending Officer will The ~~accused~~ in mitigation of punishment says:—

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~

points out accused has served 2 years - is only 22 yrs old - Was keen & anxious to serve as a D.R. Was originally employed as DR & very badly removed & wanted to see back as a DR but not permitted to do so - Submits in action would be a very good solution.

Instruction. †If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character? yes

Question to the accused.

Answer.

Evidence as to character.

H 12158 Sgt. Washington, AG
13 Bty 6 Can Yd Regt R.C.A. duly sworn Exhibit
I have known the accused about 4 years
He served under me in the M.T. section
He was always a real good worker &
was good at maintenance. He has since & re-
turned to the M.T. section. I have never
found him to be anything but a real
good soldier.

J. Fishmour
Maj

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused is guilty of the Fifth charge except that he did not lose by neglect the articles set out in the said charge indicates by a tick thus ✓ + the initials H/S of the President total deficiencies of which accused is guilty of losing by neglect being £8/4/11

H Tilmore Maj

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Lt. D. F. Burrows is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* M.F.B. 355 & Copy of M.F.M.C.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked A. ✓ signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. Yes

~~Cross-examined by the accused.~~ H/S

[Instruction.—If in respect of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any additional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

H Tilmore

F

Sentence.

7-12-41 Gnr D.W. Headley.

The Court sentence the accused ~~guilty of the~~ Sentence.

~~7th charge etc that to dismiss not less the which listed in the charge sheet of this Unit & has been placed & withheld by the Paymaster~~ Total Deficiency total £8-4-11 ~~J Hutchinson Maj~~

To undergo detention for 100 days & to be put under stoppages of pay until he has made good the sum of £6/3/4 in respect of loss of Unit & Regimental necessaries at the rate of 7s 6d of the ascertained price thereof.

10 Jany 1943 J Hutchinson Maj

Confirmed Reviewing Authority

I hereby certify that because of training & exercises being carried on by the unit to which the accused belongs that it was necessary to hold the trial on Sunday Jany 10th 1943.

J Hutchinson Maj

ABSTRACT OF EVIDENCE in the case of H.12191 Gunner HENNING, Douglas William, 6 Cdn Field Regiment, Royal Canadian Artillery, Canadian Army Overseas.

First Witness

(i) The Prosecutor will produce 6 Cdn Field Regiment, R.C.A., Part II Order No.26, dated 29 May 42 (Exhibit 'A') showing accused absent from 2245 hours 29 April 42 until 2245 hrs 3 May 42, and again absent from 1100 hours 4 May 42.

(ii) Record of Declaration of Court of Enquiry (Exhibit 'B').

(iii) Certificate of Apprehension (Exhibit 'C') showing accused apprehended by civil police at CARLISLE on 30 May 42, dressed in civilian clothes.

(iv) Certificate showing cost of return, DUMFRIES to LONDON, accused and escort, £4-11-5. (Exhibit 'D').

(v) Certificate showing accused surrendered himself to No.1 C.A.R.U. at 1410 hours, 2 Dec 42. (Exhibit 'E').

Second Witness

D.93692 L/Cpl.HANNAH, D.S., of No.6 Provost Coy, Cdn Provost Corps, Canadian Army (O).

"At SCOTLAND on 30 November 1942, at about 1035 hours, I was detailed to proceed to DUMFRIES to escort H.12191 Gunner Henning, D.W. to LONDON. At about 1930 on 30 Nov 42 I entrained for LONDON arriving at EUSTON STATION at 0730 hrs. During the journey down nothing unusual occurred to indicate the intent of H.12191 Gnr.Henning, D.W. to escape. After arriving at EUSTON STATION I proceeded to LYONS CORNER HOUSE at St.GILES CIRCUS to have breakfast for myself and the accused. At 0830 hrs we then left the CORNER HOUSE to proceed to H.Q. On the way HENNING asked my permission to purchase shaving equipment and a comb. I then proceeded to the AMERICAN EAGLE CLUB when I handed HENNING ten shillings to purchase the aforementioned articles. While proceeding up the stairs he was walking along by my side. Here he made his escape owing to the very crowded stairway. After thoroughly searching the premises I confirmed the fact that he had escaped and the proceeded to Coy.H.Q. reporting the matter to R.S.M. The S.I.S. were immediately notified, as well as the Woking Civil Police as he is supposed to have a lady frien in WOKING. I received permission from the R.S.M. to visit all the places he might be found but having no results in my search I returned to H.Q.

Third Witness

H.12136 B.Q.M.S. ROBSON, J., 13 Field Regiment Battery, 6 Cdn Field Regiment, R.C.A., Canadian Army (O).

"The following items of equipment on charge to Gunner Henning, and shown as deficient by the Court of Enquiry were subsequently found and returned to 13 Bty Q.M. Stores:

Braces web, Pat 37 L.A.S.
Belts, Whist " " "
Carrier Water Bottle

I inspected Gnr.Henning's kit after his return to unit on 6 Dec 42 and he had no issue clothing or equipment with the exception of;

/to page 2/

Badges, cap (1)	£0-0-4½
Brushes, shaving (1)	0-0-4
Brushes, tooth (1)	0-0-4½
	£ 0-2-1

Razor safety (1)	£0-1-10½
Combs, hair (1)	0-0-2
Braces, trouser (1)	0-1-3½
	£0-3-4
	0-2-1
	£0-5-5

Certified the foregoing Abstract of Evidence taken by me in the Field this 11 Dec 42, in accordance with appendix to 2 D.R.O. 772.

F. Lucy Capt

(R. F. Lucy) Capt. & Adjt.
6 Cdn Field Regiment, R.C.A.

A

R.C.Lucy Capt 6 CANADIAN FIELD REGIMENT, R.C.A.,
For O.C. 6th Fd. Regt. R.C.A.

No. 26.
29 May 42.

11. LEAVE OF ABSENCE. (Continued)

K8041	Bdr.	Matheson, E.	P5, 6-13 May 42.
L11158	Gnr.	McVinnie, J.	P6, 8-15 May 42.
M3138	Bdr.	Mitchell, W.B.	P3, 6-13 May 42.
H12165	Gnr.	Nield, K.R.E.	P5, 5-12 May 42.
L11150	"	Oliphant, K.R.	P6, 8-15 May 42.
M3204	"	Parker, H.	P4, 19-26 May 42.
D118189	"	Poirier, W.A.	P3, 6-13 May 42.
M3441	"	Ree, J.	P2, 7-14 May 42.
M3057	"	Robinson, C.L.	P6, 8-15 May 42.
L11144	"	Roper, F.J.	P5, 18-25 May 42.
L11137	"	Salt, H.	P6, 18-25 May 42.
U1727	"	Saul, F.B.	P4, 18-25 May 42.
H12118	Bdr.	Sewter, A.G.	P5, 4-11 May 42.
H12095	Gnr.	Shaw, J.H.	P5, 19-26 May 42.
M3152	"	Silverman, L.C.	P5, 7-14 May 42.
M3210	L/Bdr.	Scutag, R.F.	P6, 7-14 May 42.
H3011	Gnr.	Speed, T.W.	P4, 6-13 May 42.
D7180	"	Stewart, W.R.	P6, 5-12 May 42.
H12178	"	Tait, L.C.P.	P6, 6-13 May 42.
B68505	"	Tavner, J.H.	P4, 5-12 May 42.
K92318	"	Thomas, E.S.	P5, 20-27 May 42.
KB108	"	Townsend, H.V.	P4, 8-15 May 42.
M3115	"	Turnbull, E.	P4, 18-25 May 42.
H36617	"	Turner, R.W.	P4, 8-15 May 42.
L11095	"	Ward, C.W.	P4, 18-25 May 42.
H12156	Sgt.	Washington, A.G.	P1, 4-11 May 42. No. PTW.
M2089	Gnr.	Weaver, F.E.	P5, 4-11 May 42. No PTW.
D118189	"	Weiner, M.	P3, 18-25 May 42.
C221	L/Bdr.	Whitman, C.A.	P6, 7-14 May 42.
L11151	Gnr.	Wiebe, L.W.	P6, 19-26 May 42.
K8023	L/Sgt.	Wood, R.I.	P4, 7-14 May 42.
K16086	Gnr.	Yeoman, E.M.	P4, 6-13 May 42.
H12090	"	Young, R.W.	P5, 5-12 May 42.

D24088 Sigmn. Coombs, G.) 2 Div Sigs.) P5, 19-26 May 42.
C3576 " Gibson, W.T.) R.C.C.S.,)
C3783 " White, G.E.,)

12. ABSENT WITHOUT LEAVE.

✓ H12191 Gnr. Henning, D.W., AWL from 2245 hrs. 29 Apr 42.
returned from AWL 2245 hrs. 3 May 42.
Reported AWL 1100 hrs. 4 May 42.
8th day of absence 1100 hrs. 12 May 42.

13. HOSPITAL.

K7076 Gnr. Clark, A.H., Discharged from 10 Fd. Amb. 20 May42.
H12032 L/Bdr. Hassan, F.G., admitted to 5 C.C.S. 20 May 42.

to page 6.

13. HOSPITAL. (Continued)

H66510	Gnr. Grantham, R.E.,	admitted 10 Fd. Amb.	19 May 42.
		transf. to 2 C.C.S.	19 May 42.
K17039	Gnr. Darby, G.,	admitted 10 Fd. Amb.	20 May 42.
L22129	Gnr. Morley, R.,	admitted 10 Fd. Amb.	20 May 42.
		transf. to 5 C.C.S.,	21 May 42.
H35617	" Turner, R.W.,	admitted 10 Fd. Amb.	19 May 42.
		transf. to 2 C.C.S.,	19 May 42.
H12027	" Unsworth, R.L.,	disch. from 3 C.M.C.,	18 May 42.
		admitted 10 Fd. Amb.	19 May 42.
		transf. to 2 C.C.S.,	19 May 42.
B31257	Sigmn. Green, B.W.,	2 Div Sigs, admitted 5 CCS	20 May 42.
		R.C.C.S., disch. from "	23 May 42.

14. MARRIAGE.

M3037	Gnr. Chapman, R.J.,	granted permission to marry DORIS JOYCE HARRIS, on or after 21 Jul 42.
K25128	Gnr. Buckna, J.W.,	granted permission to marry MINNIE LUCY TOPPING, on or after 9 Jul 42.
L11081	Gnr. Cuffe, H.B.,	married with permission to ELSIE MAXINE MILLER, at HAILSHAM, Sussex, England, 3 May 42.
H35583	Gnr. Mitchell, E.,	granted permission to marry, MARGERY FLORENCE BAKER, on or after 22 Jul 4
H18065	Gnr. Thompson, A.D.,	reports the birth of son, "DAVID ANTHONY" at Slough Bucks. England. 8 May 42.

15. NEXT OF KIN.

L11081	Gnr. Cuffe, H.B.,	reports change of N of K to:- Mrs. Elsie Maxine Cuffe, (wife) 15 Victoria Street, CUTWOOD PARK, Wakefield, Yorkshire, England.
H12051	Gnr. Gowing, C.F.,	change of address of N of K to:- 387, William Avenue, WINNIPEG, Manitoba, Canada.
B6026	" Reeve, S.	change of address of N of K to:- 89, DINGWALL AVENUE, TORONTO, Ontario, Canada.

16. QUALIFICATIONS.

H12190	L/Bdr. Batchelor, D.W.,	Qual. in accordance with C.A.O.R.O. 599, as Dr. Mech. Gp "C" 26 Mar 42.
H12110	Gnr. Bazinet, H.)	Qualified in accordance with
L11161	" Kenney, D.A.,)	C.A.O.R.O. 599, as Cooks, Gp "C"
H12084	" Lister, R.M.)	26 Mar 42.
M3136	" Nemeth, S.J.,)	

to page 7.

DCA/1.

CERTIFICATE IN ACCORDANCE WITH SECTION 163(1) (m) of the ARMY ACT.

I certify that the person whose description is given below was arrested (~~or surrendered~~) at 2.40 p.m. at Carlisle on the 30th day of May 194 for Hawick Burgh Police.

REGIMENTAL PARTICULARS OF OFFICER OR SOLDIER REFERRED TO ABOVE.

No H 12191 RANK Pte.
NAME Douglas Wm HEMMING
UNIT 13 Batt. R.C.A. Canadian Field Regt

DESCRIPTION.

AGE 21 HEIGHT 5' 8½.
COMPLEXION Fresh HAIR Brown
EYES Brown MARKS

SIGNATURE OF OFFICER OR POLICE IN CHARGE OF POLICE STATION WHERE THE ABOVE NAMED PERSON WAS TAKEN, OR PLACED IN CUSTODY ON ARREST OR SURRENDER

IN CHARGE OF RCA No 2
(POLICE STATION)

THE AFOREMENTIONED PERSON WAS BROUGHT TO THE POLICE STATION ABOVE STATED, BY THE UNDERSIGNED

J Wilson PC 14

Exhibit 'E' In the case of
H.12191 Gnr. Henning, D.W.,
6 Can Pro Coy.

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1) (d)

I, ... certify, that

Regt. No. H-12191 Rank Gnr. Name Henning D.W.

REGIMENT .6th Fd.Regt R.C.A.

UNIT .....

STATIONED AT .....

Surrendered himself to No. M-4226 Rank Bdr Name Smith A.W.

of the .No.1.C.A.P.U.....

on the .2nd. day of .December ...194 2, at 14.10 hours .....

at the time of his surrender he was wearing ~~AS ACCUSED WITHOUT LEAVE~~ ..... or (Civilian Clothes)'

(Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding officer of the portion of His Majesty's forces or the officer, warrant-officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on surrender.

(Strike out part inapplicable)'

.....Lieut.
Officer i/c Detention Room,
No. 6 Can. Provost Coy.

No. H12191 Name Henning, P.W. | Sqn., Battery, or Company | Corps R.C.A. | Date of enlistment 29 Mar 40 | G.C. Badges | Service or Proficiency Pay N/A

M.F.M. 6
A.F.B. 122
500M—4-39 (7703)
H.Q. 1772-43-10

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature O.C. Company, etc. [illegible] Lt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25 Sept 40	Gnr		1. AR 15 (2) Found beyond limits of unit Hq Regimental Order. 2. AR 21 Refusing to obey lawful command given by Capt Livingston 3. AR 22 Creating disturbance in Lines 4. AR 96 Absenting himself without leave from 2200 hrs 25 Sept 40 until 0600 hrs 26 Sept 40 (About 8 Hrs 20 Mins)	Bdr Smith Sig Simpson Lt Livingston 2nd Lt Cowan	21 Days Detention	1 Oct 40	Lt Col R.C. Tees	To forfeit 20 days pay for absence. To forfeit 1 days pay for each of charges 2 & 3. To undergo 21 days detention. Total forfeiture 41 days pay

(P.T.O.)

No. H12191 Name Henning, P.W. | Sqn., Battery, or Company | Corps R.C.A. | Date of enlistment 29 Mar 40 | G.C. Badges | Service or Proficiency Pay N/A

M.F.M. 6
A.F.B. 122
500M—4-39 (7703)
H.Q. 1772-43-10

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature O.C. Company, etc. [illegible] Lieut | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25 Sept 40			1. AR 15 (2) Found beyond limits of unit Hq Regimental Order. 2. AR 21 Refusing to obey lawful command given by Capt Livingston 3. AR 22 Creating disturbance in Lines 4. AR 96 Absenting himself without leave from 2200 hrs 25 Sept 40 until 0600 hrs 26 Sept 40 (About 8 Hrs 20 Mins)	Bdr Smith Sig Simpson Lt Livingston 2nd Lt Cowan	21 Days Detention	1 Oct 40	Lt Col R.C. Tees	To forfeit 20 days pay for absence. To forfeit 1 days pay for each of charges 2 & 3. To undergo 21 days detention. Total forfeiture 41 days pay

I [illegible] must [illegible]

(over)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	18 June 12	Pte		(a) Disgraceful conduct in connection with billets (charge) in that he on parade at Fromelles did refuse to obey an order given by Lieut Col Lucas to fall out and fetch water (charge)	Private Tarry	8 Days Hard Labour	19 June 12	Corps Court	Deferred 28 days pay while in custody
				(b) Drunk (charge) in that he was drunk in billets at Fromelles on the 18th June 12 (charge)					Deferred 8 days pay in addition to the forfeiture of 28 days pay
				(c) Absenting himself without leave from 10 pm on the 18th June 12 to 8 am on the 19th June 12 (charge)					
				I certify this to be a true and correct copy.					
				R C Lucas Capt					

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	18 June 12	Pte		(a) Disgraceful conduct in connection with billets (charge) in that he on parade at Fromelles did refuse to obey an order given by Lieut Col Lucas to fall out and fetch water (charge)	Private Tarry	8 Days Hard Labour	19 June 12	Corps Court	Deferred 28 days pay while in custody
				(b) Drunk (charge) in that he was drunk in billets at Fromelles on the 18th June 12 (charge)					Deferred 8 days pay in addition to the forfeiture of 28 days pay
				(c) Absenting himself without leave from 10 pm on the 18th June 12 to 8 am on the 19th June 12 (charge)					
				I certify this to be a true and correct copy.					
				R C Lucas Capt					

M.F.B. 358
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H.12191	Gunner	HENNING, Douglas William	6 Cdn Fd Regt., RCA

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron Battery~~ Conduct sheets ~~and Company~~ Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For A.A.15(3)	)	times	One	times
For A.A.11	)	times	"	times
For A.A.22	)	times	"	times
For A.A.15(1)	)	times		times
For		times		times

Number of instances of gallantry or distinguished conduct None

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

~~or~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ Section 47 of the Army Act ~~A.A. 73~~ and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for No days in civil custody, and 16 days in military custody, making a total of 16 days in custody, of which No days were spent in hospital.

5. The present age of the accused according to his record of service is 22 years ~~attestation paper is~~

6. ~~The date of his commission specified in the record of service is~~ The date of his attestation specified in his record of service is; ~~The date of his attestation attestation paper~~ 29 March 1940

7. The service which the accused is allowed to reckon towards discharge is N/A

8. ~~The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, ~~or air force award~~ military (~~or is in possession of or entitled to~~). ~~State any air force decoration or award.~~

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

11. ~~(In the case of an officer.)~~ ~~The accused holds in the Royal Canadian Air Force the rank of~~ ~~Permanent Force~~ unit

~~dated~~ ....., ~~and in this regiment (or corps), the rank of~~

~~dated~~ .....

12. ~~The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—~~

~~Date of promotion~~

~~In the rank of~~ ..... years.

~~In the rank of~~ ..... years.

~~In the rank of~~ ..... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~Air Force~~

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number R18191 Rank Gunner

Name HENNING, Douglas William of 6 Cdn Fd Regt., R.C.A. Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
Civil Court	Edinburgh ~~Dumfries~~, Scotland. 19 Jun 42	(a)Theft while acting in concert. (b)Fraud (c)Uttering forged documents	8 months H.L.	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~20th~~ 10 day of ~~December~~ January 1942 R.E.Lucy Capt (R.E.Lucy)Capt.& Adjt ~~Cdn Fd Regt~~ R.C.A.

The above statement (with the schedule of convictions and of cases in which ~~trial was dispensed~~ with) is read, marked ..... signed by the president, and annexed to the proceedings.

CC-130 (Case #2)
GNR HENNING D.W.
See V-108 for 1st case

H-12191 Gnr Henning, D.W.
1 C.A.R.U. 66-130

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this SIXTEENTH day of APRIL, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "C" GROUP, CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY, OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *and that it is not practicable to delay the trial for "JCS" reasons by superior qualified officers;

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named appointed or detailed hereunder.

* Omit if not applicable.

*I am unable to appoint:—

*Three Officers to form the Court;

*A Field Officer as President "JCS"

*Three Officers having more than one year's service;

for the following reasons, namely:—

Proceedings Reviewed "A" E. Wall Major for Reviewing Officer JAG CMHQ 5 MAY 43

President.

Rank.	Name.	Regiment.
LT/COL.	D. L. REDMAN, VD	H.Q. C.R.U.

Members.

Rank.	Name.	Regiment.
CAPTAIN	B.W.S. WOOD, RCA	3 CARU
LIEUT.	E. F. FINNINGLEY, RCA	3 CARU
A/CAPT	R. D. FALK, RCA (Waiting Member)	3 CARU

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed "J. C. Stewart" Brigadier,

Commanding "C" Group, Cdn. Rft. Units
Convening Officer.

"D. L. Redman" Lt.Col.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
H-12191 GNR HENNING, D.W. (RCA) 1 C.A.R.U.	FIRST CHARGE A.A.S.o 36(2)	Not Guilty	Guilty Sentence To undergo detention for a period of ninety (90) days 19th April 1943 "DLR"	Confirmed "J.C.S."
	See charge sheet attached			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— NO

(Signed) "J. C. Stewart" Brigadier — (Signed) "D. L. Redman" Lt. Col.

Commanding "C" Gp Cdn Rft Units — *President.*
Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 19th day of April 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The interpreter~~ The shorthand writer
4. The officers under instruction)

* Omit if not applicable.

DLR *( )

were duly sworn.

Signed this 19th day of April 1943.

"D. L. Redman" Lt. Col.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1939.

~~I certify that the terms of s.s. [illegible] of 1940 have been complied with.~~

~~Signed this day of 19~~

DLR *President of the Court Martial.*

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~"I direct that the soldier named in the margin be not committed to prison until further orders."~~ "JCS"

Signed this 23rd day of April 1943.

"J. C. Stewart"
"J. C. Stewart" Brigadier
Confirming Officer. Commanding "C" Group
Cdn Reinforcement Units

Promulgated and extracts taken in the case of H.12191 Gnr. Henning D.W.

(a) (Dated) 24 April 43 (Signed) L H Musgrave Col
C O I C.A.R.U.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The Accused, H.12191 Gunner Henning D.W., Royal Canadian Artillery, on the strength of "P" Training Wing, No. 1 Cdn Artillery Reinforcement Unit, a soldier of the Canadian Army (Overseas) is charged with WHEN ON ACTIVE SERVICE:

ATTEMPTING TO COMMIT SUICIDE

1st Charge
A.A.S.-c.
36(2)

in that he, at No. 15 General Hospital, on the 8th Feb 43 at approximately 2215 hrs., with attempt to commit suicide cut the volar surface of his left wrist.

Dated at Bordon, Hants.,
27th March 1943.

"T. H. Musgrave"
(T. H. MUSGRAVE) Colonel,
Commanding Officer,
No. 1 Cdn Arty Reinf Unit, R.C.A.

To be tried by Field General Court Martial

"J. C. Stewart" Brigadier
Commanding "C" Group, Cdn. Rft. Units
(Convening Officer)

Bordon, Hants.,
16 April 43

"D. L. Redman" Lt. Col.

MFB 246

MEDICAL OFFICERS CERTIFICATE

K. R. (CAN) PARA 557

I certify that I have, this morning, examined No. H-12191 GUNNER HENNING D. W. of No. 1 Cdn. Arty. Reinf, Unit and in my opinion he is fit to undergo Trial by Court Martial.

Station

Date 19 apr 43

"J. Anderson" Capt
Medical Officer No. 1 C.A.R.U.

"D. L. Redman" Lt. Col.

TRANSCRIPT OF EVIDENCE

In the case of H 12191 Gnr. HENNING D. W., 1 CARU held at Superior Camp Ludshott, Hants., on the 19th day of April, 1943.

The Order convening the court, the charge sheet, the summary of evidence and the medical certificate are laid before the court.
The court satisfy themselves as provided by Hs.P.22 and 23.
The accused is brought before the court.
Prosecutor:- Lieut. P. H. Armstrong, 1 CARU
Defending Officer:-Lieut. P. A. Itter 1 CARU
At 1430 hours the trial commences.
The order convening the court is read, signed by the president, and attached to the proceedings.
The names of the president and members of the court are read over in the hearing of the accused, and they severally answer to their names.
Do you object to be tried by me as president, or by any of the officers whose names you have heard read over?
A. - No, sir
The President and Members are duly sworn

President:	LT.-COL. D. L. REDMAN, V.D.	H.Q., C.R.U.	
	CAPTAIN B.W.S. WOOD,	R.C.A.	3 C.A.R.U.
	LIEUT. E. P. PINNINGLEY	R.C.A.	3 C.A.R.U.

The following officers under instruction are duly sworn:-

Lieut. W.M.Ramsberry	1 CARU	Lieut. D. C. Ricardo	1 CARU
Lieut. R. J. Staples	1 CARU	Lieut. J. M. Roule	1 CARU
Lieut. J. M. Church	1 CARU	Lieut. D. C. Bragg	1 CARU

Do you object to H 20133 Pte Millard, R. acting as shorthand writer?
A:- No, sir
The shorthand writer is duly sworn.
The charge sheet is signed by the president, and annexed to the proceedings
The accused is arraigned upon the charge in the above-mentioned charge sheet and pleads NOT GUILTY to the charge against him
R.P.39(A) complied with

Opening address by the Prosecutor:-
The charge before the court is a serious one, and if you find the accused guilty on this charge, it will be necessary to find that the accused cut his wrist with intent to take his own life. Evidence has been taken from persons who were on the scene at 15th General Hospital where the accused was a patient, and from persons who were in the room and it is on this basis that the charge has been laid. A Medical Officer will give evidence as to the state of mind this man was in at the time this offence was attempted.

1ST WITNESS FOR THE PROSECUTION:- H.16490 Pte. BEVERIDGE, E.R. 15th C.G.H. sworn, is examined by the prosecutor:-
Q1:- Do you know the accused?
A1:- I do sir, (pointing tothe accused)
Q2:- Where do you remember seeing him?
A2:- At 15th C.G.H., Bramshott, on the 6th of February I first saw him
Q3:- Did you have any conversation with him?
A3:- Yes, sir, regarding wives, sir. It was either on the 6th or 7th of February, I came in to find Henning there and we discussed wives. He said he was having trouble with his wife, and I said I was having trouble with my wife back home. Pte. Henning brought out a letter and I got quite a shock when I saw this letter that Pte. Henning had, as it was very identical to my own wife's handwriting. After some discussion in this matter, I spoke to the accused and asked him if he would mind, to clear the doubts in my mind, if he would let me describe my wife, her friends, mother, and just where she lived, which the accused agreed to. It coincided perfectly with Pte. Henning's wife. This being so, we both came to the conclusion that we were both married to the same woman. Pte Henning came to that conclusion from the details which I gave him. He said "that is the exact description of my wife and her friends". Unfortunately neither one of us had a photo, and we could not prove it, and as I told the accused at that time, not to jump at conclusions in case we were wrong, it would spoil his life. The Government has checked up, and she has had two children by another man, but I have had no final definite proof that my wife has been married before to Pte. Henning and myself. Pte. Henning afterwards then was quite shocked by it and I myself was severely shocked, as I had known her about a year before. On or about the 8th of February the accused could not eat anything nor hold any conversations with me. Pte Henning had taken this seriously. In fact

very seriously at the time. I told him that I did not think it advisable to take the matter in such a way unless we were both positive of such a thing. It was on the night of 8-9th of February before midnight I was awakened by the footsteps of a guard coming over to Pte. Henning's bed. When I looked over to the bed it was empty then.
Q4: - Did you see anything?
A4:- I saw nothing but the guard and the sister by the bed, sir. Pte. Henning was not there then
Q5: - Did you notice the condition of the accused's bed or the floor or furniture?
A5: - There was quite an amount of blood on the floor, and also on the sheets of the accused's bed
Q6: - Was there any fighting or struggling that night?
A6: - I saw nothing of that
Q7: - Do you know what time the lights were put out that night?
A7: - Between 10 and 1030 sir. I tender to the court a photo of my wife

PHOTO OF BEVERIDGES WIFE MARKED EXHIBIT I

Defence declines to cross-examine this witness.

2ND WITNESS FOR THE PROSECUTION:- G 17556 PTE. MOORE, R., 15th C.G.H., sworn Is examined by the prosecutor:-
Q8: - Do you know the accused?
A8: - Yes sir
Q9: - Do you remember where you saw him before?
A9: - Yes, sir, I saw him in ward SJ at 15th C.G.H. sir, on the night of the 8th of February at approximately 2300 hours, I was on guard duty at ward SJ. Pte. Shangro informed me that there was some trouble. I stood over the entrance there to keep watch on the ward while I notified the sister in charge that night. The sister came down to the ward and turned on the lights. I saw Henning lying on his bed with a gash in his wrist. He was lying with his left hand hanging over the bed, and I noticed blood on the floor. The blood was coming from his wrist, and I saw a gash in his left wrist. The sister and myself removed the locker from Henning's bed and his small kit, etc.,
Q10:- Did you take any notice of any articles in that kit?
A10:- No, sir, I did not
Q11: -Was there any noise or commotion that night?
A11:- It was very quiet that night. There was a movement after lights out. Henning went to get a light for a cigarette. He appeared to go in the direction of Shangro's bed. I saw the light of the cigarette. That was about 15 minutes before the lights were turned on the again
Q12:- What time did the lights go out for the night?
A12:- From 1020 to 1030 sir

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q13:- You say you heard some commotion, what was that?
A13:- Well, a movement, sir
Q14:- But you did not see anything
A14:- There was a light in the hallway, which shows any movement
Q15:- You were sent for help
A15:- As soon as I was notified that somebody had cut their wrist
Q16:- But you did not know that?
A16:- No, not till after

3RD WITNESS FOR THE PROSECUTION:- C 40296 GNR. SHANGRO, P.J., 15th C.G.H., sworn, is examined by the prosecutor:-
Q17:- Do you recognise the accused Gnr. Henning?
A17:- Yes, sir
Q.18- Where do you remember seeing him?
A18:- In Ward SJ Bramshott Hospital, on February 8th
Q19:- What happened then concerning the accused?
A19:- On February 8th at approximately 2230 hours, the accused came to me and showed me his wrist, which had been cut, and wanted to know what to do. I immediately informed the guard, who informed the nurse
Q20:- Did he explain to you how his wrist had been cut?
A20:- No, sir, no explanation whatever
Q21:- Do you remember any noise or struggling in the area of his bed at the time?
A21:- No, sir
Q22:- Were the lights out at the time?

A22: - Yes sir
Q23: - Then how could youtell he cut his wrist?
A23:- I struck a light to light his cigarette, and could see his wrist. He went back to his bed. I informed the guard and I informed the nurse. The nurse and other people came and took him away

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q24: - Did Henning ask you for help when he came to you?
A24: - Yes in a way, sir
Q25: - That is what he meant?
A25: - Yes, sir

4TH WITNESS FOR THE PROSECUTION:- MAJOR J.R.F. MILLS, 15th C.C.H., sworn, is examined by the prosecutor:-

Q26: - Do you recognise the accused, Gnr. Henning?
A26: - I remember seeing him, I only saw him once, and am not certain I would know him again. I was attached to 15th C.C.H. for a time. I believe I tended to Gnr. Henning on February, approximately the 8th
Q27: - What time of day was that?
A27: - It would be approximately 11.30 at night. He had a laceration to his left wrist
Q28: - Do you remember any explanation being given as to how the wrist was cut?
A28: - Gnr. Henning had a laceration about 1½ inches long, slightly irregular It was just through the skin, it was not very deep. That was on the volar surface, the other surface on the wrist is the dorsal surface
Q29(Pres) Are there any arteries or veins near the volar surface?
A29: - Yes, radial arteries, and some tendons and muscles going to the wrist and hand. It was just through the skin. I did not see any vital structures reached or exposed by the laceration.
Q30: - If the radial artery had been severed, what would the consequence have been?
A30: - I don't think it would make any difference. It could possibly have ended in death, though I have never seen any die that way, even if it had not been controlled. It is quite possible that had a radial artery been cut it may have clotted before it lost too much blood to prove fatal
Q31: - Were any articles found in the accused kit?
A31: - There was a sealed letter turned over to me
Q32: - Did you read that letter?
A32: - I did
Q33: - Can you tell me whether or not that is the letter?
A33: - Yes I believe that to be the letter I read that night. I recognise some of the phrases and peoples names. Yes, I believe it to be the letter

Defending Officer:- I think it is up to the prosecution to prove that this letter was written by the accused, and it certainly looks to me as though the first page is missing. No one would start to write a letter right at the top of the page.

Q34: - Who found this letter?
A34: - Some one of the attendants handed it to me, I believe it was one of the nursing sisters

The prosecutor said that the nursing sister and S/Sgt Sparks knew about the letter, but that Sparks could not be here to give evidence today, due to hospitalization. An attempt was made to obtain this witness, but the hospital authorities advised against it

QUESTIONED BY THE PRESIDENT

Q35: - Were you the only medical officer present in the ward at the time this happened?
A35:- I did not see him in the ward, I saw him in the operating room
He did not say anything to about the letter
Q36: - You had no discussion with him about the letter?
A36: - I do not recall having questioned him, he may have said something about it, I don't recall any definite conversation.
Q37: - Will you tax your memory about this letter, it is very important
A37: - I remember it being handed to me, I believe by a nursing sister, and opened it up in the presence of the nursing sister. I certainly did not have any lengthy conversation about it
Q38: - It is a very important thing, this letter

A38: - I know, sir
Q39: - Are you satisfied you cannot go any further than that?
A39: - I think I saw the accused medically on that night, and I do not recall going into the details with the accused about the letter.

Prosecutor:- I suggest that the court compare the signature on that letter with the signature made by the accused on the statement requesting an officer be appointed to represent him at this trial, which statement is included in the summary.

President: - Defending Officer, I am very much inclined to let this letter in as an exhibit (To Pros) Have you the accused's pay book?
Pros: - I have one part with the accused's signature on it
Defending Officer: - Those were the only two reasons I had for objecting to it, proof that it was the accused's handwriting, and the fact that one page is obviously missing
President: - There seems to be no sound reason for keeping it out
The court will admit the letter, and it marked Exhibit 2

Q40: - Can you remember whether the two sheets were beatiched when you saw them?
A40: - I do not recall one being there, sir
Q41: - Can you remember how many sheets there were in the letter you saw?
A41: - I am sorry, I don't remember, sir, It was in a white envelope; I am not sure if it was an Auxiliary envelope or not. I gave it to one of the nurses for safe-keeping, when I went to suture the wound

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q42: - To your knowledge, did the accused seem to be in any mental condition when you examined him?
A42: - He was very quiet, and did not speak at all. I did not go into any examination of him at that time as to his mental state. He did not exhibit any mental condition as far as I could see
Q43: - Did you not think it unusual for a man not to say something while you were treating him?
A43: - I think he knew what he was coming there for, and expected it. I did not feel that I should broach the matter any further that night, having read the letter, I purposely avoided any reference to it.

5TH WITNESS FOR THE PROSECUTION:- NURSING SISTER A.E.PRESCOTT, 16TH C.G.H. sworn, is examined by the prosecutor:-
Q44: - Were you attached to 16th General Hospital for a time?
A44: - I was
Q45: - Do you know Gnr. Manning, would you recognise him?
A45: - Yes, I recognise him here
Q46: - Do you remember attending him at any time?
A46: - I was on night duty while he was a patient there. I was in charge of ward 8J. About supper hour, one of the guards came over and told me that one of the patients in 8J ward was in trouble. That was about 11.15 P.M. We went and put the lights on, and we found the patient with his arm over the bed, he was bleeding. I applied first aid, and called the medical officer, Major Mills. Major Mills took him to the operating room
Q47: - What part of the accused was bleeding?
A47: - His wrist. Did you see anything there to indicate how it might have happened?
A47: - There was a razor blade on the floor. It was broken. It was on the floor in a pool of blood
Q48: - Was any explanation given as to how the accused's wrist was cut?
A48: - No
Q49: - Did you see any other articles there belonging to the accused?
A49: - Just his bedside belonging, on his table
Q50: - You remember nothing about them?
A50: - No
Q51: - Did you see a letter relating to the accused?
A51: - Yes. It was given to the night supervisor. I did not see the letter till after, when it was shown to me by the night supervisor. That was miss Carsons
Q52: - Do you remember how many pages there were?
A52: - No, I don't. It was red ink, I think. I could not say how many pages it was. I read it over very hurriedly, and could not be sure what it looks like

Q53: - What time were the light turned out?
A53: - About 10.30
Q54: - Do you recognise this letter, exhibit 1, is this the letter you read?
A54 (Witness read the letter) I think it is the same letter, yes this is the letter
Q55: - How can you tell that?
A55: - I remember parts of it

Cross-examined by the defending officer

Q56: - Can you give some explanation as to how the accused's wrist was cut?
A56: - I don't think I could. His wrist was cut, but I could give no explanation as to how it was cut.

5TH WITNESS FOR THE PROSECUTION: CAPTAIN C.H.GAUDRY, Attached 15th C.G.H., sworn is examined by the prosecutor:-
Q57: - Do you know the accused?
A57: - Yes
Q58: - In what capacity are you attached to 15th C.G.H.?
A58: - As regional neurological physciatrist
Q59: - Did you attend the accused?
A59: - Yes on the 10th of February. He gave evidence of belonging in a group of phycopathic personalities, and he was mildly depressed. That is really the extent of my diagnosis
Q60: - Was there any indication of how long such a state might have existed?
A60: - It impressed me as long standing condition. The depression is more temper He was depressed when I saw him. Apparently the depression had existed some days. The implication of the dignosis of phyciatric personality is a tendence to act injudiciously, showing instability, easily disturbed emotion, containing a tendency to act impulsively.

CROSS-EXAMINED BY THE DEPENDING OFFICER

Q61: - Could that impulsiveness of a man result in an act to attract attention to himself?
A61: - It might be
Q62: - It is not necessarily an attempt at suicide that the accused is charged with in this particular instance?
A62: - I cannot say whether or not this attempt was genuine or intentional, or how strong the purpose of suicide, or whether it was just to make a gesture, I could not say

RE/EXAMINED BY THE PROSECUTOR

Q63: - Would your examination show the degree of responsibility of the patient, or the sense of responsibility implied by the condition?
A63: - It is a matter of opinion

7TH WITNESS FOR THEPROSECUTION:- CAPT. H. P. MARSHALL, RCAPC, 1 CARU, sworn Is examined by the prosecutor:-
Q64: - What unit are you stationed with?
A64: - No. 1 Paymaster, 1 CARU
Q65: - Can you identify this book?
A65: - As far as I know, it is the pay book of the person whose name it bears, that is, Gnr. Henning. It bears my signature
Q66: - It is customary for the soldier to putnhis signature on a certain page of that book?
A66: - Yes, it is compulsory. On page 6 of this pay book the man's signature appears. If a paymaster is in doubt, he gets the man to sign on a slip of paper
Q67: - Would you go so far as to say that if that is not his signature it is a forgery?
A67: - Yes, sir, I think I would say that. In accordance with the regulations, in the ordinarly course of events, the signature on page 6 should be the signature of the owner, in this case, the accused, unless it has been improperly put there by someone else

DEFENSE DECLINES TO CROSS-EXAMINE THIS WITNESS

Accused's paybook Marked Exhibit 3

8th WITNESS FOR THE PROSECUTION:- B 16602 L/BDR HILL, J., 1 CARU, sworn, is examined by the prosecutor:-
Q68: - Have you ever seen this document before?
A68: - Yes, sir, I took it down for Gnr. Henning to sign in the guardroom
Q69: - Did you see him sign it?
A69: - Yes, sir

Q70: - Whose signature is that?
A70: - To my knowledge it is Gnr. Henning's signature

Statement of accused in accordance with R.P.14(B) bearing accused's signature marked exhibit 4.

cross-examined by the defense
Q71: - Did you actually see him sign it?
A71: - Yes, sir, right in my presence

CLOSE OF CASE FOR THE PROSECUTION

Defending Officer:-

I move to have the charge dismissed, because a prima facie case has not been established. There is only one fact before the court, which is the letter. It has been proven to a certain extent that it was written by the accused. For the rest of the evidence, you have heard evidence which only shows that Gnr. Henning had a cut on his left wrist. There is no proof from any witness that he cut his wrist, neither is there any witness who had supported a charge of attempted suicide, therefore I submit to the court that this charge should be dismissed.

Prosecutor:-

As to say the accused cut his wrist, I would say that the consensus of what the witnesses say is that it happened about 2300 hours, so that the room was dark, and it would be difficult for anyone there to see him do it. We have this much from the evidence: the patient lying in bed with his wrist bleeding, his wrist was cut, and there wasblood on the floor, and blood near his bed. There was no noise or struggling amonth the patients to indicate he was fighting with anyone, no explanation from theaccused, and this is strongly suggestive that the accused cut his wrist. As to attempted suicide it is not for anyone to say that. There must be facts before the court, to let the court infer for themselves. That is what has to be established for the court to infer for themselves, whether suicide was attempted or not.

Defending Officer:-

The prosecutor implied that we should consider this case on suggestions. On my limited knowledge of law, a man can only be convicted on facts or very strong circumstantial evidence, of which we have neither here

The court is closed to consider the application

The court re-opens, and the president annnounces that the application is not allowed.

R.P. 40(A) note 2 complied with, and the defending officer stated that he did not wish the accused to give evidence under oath, as he would break down too easily, but that he would make a statement not on oath.

Statement by the accused:-

As far back as I can remember sir, I don't remember my mother at all. I remember living with my father and brother, who had to work during the day and another lady used to look after us. We did not see much of him. This was in Winnipeg. When I was about two years old mother died on account of Scarlet fever. My father definitely held that against me, and gave me that impression all the time. I started to school, and did not like mixing with anyone. I used to play hookey quite a bit. I used to get clothes handed down from otherpeople, and resented that other people could have things, and I could not, so I started to steal. When I was about 11 or 12 an insurance man came to live at our place, and I had a stepmother then, and she beat me for playing hookey from school. I ran away once when I was 10. This insurance man was staying at our house, and he missed a large sum of money from his room. I was blamed for it, andwas taken to court, and did two years in the reformatory. I was let down on that. I had to do something, so I stole small things and was sent back for another two years. I got about two months off. I came out, and was sent back again for two years. The third time I came out my stepmother would have nothing to do with me. I could not get a job that I could stick to on the farm. I met some fellows and went to Portage and stole a car and broke into a clothing store to get some clothes, and got two years in the penitentiary. When I came out my people said they were through with me. I joined the army, and went to the same unit as my brother. My father heard I joined the army, and took me back home, and then I met my wife. From the time I met here, I had never been so happy in my life. I had a friendship that I had never had before. I came overseas in 1940, in December. As soon as I left my wife I started drinking again. I just lose control over myself. I got over here and had two M.C. accidents. I went AWL a couple of times, but twice came back myself. After being away for awhile, I thought about my wife and came back. I was grounded for all M.T. vehicles for the accidents in 1941. The last time I was away, I was away 46 days, and was arrested in Scotland. I got in trouble and was sentenced to 8 months hard labor. My wife stuck to me, wrote me, and sent me mail. I escaped from the Provost corps and then handed myself in to 1 CARU. I was court-martialed for AWL and given 180 days detention. When after serving 2 or 3 weeks of my sentence I got appendicitis and went to Bramshott, where I met Beveridge. He started talking to me, and he saw one of my letters, and asked where it was from, saying the writing was familiar, and asked if he could read it, and I said "Yes". He said it looked like his wife's handwriting. He said his wife came from the same place as mine, and his brother in law and mother in law were the same. Everything fitted perfectly. When I decided that this man was married to my wife too, I asked for the padre on Saturday morning, but he did not come, and I could not eat or anything. I wanted to convince them that I was in earnest. I did not intent to take my life. I just wanted to be able to see my wife

Accused submitted a photo of his wife, which was annexed to the proceedings.

1ST WITNESS FOR THE DEFENSE; CAPT. H. LEWIS, P.S.C., I C.A.R.U. sworn, is examined by the defending officer:-

Q'72: - I ask you to recall Saturday, the 8th of this month, tell the court what happened that day

A'72: - On Saturday the 8th of April I administered the "G" test to the accused, in which he scored 153, grade C, quite above the average for the ranks in the army. We filled out a qualification card "Q". During the course of the interview I elected a certain amount of information from him which led me to believe that his was a case of mal-adjustment. I also administered a test which has not been standardized yet, which brought out to my satisfaction the fact that the accused's response indicated something which is diagnosed as pathological personality

PROSECUTION DECLINES TO CROSS-EXAMINE THIS WITNESS

2ND WITNESS FOR THE DEFENSE:- CAPT. C.W. MCCORMACK, RCAMC, "O"Group, sworn Is examined by the Defending Officer:-

Q'73: - When you had this case brought to your attention, you looked at a let of the evidence, and drew certain conclusions, tell the court about that

A'73: - In a case of this kind, there are certain times when a man may be depressed below the average, when he may do things for which he is not res-

ponsible. I think in Gnr. Hannings case there are strong indications that this was so.

Q74: - Tell the court, is there a possibility, wholly or partially, or curing this case by home life, steady job, proper environment, and proper supervision?

A74: - Yes, I think that is the only way to get an improvement or cure to a certain extent.

PROSECUTOR DECLINES TO CROSS-EXAMINE THIS WITNESS

Closing address by the defending officer attached hereto:

Closing address by the Prosecutor:-

I am sure you are all agreed that this case is one which calls for a remedy. Much of the evidence we have just heard from the defending officer would be much better said in mitigation than on the facts of the finding. No one can say what the accused's intent was. On the evidence of what happened, I submit that the court may find the accused guilty of cutting his wrist with intent to take his own life. It rests with the court, if they find the accused guilty, to attempt whatever remedy they may.

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE FINDING

The court re-opens, prosecutor presented to the court AFB 296 and MEM 6 stating that they both referred to the accused
R.P. 46 (B) complied with, and neither the accused nor defending officer had any objection to these two documents.

Pursuant to R.P. 87(C) the defending officer stated that he would call two witnesses as character reference

1ST CHARACTER WITNESS:- H/CAPT. S. D. RIGES, Padre, 1 CARU' sworn, states:
I was called to the guard room to visit the accused, he had returned from the detention barracks. I found him in considerable distress, but as time went on I got his confidence. He was a man who wanted to find friends, and his work could be taken. He was treated very well and allowed to go out of the guard room in the evenings to a show, and he never abused the privilege. I think he was happy when he was at home. He leads a respectable and useful life with his wife at home. I think it would be beneficial to him and to the court and to all of us if we could return him to that life, and I feel sure that he could be re-established.

2ND CHARACTER WITNESS:-B 6323 S/SJT COCKER, F, 1 CARU, sworn, states:-
Gnr. Henning has been detained in the unit guard room for approximately 26 days and his behavious without exception, has been excellent

D.C. - I think I have covered everything pretty well, and I have nothing to add in mitigation to the character evidence which was given

R.C. 3262 complied with

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

"D. L. Redman" Lt. Col.

In summing up it will not be necessary, I'm sure, to go over the evidence again which you have now had presented to you. I feel too that I have proven beyond a doubt why the accused should not be found guilty, but I would like to direct the attention of the court to certain salient features in the life story of the accused which have a direct bearing on the situation in which we find him today.

I am convinced, and am assured by much competent medical opinion that this man presents a case of serious maladjustment. Here are the contributing factors. At the age of two years by her death he was deprived of the greatly needed care of his Mother. She contracted scarlet fever from him, and as the lad grew up he came to feel that in some way he was guilty of causing the death of his Mother. His father, unreasonably and cruelly persisted in laying this charge upon his son. You can, I'm sure, appreciate the effect this would have on a young boy's mind. Instead of guidance and inspiration, such as most of us have enjoyed, there was an insidious persecution, and the gradual driving home of a conviction of guilt. The father married again and the last state was perhaps worse than the first; the bias against the young boy was never removed, and a steadily increasing resentment grew up between the boy and his home, fostered by the unreasoning and harsh attitude of the stepmother. It is known that at an early age the accused was made to stand punishment for a crime for which his stepmother claimed him to be responsible.

It is hardly conceivable, gentlemen, that a youngster could grow up in an atmosphere of this sort and not have his mind seriously injured. Now the evidence of the psychiatrists shows that this man is, and moreover has been for years, mentally ill. Therefore, it should be clear to all of us that this man needs our help, and I know that when you are convinced of this you will give your help most generously. I feel that were I in the position of the accused at this moment I should discover in myself, after a long and anxious wait, a growing confidence in the outcome of this court-martial. Let me say at this point that the conduct of the accused, since he was first detained in the guard room upon his return to this unit, has been both cooperative and exemplary. When he finds people he can trust he accepts direction from them, and I am disposed to lay stock in his given word.

Now he does, I am sure, trust this court. We are here, all of us in his interests; otherwise there would have been no court-martial. He needs our help. What can we do to help him? Is a verdict of Guilty the answer? The answer must, most emphatically be "NO". Were a sentence of Guilty to be returned, the mental condition which must be cured if at all possible would greatly deteriorate and punishment would defeat its own purpose since it is an accepted fact that punishment should be a corrective process.

What then may be done to dispose of this case? Medical evidence has reboarded Gunner Henning Category "E". The natural consequence of this is that he should be returned to Canada. Capt. Gaudry's evidence points out that this man could be cured, if not wholly at any rate in part. The cure will be progressive under the proper influences and in the proper environment. The strongest influence for good in the accused's life is undoubtedly his wife. You may think perhaps that a woman who might (though there is no certainty of this) be married to another man, is not a fit companion for Gunner Henning's future life. I am disposed to think otherwise, and the Padre does not disagree. It has been proven without doubt that this woman took what was his life, and made it vital and directed it into the right path. She gave this man the social companionship, and the home that he needed. In his record it shows that as long as she had him in hand he lead a normal and straight life, and a happy one. This was a new experience I am fairly certain that a proper adjustment can be made in his domestic life and we are working to that end.

I remember Henning in the Winnipeg Training Centre in Canada. He was normal and applied himself well. It was obvious that when he was away from his wife for any length of time he was sometimes depressed. I could inject "Aren't we all?" She definitely had the capacity to re-establish a happy state of mind and judging by her letters I have ample evidence of her continued loyalty to him, and this at a time when she might have been excused and permitted some indifference. This has not been the case and

their correspondence one with the other has been regular and a bright spot i
a somewhat dismal period spent by the accused in this country.

We have to think of a positive way of making this man a useful citizen. It would appear that this man's usefulness to the Army has ceased for a time to exist. The problem which faced us at the outset was one of maladjustment to which we have found at any rate part of the answer. By returning a verdict of "Not Guilty" you set in motion the processes by which we have real hopes this problem will eventually be solved. Remember the medical evidence shows that given the proper environment this man's psychopathic condition can be adjusted. The proper environment is his home, the company of his wife, and a job under good supervision. We can establish this environment for him.

A verdict of "Guilty" will introduce the question of subsequent punishment which should not, I most earnestly plead be entertained by this court. Further it will retain this man within the framework of the Army when his Category "E" is the technical equivalent to a discharge and finally and most effectively will tie the hands of all those who seek to restore this man to the proud status of a good Canadian citizen. Of those who strive to this end I am sure each one of you wishes to be included. It will be to the lasting credit of this Court to have set this man's feet upon the road to a life of privilege and happiness for which wise act we shall retain his gratitude and trust.

Gentlemen, this is the case before you. I submit to you that in view of the facts now before you I trust that you will return a verdict of "Not Guilty"

It is certified that the following are not available for attendance at court martial proceedings on 19 Apr 43 for reasons stated:

Major H. B. Hough - not returned from leave. Apparently retained on Naval attachment

B 93545 S/Sgt Sparks W - detained in hospital on account of illness

"J. B. Neilson" Major
Registrar
15th Canadian General Hospital

19 Apr 43 "D.L.R."

T.15 - Pers. Henning D.W.

No. 15 GENERAL HOSPITAL
R.C.A.M.C.
CANADIAN ARMY OVERSEAS

13 Feb 43

Officer Commanding,
#1 Neuro. Hosp.

Re Enclosed Letter
H.12191 Gnr. Henning, D.W.

1. The m/n soldier was transferred in custody to your hospital on 11 Feb 43 from this unit.

2. While in this hospital he attempted suicide by cutting his wrists.

3. The enclosed letter was written by this soldier prior to his attempted suicide, and is forwarded to you for incorporation with his documents.

"J. B. Neilson" Major
(J. B. Neilson) Registrar

"D.L.R."

Received at
16 Feb 43
1 Neuro Hosp

P.T.O.

#1 C.A.R.U.

Herewith letter as requested

"R. Muir"
No. 1 Neuro Hosp

Ex 2 "D.L.R." EX 2

Please try and understand I am not a coward.

I did this because I can see nothing left for me to do. It is hard for me to put into writing the feeling I have in my heart, I don't believe anyone could explain it.

When I was back home I met and married a girl whom I loved, she to me was everything noone else could ever take her place. Whilst in conversation with one of the men he stated that the writing on one of my wifes envelopes looked familiar to him, soon I learned he knew all about my wife and later he told me he was trying to get a divorce from his wife. I soon learnt after speaking to him that they were the same girl.

Surely you can understand how I feel and why I have taken my own life. I am only one of many millions so I feel I shall not be missed and sooner than try to cause anyone any trouble I have decided to end it this way. Tell my wife I loved her to the last and right to the end I couldn't believe it to be true.

God bless you all. Regards to Mrs. Tucker and many thanks to her for her understanding and kindness shown to me when she learnt of my bad news. She is a wonderful woman.

Love to my brother now serving in the 6th Fld Regt R.C.A. in England

Good-bye to you all

H.12191 Gnr. D. W. Henning
13th Bty H Q
6th Field Regt R.C.A.

NIL

LIST OF EXHIBITS

STATEMENT OF ACCUSED IN ACCORDANCE WITH R.P.14(B)

I, H-18191 Gnr. Henning, D. W. No. 1 C.A.R.U., Can Army (Overseas) desire to have H/Capt S. E. Higgs, of No. 1 C.A.R.U. appointed to represent me at my trial by Court Martial if available, otherwise desire to have an officer assigned by the Convening Officer to represent me.

"D. W. Henning"
H-18191 Gnr. Henning, D.W.

Ex 3

"D.L.R."

LIST OF WITNESSES

PROSECUTION

1. Major H. B. Hough
2. H-16480 Pte Baveridge, E. R.
3. G-17556 Pte Moore, R.
4. L-12624 Pte. Neal, B. A.
5. Nursing Sister A.E. Prescott
6. C-4029 Pte Shangro, P. J.
7. H-92545 S/Sjt. Sparks, W. H.
8. Capt. J. H. F. Wills
9. Capt. C. H. Gundry
10. Capt. J. Anderson

DEFENCE

NIL

LIST OF EXHIBITS

NIL

STATEMENT OF ACCUSED IN ACCORDANCE WITH R.P.14(2)

I, H-12191 Gnr. Henning, D.W., No. 1 C.A.H.U., Can. Army (Overseas) desire to have H/Capt S. E. Higgs, of No. 1 C.A.H.U. appointed to represent me at my trial by General Court Martial if available, otherwise desire to have an Officer assigned by the Convening Officer to represent me.

"D. W. Henning"
H-12191 Gnr. Henning, D. W.

Exhibit 1

Snapshot of young woman presented by Pte. Beveridge

Exhibit 2

Snapshot of young woman presented by Gnr. Henning

"Gunner Henning has particularly requested that attached picture of his wife be returned to him after they have served their purpose

1 C.A.R.U

Army Form B.296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or as the case may be
H-12191	Gunner	Henning, D. W.	No. 1 C. A. R. U.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:

	Within last 12 months	Since enlistment
For AA S c 15(1)	3 times	4 times
A.A.S.c 22	1	2
A.A.S.c 15(3)		1
A.A.S & 24(2)		1
A.A. S c 11		1
Civil Theft	4	4
Fraud	1	1
Uttering forged documents	2	2

2. Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act are set out in the schedule annexed to this statement

3. The accused is not under sentence at the present time

4. The accused has been in confinement awaiting trial on the present charges for 0 days in civil custody and 24 days in military custody, making a total of 24 days, of which 0 days were spent in hospital

5. The present age of the accused according to his attestation paper is 22 7/12 yrs.

6. The date of his attestation specified in his attestation paper is 29 March 1940

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs

8. The accused is entitled to deferred pay or gratuity in respect of 3 yrs service

9. The accused is entitled to reckon 3 yrs service for the purpose of determining his pension, etc.

SCHEDULE OF CONVICTIONS BY A COURT MARTIAL OR CIVIL COURT OR SUMMARY AWARDS UNDER SECTION 47 OF THE ARMY ACT AND OF CASES IN WHICH TRIAL HAS BEEN DISPENSED WITH OF ACCUSED

No. H-12191 Rank Gunner Name Henning, D. W. of No. 1 C.A.R.U. Regiment

Description of court by which tried or status of officer disposing ofer dispensing with trial	Date and place of trial or summary award under AA 47 or of order, dispensing with trial	Charges upon which convicted or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the case
Civil	19 Jun 42 Edinburgh	(1) Theft (2) Obtaining board and lodgings by theft (3) Fraud	8 mos imprisonment with hard labour
F.G.C.M.	10 Jan 43 Field	(1) A.A.Sec.15(1) (2) A.A.sec.15(1) (3) A.A.S c.22 (4) A.A.S c 15(1) (5) A.A.Sec 24(2)	100 days det (20 days remit 19 Apr 43 "J.B.Killick"Capt

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody

M.F.M. 6
(A.F.B. 122)
40/P & S/136 (2637)

No. H12191 Name Henning D.W. | Sqn., Battery, or Company | Corps R.C.A. | Date of enlistment 29 Mar 40 | G.C. Badges | Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 2 | Signature O.C. Company, etc. E.Fleury Lt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	29 Apr 42	Gnr		AWL from 2245 hrs 29 Apr 42 to 2245 hrs 3 May 42 A.A.Sec 15(1)	Documentary	100 days detention	11 Jan 43	F.G.C.M.	Placed under stoppages of pay to the extent of £6-3-9 to make good deficiencies in kit
	4 May 42			AWL from 1100 4 May 42 to 30 May 42 A.A Sec 15(1)	BQMS Robson J				
	1 Dec 42			Escaping lawful custody A.A.Sec. 22					
	1 Dec 42			AWL from 0800 hrs 1 Dec 42 to 1410 hrs 2 Dec 42 A.A.Sec 15(1)					
	1 Jun 42			Losing by neglect public property A.A.Sec 24(2)					

Released from the Detention Barrack B. Down on Mar 24 1943 sentence having expired. Remission earned under "Rules for Detention Barracks and Military Prisons" 27 days

Commandant's Initials

(P.T.O.)

M.F.M. 6
(A.F.B. 122)
40/P & S/136 (2637)

No. H12191 Name Henning D.W. | Sqn., Battery, or Company | Corps R.C.A. | Date of enlistment 29 Mar 40 | G.C. Badges | Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature O.C. Company, etc. E.Fleury Lt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	25 Sep 41	Gnr		1. A.A.Sec 15(3) Found beyond limits fixed by Regimental Orders			17 Oct 41	Lt.Col.Tees	Forfeits 20 days pay for absence
				2. A.A.11 Neglecting to obey Regt'l orders failed to carry respirator and steel helmet	Bdr Smith Bdr Cameron Sgt Errington BSM McLean	27 days det'n			Forfeits 1 d pay for time in arrest
				3. A.A.22 Breaking open arrest					Forfeits 27 days pay whil in detention
				4. A.A.15(1) Absenting himself without leave 1200 hrs 25 Sep 41 until 1110 hrs 15 Oct 41 (Absent 19 days 23 hrs 10 mins)	"D. L. Redman" Lt. Col.				Total forfeiture 48 days pay E.F.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED TRUE COPY 30 Mar 43

"H. L. Thorne" Capt.
(H. L. Thorne) Capt. & A/Adj.
"B" Training Wing No1 C.A.R.U

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19 Jun 42	Gnr		(a) Theft while acting in concert (4 charges) of in alia suitcase gent's suit, a portable radio, two waterproof coats, etc. (b) Fraud (1 charge) Obtaining board and lodging to the value of £3.1.6 (c) Uttering forged documents (2 charges) Held in civil custody from 1340 hrs 30 May 42 until 1000 hrs 19 Jun 42 (19 days 20 hrs 20 mins)	Documentary	8 mos hard labour	19 Jun 42	Civil Court	Forfeits 20 days pay while in custody. Forfeits 245 days pay. Total forfeiture 265 days pay E.F.

RRR-56

PTE HENRI AJ

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-11596 Private Alfred Joseph HENRI - 1 CASCRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 18(4)	guilty	guilty	
2nd	AA Sec 24(4)	guilty	guilty	
3rd	AA Sec 18(2) (alternative)	guilty "AOA"	Not guilty	
4th	AA Sec 40		guilty	
5th				
6th				

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~The Court's order is to run~~ beginning on (date) ~~[illegible]~~ (1) "AOA"

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under 62.)

Sentence Awarded by the Court: To undergo xxxxx "AOA" detention for a period of 18 months

(Sgd) ---------- Judge-Advocate, if any. 30 May 44 Date awarded. (Sgd) "A.O. Allan" President (RP 45, 80.) A/Major

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 128(5), MML p 760.)

Date ---------- (Sgd) ---------- Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 57(D) fn 6/46(A), 51-56, 120, MML pp 758-761, KR Con 567-577. Inquiries require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 128(2). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 58A 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence(s) set forth in Part I is:

I confirm the findings / and sentence "JRS" of the Court but remit six (6) months detention.

~~I WISH THE ACCUSED TO BE ORDERED TO PAY OR TENDER THE COST OF THE~~ "JRS"

(1. AA 57A. Delete if not used.)

(Sgd) "J.R. Stewart Lough"

Date 1 Jun 44 Commanding D Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
C11595	Pte. Henri A.J. 3 Jun 44	"A.T. Dixon" (A.T. Dixon) Major

"? M.Gibbons" Lt. Officer i/c Records

Part II Order 134 d/8 Jun 44. 1 Cdn ASC Rft Unit

Can Sec Base, Part I

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 RRR 56

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA3) 40/P & S/160B (39604)

Convened by Order of Brig. J.R. Stewart Lough Comd "D" Gp CRU dated 29 May 44

ACCUSED.

"AOA" (As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C-11595	Pte.	Alfred Joseph	HENRI	1 CASCRU

PROCEEDINGS REVIEWED 13 Jul 44 "K.G. Morden" Lt-Col. Reviewing Officer, JAG Branch CMHQ

Certified true copy of original proceedings herein. [signature] Received 26 Jun 1944 JAG Branch C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 30 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~missing Members, state if any, and Other names, state if any, amendable, and the~~ "AOA" Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A91, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and "AOA" each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1330 hours trial commences. "AOA"

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ "AOA"

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to the interpreter~~ Do you object to L25209 Sgt R.S. Powley shorthand writer? Ans No "AOA"
~~The interpreter is sworn.~~ The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~the Judge-Advocate, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc: "AOA"

President	A/Major	A.O. ALLAN	1 CASCRU
Member	Capt	H.H. MacKAY	1 CASCRU
Member	Capt	A.F. MILNE	1 CASCRU
Judge-Advocate		----------	
Prosecutor	Lt.	J.E. MILLER	1 CASCRU
Defending Offr	Capt	T. McELVOGUE	1 CASCRU

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dl p 2.)

A8. The accused C11595 Pte. Alfred Joseph HENRI before arraignment makes(s) (no) ~~application~~ plea. "AOA" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 52(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP 108. Insert in AB each and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. "AOA"

(1. RP 31, 112. See paras 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A8s to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; securing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-86; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(B) fn 6; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

"AOA" B1. The President ~~reads the charge~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

"AOA" B3. ~~The President reads the prosecutor's statement to the accused and asks him if he wishes to produce any witnesses to prove his plea of guilty to Not Guilty on the charge(s). The prosecutor is not sworn and no cross-examination of those witnesses on the charge(s) dealt with in the Schedule is allowed at this stage.~~

(1. Court may be closed to consider the statement. Delete whole or part not used.)

"AOA" B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex. "B", initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded ~~GUILTY~~ "AOA" are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B before.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereof proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 35(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para. If submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 741 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. ..... Do you intend to call witnesses on your behalf ?

Ans. ..... Are they witnesses as to character only ? Ans. .....

(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CP 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Make the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42. 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(2) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. No

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~ of Conduct Sheet(~~s~~)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport "AOA" to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. "C" and Ex. "D" respectively.(3)

(1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(~~s~~) and Conduct Sheet(~~s~~), and in "AOA" mitigation of punishment ?(1) Ans. Yes (2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and his full address given~~. "AOA"

(1. When several accused tried separately see RP 108. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 66(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"AOA"

CHARGE SHEET

The accused, C-11595 Pte Alfred Joseph HENRI on strength of 1 Cdn ASC Rft Unit, a soldier of the Canadian Army Overseas, is charged with, When On Active Service:-

1st Charge
A.A. Sec. 18 (4)

STEALING GOODS THE PROPERTY OF A PERSON SUBJECT TO MILITARY LAW

in that he

in the Field, at approximately 1230 hours 20 May 1944 stole a number of loose packages of cigarettes the property of D-139931 Pte Boysen, J. on strength of 1 Cdn ASC Rft Unit.

2nd Charge
A.A. Sec. 24 (4)

WILFULLY INJURING PUBLIC PROPERTY ON CHARGE TO ANOTHER PERSON SUBJECT TO MILITARY LAW

in that he

in the Field, at approximately 1230 hours 20 May 1944 did wilfully slit open a kit bag on charge to D-139931 Pte Boysen, J. on strength of 1 Cdn ASC Rft Unit. (Cost of damage £0-4-7).

3rd Charge
A.A. Sec. 18 (2)

WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

in that he

in the Field, at the Unit Guard Room of 1 Cdn ASC Rft Unit at approximately 1615 hours 21 May 1944, when under close arrest, injured himself by cutting his wrists with a razor blade or such sharp instrument with the intention of thereby rendering himself unfit for Active Service.

4th Charge
A.A. Sec. 40
Alternative

AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, at the Unit Guard Room of 1 Cdn ASC Rft Unit at approximately 1615 hours 21 May 1944 when under close arrest did injure himself by cutting his wrists with a razor blade or such sharp instrument.

"H.P. Bonnick"
(H.P. Bonnick) Colonel,
Commanding,
1 Cdn ASC Rft Unit

In the Field
25 May 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"J.R. Stewart Lough"
(J.R. Stewart Lough) Brigadier,
Commander "D" Group,
CANADIAN REINFORCEMENT UNITS.
Convening Officer.

In the Field
28 May 1944.

"AOA"

CHARGE SHEET

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4th Charge A.A. Sec. 40 Alternative

AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, at the Unit Guard Room of 1 Cdn ASC Rft Unit at approximately 1615 hours 21 May 1944 when under close arrest did injure himself by cutting his wrists with a razor blade or such sharp instrument.

In the Field
25 May 44

"H.P. Bonnick"
(H.P. Bonnick) Colonel,
Commanding,
1 Cdn ASC Rft Unit

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"J.R. Stewart Lough"
(J.R. Stewart Lough) Brigadier,
Commander "D" Group,
CANADIAN REINFORCEMENT UNITS.

In the Field
28 May 1944.

Convening Officer.

"AOA"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C-11596	Pte.		Alfred Joseph	HENRI	1 CASCRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 29 May 44 endorsed by me, (~~if by an officer of any subordinate~~), "To be tried by Field General Court-Martial", "JRS"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~ "JRS"

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "JRS"

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint an Judge Advocate and the Offrs named hereunder.~~ "JRS"

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
A/MAJOR	A.O. ALLAN	1 CASCRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
An Officer	to be detailed by O.C.	1 CASCRU
An Officer	to be detailed by O.C.	1 CASCRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

"J.R. Stewart Lough" (Signed personally RP 105 fn 2.) Brigadier (Rank.)

(J.R. Stewart Lough)

Date 29 May 44

Commanding "D" Group, Cdn Rft Units.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFAAS (To Item of AFAS) 80/7 & 8/1697 (4021)) *(See overleaf for oaths and notes for use on trial.)*

Medical Officers' Certif.
K.R. (Can) para 557 "AOA"

I certify that I have this morning examined No. C.11595

Pte. (rnak) HENRI, J.A. (name) and in my opinion he is fit to undergo

trial by Court Martial.

Station: Victoria Bcks.

Date 30 May, 1944

"A.D. MacDonald" Maj.
(Medical Officer)
1 Cdn A.S.C. Rft Unit

"AOA"

STATEMENT FOR MITIGATION MADE BY CAPTAIN T. McELVOGUE: DEFENDING OFFICER FOR C.11595 PTE. HENRI, A.J.

Mister President and Members of the Court: In offering a plea of leniency for the accused, Pte. Henri, A.J., I would like to state that he is a married man with a wife and a girl, sixteen (16) months old, and a boy, nine (9) weeks, and I respectfully submit that in your findings and award you will take into consideration the Dependents Allowance which would automatically be cut off the wife and two children after a period of six months.

On the 23rd of May, 1944, the accused was interviewed by Captain E.C. Armstrong who is a Psychiatrist, at present attached to No. 1 Cdn A.S.C. R.U., and in his examination of the accused he reports the following:

"His judgement is immature and poor comprehension, etc, limited. He is emotionally unstable, impulsive, immature reactions. Little sense of discipline control or responsibility. Outlook anti-social. His adaptibility is low. Adjustments immature and inadequate. Has never adjusted in civil life or during service. Moral low and is egocentric in outlook and behaviour. He appears of little use to the Canadian Army Overseas. Contributes little useful service and punishment has little useful results. Recategorization M-4, S-5."

That is all I have to say in my plea for mitigation.

(T.McElvogue), Captain,
Defending Officer.

Taken down by Court Shorthand writer for inclusion in proceedings.

"A.O. Allan" A/Maj.

30 May 44. "ACA"

Rec'd from the president of the Court Major Allan one kit bag and contents to be returned to rightful owner used as exhibit "A".

"Pte. H. Nunn," R.P.
No. CASCRU

I the accused, C-11595 Pte Henri, A.J. desire the services of Capt McEvogue to defend me at my forthcoming Trial by Field General Court Martial.

"Henri, J.A."
(C-11595 Pte Henri, A.J.)

"ACA"

LIST OF EXHIBITS

(a) One (1) slit Kit Bag and several packages of cigarettes.

"AOA"

LIST OF WITNESSES FOR THE PROSECUTION

1.	D-139931 Pte. Boysen, J.		1 Cdn ASC Rft Unit
2.	A-29167 Pte. Robinson, L.B.		1 Cdn ASC Rft Unit
3.	K-69327 Pte. Prowse, L.J.		1 Cdn ASC Rft Unit
4.	K-69877 Pte. Robinson, E.J.		1 Cdn ASC Rft Unit
5.	H-103822 Pte. Sutherland, J.L.		1 Cdn ASC Rft Unit
6.	C-11460 Pte. Graham, L.F.		1 Cdn ASC Rft Unit
7.	C-11809 Pte. Conlin, D.J.		1 Cdn ASC Rft Unit
8.	H-101732 Pte. Moser, J.		1 Cdn ASC Rft Unit
9.	C-12117 L/C Blackburn, P.G.		1 Cdn ASC Rft Unit
10.	Capt H.K. Atwood	RCAMC	1 Cdn ASC Rft Unit

"AOA"

Exhibit "B" "AOA"

SUMMARY OF EVIDENCE

IN THE CASE OF C-11595 Pte. Alfred Joseph HENRI, of 1 Cdn ASC Rft Unit, a soldier of the Canadian Army Overseas.

1st WITNESS (For the Prosecution)

D-139931 Pte. Boysen, J., having been duly sworn states:-
"I am D-139931 Pte Boysen, J. of 1 Cdn ASC Rft Unit
" On Saturday, 20 May 1944, about 1300 hours when I came back to my hut No. 16 of B Coy I found my kit bag out of place and as I pushed it back I noticed that the kit bag was cut open and that my cigarettes were missing. There was nine packages of British Consols of 50 cigarettes each. The rest was made up of Sweet Caporals and Black Cats. (The witness was shown a kit bag and contents marked Exhibit "A" which he identifies as his own and was able to produce the key to unlock the lock on this kit bag.) I hollared out that my cigarettes were gone, then Ptes Prowse and Robinson said that they had seen somebody in the hut asking for a palliasse and the boys said, "That must have been him, lets go and look for him." A bunch of us went out and we went from hut to hut and at last we went into an empty hut and saw Pte Henri enter another hut and Robinson said that that was the man that was in the hut. The accused went out and we followed him and I went into the empty hut he left to see if he had left anything behind. I looked through everything and I found an empty container of British Consold and I knew that we were on the right trail. In the meantime the boys had caught up with Pte Henri and they bought him back to our hut and they took the nine packs of British Consols out of his tunic. After that he ran out of the door and all the boys followed him down to Victoria Square where Robinson caught him. We took him back again and I asked him where the rest of the cigarettes were and he took us to the Boiler Room of No. 4 Kitchen where Sweet Caporals and Black Cats were lying on the bench. From there he was taken to the Guard Room along with the part of the cigarettes. The R.P. there called for the kit bag and the empty carton. I brought the cigarettes in question on the boat coming from Canada, having arrived in camp about 7th May."

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

"J. Boysen"
(D-139931 Pte. Boysen, J.)

2nd WITNESS (For the Prosecution)

A-29167 Pte. Robinson, L.B., having been duly sworn states:-
"I am A-29167 Pte Robinson, L.B. of 1 Cdn ASC Rft Unit,
" On Saturday, 20 May 1944, at approximately 1230 hours on returning to my hut, No. 16 of B Coy, in Wolfe Lines, I met Pte Henri, whom I now recognize as the accused, in the hut with a palliasse. I asked him what he was doing and he said that he needed a palliasse and since the bunk in the corner was empty he took the palliasse. At about this time Pte Prowse entered and Pte Henri went away. I watched out the window to see where he went and sort of forgot about it until Pte Boysen came in and noticed his kit bag was slit. (The witness was now shown the kit bag marked Exhibit "A" which he identifies as that belonging to Pte Boysen which was slit open.) We decided that it must have been the fellow that took the palliasse and we started going through the huts in Wolfe Lines. We went into one of the huts that was completely empty and while in there I noticed Pte Henri coming up the walk and entering the hut opposite to us.

.....cont'd

2nd WITNESS (cont'd)

I sort of had an idea that it was the man who was in the hut. When he came out we followed him he must have been suspicious of us because he kept on looking around. He cut through back of the huts towards No. 3 Kitchen and went through the door into the Kitchen. Pte. Robinson, E.J. and Pte Sutherland went around to the opposite end of the Kitchen and caught him as he came out. When we came up he admitted to taking the cigarettes and had nine packages on him. We took him over to our hut where he emptied them on the bed from inside his tunic. He then broke away and ran acrossby the Sally Ann towards Victoria Parade Square where he was caught by Pte Robinson again. Pte Henri then took us to where he had the rest hidden at the Boiler room of No. 4 Kitchen. An R.P. happened to be there at the time and saw the cigarettes. I saw some Sweet Caporals and Black Cats on a bench to the right of the door covered with something in the Boiler room. Pte Henri was then taken to the Guard Room where Boysen made the charge. The accused when caught had nine packages of 50 to a package of British Consols cigarettes. I sleep about three beds from Pte. Boysen. Pte Henri did not belong to our hut. I did not know that Pte Boysen had any cigarettes until he told us that they were gone. (A package of British Consosl was shown this witness who claims it was the same as found on Pte Henri.)

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

"A Pte. Robinson, L.B."
(A-29167 Pte Robinson, L.B.)

3rd WITNESS (For the Prosecution)

K-69327 Pte. Prowse, L.J., having been duly sworn states:-

" I am K-69327 Pte Prowse, L.J. of 1 Cdn ASC Rft Unit
" On Saturday, 20 May 1944 I came back to my hut No. 16 of B Coy at approximately 1215 hours and I met Pte Henri, the accused, whom I now recognize, going out of the door with a palliasse under his arm. I thought nothing of it at that time until Pte Boysen had discovered that his kit bag was slit open. (The witness was now shown Exhibit "A" which he identifies as the kit bag which was slit and belonging to Pte Boysen.) Then we went out looking for the party who had taken the palliasse. We went into an empty hut in Wolfe Lines there was nothing in there so we crossed to another empty hut and we saw Pte Henri going into the hut we just came out of, so we stayed in the hut until he came out and followed him where Pte Robinson, E.J. and Pte Sutherland stopped him at the corner of No. 3 Kitchen and found nine packages of British Consosl each containing 50 cigarettes, on him. They were in his tunic where Pte Sutherland had felt them. We took him back to our hut where he emptied the cigarettes on a bed. (The witness identifies that the cigarettes were the same as a package shown to him at this time.) Then Pte Henri made a run for it and was caught again down on Victoria Square. We then asked him where the rest of the cigarettes were and he took us to the boiler room of No. 4 Kitchen where I saw a number of packages of Sweet caporals on a bench covered with a sack. He was then taken to the Guard Room. I sleep across from Pte Boysen. Pte Henri did not belong to our hut.

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS.

"L.J. Prowse"
(K-69327 Pte. Prowse, L.J.)

4th WITNESS (For the Prosecution)

K-69877 Pte. Robinson, E.J., having been duly sworn states:-

" I am K-69877 Pte Robinson, E.J. of 1 Cdn ASC Rft Unit

" On Saturday, 20 May 1944, at approximately 1230 to 1300 hours I came back to hut No 16 of B Coy after dinner. Pte Boysen was standing beside his bed and he said that somebody had ripped open his kit bag and taken his cegarettes. (The Witness was now shown Exhibit "A" which he identifies as the kit bag belonging to Pte Boysen that was ripped.) (Pte Robinson sleeps a few beds from Pte Boysen.), Sutherland and I were left behind in the hut to clean up and straighten kits so when Pte Boysen made that remark we thought that he would think we knew something about it. Then Pte Prowse and Robinson said they had seen someone not belonging to the hut take a palliasse so we asked them which way he went. About ten of us got together and went searching through the lines. We went through all the huts up to the empty ones up the linewhile in one empty hut Pte Henri, the accused, whom I now recognize was seen coming out of a hut and Pte Robinson said he thought it was the fellow. Sutherland and I went around the huts to get ahead of him, meanwhile, the rest followed up the sidewalk I noticed that his tunic was puffed out and looked suspicious. He went pass the N.A.A.F.I. and we went around to try and catch him in front. We went around to the entrance of the Mess Hall. Pte Henri came up to the corner and we stopped him Sutherland felt his tunic and felt packages of cigarettes under it. When we asked him where he got them he tried to talk to us to bribe us. The rest of the fellows came up and we took him to the hut. He took the cigarettes out of his tunic and put them on the bed. He took out about eight or nine packages of what I think were British Consols of 50 per package. He walked to the door and ran towards the Sally Ann. Sutherland caught him at the end of the Sally Anne, he got away, I ran after him towards the Victoria Square where I caught him and Sutherland and I took him along and after asking him where the rest of the cigarettes were he said he would show us. He took us to the boiler room of No. 4 Kitchen where we found packages of Black Cat and some other kind on a bench covered up. From there he was taken to the Guard Room. I know Pte Boysen as long as I was in hut 16."

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

"E.J. Robinson"
(K-69877 Pte Robinson, E.J.)

5th WITNESS (For the Prosecution)

H-103822 Pte Sutherland, J.L., having been duly sworn states:-

" I am H-103822 Pte Sutherland, J.L. of 1 Cdn ASC Rft Unit,

" On Saturday, 20 May 1944, at approximately 1220 hours on returning from lunch to hut 16, B. Coy, on entering the hut, and finding that one of the boys in the hut had had his kit bag slit open and was missing cigarettes. Inquiring as to who has seen anyone leaving the hut with anything, two of the boys Robinson and Prowse, saw a fellow leaving the hut with a palliasse. We immediately started to look for a fellow carrying a palliasse. Going through most of the lines we came to two empty huts, seeing a fellow entering one of the huts, the two boys identified him as being the fellow seen leaving hut 16. We proceeded to follow this fellow back of No. 3 Kitchen where Robinson, E.J. and I stopped him asking him what he had in his tunic. I felt his tunic and felt what seemed to be packages of cigarettes. Immediately he told us he was hard up and that he would fix it up with us if we said nothing about the incident. Waiting till the other boys had arrived we asked him where the rest of the cigarettes were hidden. He took us to Hut 16 where he emptied his tunic of cigarettes which were identified as belonging to Pte. Boysen.

5th WITNESS (cont'd)

(The witness was shown some packages which he says were the kind found on Pte. Henri,) We found approximately nine packages of British Consold containing 50 cigarettes to a package. Telling us that he would show us where the remainder of the cigarettes were he proceeded to the door and started to run towards the Fawcett building. I chased him and caught him beside the Sally Ann where he got away from me. Pte Robinson, E. J. and I chased him around to the rear of the Fawcett building where Pte Robinson caught him. He then took us to No. 4 Kitchen Boiler room where we found the remainder of the cigarettes hidden underneath a sack on a bench. We then proceeded to take this fellow to the Guard Room where he was taken over from us. Returning to the Boiler room of No. 4 Kitchen we inquired as to how the fellow had gotten the cigarettes hidden in there but had no satisfaction. I identify Pte Henri, the accused, as the man we caught with the cigarettes." (Exhibit "A" was shown to this witness and he identifies the Exhibit as the kit bag belonging to Pte. Boysen that was slit.) "When I entered the boiler room and the cigarettes were uncovered I think that they were packages of Black Cat and Sweet Caporals.

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

"J.L. Sutherland"
(H-103822 Pte Sutherland)

6th WITNESS (For the Prosecution)

C-11460 Pte Graham, L.F., having been duly sworn states:-
" I am C-11460 Pte Graham, L.F. 1 Cdn ASC Rft Unit,
" On Sunday 21 May 1944 in the afternoon I was standing at the cell window of the Guard Room, 1 Cdn ASC Rft Unit, looking out when I turned to speak to the other two chaps who were in the same cell. I saw that Pte Henri was doing something and I saw blood on his wrists. I shouted to the other chap then I took the razor blade away from him and stopped him. He seemed to be in a sort of a daze at the time so I held on to hom. The other chap knocked on the door for the Guards. I saw Pte Henri starting to cut his wrists the other was already bleeding. Pte Henri, the accused, was the man in the cell with me who had the cut wrists."

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

"Pte L.F. Graham"
(C-11460 Pte Graham, L.F.)

7th WITNESS (For the Prosecution)

C-11809 Pte Conlin, D.J. having been duly sworn states:-
" I am C-11809 Pte Conlin, D.J. of Cdn ASC Rft Unit,
" On Sunday afternoon 21 May 1944, Pte Henri, whom I now recognize, seemed very worried. He had been talking to Graham and I about his wife and children. We tried to cheer him up. A little later on in the afternoon I was half asleep when my pal, Pte Graham, gave a yell to me and he had a hold of Pte Henri. I noticed that his wrists were bleeding so, I kicked on the door and called for a guard."

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

"Pte Conlin, D.J."
(C-11809 Pte Conlin, D.J.)

8th WITNESS (For the Prosecution)

H-101732 Pte Moser, J., having been duly sworn states:-

" I am H-101732 Pte. Moser, J. of 1 Cdn ASC Rft Unit.

" On the 21st May 1944 I was on duty in the Unit Guard Room of No 1 Cdn ASC Rft Unit. About 1600 hrs I heard a knock on No. 3 cell door, I went to the door and opened it and two other men that were confined with the accused, Pte. Henri, whom I now recognize, were holding on to Pte Henri. One of the, Pte Graham, told me that Pte Henri had cut his wrists with a razor blade which he handed to me. I immediately called for L/Cpl Blackburn and told him what had happened. I questioned Pte Graham and Pte Conlin if they had seen him do it, they replied that they did not see him do it as they had been looking out the window and had their backs turned to him. They turned and noticed drops of blood on the floor. I asked Pte Henri what he had done and all that he replied was that he was all right. L/Cpl Blackburn immediately put some adhesive tape on the wounds and rushed him over to the R.A.P. where the Medical Officer tended to him. We destroyed the razor blade and all other loose blades or glass to prevent any further accidents. I saw the wounds on Pte Henri's wrists they were cuts that were bleeding. I did not see the blood on the floor because I was in a hurry to get him to the M.O. If a man leaves the Guard Room he is thoroughly searched when he gets back. Pte Henri did not leave the Guard Room that day. All S.U.S. shave every morning and have access to their own shaving kits. Pte Henri must have taken one blade into the cell with him after shaving as they are not searched after shaving and going back to cells. One R.P. always watches the men shaving an washing in the morning."

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

"J. Moser"
(H-101732 Pte Moser, J.)

9th WITNESS (For the Prosecution)

C-12117 L/Cpl Blackburn, P.G., having been duly sworn states:-

" I am C-12117 L/Cpl Blackburn, P.G. of 1 Cdn ASC Rft Unit.

" I was on duty at No 1 Guard Room, 1 Cdn ASC Rft Unit on Sunday 21 May 44 at approximately 1600 hours when Pte Moser called me and told me that Pte Henri, the accused, whom I now recognize, had cut his wrists. I immediately rushed over to him and grabbed him by the arm and saw that he was bleeding. I went to our cupboard and took a roll of adhesive tape and placed a piece on his wrists. I immediately detailed to escorts to rush him to the Medical Officer. I saw the wounds that were on Pte Henris wrists, they were cuts that were bleeding. I saw the drops of blood on the floor and also had some on my uniform. I did not see the razor blade because I was only thinking of getting this man to the M.O. The R.Ps detailed to watch the men in the ablution room are there to see that the men get through with their washing and shaving, they do not check to see if a man has taken anything out with him. It would be possible for a man to take a blade or any such article with him."

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

"C12117 L/CPP Blackburn, P.G."
("C-12117 L/Cpl Blackburn, P.G.)

10th WITNESS (For the Prosecution)

Capt. H.K. Atwood, R.C.A.M.C., Medical Officer of 1 Cdn ASC Rft Unit, having been duly sworn states:-

" At approximately 1615 hrs on 21 May 1944 I did examine Pte Henri, the accused, whom I now recognize. He was brought to the R.A.P. by two of the R.Ps of 1 Cdn ASC Rft Unit. On examination he had several minor lacerations on each wrist these were cleansed with soap and water and alcohol and a bandage applied to each wrist. These lacerations were of an insignificant character and would not result in the lowering

10th WITNESS (For the Prosecution) (cont'd)

of his category and no future disability would result. The lacerations on Pte Henri's wrists were cuts or wounds they were bleeding slightly at the time. They looked to be done by a sharp instrument such as a razor blade or knife. They had to be done with a sharp instrument. Pte Henri volunteered the information that he made these wounds himself with a razor blade."

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

"H.K. Atwood" Capt.
(H.K. Atwood) Capt.

The accused was cautioned as follows, "Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

THE ACCUSED DECLINES TO MAKE A STATEMENT AT THIS TIME

I hereby certify that the foregoing Summary of Evidence consisting of six pages was taken down by me in writing on the 24th day of May 1944 at 1 Cdn ASC Rft Unit in the presence and hearing of the accused and that R.P. 4(c) (d) (e) (f) and (g) have been complied with.

"J.E. Miller" Lt.,
(J.E. Miller) Lt.
Officer taking
Summary of Evidence.

"AOA"

In the Field.
24 May 1944

"AOA"

PREVIOUS SHEET DESTROYED 6 Jul 40

Exhibit "D" "AOA"

MFM 6 (AFB 122) 40/PAS/156 (3428)

No C.11595 Name HENRI, A.J. | Sqn, Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 6-1-40 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet 2-5-40 | No and date of last drunk NIL | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30-12-40	Pte		Failed to appear at Tattoo Roll call A.A. Sec 15(1)	DO 34 d/31-12-40	7 days C.B.	31-12-40	Major Thompson	
Field	18-10-40	Pte		AWL 2130 hrs 18-10-40 to 1130 hrs 22-10-40 A.A. Sec 15(1)	DO 2 d/24-10-40	7 days C.B.			Forf 8 days pay FR&I 149 (1)(b) & (b) (2) 30 days pay
Field	14-10-41	Pte		AWL 0815 hrs 14-1-41 to 1400 hrs 16-1-41 AA 15(1)	DO28 d/8-3-41	27 days Det	8-3-41		
Field		Pte		Negligent driving A.A. Sec 40	DO 50 d/21-4-41	Stoppages of pay $43.75	16-4-41		
Field	6/10/41	Pte		AWL 2230 hrs 6/10/41 to 0615 hrs 7/10/41 A.A. Sec 15(1)	DO 109	168 hrs det			Forf 8 dys pay FR&I 149(1)(a) & (1)(b)
Field	9/11/41	Pte		Disobeying a lawful order, refusing to clean his cell.	DO 124	168 hrs Det	11-11-41		Forf 7 days pay FR&I 149(1)(b) (DTO)

"AOA"

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte.		CIVIL OFFENCE theft of cigarettes to the amount of $3-11-6	DO 70	one month imprisonment with Hard Labour	16-2-42	Court of Summary Jurisdiction	38 days pay FR&I 149(1)(b) and FR&I(1)(c)
Field	25 Aug 42			FGCM Sec 18(4) A.A. Stealing Guilty		8 mos detention reduced to 5 mos by Confirmaing Authority			
				Released from Detention 14 Dec 42 Remission earned 46 days					
				Awarded the Cdn Voluntary Service Medal Clasp wef 15 Jan 44 in accordance with CAORO 4167					
Field	9 May 44	Pte		WOAS AWL from 2230 hrs 9 May 44 till 1300 hrs 17 May 44 TTA 7 days 14 hrs 30 mins A.A. Sec 15(1)	Documentary	10 days pay FR&I 149(2)	18 May 44	Major AT Dixon	8 days pay FR&I 149(1)(a) Total 18 days pay

CERTIFIED TRUE COPY officer having custody of Regimental Books

"J.E. Miller" A/Adjt
(J.E. Miller) Lieut
1 Cdn ASC Rft Unit
Cdn Army Overseas

30 May 1944
24 May 44

Exhibit "C" "A.C.ALLAN"
M.F.B. 355

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or Unit)
C.11595	Pte	Henri, A.J.	1 Cdn ASC Rft Unit

1. The following is a fair and true summary of the entries in the "JSM" xxxxx "JSM" xxxxxxx "JSM" xxxxxxx"JSM" xxxxxxx"JSM" xxxxx"JSM" Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, "JSM" xxxxx "JSM" of summary awards ujder Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since e listment or appointment
For	A.A. Sec 15 (1) ONE	times	A.A. Sec 15 (1) FIVE times
For		times	A.A. Sec 40 TWO times

"JSM" xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx "JSM"

xxxxxxxxxxxxxxxx "JSM"

"JSM" xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx "JSM"

"JSM" xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx "JSM"

"JSM" xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx "JSM"

xxxxxxxxxxxxxxxx "JSM"

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act xxxxxxx "JSM" and dispensations with trial under A.A. 73 xxxxxxx "JSM" are set out in the Schedule annexed to this statement.

"JSM" xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx "JSM"

xxxxxxxxxxxxxxxx "JSM"

"JSM" xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx"JSM"

"JSM" xxxxxxxxxxxxxxxxxxxxxxx "JSM"

4. The accused has been in confinement awaiting trial on the present charges for Nil days in civil custody, and 10 days in Military xxxxx"JSM" custody making a total of 10 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper "JSM" xxxxxxxx "JSM" is 30 years

6. The date of his "JSM" attestation "JSM" specified in his "JSM" xxxx"JSM" attestation paper is 6 Jan 1940

7. The service which the accused is allowed to reckon towards discharge is Nil

8. The accused is entitled to reckon Nil service for the purpose of determining his pension, etc.

"JSM" xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx"JSM"
"JSM"xxxxx"JSM" "JSM"xxxxxxx"JSM"

"JSM" xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx"JSM"
"JSM" xxxxxxx"JSM"

"JSM" xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx"JSM"
"JSM" xxxxxxxxxx"JSM"
"JSM" xxxxxxxxxxxxxxxxxxxxx"JSM"

"JSM" xxxx

F.G.C.M. - 30 May 44 - C-11595 PTE HENRI AJ 1 CASCRU

The Court arraigned accused on all charges - see A-9; he pleaded guilty to all charges. Court used Record Form B; plea on 4th Charge omitted apparently through inadvertance. Court, under RP 37(A), could find him guilty of either 3rd or 4th Charge and not guilty of other charge - Pass

13 Jul 44

"K.G. Morden"
(K.G. Morden) Lt-Col
AJAG(CTS)

Dr. Henri a. J.

O. H. M. S.

M. F. B. 270

F.G.C.M. C-11695 [illegible] Henri, J.A.
1 Cdn. Army R.U.

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 29th day of August, 1942.

Whereas it appears to me, the undersigned, an officer in Command of "B" GROUP CANADIAN REINFORCEMENT UNITS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior quashed officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint:
*(1) Three Officers to form the Court.
*(2) A Field Officer as President)
for the following reasons, namely:—]

Judge Advocate

Lieut. G.M. Morrison - H.Q., C.R.U.

*Omit if not applicable.

*PROCEEDINGS REVIEWED. [illegible] 21/9/42

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.		
Rank.	Name.	Regiment.
Major	F.J. Gilmour	R.C.A.
Members.		
Rank.	Name.	Regiment.
A Captain	from	1 Cdn. Gen. R.U.
A Lieutenant	from	1 Cdn. Sig.R.U.

*Signed (F. NASH) BRIGADIER
Commanding "B" GROUP CDN. REINF. UNITS
Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

Don. Henri a. J.

O. H. M. S.

F.G.C.M. C-11595 Pte. Kapp, J.A.
1 Cdn. ASC. R.U.

106 M

Army Form A.8.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 29th day of August, 1942.

Whereas it appears to me, the undersigned, an officer in Command of "B" GROUP CANADIAN REINFORCEMENT UNITS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial to make reference to superior military authority.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint:—
*(1.) Three Officers to form the Court;
*(2.) A Field Officer as President;
for the following reasons, namely:—].

* Omit if not applicable.

Judge Advocate

Lieut. G.M. Morrison - H.Q., C.R.U.

*PROCEEDINGS REVIEWED.

21 Sept 42

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	F.J. Gilmour	R.C.A.

Members.

Rank.	Name.	Regiment.
A Captain	from	1 Cdn. Gen. R.U.
A Lieutenant	from	1 Cdn. Sig.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (E.W.E. NASH) BRIGADIER
Commanding "B" GROUP CDN. REINF. UNITS
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
C-11595 Pte. HENRI, Joseph Alfred 1 Cdn. ASC. R.H.	First Charge A.A.Sec. 15(4)	Guilty. Guilty.	To undergo detention for 8 ~~days~~ months. 7/8/42 31/8/42	Finding and Sentence Confirmed but sentence reduced to detention for 6 months. 7/9/42
	See attached charge sheet			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) BRIGADIER (Signed) J Johnson Major
(A.E. NASH)
Commanding 7th GROUP CDN. REINF. UNITS President.
Convening Officer (*e*)
Lieutenant J. A. G. A.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 31st day of August 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) The Judge Advocate
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 31 day of August 1942.

J Johnson Major
President of the Court Martial.

Lieutenant J. A. G. A.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this ~~7~~ day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the ~~[illegible]~~ named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 2nd day of Sept 1942.

Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) HQ. 21H. dated 8 Sep 42 (Signed) R Gale Capt
Officer i/c Records
7 Cdn. A.S.C. Reinf. Unit.

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W.L. 47767/1867 35 M. 3/43 K.H.,S.(S&G) Gp. 698/3

CHARGE SHEET

"B" J Gilmour Maj J.A.

The accused C.11595 Pte HENRI, Joseph Alfred, 1 Canadian A.S.C. Reinforcement Unit, a soldier of the Canadian Army Active Force is charged with when on Active Service.

SEC.18(4) A.A. STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

at Tournay Barracks, Farnborough, Hampshire on 14 August 42 stole one blank leather pocketbook containing one ten shilling note, two farthings, one Ration Card # RB/c354151, 7 soap coupons and one photograph, the property of M.55791 Dvr Lister, W. 15 Coy R.C.A.S.C., 2nd Armoured Brigade, a person subject to Military Law.

(M.V.McQueen) Colonel,
Commanding,
1 Cdn A.S.C. Reinforcement Unit

Blenheim Barracks,
Farnborough, Hampshire
25 Aug 42

To be tried by Field General Court Martial.

(A.E.W.) BRIGADIER
COMMANDER "B" GROUP
CANADIAN REINFORCEMENT UNITS
CONVENING OFFICER

"A" J Gilmour Maj

Medical Officers' Certificate.
K.R. (Can.) Para 557

I certify that I have this morning examined No. C.11595 Pte. Henri, J.A. of Admn. Wing and in my opinion he is fit to undergo trial by court martial.

Station.

Date. 31/8/42

(Medical Officer)

4. J. Fichmour Major Pres.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD AT In the Field ON THE 31 DAY OF Aug 42

TRIAL OF:- No. C-11595 Pte Henri, J. A. Unit 1 Cdn A.S.C.R.U.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Lt. V. G. Pearce (Unit) 1 C.A.S.R.U.

Defending Officer:- (Name) Lt. R.H. Tellier (Unit) 1 C.A.S.R.U.

At 1415 hrs the trial commences.

The order convening the court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 - No. Sir.

The President, members and judge-advocate (if any) are duly sworn.

The following constitute the Court:-

President Major J. Fichmour .....(Unit) R.C.A.

Members Capt. J.M. Burgess .....(Unit) 1 C.G.R.U.

Lieut C.R. Merrill .....(Unit) 1 C.S.R.U.

~~The officers under instruction are duly sworn.~~

Q2 ~~Do you object to .....acting as shorthand writer?~~ A2.- ~~The shorthand writer is duly sworn.~~ Lt. G.M. Morrison J.A. is duly sworn.

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

~~Court is closed to consider its finding.~~ Court is re-opened.

Name, Lt. V.G. Pearce .....(Unit) 1 C.A.S.C. A.R.U. sworn, produces AFB 296 and MFM 6 and upon being questioned by Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3. (To accused) - Do you wish to make any statement in mitigation of punishment? A3 - No

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4 - A witness on his character only.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

1st Witness for defence:- Sgt-Major Frederick Walter Bennett, 1 C.A.S.C. duly sworn states:- Pte Henri was refused permission to party + since then I have noticed a distinct change in his bearing + attitude - he seemed to have lost interest. He has been employed as a Teamster since March 15th 1942 + I have known him since then + he has been quite satisfactory. R.P. 83(b) complied with.

In Mitigation the Defending Officer submits accused was under influence of liquor + was in agitated state of mind over refusal of permission to marry. Prospective wife is about to bear him a child + expected to arrive in Canada on ... Sailing date is uncertain.

SUMMARY OF EVIDENCE

'C' 1 Canadian Base Pers.

In the case of C-11595 Pte HENRI J.A. of 1 Canadian A.S.C. Reinforcement Unit, Blenheim Barracks, Farnborough, Hants.

The Commanding Officer Colonel M.V. McQueen, 1 Canadian A.S.C. Reinforcement Unit, Blenheim Barracks, Farnborough, Hants, directs that the evidence be taken on oath.

1ST WITNESS

M-55791 Dvr. Lister, W. having been duly sworn states:

I am M-55791 Dvr Lister, W. of 15 Coy, R.C.A.S.C., 2nd Armoured Brigade, Tournay Barracks, Aldershot, Hants. On Friday 14 August 1942 at 1230 hrs. I was called to the Coy Orderly Room and was shown a pocket book by the Adjutant, Lieut. R.T. Fraser and which I identified with the contents as being my own. The last time I had seen the pocket book was just before dinner at approximately 1145 hrs when I placed it in the left breast pocket of my battle dress blouse which was hanging in my locker in Workshop quarters in "D" Block. The locker was by my bed, the door closed but not locked. The description of the pocket book is as follows:

Black leather pocket book with zipper fastener Initials " W.L. " on one corner. The pocket book contained one ten shilling note and two farthings in cash. A ration card unused with the name W. Neal on it. Several soap coupons (about seven) One snapshot of a lady.

The accused declined to cross-examine this witness.

W. Lister
.....
M-55791 Dvr Lister, W.

2ND WITNESS

D-115427 Cpl Proctor J., having been duly sworn, states:

I am D-115427 Cpl Proctor, J. of 15 Coy, R.C.A.S.C., 2nd Armoured Brigade, Tournay Barracks, Aldershot, Hants. Upon entering my barrack room at approximately 1145 hrs I observed a man closing the door of a locker. This locker belonged to Dvr. Lister, W. Seeing that this man was a stranger I immediately asked him what he was doing in the barrack room and why he was looking in the locker of Dvr. Lister. This man stated he was looking for a friend of his by the name of Dvr. McLean. He stated he had asked some of the men of this Coy if there was a Dvr by that name in this Coy. He stated that the men said there was and that he slept in the quarters where he was caught. He also stated that there being no one around he was looking at Dvr Lister's Kit Bag to see if there was a name written on it. I took this man to the M.T. Office to see S/Sgt Smally, but on the way I met S/Sgt Burley and I told S/Sgt Burley of what occured. S/Sgt Burley and I immediately started for the office with the accused and we met S/Sgt Smalley just as he came out and was locking the office. I then told S/Sgt Smally what had occured. S/Sgt Smalley immediately went to report to C.S.M. Finlayson who was just on his way to his quarters from the Orderly Room. S/Sgt Burley and I remained with the accused but upon seeing S/Sgt Smalley going for the C.S.M. he immediately attempted an escape. We hollered for him to halt and he paid not attention. We immediately gave chase. Being a faster runner than S/Sgt Burley, I was able to catch the man after he had got around the corner. He tried very hard to get away but I was able to handle him until S/Sgt Burley came and assisted me. We then marched him back to where C.S.M. Finlayson and S/Sgt Smalley were. The C.S.M. then ordered

SUMMARY OF EVIDENCE IN THE CASE OF C-11595 PTE HENRI J.A.

us to take him to the guard room. We took the man to the guard room and placed a guard on him and waited the arrival of Lieut Fraser and C.S.M. Finlayson. On their arrival he was ordered to remove all the articles in his possession. These were all put on the floor and a list made of them by Lieut Fraser. This list consisted of the following articles: (See attached list).
As they were checking these things and making the list the accused then attempted another escape. This was by the window. As he went through the window S/Sgt Smalley went through it after him. Three of us went out the door and ran around the building. As he was no place in sight I climbed a ladder which took me up to the top of the wall which forms a small court yard for the guard room. It was in there where he was caught by S/Sgt Smalley. As soon as I saw this we went back into the guard room. As we entered the guard room we observed that the man was under guard and the windows were closed. I was then ordered to get two men from "D" Platoon and place them on guard. This was carried out and I returned to my quarters.

The accused declined to cross-examine this witness.

Cpl J. Proctor
B-11427 Cpl Proctor J.

3RD WITNESS

M-55445 M/S/Sgt Smalley, J.E. having been duly sworn, states:

I am M-55445 M/S/Sgt Smalley, J.E. of 15 Coy, R.C.A.S.C., 2nd Armoured Brigade, Tournay Barracks, Aldershot, Hants. At approximately 1145 hrs on 14 Aug 42 I was locking the Workshop Office Door when M/S/Sgt Burley, C.M. and Cpl Proctor, J.W. came to me with the accused whom Cpl Proctor, J.W. had caught rummaging in a locker of our barrack room. After hearing the facts I told them to watch the accused until I brought CSM Finlayson. J.W. M/S/Sgt Burley and Cpl Proctor took the accused to the guard room. After locking the office, I went to the Guard Room where Lieut Fraser, R.T. and CSM Finlayson were questioning the accused. All the articles in his possession had been listed, one wallet of which he was unable to describe and one being questioned by Lieut Fraser, the accused admitted having stolen it from our Barrack Room. While CSM Finlayson was kneeling checking the articles as listed, the accused bent down to adjust his trousers. I saw him make a dash for an open rear window from this position and ran after him. Just as he got through the window I dove through striking him in the back with my shoulder and at the same time grabbed the back of his web belt with my left hand. I think that I knocked his wind out when I struck him with my shoulder as he made no further attempt to escape. On returning through the window he was placed against a wall with an armed guard on either side. Then I proceeded to dinner.

The accused declined to cross-examine this witness.

J.E. Smalley
M-55445 M/S/Sgt Smalley, J.E.

SUMMARY OF EVIDENCE IN THE CASE OF C-11595 PTE HENRI J.A.

4TH WITNESS

M-55673 M/S/Sgt Burley, C.M. having been duly sworn, states:

I am M-55673 M/S/Sgt Burley, C.M. of 15 Coy, R.C.A.S.C. 2nd Armoured Brigade, Tournay Barracks, Aldershot, Hants. At approximately 1145 hrs. 14 Aug 42 Cpl Proctor reported to me that he had caught a man tampering with a locker in "D" Block. He had the man with him. As Cpl. Proctor and I were escorting the man to report to the CSM he attempted to get away by running from us. Cpl Proctor overtook him. We then escorted him to the guard room. While being questioned in the guard room the prisoner made a short dash and jumped through a window. M/S/Sgt Smalley caught him and returned him to the guard room. On being ordered to turn out the contents of his pockets he produced the following articles. (See attached list)

The accused declined to cross-examine this witness.

C.M. Burley
M-55673 M/S/Sgt Burley, C.M.

5TH WITNESS

B-98267 C.S.M. Finlayson, J.M. having been duly sworn, states:

I am B-98267 C.S.M. Finlayson, J.M. of 15 Coy R.C.A.S.C. 2nd Armoured Brigade, Tournay Barracks, Aldershot, Hants. While going to my quarters I was approached by M-55445 M/S/Sgt Smalley, J.E. who reported to me that Cpl Proctor had caught a man in his barrack room and had placed him under close arrest. Just then M/S/Sgt Burley and Cpl Proctor appeared escorting the accused. I ordered them to take him to the guard room and I reported the matter to my Adjutant, Lieut Fraser R.T. I accompanied Lieut Fraser to the guard Room and I ordered Cpl Proctor to search the prisoner. Articles found on the prisoner were as follows: 1 wallet initialled H.L. contents a ten shilling note, one snapshot, seven soap coupons, One wallet containing One pound ten shillings, snapshots and permanent late pass, seven pence half penny in coppers, one comb, one pencil and handkerchief, one Ronson Lighter two keys. Just as we had finished questioning the prisoner he dived through the rear window of the guard room, but was immediately caught by M/S/Sgt Smalley.

The accused declined to cross-examine this witness

C.S.M. Finlayson
B-98267 CSM Finlayson J.M.

SUMMARY OF EVIDENCE IN THE CASE OF C-11595 PTE HENRI J.A.

6TH WITNESS

Lieut R.T. Fraser, having been duly sworn, states:

I am Lieut R.T. Fraser of 15 Coy, R.C.A.S.C., 2nd Armoured Brigade, Tournay Barracks, Aldershot, Hants. At 1150 hrs, Friday 14 Aug 1942 CSM Finlayson informed me that a soldier had been apprehended by Cpl Proctor, J.W. of Workshop Platoon in the quarters of Workshop Platoon in "D" Block and was at present held in the Guard Room under close arrest. I accompanied the CSM to the Guard Room where I found C-11595 Pte Henri J.A. of Administrative Wing 1 Cdn A.S.C. Reinf Unit. He was dressed properly except that he did not have a battle dress blouse on. He did not have his Pay Book nor identity discs with him, but had a silver RCASC wristlet on his right wrist with the name C-11595 J.A. Henri engraved on the reverse side. From the smell of his breath I judge that he had been drinking. When questioned he stated that he had been looking for someone named McLean and had been directed to "D" Block. On further questioning he did not believe he could identify the man in question if confronted with them. I instructed the CSM to have his pockets turned out and catalogued the articles as follows:

Zipper Fastener Note Case Containing: Cash 10/- 2 Farthings
(Initials W.L. on corner)
Ration Card RBB/c 354151
(W.Neal M-55616 2 CAB Coy/
7 Soap Coupons
Photograph.

1 Ronson Lighter in holder
(Initials J.A.H.)

Pocket Book Containing: Cash £1-10-0
Number of snapshots
1 Permanent Midnight Pass
(C-11595 Pte Henri J.A.)
1 Jewellers Receipt for
£5-0-0 for signet ring.

Loose articles in pockets:
2 keys, cash seven pence half penny, one handkerchief, one pencil, one comb.

While I was writing, Pte Henri, who was standing between the CSM and Cpl Proctor made a break to get away and dove head first through a window in the guard room. W/O/Sgt Smalley who was also present dove out the window after him and caught him at once. I collected the contents of his pockets, told him they would be taken to the Orderly Room. I then took them to the Orderly Room and reported the incident to the Officer Commanding and then telephoned the Adjutant of No 1 Cdn A.S.C. Reinf Unit, reporting the matter and asked that Pte Henri be picked up under escort. All the articles held appear to belong to Pte Henri with the exception of the Zipper Fastener Note Case and contents which have been identified by Dvr Lister of Workshop Platoon 2 C.A.B. Coy, as his. It was while rummaging in Dvr. Lister's locker that Pte. Henri was caught.

The accused declined to cross-examine the witness.

R.T. Fraser
.....
Lieut R.T. Fraser

7th WITNESS

Lieut V.G. Pearce, having been duly sworn, states:

I am Lieut. V.G. Pearce, Legal Officer, 1 Cdn A.S.C. Reinf Unit employed at Regimental Headquarters, and as such have knowledge of and am custodian of certain ~~documents~~ articles pertaining to this case and relative to the accused. VGP

I produce the following:-

Zipper Fastener Note Case Containing: (Initials W.L. on corner)
- Cash 10/- 2 Farthings
- Ration Card RB8/c 354151 (W. Neal M-55616 2 CAB Coy)
- 7 Soap Coupons
- Photograph.

1 Ronson Lighter in holder (InitialsJ.A.M.)

Pocket Book Containing:
- Cash £1-10-0
- Number of snapshots
- 1 Permanent Midnight Pass (C-11595 Pte Henri J.A.)
- 1 Jewellers Receipt for £5-0-0 for signet ring.

~~Loose articles in pockets:~~ 2 keys, cash seven pence half penny, one handkerchief, one pencil, one comb. VGP

V.G. Pearce Lt.
.....
Lieut V.G. Pearce

SUMMARY OF EVIDENCE IN THE CASE OF C-11595 PTE HENRI JA.

The accused was therefor warned in accordance with R.P. 4(e) "Do you wish to make any statement or to give evidence upon oath?" You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declined to make any statement or give any evidence.

I certify that the foregoing Summary of Evidence was taken down before me in writing in the presence and hearing of the Accused at Blenheim Barracks, Farnborough, Hampshire, this 24th day of August, 1942 and that R.P. 4 (c) (d) (e) and (f) have been complied with.

(J.A. Silver) Lieut
1 Cdn A.S.C. Reinf Unit
Officer taking the Summary

I C-11595 Pte Henri J.A., desire the assignment of an Officer to represent me at my Court Martial.

C-11595 Pte Henri J.A.
1 Cdn A.S.C. Reinf Unit.

LIST OF WITNESSES

M-55781	Dvr Lister W.	- 2nd.Cdn.Arm'd Bde Coy.(15 Coy) RCASC
D-115427	Cpl Proctor J.	- 2nd.Cdn.Arm'd Bde Coy.(15 Coy) RCASC
M-55445	M/S/Sgt Smalley J.E.	- 2nd.Cdn.Arm'd Bde Coy (15 Coy) RCASC
M-55673	M/S/Sgt Burley C.M.	- 2nd.Cdn.Arm'd Bde Coy.(15 Coy) RCASC
B-98267	C.S.M. Finlayson J.M.	2nd.Cdn.Arm'd Bde Coy.(15 Coy) RCASC.
Lieut	R.T. Fraser	- Adj. 2nd.Cdn.Arm'd Bde Coy.
Lieut	V.C. Pearce	- 1 Cdn. A.S.C. Reinf Unit.

List of articles found on person of C-11595 Pte Henri J.A.

Zipper Fastener Note Case
(Initials W.I. on Corner)

Containing: Cash 10/- 2 Farthings

Ration Card RB8/c 354151
(W. Neal M-55016 2 CAB Coy)

7 soap Coupons

Photograph.

1 Ronson Lighter in holder
(initials J.A.H.)

Pocket Book

Containing: Cash £1-10-0
Number of snapshots
1 Permanent Midnight Pass
(C11595 Pte Henri J.A.)
1 Jewellers Receipt for
£5-0-0 for signet Ring.

Loose articles in Pockets:

2 keys
Cash 7½d
1 handkerchief
1 pencil
1 comb

R.T. Fraser
.....
Lieut R.T. Fraser

C.M. Burley
.....
M-55673 W/S/Sgt Burley C.M.

COPY

No. C.11595 Name HENRI J.A. Sqn. Battery or Company Corps R.C.A.S.C. Date of enlistment 6-1-40 G.C. Badges Service or Proficiency Pay Character

Date of last entry in Company Conduct Sheet No. and date of last drunk Period from last entry to freedom from extra fine 1st. Cps Pat.Pk. Sheet No. Signature O.C. Company, etc.

MFM 6 (A.F.B.122)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed on 9 Jun 42 : Last entry 2-5-40.									
Bordon	30-12-40	Pte.		Failed to appear at tattoo Roll call AA.15		7 days C.B.	31 Dec.'40	Maj.Thompson	
Bordon	12-1-41	Pte.		Failed to appear atplace appointed AWL.14-1-41 to 16-1-41	Sgt. Hole	27 days Det.	12-1-41	Lt.Col.Pocock	
Bordon	19-5-41	Pte.		Entered an NCO's room without authority.AA.40	Cpl. Benny	7 days C.B.	19-5-41	Maj.Partington.	
Farnborough	6-10-41	Pte.		WOAS,AWL from 2230 hrs 6-10-41 to 0615 hrs 7-10-41 AA.15(1)	Lt.Christie	168 hrs Det. 7 days pay.	7-10-41	Maj.Sperling Pts 1 days pay 1490(a)FR/.	1490(4)FR/.
BlenHeim	31-10-41	Pte.		AWL from 2200 hrs 31-10-41 to 2200 hrs 31-10-41 AA.15(1)	Cpl. Cullum	2 days C.B.	4-11-41	Maj.Stewart	
Farnborough	5-11-41	Pte.		Disobeyed a lawful command Sec 9(2) A.A.	Cpl. Cullford	168 hrs Det.	11-11-41		Pfte 7 days pay.

Name	Date of offence	Rank	Corps or Regiment No.	OFFENCE	Name of Witnesses	Punishment awarded	Date of Award or if under disposing with order	By whom awarded	Remarks
Bordon Hants		Pte.		Civil Offence in that he stole a carton of cigarettes with the value of £3-11-6. The property of Pte. Goulette		one month hard labour	16-2-43	Court of Summary Juriadiction Whitehall Hants.	

CERTIFIED TRUE COPY

W.J. Pearce Lieut
Legal Officer
1 Cdn. A.G.C. Reinf. Unit

"D" Hqs Edmonton 14/7/41 Pers.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C-11595,	Pte.	HENRI, J.A.	1 Cdn. A.S.C. Reinf. Unit.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, previous being given in the most serious offence in each entry, and in any proposal for special rate of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	Sec. 15(1) A.A.	2 times	4	times.
For	Sec. 40, A.A.	- times	1	times.
For	Sec. 9(2)	1 times	1	times.
For		times		times.
For		times		times.
		times		times.

Number of instances of gallantry or distinguished conduct, NIL.

or

~~Particulars of gallantry or distinguished conduct~~

2. ~~The accused has no previous convictions.~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~except as stated in the schedule annexed to this statement.~~

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 16 days in military custody, making a total of 16 days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ is 29 years.

6. The date of his ~~commission~~ attestation specified in his ~~attestation paper~~ is 6 Jan. 40.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is _____

8. The accused is entitled to deferred pay or gratuity in respect of _____ service.

9. The accused is entitled to reckon _____ service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to [*state any military decoration or reward*]).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of _____

12. (*In the case of an officer.*) The accused holds in the army the rank of _____ dated _____ and in his regiment (*or* corps or department) the rank of _____ dated _____

(71648) W.L.20546/6802 75,000 12/40 A.& E.W. Ltd. Gp.479
(37423) W.L.46491/1687 25,000 4/41

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C-11595. Rank Pte. Name HENRI, J.A. of 1 Cdn. ASC. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
Civil.	16 Feb. 42.	Stealing Cigarettes.	One month with hard labor.	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26th day of August 1942

W.J. Pearce, Lieut.
Legal Officer
1 Cdn. ASC Reinf Unit

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

In the rank of ..... years,
In the rank of ..... years
In the rank of ..... years,

Date of Promotion.

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collated from such sources as are available and the paragraphs concerned amended accordingly.*)

100 G Pte HENRI J

O. H. M. S.

Correspondence to be PINNED here.

100 C

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twelfth day of March, 1942.

Whereas it appears to me, the undersigned, an officer in Command of Third Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[I am unable to appoint—

*(x) Three Officers to form the Court;

*(x) A Field Officer as President;

*(x) Three Officers having more than one year's service;

for the following reasons, namely:—]

PROCEEDINGS REVIEWED

President.

Rank.	Name.	Regiment.
Major	W.B.CARSON	Carlt & York R

Members.

Rank.	Name.	Regiment.
Capt	A.B. McBeath	Carlt & York R
Lieut	J.L.F. McNeil	West N.S.R.
(Waiting) Lieut	W. Himmelman	West N.S.R.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brig.,

Commanding 3 Cdn Inf Bde

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E-4917 Pte Henri, J., R 22e R	First Charge Sec 13 (4) A.A.	Not Guilty	Guilty. 40 days. Detention	Confirmed WBGraves Brig
	See Charge Sheet Attached.			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— No

(Signed) WBGraves Brig., Commanding 3 Cdn Inf Bde — *Convening Officer* (c)

(Signed) W.B. Carson Major, President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 21 day of March 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 21 day of March 1942.

W.B. Carson Major.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 752 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the soldier named in the margin be not committed to prison until further orders.~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 24 day of March 1942.

WBGraves Brig.,
Confirming Officer 3 Cdn Inf Bde

Promulgated and extracts taken in the case of E4917 Pte Henri J.

(a) (Dated) 24 March 42 (Signed) Asst Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(1)

C H A R G E S H E E T

The accused E 4917 Pte HENRI J., Royal 22e Regiment, a soldier of the Canadian Army Overseas is charged with

When on active service:-

FIRST CHARGE
A.A. Sec 15(4)

FRAUDULENTLY MISAPPLYING GOODS, THE PROPERTY OF A REGIMENTAL MESS

in that he

In the Field, on the 7th February 1942, when employed as a cook at the Officers' Mess of "D" Company, Royal 22e Regiment, so fraudulently handled rations belonging to that mess, that is to say two tins of corned beef, one tin of milk, one tin of marmalede and one pound of butter, total value of four shillings, as to make them fall into the hands of a civilian.

(P.E.BERNATCHEZ)Lt-Colonel,
Commanding,Royal 22e Regiment,
Canadian Army Overseas.

In the Field
10 Mar 1942.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(H.N.GANONG) Brig.
Comd 3 Cdn Inf Bde.

1083

FORM A

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL held in the Field on the 21st day of March 1942.

Trial of No. E4917 Pte. Henri, J.

Prosecutor: Lieut. J. Guimond, R 22e R.

Defending Officer: Lieut J. Armagh Le Febure

Officer under Instruction: Nil

1. The Order convening the Court is read in the presence of the accused.

2. The accused is asked the following question:-

Do you object to being tried by the President or any Members of the Court, whose names you have heard read over?

Answer - No

3. The President, Members, Judge Advocate, Officers under instruction, Shorthand Writer, and Interpreter are duly sworn.

4. (a) The accused having pleaded guilty to the charge(s) R.P. 36(B) is complied with.

5. The accused is asked the question at the foot of Page 2 of A.F.A. 3 and his answer is recorded beneath the question.

6. The Prosecutor makes (no) ~~the following~~ opening

First Witness for Prosecution

Regt'l No. E5108 Sjt Desjardins, L. of the R 22e R having been duly sowrn states as follows:-

In the Field on 19 Feb 42, Private Henri, having been duly warned in accordance with R.P. 4(c) made the following declaration to me:-

"I am a Private in "D" Company Royal 22e Regiment, and am employed as cook at the Officers Mess of this Company.
I have met a Mrs Tiplady on New Years Day, in the Fletcher Arms Public House, Rustington, and I spoke to her. Mrs Tiplady has sent a lad on several occasions for cigarettes and when I have some to spare I have given him some to take to her. On Wednesday morning, 4th Feb 42, the lad came to the billet for some cigarettes and then told me that Mrs Tiplady had nothing for her children to eat that morning and he asked me if I could do anything. I told him that I could not. I gave him a packet of cigarettes and he went off. The next morning, the lad called again for cigarettes but I said: It is too bad, I have no more". I told the lad "About what you asked me the other day, I might do something to-night if she will meet me at the white gate at about 8 o'clock. The lad then left.
At about 8 p.m. on Friday 6th Feb 42, I packed into a sandbag some tinned food, two tins of corned beef, one tin of mik, one tin of marmalade and one pound of butter. I took it out of the billet and left the sandbag behind the post at the gate and then went to the Public House.
I forgot all about the sandbag when I came back that night and again on the morning of th 7th Feb 42.
On that morning, at about 1100 hrs, the lad came to the back door of the billet. He asked me for cigarettes and I said: "No more". I said to him: "She didn't come last night. He said she had gone to the theatre and I said: "I didn't see you" and he replied: "I couldn't come last night". I then said: "I left it by the gate post. I forget about it last night and this morning. The lad then left and apparently took the sandbag with him without my permission".

Q. Did you warn Pte Henri, J. in accordance with R.P. 4 before he made his declaration?

A. Yes Sir.

Examined by the Defence

Q. When you asked Pte Henri to make his statement, did you put that statement in his own words?

A. Yes Sir.

Second Witness for Prosecution

Regt'l No P4877 CQMS Fortin, P.
(Documentry Evidence)

Third Witness for Prosecution

Constable James Chappell, No 107 Police Cottage, Rustington, having been duly sworn states as follows:

At 1150 A.M., on Saturday 7-2-42 I was on patrol on Station Road, Rustington, when I saw a lad, Brinley Smith walking towards Rustington. I saw that he was carrying a sand bag over his shoulder. I stopped him and asked him where he had came from. I asked what he had in the bag, and examined the contents. I found it contained one pound packet of butter, two tins of corned beef, one tin of milk, one tin of marmalade: which I recognized as not being civilian food stuffs. I took possession of this property at 1205 P.M. On the same day I saw E4917 Pte J. Henri in the Officers Mess in presence of the Major in charge of the Company. I questioned and asked if he gave the boy the foodstuffs. He replied, "I did not give the boy anything". He was cautioned and shown the foodstuffs in the sand bag. He then made a statement which I took down in writing and read over to him, and he signed. Before taking the statement I asked him if he could understand English and he replied, "I understand it allright". The statement I took from him reads as follows:

"I have been cautioned and make this statement voluntary. I am a member of the R 22e R, "D" Company, and am employed as cook in the Officers Mess. I have met a Mrs. Tiplady on New Year's Day."

Examined by the Defence.

Q. When did you take this statement?

A. On Saturday Morning at 1:25.

Q. Did you show the statement to anybody except Henri?

A. No Sir.

Fourth Witness for Prosecution.

Brinly Smith, Conbar Ave, Rustington, having been duly sworn, statesas follows:

On Wednesday afternoon about 3 o'clock I was waiting at 4 Conbar Ave for the cook. Mrs. Tiplady and the children were out and when the cook had come I went over and met Mrs. Tiplady and told her the cook was in the house and then I went to my home.

Fourth Witness for Prosecution (cont'd)

Q. Who was the cook ?

A. I do not know his name.

Q. Do you recognize him as the accused?

A. Yes Sir. On Friday morning I went to the billet again, and I was told that Mrs. Tiplady was to meet him at the White Gates(the cook told me) at 8' o'clock that evening. On Saturday morning I went for some cigarettes to the cooks billets for Mrs Tiplady. He told me that he was expecting me at the billets the previous evening, and I said I didn't think he meant' me. Then he told me that he left the things by the white gates, on the left-hand side. I went down and got them and was taking them along to Mrs Tiplady's when I was stopped by the policeman.

Q. Did you know there was a parcel to be picked up at the cook's billets when you went there on Saturday morning?

A. No. I wasn't expecting one to be taken that morning.

Q. Had you ever taken any parcels from the cook's billets to Mrs Tiplady's before that?

A. No, only cigarettes.

Q. Did ~~you~~ the cook tell you to take the parcel by the gates that morning?

A. No Sir.

Q. Then why did you go down to collect the parcel at the white gates?

A. The way he said he wanted Mrs Tiplady to come up I thought he wanted me to take it then.

Examined by the Defence

Q. Did Pte Henri, the cook, give you cigarettes very often?

A. Yes, nearly every morning.

Q. Did Pte Henri tell you to take that bag to Mrs Tiplady's place?

A. No Sir.

COUNTER NUMBER 167317

HOUR 8.45

OPERATOR'S INITIALS LS

RELIEVING OPERATOR JR

Yes

First witness, Prosecution, recalled

The accused, Regtl No. E4917 Private Henri, J. of the R 22e R, having been duly sworn, states as follows:

Questioned by the Defence

Q. What was Mrs Tiplady to you?

A. A friend.

Q. Was she in need of money?

A. Yes. she was poor. The house and the children hadn't much clothes, and she told me she would like to have some.

Q. Did you receive pay from the Officer's Mess?

A. Yes, I receive thirty shillings every month.

Q. Did Mrs Tiplady ask you for something?

A. Yes Sir.

Q. What did she ask for?

A. She asked me if I could help.

Q. In what way did she want you to help her?

A. I intended to give her money to buy food. She had no coupons and I had no coupons. I packed the food in the bag and took it with me and left it at the white gate, having changed my mind, I then went to the 'pub'.

Q. What did you do afterwards?

A. I stayed until the 'pub' closed and I forgot to take thefood back tothe billets.

Q. Did you intend to pick the food up in the morning?

A. Yes Sir.

Q. Did you give Smith permission to give the food to Mrs Tiplady.

A. No Sir.

Examined by the Prosecution

Q. Why did you take some rations out of the officers mess kitchen.

A. With intentions of taking it to Mrs Tiplady, but I changed my mind.

Witness recalled by the Defence

Regtl No. E5108 Sjt Desjardins, L. of the R 22e R having been duly sworn states as follows:-

Q. Was Pte Henri's statement copied from the one taken by Police Officer Chappell?

A. No Sir.

FORM C PAGE / 8

After finding

Lieut. E. J. Guimond, R.22e R.

is sworn and stamped.

I produce a certified true copy of A. F.B. 130 relating to the accused. The said copy is marked [illegible] signed by the President, and attached to the Proceedings.

Question to the Accused

Do you wish to address the Court, or to call evidence as to character?

No

Answer.

The _____ (Defending Officer) makes the following plea in mitigation of sentence:-

His platoon commander considers him very reliable & one of his best men.
The M. I. R. C. of accused is clean of entries.
Due to his previous good conduct I would ask the court to be as lenient as possible

H-1

WEST SUSSEX CONSTABULARY.

ARUNDEL DIVISION. RUSTINGTON DETACHMENT.

STATEMENT FORM.

NAME. Joseph HENRI.

ADDRESS. No.E.4917. "D" Company, Royal 22nd Regiment, Canadian Army, Angmering.

OCCUPATION. Private Soldier. AGE. 36½ years.

States:- "I have been cautioned and I make this statement voluntarily.

I am a Private in "D" Company, Royal 22nd Regiment, and am employed as cook at the Officer's Mess at Angmering Lane, East Preston.

I have met a Mrs. Tiplady, on New Year's Day, in the Fletchers Arms, Rustington, and I spoke to her. Mrs. Tiplady has sent a lad on several times for cigarettes and when I have some to spare I have given him some to take to her. On Wednesday morning, 4th February, 1942, I think, the lad came to the billet for some cigarettes and he then told me that Mrs. Tiplady had nothing for the children that morning, and he asked me if I could do something. I told him that I could not. I gave him a packet of cigarettes and he went off.

The next morning, the lad called again for cigarettes but I said 'It is too bad, I have no more.' I told the lad 'About what you asked me the other day, I might do something tonight if she will meet me at the white gate at about 8 o'clock.' The lad then left.

At about 8 p.m on Friday, 6th February, 1942, I packed into the sandbag, some tinned food, two tins of corned beef, one tin of milk, one tin of marmalade and one pound of butter. I took it out of the billet and left the sandbag behind the post at the gate and then went to the Pub.

I forgot last night about it and forgot this morning.

On the morning of the 7th February, 1942, at about 11 a.m, the lad came to the back door of the billet. He asked for cigarettes and I said 'No more.' I told him 'She did'nt come.' He said that she went to the theatre, and I said 'I didn't see you', and he replied 'I couldn't come last night.' I then said 'I left it by the gate post. I forgot about it last night and th this morning and I went to the pub.' The lad then left.

(Signed) J. HENRI.

Statement taken by P.C. 107 James Chappell, at 1.40 p.m on Saturday, 7th February, 1942, at Angmering Lane, East Preston.

The above is a true copy of the statement taken from Pte. E4917. Joseph Henri. at 1.40 pm 7.2.42 by PC 107. James Chappell.

SUMMARY OF EVIDENCE

in the case of

R.4917 Private HENRI J., Royal 22e Regiment; a soldier of the Canadian Army, Overseas.

FIRST WITNESS FOR PROSECUTION.

R.5108 Sergeant DESJARDINS L., Royal 22e Regiment, having been duly sworn, states:-

" I am a Sergeant of the Royal 22e Regiment, posted to Bn Headquarters. In the Field on the 19th February 1942, Private HENRI, having been duly warned in accordance with R.P.4(e) made the following declaration to me:-

" I am a Private in "D" company Royal 22e Regiment, and am employed as cook at the officers Mess of this Company.

I have met a Mrs Oiplady on New Year's Day, in the Fletcher Arms public house, Huntington, and I spoke to her. Mrs Oiplady has sent a lad on several occasions for cigarettes and when I have some to spare I have given him some to take to her. On Wednesday morning, 4th Feb 42, the lad came to the billet for some cigarettes and then told me that Mrs Oiplady had nothing for her children to eat that morning, and he asked me if I could do anything. I told him that I could not. I gave him a packet of cigarettes and he went off.

The next morning, the lad called again for cigarettes but I said: It is too bad, I have no more:" I told the lad "About what you asked me the other day, I might do something to-night if she will meet me at the white gate at about 8 o'clock. he lad then left.

At about 6 p.m. on Friday 6th Feb 42, I packed into a sandbag some tinned food, two tins of corned beef, one tin of milk one tin of marmalade and one pound of butter. I took it out of the billet and left the sandbag behind the post at the gate and then went to the Public House.

I forgot all about the sandbag when I came back that night and again on the morning of the 7th Feb 42.

On that morning, at about 1100 hrs, the lad came to the back door of the billet. He asked me for cigarette and I said: "No more" I said to him:"She didn't come last night. He said that she had gone to the theatre and I said:" I didn't see you" and he replied:"I could n't come last night." I then said:" I left it by the gate post. I forgot about it last night and this morning. The lad then left and apparently took the sandbag with him without my permission.

The accused declines to cross-examine this witness.

L. Desjardins ..Sgt

SCOND WITNESS OR PROSECUTION.

P.48774 C.Q.M.S. Fortin P., Royal 22e Regiment, having been duly sworn, states:-

" I am Quarter Master Sergeant of "D" Coy, Royal 22e Regiment, Angmering. It is my duty to issue rations to all billets of the Company.

On Saturday, 7th Feb 42, I was shown by the Police, 2 tins of Corned Beef, 1 tin of milk, 1 tin of marmalade, and 1 lb of butter, which I identify as similar rations to those I issue, and are the property of H.M. Government.

The value of the foodstuff shown to me is about 4/.

(P. Fortin) C.Q.M.S.
Royal 22e Regiment.

The accused declines to cross-examine this witness.

THIRD WITNESS FOR PROSECUTION.

James Chappell, Police Constable No.107., Police Cottage, Rustington, having been duly sworn, states:-

" At 11.50hrs a.m. on Saturday 7th Feb 1942, I was on cycle patrol in Station Road, Rustington, where I saw Brinley Smith aged 14 years, of 15 Conbar Avenue, Rustington, walking towards Rustington. He was carrying over his shoulder a sandbag.

I stopped him and asked him where he had just come from and what he had in the the sandbag. In the sandbag were two tins of corned beef, one tin of milk, one tin of marmalade, and a one pound packet of butter, which appeared to me to be Government stores. I took possession of the foodstuffs.

In consequence of what I was informed, at 1.25 p.m. on the same day, in company with P.C. Buckley, I interviewed Private Joseph HENRI, of the Royal 22e Regiment, at the Officer's Mess at Angmering Lane, East Preston. I cautioned him, and asked him if he spoke and understood English, to which he replied, " I understand alright."

I said " Have you given any tinned food to a boy who called here this morning?" and he replied " I have not given any to the boy". I further questioned him and showed him the sandbag containing the foodstuff.

HENRI later made a statement which I took down in writing, read over to him and he signed.

I informed him that he would be reported for stealing the foodstuff, the property of H.M. Government, to which he replied " I thought I was doing a good turn to the lady".

James Chappell

(James Chappell) P.C. 107

FOURTH WITNESS FOR PROSECUTION

Mr. Brinley SMITH, 15 Conber Ave, Rustington, having been duly sworn states:-

I am Brinley Smith, aged 14 and I live at 15 Conber Avenue, Rustington.

On Wednesday afternoon, the 4 Feb 42 I was waiting for the cook, Private Henri, to come to Mrs Tiplady's place. Mrs Tiplady and the children were out. When he came they were still out and while waiting for them we played the gramophone. Then I went out to the Recreation Ground where I met Mrs Tiplady and the others, and told her that the cook was there. So they came along and myself I went home.

On Friday morning, the 7 Feb 42, at about 1030 a.m. I went to the cook's billet to deliver some messages from Mrs Tiplady. The cook told me that he expected Mrs Tiplady to meet him that evening at the bottom of the road by the white gate. I went to Mrs Tiplady's place and told her about it.

The next morning, on Saturday, I went back and the cook told me that he had been waiting for me the previous night. He then told me that he had left the parcel by the white gate and that it was on the left hand side. I went down and collected the parcel, and while I was going back to Mrs Tiplady's place the policeman stopped me and asked me what was in the parcel. I said I didn't know what was in it but that I had picked it up by the white gate and that I was taking it to Mrs Tiplady's place. The policeman then took the parcel away from me and told me that he was going to Mrs Tiplady's place himself.

Question 1- Did you know that there was a parcel to be picked up for Mrs Tiplady at the billet when you went there on the Saturday morning?

Answer. I did not know that there was a parcel to be picked up, but I had heard the cook mention on Friday morning that Mrs Tiplady had a parcel to pick up in the evening at about eight o'clock.

Question 2- Had you ever taken any parcels from the cook's billet to Mrs Tiplady's before?

Answer. Only cigarettes, that's all.

Question 3- Did you know that there was food in the parcel that you took on the Saturday morning.

Answer. No, I didn't.

The accused cross-examines this witness:

Question 1- Do you remember telling me on Friday morning that Mrs Tiplady had nothing for her children that day?

Answer. No, I don't remember.

Question 2- Did I tell you to take the parcel to Mrs Tiplady's place when you came on Saturday morning?

Answer. No, you didn't, but I thought you meant me to take it as Mrs Tiplady was supposed to collect it the night before.

Brinley Smith.
(Brinley SMITH)

The accused was duly warned in compliance with R.P.4(e) but declined to make a statement and reserves his defence.

The evidence was taken down by me in the presence and within the hearing of the accused, on the 19 Feb 42. The evidence of the fourth witness was taken down on the 10 Mar 42.

Compliance wit R.P.4(c),(d),(e),(f) certified.

[signature]
[illegible] Lieut. Off. detailed to take Summary of evidence.

LIST OF WITNESSES

in the case of

E.4917 Pte. J. Henri, Royal 22e.Regiment, a soldier of the Canadian Army, (Overseas).

PROSECUTION.

Mr. H. Smith

E.5108 L/Sgt. Degardins L., Royal 22e.Regiment.

P.48774 CQMS Fortin P. Royal 22e Regiment
James Chappell P.C. No.107
Police Cottage, Rustington.

DEFENCE.

Nil.

LIST OF EXHIBITS.

in the case of

E.4917 Pte. J. Henri, Royal 22e.Regiment, a soldier of the Canadia n Army, (Overseas).

H-1 Certified true copy of statement by Private Henri J. E4917

STATEMENT BY ACCUSED.

I, E.4917 Pte. J. Henri, Royal 22e.Regiment, a soldier of the Canadian Army, (Overseas), desire to have an Officer assigned to represent me at my trial by FGCM.

I desire the services of Lieut. L.F. Chicoine R22R if he is available.

J. Henri .....Pte.

This is to certify that I have been given free of charge, Copy of the Proceedin s, documents, relative to my trial by FGCM.

J. Henri .....Pte.

20 Feb 42.

I am Quarter Master Sergeant of D Coy
Royal 22 inn Regiment, Hongcong.
it is my duty to issue ration to all
billets of the Company.

On Saturday 7th feb 42. I was shown
by the profos, 2 tins of Corned beef, 1 tins
of milk. 1 tins of marmalade, and 1 lb of butter
Which I identify as similar ration to those
I issue and are the property of H.M. Government
the value of this foodstuff shown to me is
about 4/

C Stanton Sgt. C.O.M.S

I certify that this statement
was given in my presence
by C.Q.M.S Horton in presence
of the accused

(2)

E4917 PTE HENRI. S

D coy.

This is to certify that ... of ... R.22e.R. is physically and mentally fit to undergo trial by Court Martial, and/or Detention or Field Punishment, with Hard Labour.

M.M. Brown Capt.

H.Q., Royal 22e Regiment.

Station. In the field

Date. 28 March 1942

(3) No. 3.4917 Name Henri J. Sqn., Battery, or Company "D" Corps R.22eR. (CAO) Date of enlistment 27-1-40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc. | Character

M.F.M. 6 (A.F.B. 122)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On the 27th this soldier completed two years service. In accordance with R.O. 71 the above regt' entries were transferred from previous sheet which was then destroyed on the									

C. Parker Bt Lt-Col Comdg

Certified true copy

[signature] Adjutant Royal 22e Regt

WSC

(P.T.O.)

(4)

SHORT STATEMENT AS TO PARTICULARS OF SERVICE OF THE ACCUSED.

(a) The accused has been in confinement awaiting trial on the present charge (s) for NIL days in civil Custody and 38 days in military custody making a total of 38 days of which None days were spent in hospital.

(b) The present age of the accused according to his own statement is 41 years

(c) The date of his attestation specified in his attestation paper is 24/1/40

(d) The accused is in possession of, or entitled to no military decoration or military reward, (or is in possession of or entitled to

I hereby certify that the foregoing particulars are true extracts from the Regimental Books in my custody.

for Adjutant,
ROYAL [illegible] REGIMENT, C. A. C.

Date 21 Mar 42

4/J-115

PTE HENRI M.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D 140466 Pte Maurice Henri

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Charge	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 36, RP 44 ; findings on alternative charges see MML p 463 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~XXXXXXXXXXXXXXXX~~ ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ "WRP"

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which NO days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be imprisoned with hard labour for a period of 1 year 6 months

(Sgd) ..... Judge-Advocate, if any. 18 Nov 44 Date awarded. (Sgd) "W.R. Pell" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Findings and sentence confirmed

~~I direct that the record is recommitted to the Court for revision of the finding~~ "WRP"

(1. Write "I direct" etc. if not used.)

(Sgd) "J.P.E. Bernatchez" Brig

Date 21 Nov 44 Commanding 3 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D 140466 Pte Maurice Henri	22 Nov 44	"JR Rousseau" Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Certified true Copy "D.W. Owen" Capt Cdn Sec GHQ 2nd Echn AAI

RECORDED AT GHQ IN MAY 45

45-115

FIELD GENERAL COURT-MARTIAL

(CFA86 (To lieu of AFA3) 40/P & B/1698 (40/6)) 4/38B

Convened by Order of Brig J.PE. Bernatchez Comd 3rd Cdn Inf Bde dated 16 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D140466		Pte	Maurice	Henri	R22R

"WRP"

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 17 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2E 120

A1. The President, Members, waiting Member, ~~[illegible]~~ assemble, and the Court is closed. "WRP"

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3) "WRP"

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~[illegible]~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused : Do you object to D125369 L/Cpl Dubois, R. as interpreter ? Ans No

The Interpreter is sworn.(1) ~~[illegible]~~ "WPR" ~~[illegible]~~ "WPR"

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 110, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	W.R. Pell	G&YR
Member	Capt	F. Peacock	WNSR
Member	Capt	G.A. Fortin	R22R
Judge-Advocate			
Prosecutor	Lieut	R.A. Piche	R22R
Defending Offr	Lieut	F. Turgeon	R22R

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 3.)

A8. The accused D140466 Pte Maurice Henri before arraignment make(s) (no) (~~a~~) plea "WPR" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned ~~[illegible]~~ on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is ~~are~~ closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D not "WPR"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans 2/Pte (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E2 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) in use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1) 2/Pte
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~no~~ (no) opening address.(1) "WRP"
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The ~~Defending Officer submits that~~ evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Neither. Do you intend to call witnesses on your behalf ?
Ans Yes. Are they witnesses as to character only ? Ans No.
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* 895. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*B*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*F*).) "WPR"

D8. The President ~~announces that a copy of the Summary of Evidence~~ states to the accused that the finding(s) of the Court on the 1st charge charge(s), being subject to confirmation, will be promulgated later.(1) ~~If the finding on any charge is that the accused is guilty but insane, or unfit to stand his trial, the President explains to the accused that the Court will now receive evidence as to whether he committed the act or made the omission charged against him.~~ Part I of the Schedule is dated and signed.(2) 2/Pte
(1. *AA* 54(3) (*b*), *RP* 43, 120(*A*). 2. *AA* 54(3), *RP* 43, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B 1 and Ex B 2 respectively.(3)
(1. *MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans plea of mitigation (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 309, 2322, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1*B*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET "WRP"

The accused D140466 Pte Maurice HENRI, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, is charge with:-

First Charge
Section 12(1)(a) Army Act

WHEN ON ACTIVE SERVICE
DESERTING HIS MAJESTY'S SERVICE

in that he,

in the Field, Italy, on 20 October 1944, whilst serving in a forward area, absented himself without leave from approximately 1830 hours 20 October 1944, with intent to avoid so serving, until apprehended in ROME at approximately 0905 hours 26 October 1944.

Absence:- 5 days, 21 hrs.

In the Field
13 Nov 44

"J.V. Allard"
(J.V. Allard) Lt Col
Comd Royal 22e Regiment

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
16 Nov 44

"J P E BE Marchex" Brigadier
(J P E BE Marchez)
Commanding, 1 Cdn Inf Bde.

"JM"

"WRP"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D 140466	Pte	Maurice	HENRI	R22R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 16 Nov 44 endorsed by me, (~~my direction for trial~~). "To be tried by Field General Court-Martial". "WRP"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~as the accused is serving with a force specified offr~~) "WRP"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. "WRP"

4. I ~~am unable to appoint an officer of the Corps to which the accused belongs~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~A duly qualified~~ Judge Advocate thereof. (~~Qualified officer~~) appointed hereunder. "WRP"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	W.R. Pell (Must be named. RP 106.)		CYR (Unit.)

MEMBERS.

Capt	F. Peacock		WNSR
Capt (Rank.)	G.A. Fortin (Named or detailed. RP 106.)		R22R (Unit.)

WAITING MEMBER.

Lieut (Rank.)	C.B. Harper (Named or detailed, if any. RP 106.)	CYR (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

Date 16 Nov 44

"J.P.E Bernatchez" Brig (Rank.)
(Signed personally. RP 105 fn 2.)

Commanding 3 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFAAS 11b (Jan of AFAS) AD/P & S/1607 (Amd)

MEDICAL O FFICER'S CERTIFICATE

I certify that I have this morning examined No D 140466
Rank Pte Name Henri, J.M.N. of R22R
and my opinion he is fit to undergo trial by Court Martial

"WRP"

Station In the Field
Date 17 Nov 44

"G Dandenault" Capt
Medical Officer

MEDICAL OFFICER'S CERTIFICATE "WRP"

I certify that I have this morning examined No 140466
Rank Pte Name Henri J.MN. of R22r
and in me opinion he is fit to undergo trial by Court Martial
Station In the Field
Date 18 Nov 44

"G. Dandenault"
Medical Officer

Field General Court Martial

re-case D140466 Pte Maurice Henri R22r

The Court having been opened 1130 hrs 17 Nov 44 had to adjourn at 1230 dus to witness needed being used on another FGCM and will open again at 0900 hrs 18 Nov 44.

"WRP" 18 Nov 44

The Court is declared open 0900 hrs 18 Nov 44 and the same members present.

First Witness for Prosecution

D 38043 A/Sgt Cotnoir, A.A. R22r having been duly sworn states:

I recognize the accused to be Pte Henri.
On the 20 Oct 44 I was acting CSM of A Coy, R22r Pte Henri reported tome at the company headquarters escorting three German prisoners. I told him to keep the prisoners until further orders. A few moments later the Major gave me orders to take the prisoners to Bn HQ. Having only a few men in Henri's platoon I detailed two men from another platoon and I told Henri and another soldier to return to his platoon. He asked me if he could have permission to wash. I told him he could but to do it quickly. He said"thank you". A few moments later Cpl Gagnon of 8 Platoon reported the absence of Pte Henri.

Q. Did you tell him to report to his platoon after washing?

A Yes

Q At what place was Pte Henri's platoon at that time?

A It was the forward platoon of the Coy

Q In which platoon was Pte Henri?

A In 8 platoon.

Q When did you see Pte Henri again?

A When he was paraded to the company on the second or third of November

Q Can you remember exactly how many were left in the platoon on 20th October?

A On the parade state the following morning there were twelve all ranks.

Cross-examined by the Defence.

Q Was there an attack on that morning?

A There was an actack that morning.

Q Did Pte Henri take part in that attack?

A Yes

Q Was Henri's platoon in the forward position?

A Yes

Q Was there much shelling and enemy fire tat morning?

A There was plenty of small arms fire.

Q Do you remember how many were in the platoon when they started the attack?

A Approximately sixteen or seventeen.

Examined by the Court

Q Can you remember at approximately what hour on the 20th Oct Pte Henri reported with prisoners?

A At approximately 1145 to 1200 hrs.

Q At what time did Pte Henri go to wash?

A At exactly twelve thirty noon.

Q Was the company still in contact with the enemy at that time?

A Yes

RP 83(B) has been complied with

Second Witness
E19543 Cpl Cagnon, L R22R having been duly sworn states:

I recognize the accused to be Pte Henri. On the 25th October we were on the front in line and made an attack. Pte Henri was in the platoon with me . We took a few prisoners. I saw that Pte Henri looked very nervous. Lt Vincent sent him back escorting German prisoners. Later after the attack I sent Pte Henri back to the Company HQ with another soldier escorting the prisoners. The other escort came back alone. I enquired where Henri was. He answered He is probably at Coy HQ When I went to Coy HQ I noticed that Pte Henri was not there. I reported him absent to acting CSM Cotnoir.

Q At what time did you notice the absence of Pte Henri?

A Between twelve and twelve thirty noon.

Q Did you see him later on during the day in the platoon.

A No

Q What was your position in the platoon at that time?

A I was acting platoon sergeant.

Q When did you see Pte Henri again?

A On the third of November.

Q At approximately 1230 where was your platoon?

A At approximately 150 yds forward of Coy HQ

Q What was your platoon strength at that time?

A Twelve-thirteen all ranks. "WRP"

Second Witness(cont'd)
Cross examined by the defence

Q Did Pte Henri participate in the attack?

A He took part in about three quarters of the attack.

Q What do you mean by three quarters of the attack?

A He was sent to the rear to escort prisoners.

Q Did he do a good job in the attack?

A Fairly good.

Q Do you remember that Pte Henri told Lt Vincent that he couldn't take it any longer?

A Yes

Q What was Lt Vincent's answer?

A He sent Pte Henri with me to see the stretcher bearers.

Q Did Pte Henri look nervous

A Yes, he was very nervous

Q Was Henri taken to the stretcher bearers before that attack or afterward?

A Before the attack.

Q Did Pte Henri participate in the attack after returning from the stretcher bearers?

A Yes

Q Was it to give Henri a break that Lt Vincent sent him back to escort prisoners?

A Yes

Q Did you participate in the Gothic line with Henri?

A Yes

Q Did he do a good job there?

A Yes

Second Witness (cont'd)

Q Was there a Pte Pakuet in the same platoon with Pte Henri who was a close friend of Henri?

A Yes

Q When you took Henri to the stretcher bearers what happened there?

A I spoke for Pte Henri to the S.B. Tremblay. I told him that Lt Vincent sent Pte Henri there to rest a little. Pte Trembly said "What do you want me to do with him? He gave him a glass of wine and sent him back to his platoon.

Q Did Henri go back with you to the platoon?

A Yes

RP 83(b) has been complied with

The prosecutor produces a certificate of arrest (AA Sec 163 (I) Certificate marked exhibit "A"
Prosecution closed. "WHB"

First Witness for Defence

Lt P.E. Vincent, R22R, having been duly sworn states:

I am platoon commander of 6 platoon. I recognize Pte Henri to be one of the men of my platoon.

Q On the 20th October 44 during your attack did Pte Henri approach you?

A. On the morning of 20 October Pte Henri came to me and told me ~~and told my~~ he was not able to go on because he was too tired and nervous. I sent him back to Coy HQ but at that time I r received the order to advance. I couldn't leave any men behind so I told Pte Henri to join his section, which he did

Q Was he nervous

A Yes

Cross examined by Prosecutor

Q Can you remember if on or about 20th Oct the accused was reported absent from your platoon

A In the afternoon of the 20th October i asked Cpl Gagnon for a roll call of the platoon. He told me that Pte Henri had to be put on the list of the missing.

Q When did you see Pte Henri after that?

A A few days ago with the regimental police

RP 83(b) has been complied with

The Defense declines to make a closing address.

Closing Address by Prosecutor "TP"

The evidence given by the witnesses proves that Pte Henri received an order from his CSM to proceed forward to his platoon and Pte Henri neglected to do so. He was reported absent without leave to the CSM and five days later he was apprehended in Rome. By these facts I ask that Pte Henri be found guilty on the charge against him

Plea in Mitigation of Sentence

I would kindly ask the court in mitigation of sentence in this case Pte Henri who has been in the army for 16 months as the court has a white sheet. Henri has been in Italy for four months and has participated in the battle of the Gothic line. It was told before this court by the witnesses ofthe prosecution that he did a good job in this battle. It was also told that he did a good job in that attack of 20th Octob er, but looked very nervous. His platoon commander certainly found out that he was nervous because as it was said by a witness for the prosecution he gave him a break by detailing him as escort of German prisoners.

I will also ask the court to take into consideration that Henri has family troubles. His mother diid last January.

The accused has good character. He is a volunteer. He was a fool rather than a knave and he apologizes.

A Coy

Certificate in accordance with the Army Act Sec 163 (1)(ii)"WP"

I certify that No D140466 Rank Private Name Henri, M
of the Royal 22nd Regiment
was arrested at Rome at 0930 hrs
on the 26th day of October1944

Signature of PM. ,APM or other Officer into whose custody the above named person was taken on arrest "J Wodd" Captain

Appointment D.A.PM.
Commanding 111 Provost Coy, C.M.Police

Date 26th October 1944

Exhibit "A"

ARMY FORM B 206.

B 1 "WIP"

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D 140466	Pte	Maurice Henri	Royal 22e Regiment

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishments being given in the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	Nil times	Nil times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, N/A

or

There are no entries in the conduct sheets of the accused. N/A

2. The accused has not been previously convicted, *or* N/A

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for N/A beginning on the N/A day of N/A

4. The accused has been in confinement, awaiting trial on the present charges, for N/A days in civil custody, and 18 days in military custody, making a total of 18 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ ~~[illegible]~~ is 20 years

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 17 May 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated N/A, and in his regiment (*or* corps or department) the rank of N/A dated N/A

(*52647) Wt.31705/1877 10,000 10/42 A & E.W. Ltd. Gp.698
(*54491) Wt.1822/451 $6,000 5/43 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D140466 Rank Pte Name Maurice Henri of Royal 22e Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th day of November

"P.A. TREMBLY" LT.
ADJT. R22eR

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of	years,	
In the rank of	years,	
In the rank of	years,	

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such soldier's pay-book as are available and the paragraphs concerned amended accordingly.*)

No. D 140466 Name Henri JMN | Sqn, Battery, or Company "A" | Corps CIC | Date of enlistment 17 May 43 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/126 (5428)

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No One | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
								"WRP"	
				Sheet Dect To RO 319 and 2064 after 6 months Service					
								B 2	
				I certify this is true copy of regt'l books now in my possession					
					"P.A. Trembly" Adj R22R Regt C.A.C.				

(PTO)

YY-116

Pte HENRY A.

Correspondence to be PINNED here.

B113 Send Sgt XY-146

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this twenty-second day of December, 1943.

Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of No. 1 Canadian Base Reinforcement Depot, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer];

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint
*(1) three Officers to form the Court,
*(2) a Field Officer as President,
for the following reasons, namely:]

PROCEEDINGS REVIEWED

18 Jan 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	J. Bernier (RCAFC)	3 Bn 1 CBRD

Members.

Rank.	Name.	Regiment.
Capt.	G.H. McDougall (RCA)	3 Bn 1 CBRD
Capt.	D.O.C. Byng Hall (RCE)	3 Bn 1 CBRD
WAITING MEMBER Capt.	B.J.Kelly (RCA)	3 Bn 1 CBRD

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed G.Hilary Baker Colonel

Commandant, 1 Can Base Reinforcements Depot

Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-51105 Pte Andre HENRY, (R22eR) 1 Bn 1 CBRD	FIRST CHARGE Sec 15(1) Army Act	Guilty	Guilty	
	SECOND CHARGE Sec 24(2) Army Act	Guilty	Guilty	
			6 mon ths detention and stoppages of pay of $17.14 for deficiencies	
			Lan Schmidt major	
			23 Dec 43	I confirm the findings and sentence of the Court.
				G Kenny Basher Colonel Commandant, 1 Cdn Base Reinforcement Depot

(FOR FULL DETAILS SEE CHARGE CHARGE ATTACHED)

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No

Answer (to be recorded on separate sheet if necessary) :—

(Signed) G Kenny Basher Colonel
Commandant, 1 Cdn Base Reinforcement Depot
Convening Officer (*c*)

(Signed) Lan Schmidt major
President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the twenty third day of December 1943 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B.** Certificate of President as to proceedings.

I also certify that :—

*Omit if not applicable.

1. The members of the Court
2. The witnesses
*(3. The Interpreter)
*(4. ~~The officers under instruction~~) JS

were duly sworn.

Signed this 23rd day of December 1943

Lan Schmidt major
President of the Court Martial.

*See footnote (*b*) on page 782 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. **C.** Certificate in case of death sentences.

Signed this day of 19 ,

President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. **D.** Confirmation.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 23 day of Dec. 1943.

To Mr Promulgation on parade.

G Kenny Basher
Confirming Officer
Colonel
Commandant, 1 Cdn Base Reinforcement Depot

D51105 Pte Andri Henry Coy 1 Bn 1 CBRD

Promulgated and extracts taken in the case of

(*a*) (Dated) 24 December 43 (Signed) L'Espérance Capt

Promulgated and extracts taken in the case of D51105 Pte Andre Henry

(Dated) 24 Dec. 43 (Signed) Chester Lieut.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23571) W1 46179/850 30,000 7/43 A & E W Ltd Gp.698
(24256) W1 11192/71 100,000 5/43

CHARGE SHEET

The accused D.51105 Pte Andre HENRY, on the strength of "C" coy, 1 Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army, Overseas, is charged with:-

FIRST CHARGE — Sec 15(1) Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the field, in North Africa, absented himself without leave from 2215 hrs 7 Oct 43 until apprehended at PERREGAUX at 0900 hrs 8 Nov 43. (total absence - 31 days, 10 hrs, 45 minutes).

SECOND CHARGE — Sec 24(2) Army Act

WHEN ON ACTIVE SERVICE, LOSING BY NEGLECT HIS EQUIPMENT, CLOTHING AND REGIMENTAL NECESSARIES,

in that he,

in the field, in North Africa, on 20 Dec 43 was found deficient of clothing, equipment and regimental necessaries as listed hereunder to the value of $23.04 (75% value - $17.14)

Article	Amount	100%	75%
Tins, mess, rect.	1	.57	.43
Anklets, prs	1	.77	.58
Boots, ankle, prs	2	9.62	7.22
Caps, FS	1	.82	.61
Socks, woollen, prs	1	.38	.28
Jersey, pullover	1	1.66	1.24
Trousers, KD	1	1.58	1.11
Shorts, KD	1	1.34	1.00
Braces, prs	1	.29	.22
Brushes, shoe, polishing	1	.17	.13
Cap comforter	1	.25	.13
Dressing field	1	.34	.25
Knives, clasp	1	1.16	.87
Knives, table	1	.18	.13
Fork, MS	1	.09	.07
Packs, WE	1	2.13	1.60
Spoon, MS	1	.09	.07
Shirts, AD	1	1.69	1.20
	Total -	23.04	17.14

In the Field
21 Dec 43

(W.P. Bristowe), Lt.-col.,
Commanding 1 Bn 1 C.B.R.D.

To be tried by F.G.C.M.
22 Dec 43.

Colonel
Commandant, 1 Can Base Reinforcement Depot

re Jurisdiction
Presided at Court

MEDICAL CERTIFICATE
K.R. (CAN) 557

I CERTIFY THAT I HAVE THIS MORNING EXAMINED NO D 5 1 0 5 5

RANK Pte. NAME Henry, A.S.

OF 1 BATTALION, 1 CDN BASE RFT DEPOT. AND IN MY OPINION

HE IS FIT TO UNDERGO TRIAL BY COURT MARTIAL.

STATION Field.

DATE 23 Dec 43.

Capt (RCAMC)
MEDICAL OFFICER 1 BN 1 CBRD

Accused D-5110 Pte HENRY ANDRE 1 Bn 1 C.B.R.D.
(Number) (Rank) (Christian Names) (Surnames) (Unit)

Held in the Field in Algeria on December 23rd 1943.
(Country) (Date)

	Rank	Name	Unit
PRESIDENT	Major	T. Bernier	R.C.A.P.C. 3 Bn 1 C.B.R.D.
MEMBERS	Capt	G. H. MacDougall	R.C.A. " "
	Capt	D.C. Byng Hall	R.C.E. " "
JUDGE ADVOCATE (if any)			
OFFICERS UNDER INSTRUCTION:	[redacted]		

PROSECUTING OFFICER Lieut G. A. Boyle Lawyer? Ans. No

DEFENDING OFFICER Lieut J. C. Andrew Lawyer? Ans. No

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs P 17(E), 22(a)).

The President, in closed court (R.P.22, fn 1), reads the Convening Order and the Charge Sheet(s) to the Members and the Court satisfy themselves that it is properly convened (A.A.49;R.P.105) and constituted that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (R.P. 106).

The accused is (are) brought before the Court, and at 11 00 hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can) 557 (See CMHQ Circular Letter 173) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

President to the Accused:
Do you object to Lieut H. Chasse as interpreter? Answer No

The interpreter is duly sworn

Do you object to [redacted] as shorthand writer? Ans.

~~The shorthand writer is duly sworn~~ (Forms of Oath on Page "D").
The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (R.P.10

President to the accused:

Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Answer No

The President, Members, ~~Judge Advocate and Officers under Instruction~~ are duly sworn (R.P.26-27 (Forms of Oath on Page "D"))

(PTO)

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused ~~has~~(has not) elected trial by Court Martial (A.A. 46(8)).

(If special plea(s) is (are) made for separate trial on one or more charges (Rs 62(E), 108); or as to the jurisdiction of the Court (R.P.34) or in bar of trial (A.A. 36) or as to accused's mental fitness to stand trial (A.A. 130, R.P.57), record such pleas and evidence (if any) on separate sheet (s) to be initialled by the President and attached to the proceedings.

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112)
He pleads as follows.

FIRST CHARGE Guilty	NINTH CHARGE_____
SECOND CHARGE Guilty	TENTH CHARGE_____
THIRD CHARGE_____	ELEVENTH CHARGE_____
FOURTH CHARGE_____	TWELFTH CHARGE_____
FIFTH CHARGE_____	THIRTEENTH CHARGE_____
SIXTH CHARGE_____	FOURTEENTH CHARGE_____
SEVENTH CHARGE_____	FIFTEENTH CHARGE_____
EIGHTH CHARGE_____	SIXTEENTH CHARGE_____

(For procedure on alternative charges, see R.P.37, fn 2)

Further proceedings are recorded on Pages hereto attached.

PAGE "A"

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President).

1. R.P. 35(B) is complied with by the President, ascertaining that accused understands the nature of the charge (s) (fn 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(b) and advising him to withdraw his plea if he thinks the accused ought to plead "NOT GUILTY" thereto.

2. President to the Accused
Q. Do you desire to make any statement of the circumstances, in reference to the charge (s) (R.P.37(B)) Ans. No

(Statement, if any, not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross examination thereon).

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the Proceedings.(If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (R.P.37(B)).

4. President to the Accused:
Q. Do you wish to make any statement in mitigation of punishment? (R.P. 37(C). Ans Yes

(Statement (if any) is recorded on separate sheet, initalled by the President and attached hereto. No cross-examination).

5. President to the Accused
Q. Do you wish to give evidence yourself or call any witnesses as to character? (R.P.37(C)). Ans. No

(Such evidence, confined to character only, is recorded on separate sheet, initalled by the President and attached hereto).

6. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (M.F.M.6) signed in the manner required by A.A. 163(i)(h) and purporting to refer to the accused by his number(if any) rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings. (R.P. 46; Oversens R.O. 3131).

7. President to the Accused:
Q. Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)). Ans No (No cross examination).
(Record address, if any, on separate sheet, initalled by the President and attached hereto).

8. The Court is now closed to consider sentence.(Record on Page 2 of A.F.A.3)
(Punishments, A.A.44, K.R.(Can)563-566; one sentence only awarded, (R.P.48). Sentence should be dated

NOTE: When the President announces that "The Court is closed for the consideration of the sentence", ~~he will add that~~ "the sentence is to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in Open Court are accordingly terminated".
The sentence is not announced to the accused by the Court.

(Signature of the President)

PAGE "B"

(For use when accused pleads "Not Guilty" to all Charges)

(All printed matter not applicable to be struck out, and all alterations, erasures, and additions to be initialled by the President).

1. President to the accused
Q. Do you wish to apply for any adjournment on the ground that any of the rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (R.P. 39(A)). Ans._____

2. The Prosecutor's opening address(if any)(R.P.39(B)) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto.(See RECORD OF EVIDENCE on Page "D").

3. The Prosecution is closed.(If submission that there is no prima facie case established, see R.P.40 fn1&R.P.70 fn 1).

4. The accused is informed that he may, if he wishes, give evidence but if he does so he will be liable to cross examination (R.P.40 fn 2) or that he may, if he wishes, make an unsworn statement, upon which he can not be cross-examined.(R.P.40(D)(ii)(a)).

5. President to the accused:
Q. Do you apply to give evidence yourself as a witness?Ans_____
Q. Do you intend to call any other witnesses in your defence?
Ans._____
Q. Is he a witness as to character only? (F.P.40(B)) Ans_____

6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing address of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto.(For order of addresses see Rs P 40, 41 and 42).

8. The court is now closed to consider the finding(Rs P 43 and 117

9. The court being re-opened, the accused is again brought before it, and the findings of "Not Guilty"(if any) are pronounced and(if findings of "Not Guilty" on all charges) the accused is released.

Where the Court acquits the accused of one or more charges and find him guilty of any other charge or charges, the President of the Court, when announcing the findings of not guilty will add that "The findings of the Court on the.....charge(s) being subject to confirmation, will be promulgated later".

10. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (MFM 6) signed in the manner required by AA 163(1)(h) and purporting to refer to the accused by his number(if any) rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings, (R.P. 46; Overseas R.O.3131).

11. President to the accused:
Q. Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of the punishment(R.P. 46(D)). Ans._____(No cross examination).
(Record address, if any, on separate sheet, initialled by the President and attached hereto.

(Continued)

Plea in mitigation of punishment by Defending

Pte Henry enlisted at the outbreak of war
1939. & has conducted himself as a good
soldier. The accused was a steel strue
Sicily, wounded in action & has proved himself
& be a brave soldier the accused who is fully
qualified as a 1st Class soldier, although he
admitted he made a slip, should good be
to his regt. where he would be very use
in closing may I add that Pte Henry is
very anxious to go back in action with
his regt, I hope the sentence will be
very minimum. I leave the justice in yo
hands

EXHIBIT "D"

C - COY - DEFICIENCIES - [illegible] 1/43

- D.S.U.O.S - L/CPL - HENRY - H. -

		100 lbs	70 lbs
TIN MESS KIT	1	0.57	0.43
ANKLETS-PRS	1	0.77	0.58
BOOTS-ANKLE	2	9.62	1.22
CAPS-F.S.	1	0.82	0.61
SOCKS-ANKLETS	1	0.38	0.28
JERSEY-PULLOVER	1	1.66	1.24
TROUSERS-K-D	1	1.58	1.11
SHORTS-K-D	1	1.34	1.00
BRACES-PRS	1	0.29	0.22
BRUSHES-SHOE-POL	1	0.17	0.13
CAP COMFORTER	1	0.25	0.13
DRESSING-FIELD	1	0.34	0.25
KNIVES-CLASP	1	1.16	0.87
- TABLE	1	0.18	0.13
FORK-M.S.	1	0.09	0.07
PACKS-M.E	1	2.13	1.60
SPOON-M-S	1	0.09	0.07
SHIRTS-K-D	1	1.60	1.20
		$23.64	$17.14

G.H. Rocketeer
C.Q.M.S.

Certificate in accordance with the Army Act Section 105(1)(f)

I certify that No D 51105 Spr HENDL. A of the 6th Army

was arrested at PARREBALIX at 0900 hrs, on 8 NOV 43

"B" 24c.

Signature of Provost Marshal, A.P.M.) or other Officer into whose custody) the above named person was taken on) arrest.

Captain.

GARRISON ADJUTANT, ORAN

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 30th day of October, 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D5110 Pte Henry, A., "C" coy,

DECLARATION

The Court declare that No. D5110 Pte Henry, A., "C" coy, 1 Battalion, 1 Cdn Base Rft Depot illegally absented himself without leave 2215 hrs at In the Field on the 7th day of Oct, 1943 and that on the 8 Oct 43 he was deficient, and that he is still deficient of the following articles:-

Articles	Amount	100%	75%
Anklets, web, prs	1	$ .77	.58
Boots, ankle, prs	2	9.62	7.21
Cap, FS	1	.82	.61
Socks, woollen, prs	2	.76	.57
Jersey, pullover	1	1.66	1.24
Shirts, bush	2	3.50	2.62
Trousers, K.D.	1	1.58	1.18
Shorts, K.D.	1	1.34	1.00
Braces	1	.29	.22
Brushes, shoe pol.	1	.17	.13
Brushes, tooth	1	.09	.07
Cap, comforter	1	.25	.19
Dressing, field	1	.34	.25
Housewife	1	.50	.50
Knives table	1	.18	.13
Haversack	1	2.14	1.60
Spoon, M.S.	1	.09	.07
Towel, hand	1	.21	.16
	Total -	$ 24.31	$18.20

(sgd) R. Paquette, A/Capt. President

L. Charlebois, Lt. Member

Signed at In the Field this 30th day of Oct, 1943. C. Gagnon, Lt. Member

Signature of Commanding Officer,
(sgd) W.P. Bristowe, Lt.-Col.,
Officer Commanding,
1 Bn, 1 Cdn Base Rft Depot.

CERTIFIED TRUE COPY.

[signature] Capt., Adjt.,
Officer having custody of the Original Record.

Summary of Evidence in the case of D 5/1 02
Pte Alex Young 15 BDE in the case of
Adjutant

By direction of the Commanding Officer the Summary of Evidence is taken under oath

FIRST WITNESS For the Prosecution

Capt H. J. Comma.
Born , a Can Born Rfs Regt. having been duly sworn states.

I am the person above described I am the officer in charge of documents of the battalion and reported books

I produce hereunto Exhibit "A" a true copy certified by myself being a declaration of a Court of Inquiry relating to the accused

I produce also a certified copy of proceedings marked Exhibit "B" relating to the accused

The accused declined to cross examine the witness.

SECOND WITNESS for the Prosecution

D 61755 a/Cpl Bissonnette, C. E. of the strength of "C" Coy, 1 Can Base Rft Depot having been duly sworn states.

I am the person above described. I am the Coy orderly room clerk for the week of my duty I observed that the accused was absent from 7215 hrs 7 last 43 to a date after 0900 hrs 8 Nov 43.

(E Bissonnette

The accused declined cross examine this witness.

After being duly warned & accused with R.H.A. the accused elect to reserve his defence

I certify that the foregoing Summary of Evidence was taken down by me in the presence & hearing of the accused & that as I have recorded it the evidence is true.

[illegible] Lt
Asst Judge Advocate
Court Summary

To date 8 Nov 43

B.36818 C.Q.M.S. Crookshank, G.A.
on strength of "C" Coy, Edn Base Rft
Depot, having been duly sworn states,

THIRD WITNESS for the [illegible] I have checked the kit of the accused whom I now recognise with his S.B.R. I produce the accused whom I now recognise when he came to this Coy from the field. The deficiencies against him and the 75% value is as stated in the charge sheet.

Sgd Crookshank C.Q.M.S.

The accused declined to cross examine this witness

SUMMARY OF EVIDENCE in the case of D.51105 Pte Henry, A., on the strength of "C" coy, 1 Bn, 1 Cdn Base Reinforcement Depot, a soldier of the Canadian Army Overseas.
By direction of the C.O. this Summary is taken under oath.

FIRST WITNESS
FOR the Prosecution.

Capt. K.J. Cannon, on strength of 1 Bn 1 Cdn Base Reinforcement Depot, having been duly sworn, states:- I am Capt. K.J. Cannon, adjutant of 1 Bn, 1 Cdn Base Rft Depot, officer in charge of documents of this bn, and regimental books. I produce herewith Exhibit "A", true copy, certified by myself, of a Declaration of a Court of Inquiry relating to the accused.
I pproduce also a certificate of apprehension, marked Exhibit "B", relating to the accused.

(sgd) K.J. Cannon

The accused declines to cross-examine this witnes

SECOND WITNESS
For the Prosecution.

D.61754 A/Cpl Bissonnette, C.E., on strength of "C" coy, 1 Bn, 1 Cdn Base Rft Depot, having been duly sworn, states:- I am D.61754 A/Cpl Bissonette, C.E., orderly room clerk of "C" coy, 1 Bn, 1 Cdn Base Rft Depot. In the course of my duty I learned that the accused was absent from 2215 hrs 7 Oct 43 to a date after 0900 hrs 8 Nov 43.

(sgd) Bissonnette, C. E.

The accused declines to cross-examine this witnes

THIRD WITNESS
For the Prosecution.

B.36848 CQMS Crochetiere, G.A., on strength of "C" coy, 1 Bn, 1 Cdn Base Rft Depot, having been duly sworn, states:- I am B.36848 CQMS Crochetiere, G.A., CQMS of "C" coy, 1 Bn, 1 Cdn Base Rft Depot. I have checked the kit of the accused whom I now recognize with his 513a. I equipped the accused when he came to this coy from the field. The deficiencies against him and the 75% value is as stated in the charge sheet.

(sgd) G.A. Crochetiere, CQMS

The accused declines to cross-examine this witness. After being duly warned in accordance with RP 4 (b) the accused elects to reserve his defence.

I certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused and that RP 4 (c), (d), (e) and (f) have been complied with.

In the Field
20 Dec 43

(sgd) L.A. Kitz, Lt.,
Offr detailed to take Summary

FIELD CONDUCT SHEET.

Date of Enlistment: 2 Oct 39

Army Form B128 Sheet No. 3

EXHIBIT A

*No. D51105 Name Henry A Sq., Batty., or Company: Corps C. I. C.

Date of last entry in Company Conduct Sheet: No. and date of last drunk: G.C. Badges: Long Service and G.C. Pay: Signature O.C. Company, etc.:

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded and Remarks
This man came to us from the Field Unit but we have not as yet received his M.F.M-6. We are unable to take extracts from M.F.M-4 as they are with 2nd Echelon in Italy								

I.J. Cannon Capt
Adj. 113th I.C.I.R.D.

[illegible] Forwarded and Punished

(P.T.O.

*Serial Number in case of enemy prisoner of war.

In Lieu of
MFB 365

EXHIBIT 8

STATEMENT AS TO CHARACTER AND PARTICULARS
OF SERVICE OF ACCUSED

Number D2105 Rank Cfn Name Henry A Unit [illegible] R

1. The following is a fair and true summary of the entries in the ~~Service and General~~ conduct sheets
Regt and ~~Sen, Battery~~ or coy conduct sheets of the accused, excl of convictions b a Court-Martial or a Civil Court, of summary awards under Sec 47 of the Army Act and of cases in which trial has been dispensed with.

Within last 12 months		Since enlistment or appt.	
For	times	For	times
For	times	For	times
For	times	For	times
For	times	For	Times

~~number of instances of gallant or distinguished conduct,~~
or,
There are no entries in the conduct sheets of the accused.
NOTE - If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted,
or,
~~Previous convictions of the accused by a Court martial or a civil court, of summary awards under Sec 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time,
or,
~~The accused at the present time is under sentence for _____ beginning on the _____ day of _____.~~

4. The accused has been in confinement awaiting trial on the present charges for Nil days in civil custody and 43 days in military custody making a total of 43 days in custody of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 22 yrs.

6. The date of his attestation specified in his attestation paper is 2 Oct 39.

7. ~~The service which the accused is required to reckn towards discharge is~~

8. ~~The accused is entitled to reckn _____ service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no military decoration,
~~or military reward (or is in possession of or entitled to). State any military decoration or award.~~

10. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:-

In the rank of _____ Yrs. _____ Date of Promotion.

In the rank of _____ Yrs.

In the rank of _____ Yrs.

NOTE - If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a Court Martial or civil court, of summary awards under sec 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number _____ Rank _____

Name _____ of _____ Unit Regiment.

NOTE - A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of trial	Charge	Sentence of Court	Punishment remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.
Signed this 21 st day of December 1943. [illegible]

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked _____, signed by the president and annexed to the proceedings.

XXX-23

PTE HENRY A.D

RECORDED AT CMHQ IN AB 160. XXX-23

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA3) 4/1 (P & R) 1608 (2004)

Convened at Brig D. C. Spry Comd 12 C.I.B. dated 1 Aug 44

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K 43502 Pte Henry, Albert Donald

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	See 15(1)	Guilty	Guilty	
2nd	See 15(1)	Guilty	Guilty.	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for N/L beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 24 days, of which N/L days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

£120 days detention

(Sgd) Judge-Advocate, if any. 2 Aug 1944 Date awarded. (Sgd) Lawson President. (RP 45, 90)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(1). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm

I direct that the accused be not committed to prison or detention barracks until further orders. (1. AA 57A. Delete if not used.)

(Sgd) D. C. Spry Brig

Date 2 Aug 44 Commanding 12 Corps Tps. Base. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
K43502 Pte Henry AD	3 Aug 44	G H R Thirlwall Capt THE WESTMINSTER REGIMENT (MOTOR)

THE WESTMINSTER REGIMENT (MOTOR)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECEIVED 26 SEP 1944 ... BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED 21 Sep 44 R. Beaulieu Capt REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K. 43502	Pte	Albert Donald	Henry	Westminsters

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 2 Aug. 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2A 53

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or succeeding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~were~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~were~~ brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ... as interpreter? Ans N/A

The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans N/A

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans N/O (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 98(2). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J. B. Lawson	4 Fd. A. Bde.
Member	Capt	W. J. Neill	Westminsters Regt.
Member	Lieut	D. E. Jones	89/49 Int Regt.
Judge-Advocate			
Prosecutor	Lieut	R. B. Fenton	Westminsters Regt
Defending Offr	Lieut	J. S. Moore	Westminsters Regt.

Questions by President: Is the Prosecutor a lawyer? Ans N/ Is the Defending Offr a lawyer? Ans N/ (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DC.)

A8. The accused K. 43502 Pte Henry A.D before arraignment make(s) (no) ~~objection~~ (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~were~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 52; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 88, 116; use of Summary of Evidence at Trial see RP 17(B) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, court thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(1. *If "yes", see RP 39(A), for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 84 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 44(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes (addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans. No.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~acquittal~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(i) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C, and Ex - respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 809, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

E.D. 8

The accused, K43502 Pte. HENRY, Albert Donald The Westminster Regiment (Motor) a soldier of the Canadian Army Overseas is charged with:

First Charge
A.A. Sec 1b(1) WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, absented himself without leave from his Regiment, The Westminster Regt. (M) from 0930 hrs. 4 Jun 44 till 1900 hrs 14 Jun 44. (Absent 10 days 9 hrs and 30 mins)

SECOND Charge
A.A. Sec. 1b(1) WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, absented himself without leave from his Regiment, The Westminster Regt. (M) while under close arrest from 2330 hrs 18 Jun 44 until he surrendered himself to the Military Police in Naples at 2150 hrs 8 Jul 44. (Absent 19 days 22 hrs and 20 mins.)

In the Field
21 Jul 44

(G.C. CORSOULD) Lt.-Col
Comd
The Westminster Regt. (M)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

D.C. Spry

(D C Spry) Brig
Comd 12 Cdn Inf Bde

1 AUG 44

Ex. F

FIELD GENERAL COURT-MARTIAL

CFA 66 (In lieu of AFA 49/FA 8/1697 (2nd))

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K-43502	Pte		Albert Donald Henry	Westmr R (M)	

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 1 AUG 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ LS

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ LS

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ LS

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	James Bruce Lawson	4 PLDG

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by CO Westmr R (M)	
Lt	To be detailed by CO 89/109 Inf Bn	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	To be detailed by CO 4 PLDG	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
	N/A	

On Active Service in the Fd

in ITALY (Country.)

Date 1 AUG 44

D C Spry (Signed personally. RP 105 fn 2.)

(D C Spry)

Brig (Rank.)

Commanding 12 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

E. G.

MEDICAL OFFICER'S REPORT.

F.R. (Can) Para. 887.

I certify that I have this morning examined

No K33703 Rank Pte Name HENRY AD

Unit Queen's Own Rifles Regt. (Can).

and in my opinion he is fit ~~unfit~~ to undergo trial by Court Martial.

WESTMINSTER REGIMENT AUG 2 1944 ORDERLY ROOM

Station. In the Field.

Date 2 Aug 44

Capt
R.C.A.M.C.

Ex. E

Plea of mitigation of sentence in the case of K/35022 Rfn. Henry, A.K.

This soldier, Rfn. Henry, A.K. has been in the Canadian Army for a period of almost three and half years. He joined the Westminster Regt in July 1942. He has taken part in every engagement the unit has participated in and his conduct has been good.

The accused realizes the gravity of the situation but in pleading guilty is not attempting to evade punishment.

The accused desires very much to go back into action with his unit.

In the Field
2 Aug. 1944.

J. Smoore, Lt.
Westmr Regt (Motor)

A

Summary of evidence in the case of K43502 Pte. Henry, A.D. of the Westminster Regiment (M) Canadian Army Overseas, charged with absence without leave from 0930 hrs. 4 Jun 1944 until 1900 hrs. 14 Jun 1944.

The commanding officer directs the evidence be taken on oath.

1st Witness
K47487 Sgt. Macdonald, K.E. Westminster Regiment (M) having been duly sworn states:-

I am K47487 Sgt. Macdonald, K.E. platoon Sergeant of #16 platoon Westminster Regiment (M) and was so on the 4th Jun 44. I am well acquainted with the accused whom I now recognize.

At 0930 hrs. 4 Jun 44 I called the roll on a company church parade and found K43502 Pte. Henry, A.D. absent.

I instituted a search and could not discover his whereabouts. I then reported his absence to the C.S.M.

Pte. Henry, A.D. did not attend any further roll calls in the platoon until he turned himself in to me at 1900 hrs. 14 Jun 44

The accused declines to cross examine the witness.

K E Macdonald (Sgt)

The accused having been duly warned as follows:-

Do you wish to make any statement or to give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be used in evidence.

The accused states - I have nothing to say at this time.

A D Henry

I certify that R.P. 4 (c) (d) (e) and (f) has been complied with.

E Moore Lt.

Taken by me in the field in the presence and hearing of the accused this 15th day of June 1944.

E Moore Lt.

Respectfully submitted this 15th day of Jun 1944.

A-4

ADDITIONAL SUMMARY OF EVIDENCE in the case of K43502 Pte. Henry, A.D. of the Westminster Regiment (M) Canadian Army Overseas is charged with:-

1. ~~Whilst on Active Service~~
~~Breaking barracks whilst under close arrest at approx 2330 hrs. 18 Jun 44. A.A. Sec 22~~

1. Whilst on Active Service
Absent without leave from 2330 hrs. 18 Jun 44 until 2150 hrs. 8 Jul 44. A.A. Sec. 15 (1)
TOTAL TIME ABSENT 19 days 22 hrs. and 20 min.

THE COMMANDING OFFICER DIRECTS THAT EVIDENCE BE TAKEN ON OATH:

1st Witness K47661 Sgt. DeAnna, A., "A" Coy. Westminster Regt. (M) having been duly sworn states:-
I am K47661 Cpl. DeAnna, A. of "A" Coy. Westmr Regt. (M) and was K47661 Sgt. DeAnna, A. on the 18 Jun 44, I was in charge of Bn. Guard on the night 18-19 Jun 44 and K43502 Pte. Henry, A.D. whom I recognize here was under close arrest at that time. The Guard Room was a tent which held Guard and Prisoners. On rain starting the tent leaked. Later the prisoner went to his quarters just outside. At approx 2300 hrs I went to look at the prisoner and did not find him. I searched the vicinity then and again at daylight but the prisoner had disappeared.
I reported this to R.S.M. Clifford.

The accused declines to cross examine this witness.

A. DeAnna

11-32

2nd Witness

Capt E.B. Robertson Westmr Regt (M) C.A.O. having been duly sworn states:

I am Capt E.B. Robertson Adjt of the Westmr Regt (M) and was so on 18 Jun 44

K43502 Pte HENRY A.D. was reported as having broken close arrest and missing from 2330 hrs 18 Jun 44 and he did not attend any Unit Parade until returned by Provost on 15 Jul 44

I hereby submit Certificate of surrender in the case of K43502 Pte Henry A.D.

The accused declines to cross examine this witness

E.B.R. Robertson Capt.

Certificate of Surrender marked Exhibit A and attached.

Mountain Lt.

The accused having been duly warned as follows:

Do you wish to make any statement or to give evidence upon oath - you are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be used in evidence.

A. 3

The Accused I have nothing to say at this time.

A. P. Henry

I certify that R.P. 4 (C.D.E.F.G.) has been complied with.

B Mountain Lt

Taken by me in the Field in the presence and hearing of the accused this 20th day of July 1944.

B Mountain Lt

Respectfully submitted this 20 day of July 1944.

B Mountain Lt

CHA

EXHIBIT "A"
MM.

A. 4

CERTIFICATE OF SURRENDER

Army Act Section 163 (1) (d).

I, CAPT. K. OSBORNE. certify that :-

No K43502 Rank PTE Name HENRY A.D.

Unit WESTMINSTER REGT. 5TH CDN. DIVISION surrendered himself to

No D-51753 Rank L/cpl Name MACDONALD, W. AT - NAPLES.

at 2150 hours on the 8th July 1944, as a deserter (or absentee without leave).

Commanding Officer of the person or portion of His Majesty's Forces to whom the surrender was made.

K. Osborne Capt.

Commanding,
5th Howar Coy. C.A.C. Petrie.

138/175.7/3/2/Gen/No.

K 43502 PTE WESTMINSTER HENRY A.J. SUPPORT CMF.

CENTRAL 2210

9TH JULY SOLDIER. ABSENT

—

8 July 1944

771243 R. agnew de 510 PROVOST COY.

ARMY FORM B.206.

(B.86)

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K43502	Pte.	HENRY A.D.	Westminster Regt. (M)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, permission being given by the most senior officer in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec 10	times	1 times.
For A.A. Sec 40	1 times	1 times.
For A.A. Sec 15(1)	2 times	2 times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct: NIL

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted.

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for _____ beginning on the _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges, for _____ days in civil custody, and 13 days in military custody, making a total of 13 days, of which 30 days were spent in hospital.

5. The present age of the accused according to his attestation paper is 21 yrs 11 mos.

6. The date of his attestation specified in his attestation paper is 19 Feb 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is _____

8. The accused is entitled to deferred pay or gratuity in respect of _____ service.

9. The accused is entitled to reckon _____ service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). Cdn Volunteer and Service Medal and Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of _____

12. (*In the case of an officer.*) The accused holds in the army the rank of _____, dated _____, and in his regiment (*or corps or* department) the rank of _____ dated _____

(*25647) W.L.31705 1977 10,000 10-42 A.& E.W.Ltd Gp.698
(25967) W.C.32516 1257 12,000 2-43

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. [illegible] Rank Pte Name [illegible] of [illegible] Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21 day of Jul 44

[illegible] Capt

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of , years, , ,

In the rank of , years, , ,

In the rank of , years, , ,

In the rank of , years, , ,

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.)

No K43502 Name Henry A.D. Sqn, Battery or Company — Corps C.I.C. — Date of enlistment 19/2/41 — GC Badges — Service or Proficiency Pay

MFM 6
(A.F.B. 122)
49/Tech/136 (3438)

Date of last entry in Company Conduct Sheet NA — No and date of last drunk NA — Period not reckoning towards freedom from extra fine NA — Sheet No 2 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Seaforth camp	20/1/42	Pte.		A.A. Sec 10, Breaking out of Barracks.(Found outside of camp without permission	L/Cpl Drieme Pte. Chance	2 days CB S	21/1/42	Lt. M. Hassen	
Field	28/10/42	Pte		A.A. Sec 40 Cond to the Prej	CQMS McAskill	Admonished	29/10/42	Lt. J.O. Hall	
Field	6/4/43	Pte.		Sec 15 (1) A.A. AWL from 2300 hrs 4 Apr 43 till 2359 hrs 6 Apr	L/Cp Nelson & Hackett	7 days CB	7 Apr 43	W.J. Neill Capt	Forf 2 days P&I 149(1)a
Field	20 Aug 43	Pte		A.A. 15(1) AWL from 2400 hrs 20 Aug 43 till 1300 hrs 30 Aug 43	Cpl Robinson N.A.	9 days C.B. Forf 9 days pay	1 Sep 43	Lt.-Col. E.L. Tindall	Forf 10 days P&I 149(1)a

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2 Dec 43	Pte.		A.A. Sec 40 Cond to the Prej	CSM Wilson J.E.	14 days CB forf 14 day pay	3 Dec 43	Lt.-col. W.L. Tindall	

CERTIFIED TRUE COPY From the Regimental Books in my custody

E.W. Robertson Capt

130 H Pte Henry, A.W.

O. H. M. S.

M. F. B. 270

1369

C4742 Pte. Henry. A.28. 130 H

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this second day of May, 19 42

Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint xx (1. Three Officers to form the Court. *(2. A Field Officer as President.)

for the following reasons, namely:—]

* Omit if not applicable.

PROCEEDINGS REVIEWED

Reviewing Officer 22 May 42.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	J.W. Ritchie	RCR

Members.

Rank.	Name.	Regiment.
Capt	D.W. Banton	48 Highrs
Lieut	A.E. Andrews	Hast & PEI
Lieut	J.M. Gregg	RCR (Waiting Member)

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed R.R.L. Keller
(R.R.L. Keller)
Brigadier
Commanding Comd, 1 Cdn Inf Bde Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C.4742 Pte Henry, A.W. Hast & PER	(1) WOAS breaking out of barracks, in that he, In the Field broke out of barracks when his duty required him to be in billets, whilst his platoon was duty platoon on 5 Apr 42 AA Sec 10 (4)	NOT GUILTY	Not Guilty	I confirm the Finding and Sentence of the Court. H.T.H.Q.
	(2) WOAS absenting himself without leave, in that he, in The Field absented himself without leave from 1800 hrs 5 Apr 42 to 1630 hrs 24 Apr 42. AA Sec 15 (1)	GUILTY	Guilty 120 Days Detention	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):— NO

(Signed) H.T.Hdeller (Signed) J.W. Ritchie Maj/President. RER.
Commanding
(Rank) Brigadier, Comdl Cdn Corps
(Rank)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 2nd day of May 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 9th day of May 1942

J.W. Ritchie Maj/R
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmative

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further order.~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 9th day of May 1942

H.T.Hdeller Brig
Confirming Officer.

Promulgated and extracts taken in the case of C.4742 Pte. Henry A.W.

(a) (Dated) 11 May 42 (Signed) L. Graham LT. COL
ADJUTG. THE HASTINGS & PRINCE EDWARD REGT. C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

B2

The accused C.4742 Pte. Henry, A.W. a soldier of the Hastings and Prince Edward Regiment, C.A.(A.F.)

is charged with:-

1st Charge
A.A. Sec 10(4)

W.O.A.S. is charged with breaking out of barracks,
in that he,
at, "In the Field", broke out of barracks when his duty required him to be in billets, whilst his platoon was duty platoon on 5 apr. 42.

Cont. A.A. Sec. 10 (4)

2nd Charge
A.A. Sec 15 (1)

W.O.A.S. absenting himself without leave,
in that he,
at, "In the Field", absented himself without leave from 1800 hrs. 5 apr. 42 to 1630 hrs. 24 apr. 42.

Cont. A.A. Sec. 15 (1)

H.D. Graham

(H.D. Graham) Lieut.-Col.,
Commanding,
Hastings and Prince Edward Regiment.
C.A.(A.F.)

"In the Field
29 apr. 42

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

2nd
...4...MAY, 1942

R.F.L. Keller

(R.F.L.Keller, Brigadier,
COMD, 1 Can Inf Bde)

H.W. Richardson Major
President

This is to certify that C4742 Pte.Henry,A.W.
is fit to undergo trial by F.G.C.M.

Signed this
5th day of
May 1942
"In The Field"

(J.S.Miller) Capt.,
M.O.
The Hastings & Prince Edward Regiment,
C.A.(A.F.)

Field gaol.

PROCEEDINGS OF A GENERAL COURT-MARTIAL, held at The Hastings and Prince Edward Regiment on the 5 day of May 1943 by order of The Brigadier Commanding 1 C.I.B. dated the day of

PRESIDENT.

Major J.W.Ritchie R.C.R.

MEMBERS

Capt. D.W. Benton 48th. Highrs. of C

Lieut.E.A. Andrews Hast. & P.E. Regiment

Trial of C4742, Pte. Henry, A.W. The Hastings and Prince Edward Regiment.

The Court satisfy themselves as provided by Rules of Procedure 22 and 33.

The accused is brought before the Court.

The names of the president and members of the Court are read over in the hearing of the accused, and they severally answer to their names

The charge-sheet is signed by the president, marked B2, and annexed to the proceedings.

DEFENDING OFFICER. PROSECUTOR

Lieut. W.H.B. Deakin Major T.B. Ketchison

At 1010 o'clock the trial commences.

The order convening the Court is read and is marked "A" signed by the president and attached to the proceedings.

PRESIDENT. Q. Do you object to be tried by me, as president, or by any of the officers whose names you have heard read over ?

A. No, Sir.

Q. Do you object to Sjt. Kamske as shorthand writer ?

A. No, Sir.

C4742, Pte. Henry, A.W. The Hastings and Prince Edward Regiment, you are charged with:

FIRST CHARGE "When on active service, etc.

Q. Do you plead guilty, or not guilty to this charge?

A. Not guilty, sir.

SECOND CHARGE "When on active service, absenting etc.

Q. Do you plead guilty, or not guilty to this charge ?

A. Guilty, sir.

Q. You understand what it means when you plead guilty?

A. Yes, Sir.

FIRST CHARGE Q. Do you wish to apply for an adjournment on the grounds that the rules relating to procedure before the trial have not been complied with and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

A. No, Sir

[illegible]

FIRST WITNESS C4594, Sgt. Carswell, K.H. The Hastings and Prince Edward Regiment, having been duly sworn states:
I am and was at all times material hereto a Sgt. of "B" Coy, Hastings and Prince Edward Regiment. On 5th April, 1943, No.10 platoon, "B" Company was duty platoon on the coast. Pte. Henry had just come back from detention and got his bed in No.10 platoon billets. In the meantime I warned him that we were stand-to platoon at 1800 hrs. that evening. I checked up shortly after 1800 hrs. and found him missing, Sir.

DEFENCE Q. Did you only check house or did you check Company area?

CROSS EXAMINES A. I checked the company area, Sir.

Q. What do you mean by Pte Henry had just returned from detention?

A. He came back on the afternoon of the 5th. of April, from detention.

Q. Where did you warn Pte. Henry?

A. I warned him in the Company orderly room house.

Q. In whose presence?

A. I cannot make a definite statement, a crowd was around, but nobody I can definitely name, Sir.

Q. Accused was released from detention on the 5th, which was a Sunday. Is it the practice to release a man on a Sunday?

PROSECUTOR I object to that question, Sir, on the ground that it has no bearing on the case

PRESIDENT Objection overuled.

A. I don't know where he came from as detention is at Battalion and I am a company man.

Q. Are you sure he was released from detention on Sunday?

No answer

DEFENCE CONT'D. I can take it then that witness is not sure of when accused returned to billets and of when he gave the instructions to him

PROSECUTION Q. You make a sworn declaration that he was absent on the 5th April, yet you are mixed up .

A. It was put down as 5th. April,Sir, that is the day he was warned, as I can remember it,Sir

Q. Do you wish to cross-examine further D.

Prosecution is closed

PRESIDENT Q. Do you apply to give evidence as a witness?

DEFENCE I propose that this charge is squassed at the present stage in the light of the evidence as given .

The Court considered this suggestion by the defending officer and decided that further evidence would be heard.

DEFENCE

COURT Q. Do you apply to give evidence yourself as witness?

A. Yes, Sir.

Q. Do you intend to call any other witness in your defence?

A. Yes, two witnesses,Sir.

Q. Are they witnesses as to character only ?

A. No

C4745, Pte. Henry, A.W. having been duly sworn states: I am and was at all times material hereto a Private, in "B"Coy, Hastings and Prince Edward Regiment

DEFENCE Q. When did you enlist with the unit?

A. 8th.September,1939

Q. When did you come to England?

A. 1st January,1940

Q. What happened on 4th and 5th April,1942, and events leading up to it ?

A. I was released from detention on 4th.April and turned over by the Provost Sgt. to "B"C oy. orderly room. I took my equipment to No.10 platoon billets,got cleaned up and caught a bus for Bognor and from Bognor to London.

Q. What time were you taken to your Company headquarters, and what time did you leave for Bognor?

A. At 1400 hrs. to my company headquarters and at 1730 hrs. to Bognor.

C. During that time were you warned that you were to stand by for duties on duty platoon, or that "B"Company was duty company?

A. Not to my knowledge,Sir.

X.

PROSECUTION

Q. What day was 4th. April,1942?

A. Saturday, Sir.

Q. What day was 5th. April,1942?

A. Sunday, Sir.

Q. Who took you back?

A. Sgt.Cornish of R.P.'s

Q. Who did you report to at "B"Company?

A. Duty officer, Sir.

Q. Did you see Sgt.Carswell at "B"Company?

A. I did not, Sir.

Q. You reported in to "B"Company at what hour?

A. 1400 hrs., Sir.

Q. You took the bus for Bognor from Elmer,at what time?

A. 1730 hrs.,Sir.

Q. You are sure?

A. Yes, sir, 1730 hrs.

Q. What time does the bus leave Elmer for Bognor?

A. Ten to and twenty past,Sir.

Q. The Bus must have been late?

A. I was just in time to catch it,Sir.

Q. You went into Bognor station at roughly 1800 hrs. and took a train for London?

A. Yes,Sir.

Q. No one at all at "B"Coy. told you,you were duty platoon?

A. No,Sir.

Q. You joined 8 September,1939 ?

A. Yes, Sir.

Q. Came xx over here 1st January,1940?

A. Yes,Sir.

Q. Any idee of how many times you Have been AWL since coming?

DEFENCE — I object to that question in that he is not being examined as to character.

COURT — Objection sustained

PROSECUTION — There have been two statements made on oath, one by Sgt. Carswell and one by Pte.Henry

COURT

Q. When did you return from London?

A. On 24th, Sir.

COURT (Contd) Q. Were you in "B" Company area on the 5th. April ?

A. I was in London on 5th. it happens to be a Sunday, Sir.

- Rule 83 B has been complied with.-

The court asks for document showing time of release of Pte. Henry on or about 4th or 5th. April, 1942.

L/Cpl. Dennen Hastings & Prince Edward Regiment having been duly sworn states:
I produce a document regarding release from detention of Pte. Henry.

L/Cpl. Dennen produces a record of men undergoing detention showing the date of award and date of release.
Extract from this record -
"C21942, Pte. Henry A.W. of "B" Coy was sentenced to 28 days detention on 7th March 1942 and was released on 4th. April, 1942"

- Rule 83 B has been complied with -

SECOND WITNESS C4521 Pte. Moon R.A. of No.10 platoon, "B" Company, The Hastings & Prince Edward Regiment, having been duly sworn states:-
I am and was at all times material hereto, Pte. of No.10 platoon, "B" Company, Hast. & P.E.R.

DEFENCE. Q. Is there a man in your platoon by the name of Pte. Henry A.W. ?

A. Yes, Sir.

Q. Would you recognise him.

A. Yes, Sir.

Q. Point Him out.

The witness pointed out the defendant.

Q. What happened to this man in March or April ?

A. He was in detention. He came back on Saturday afternoon.

Q. Do you live in the same room as he does ?

A. Yes, Sir.

Q. On night of release, did he sleep in that room ?

A. No, Sir.

Q. Was your platoon duty platoon the following week ?

A. Starting Sunday, Sir.

Q. When were you warned ?

A. On Sunday morning.

Q. At time you were warned, was Pte. Henry warned ?

A. No, his name was called but he did not answer.

Q. Was he there ?

A. No, Sir.

PROSECUTION Q. Pte. Henry returned on Saturday afternoon ?

A. I believe Saturday afternoon, Sir.

PROSECUTION (Cont'd.)

Q. You are positive it was Saturday?

A. Yes, Sir.

Q. Do you remember the date?

A. No, Sir.

Q. Does Pte.Henry sleep in your room?

A. Yes, Sir.

Q. He didn't sleep in your room on that night?

A. No,Sir. I think he was there on Sunday morning.

Q. He could have been sleeping in some other house?

A. I don't know,Sir.

Q. Who warned you for duty platoon?

A. Sgt.Carswell,Sir.

Q. Was that a parade?

A. No,Sir.

Q. Do you konw whether Pte.Henry was warned that he was for duty platoon?

A. No, Sir. I heard his name called.

Q. At what time and where do you remember seeing Pte.Henry on Sunday morning, 8th April,1945.?

A. In the house,Sir.

DEFENCE

Q. Are you absolutely sure you saw him on Sunday morning?

A. I am pretty sure - not real sure,Sir, but I am pretty sure he came back Sunday morning,Sir.

COURT

Q. Was the roll called on Sunday morning in the platoon or section?

A. No,Sir.

Q. Did platoon Sgt. or Section Commanders make a check on that Sunday morning?

A. I could not say,Sir.

Q. Were you talking to Pte. Henry on Sunday morning?

A. No, I wasn't, Sir.

PROSECUTION

Prosecution declined to sum-up.

DEFENCE ADDRESS

The accused, Pte.Henry,A.W.is charged with breaking out of barracks etc. Proof is required that he broke out of billets on 8th April,1945, and that he was duly warned for duty. I contend that neither of these have been complied with. The evidence of Pte.Moon, the accused, and Sgt. Carswell is not complete enough to prove anything. Sgt.Carswell's evidence is contradictory and he was not sure of dates. He may have thoughthe warned the accused, but actually did not do so.

COURT ADJOURNED FOR FINDING

Court reassembled and finds the accused not guilty of the first charge.

F

CC.

SECOND CHARGE "When on active service, absenting etc.

Q. Does the accused wish to make any statement with regard to his plea of guilty on this charge

A. No, Sir.

The accused is found guilty of the ~~first~~ SECOND charge. The summary of evidence is read, marked H and signed by the president and attached to the proceedings.

Statement by Pte Henry, A.W. C4748, in his own defence as to character. -

"Since I was twelve years old I have been more or less wandering and find it hard to get into army routine.

COURT Q. Anything else?

A. No, Sir. There isn't much use.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

C4704, C.Q.M.S. Dunkley, F.E. "C" Coy, Hastings and Prince Edward Regiment

Q. Before becoming C.Q.M.S. what were you?

A. Platoon Sgt. No. 15 Platoon, "C" Coy, Sir.

Q. When in that platoon, did you have Pte. Henry?

A. Yes, Sir.

Q. Would you recognize him if you saw him.

A. Yes, Sir.

Q. If he is in this room point him out -

The witness pointed out Pte. Henry.

Q. How long was he serving with you in that platoon?

A. From the last week of September or the first two weeks of October, 1939, till two months ago, Sir.

Q. Was he in that platoon all the time?

A. Yes, Sir.

Q. What do you think of him a s a soldier, and what can you say as to his character?

A. He was clean, and willing to obey ~~xx xxxx~~ orders when with the platoon, the only fault he had was being AWL, but he was a good soldier otherwise.

Rule 83 B has been complied with -

Capt. A.C. Holland - Adjt. Hastings and Prince Edward Regiment having been duly sworn states:-

I produce this statement as to character and particulars of service of accused A.F.B.296 marked J and attached to the proceedings.

STATEMENT IN ACCORDANCE WITH R. OF P. 14 (b)

I, C.4742 Pte. Henry, A.W. desire to have an officer assigned to represent me at my trial by Court Martial, and desire the services of Lieut W.H.B. Cochin Hast. & P.E. Regt., if he is available.

A. W. Henry

C.4742 Pte. Henry, A.W.
Hast. & P.E. Regt., C.A.(A.F.)

"In the Field"
29 Apr. 42

E.

The Court finds that the accused 04742 Pte. Henry A.W. Hastings and Prince Edward Regiment is not guilty of the charge.

Signed In the Field this 9th. day of May 1943.

J.W. Ritchie (J.W.Ritchie) President. Major

The findings are read in open court

The Court is closed for consideration of the sentence.

Sentence
120 Days
Detention

The Court sentence the accused No C 4742 Pte Henry A.H Hastings & Prince Edward Regt to undergo detention for 120 days

Signed in the Field this 9th day of May 1942

J.W. Ritchie
Major

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

(150/20) WL.57439/557 25,000 2/40 A.A. & W. Ltd. Gp.4/99
(15/46) WL.41/260/1441 20,000 2/41 Forms O.1617/14

I CERTIFY that the man whose personal description is given below surrendered himself to* Pte. 2744 Robert Bingham at Dearhurst Gdns at (hour) 4.30 p.m. on the 24th day of April 1942 as being No. C/4742 (Rank and Name) Private Andrew William Henry a ~~deserter (or~~ absentee without leave) from Bogner Regis and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 31 Height 5 Feet 8½ Inches

Complexion Dark Hair Fair Eyes Blue

Marks Scar on Right Cheek

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	12/12/39
Probable Date of Desertion or beginning of absence, and from what place	Beginning of April Bognor Regis

Signature of Officer of Police in charge of Richmond Station.

24 4 42 Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of

No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

H.

Statement in the case of C.4742 Pte. Henry, A.G., Hastings and Prince Edward Regiment, C.A.(R.P.)

3rd Witness C.5329 L/Cpl. Densem, A.F. Bn. HQ., Hastings & Prince Edward Regiment, having been duly sworn, states:

I am and was at all times material hereto a member of the Hast. & P.E. Regtl Police.
At 1430 hrs. 25 Apr. 42 I picked up C.4742 Pte. Henry, A.G. at 1 Cdn Div Reception Camp. He was under Close Arrest at the time.

A. E. Densem

C.5329 L/Cpl. Densem, A.F.
Hast. & P.E. Regt. (R.P.)

The accused having been duly warned in accordance with Rule of Procedure 4 (2) reserves his defence.

Certified that rule of Procedure 4 (C) (D) (E) (F) (G) have been complied with.

Taken down by me in the presence of and hearing of the accused this 29th day of April 1942 at, "In the Field".

A.C. Holland Capt

(A.C. Holland) Capt.,
Adjutant,
Hastings & Prince Edward Regiment,
C.A.(A.F.)

J.A. Clarke Major
President

Summary of Evidence in the case of C.4742 Pte. Henry, A.W. "B" Coy., Hastings & Prince Edward Regiment. C.A.(A.F.)

1st Witness
1st Charge

C.4524 Sgt. Carswell, K.H. "B" Coy., Hast. & P.E.R. having been duly sworn, states:

I am and was at all times material hereto Pl. Sgt. of No. 10 Pl. "B" Coy., Hast. & P.E.R.
On the day of 5 Apr. 42 while on duty as duty platoon Pte. Henry, A.W. was absent from billets.

The accused declines to cross-examine the witness.

K.H. Carswell
C.4524 Sgt. Carswell, K.H.
Hast. & P.E.R.

1st Witness
2nd Charge

C.4524 Sgt. Carswell, K.H. "B" Coy., Hast. & P.E.R. having been duly sworn, states:

I am and was at all times material hereto Pl. Sgt. of No. 10 Pl. "B" Coy., Hast. & P.E.R.
At 1800 hrs. 5 Apr. 42 I checked the platoon again and found that Pte. Henry, A.W. was absent from billets.

The accused declines to cross-examine the witness.

K.H. Carswell
C.4524 Sgt. Carswell, K.H.
Hast. & P.E.R.

I

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C.4742	Pte.	Henry, A.W.	Hastings & Prince Edward Regt.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers hereinafter stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.W.L.	Four times	Nine times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~No entries in the conduct sheet.~~

XXXX

~~The conduct sheet is in the custody of the Regiment.~~

2. ~~The accused has not been previously convicted~~ or

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 70 of the Army Act, are set out in the schedule annexed to this statement.~~

3. ~~The accused is not under sentence at the present time.~~ or ~~The accused at the present time is under the~~ XXXX

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispositions with trial, must be inserted.)

Description of court by which tried, or status of officer dispensing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ..... day of .....

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of , years, ...

In the rank of , years .....

In the rank of , years, ...

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph inserted amended accordingly.)

Wt. 19877/1511 4,000,000 8/40 B.W. & Co. 51-0992

Army Form B 120.

REGIMENTAL CONDUCT SHEET.

Army Number 6,4742

Surname Henry, ...a.

Christian Names

Attested 19

Corps Hastings & Prince Edw'd Regiment.

Number of sheets (in words)

Signature of C.O. or Adjutant

Place	Date of Offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award, or of order dispensing with trial	By whom	Remarks
Picton	18/11/39	Pte		A.W.L. Sec. 15 Breaking Barracks whilst on C.B. and A.W.L. from 2300 hrs. 18/11/39 to 1000 hrs 19/11/39.	Sgt. Friar Cpl. Dunkley	168 hrs. Det'n	20/11/39	Lt-Col., Young, C.	
Aldershot	13/7/1940	"		A.W.L. Sec. 15 A.W.L. from 2300 hrs. 13/7/40 to 1600 hrs. 18 Jul 40.	Cpl. Young.	168 hrs. Det'n	19/7/40	Lt-Col. Salmon	FR&I 5 days pay.
Field	29/10/1.40	"		A.W.L. Sec. 15 A.W.L. from 2359 hrs. 24 Oct. 40 to 1630 hrs. 5 Nov. 40.	Cpl. Clement.	28 days det'n	9/11/1940	Lieut.-Col., Graham	FR&I 12 days pay.
"	7/12/1940	"		A.W.L. from 2300 hrs. 7/12/40 to 1030 hrs. 11/12/40	Sgt. Dunkley	28 days F.S.	11/12/1940	"	28 days pay
"	22/1/41	"		A.W.L. from 2359 hrs. 22/1/41 to 0830 hrs. 23/1/41	"			24/1/41 Maj. Sutcliffe	1 days pay

To be carried over

Place	Date of Offence	Rank	Cases of Previous Convictions	Offence	Names of Witnesses	Punishment awarded	Date of award, or of order dispensing with trial	By whom	Remarks
Field	1/2/41	Pte.		A.W.O.L. from 2300 hrs. 1/2/41 to 1400 hrs. 4/2/41.	Cpl. Young	14 days F.P.	6/2/41	Maj. Sutcliffe	4 days pay.
"	30/8/41	"		A.W.O.L. from 1730 hrs. 30/8/41 to 0830 hrs. 31/8/41.	L/Sgt. Fairchild.	14 days C.B.	2/9/41	Maj. R.H. Church	1 days pay.
"	On 8 Sep. 41 this soldier completed 24 months service in accordance with K.O. 71 C.A.S.F. the above entries transferred from previous sheets which was destroyed 8 Sep. 41.								
Field	14/11/41	Pte.		A.W.O.L. from 2359 hrs. 14/11/41 till 2400 hrs. 21/11/41.	Sgt. Ponsford	28 days F.P.	4/12/41	Maj. Reid A/C.O.	35 Days pay.
"	14/1/42	Pte.		A.W.O.L. from 2230 hrs. 16/1/42 to 1900 hrs. 17/1/42.	L/Cpl. Nesbitt	7 days C.B.	19/1/42	Maj. Ketchesson	1 days pay.
"	19/2/42	"		A.W.O.L. from 0800 hrs. 2/2/42 to 2330 hrs. 3/3/42.	Sgt. Carswell	28 days det'n	6/3 1942	Col. Grahm	41 days pay. stoppage of 10s - 3d

Certified True Copy

A.B. Walker Capt

ADJUTANT,

THE HASTINGS & PRINCE EDWARD REGT. C.A.S.F.

J. Sutcliffe Major Presiding

5B56

Pte Henry E. Ol

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K-42491 Pte Elmer William HENRY, Westmr R(M)

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for ... beginning on (date) ...~~ (1) WMWS

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 37 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer penal servitude for a term of seven years.

(Sgd) " W M W Shaw " Capt — Judge-Advocate, if any. 10 Feb 45 — Date awarded. (Sgd) " D. J. Burke " Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the finding and sentence of the Court.

Date 10 Feb 45 (Sgd) " J.S.Lind " Brig Commanding 12 Cdn Inf Bde

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

" I confirm the findings and sentence but I remit the two years penal servitude."

~~I direct that the accused be not committed to any prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

Date 20 Mar 45 (Sgd) " E.L.Weeks " Major General

Commanding A/G Administration Canadian Military Headquarters — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
K-42491 Pte Henry, EW	19 Apr 45	" M Medhurst " Lord Comdg 1 Cdn Prov Pmy Coy

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5B-52

FIELD GENERAL COURT-MARTIAL

CFA96 (To Regs of AFA'41) 40/P Ar S/1898 (4/41) 4/38B

Convened by Order of Brig J. S. Lind Comd 12 C.I.B. dated 9 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-42491	Pte	Elmer William	HENRY	Westmr R(M)

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 10 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any,~~ assemble, and the Court is closed. WMWS

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to alterations or preceding para number herein. See back of Convening Order, CF A96, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1350 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (2).~~ WMWS

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ... as interpreter? Ans ...~~ WMWS

~~The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans ...~~ WMWS

~~The shorthand writer is sworn.(1)~~ WMWS

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D. J. Burke	4 PLDG
Member	Capt	W. H. Ackhurst	12 CIB Wksp
Member	Lieut	R. J. Michener	LA RMR
Judge-Advocate	Capt	W. M. W. Shaw	HQ 5 Cdn Armd Div
Prosecutor	Lieut	W. C. Brumpton	Westmr R
Defending Offr	Lieut	R. E. Mannering	Westmr R

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 85 (B) and fn 2 were not followed. See Qs p 2.)

A8. The accused before arraignment make(s) (no) plea WMWS

(3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in All rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. WMWS

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B WMWS

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No sir.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty to~~ charge(s). The accused is (are) so informed, and he (they) ~~charge(s) NIL (their) plea(s) on charge(s) Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No.(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 40(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if on his interest, be given before the findings. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 114(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No sir.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(i) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes. I have that to offer.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused to his witnesses to prove on oath anything there or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(a), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 363-366, Overseas RO 3019, 2323. MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Con 364. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused K-42491 Pte Elmer William HENRY, The Westminster Regiment (M), a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
AA Sec 12(1)(a) WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE

in that he

In the field on 27 Dec 44, after being warned that he was to move to the front, absented himself without leave from The Westmr R (M) from approximately 1100 hrs 27 Dec 44 until apprehended by the CMP at TERNI at 1545 hrs 31 Dec 44, with intent to avoid so moving.

SECOND CHARGE
AA Sec 15(1) WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field on 10 Jan 45, when being transported under escort from 4 Battalion to the Westmr R (M) at approximately 1230 hrs 10 Jan 45, absented himself without leave until apprehended by the CMP at ROME at 1130 hrs 14 Jan 45.

In the Field
9 Feb 45

" G C Corbould "

(G C Corbould DSO) Lt Col
Comd
THE Westminster Regiment (M)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

9 Feb 45

" J S Lind "

(J S H Lind) Brig
Comd 12 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if autharized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
K-42491	Pte		Elmer William	HENRY	WESTMR R (M)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 9 Feb 45 endorsed by me, (~~or by an offr of my staff for me~~)," To be tried by Field General Court-Martial ". JSL

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~) JSL

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. JSL

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ JSL

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) D. J. Burke (Must be named. RP 106.) 4 PIDG (Unit.)

MEMBERS.

Capt to be detailed by CO 12 Cdn Inf Bde Wksp RCEME

Capt or Lt (Rank.) to be detailed by CO LAN & REN SCOT R (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

Lieut (Rank.) to be detailed by CO WESTMR R (M) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.) W. M. W. Shaw (Must be named, if any. RP 106.) HQ 5 Cdn Armd Div (Unit.)

On Active Service in the Fd

in ITALY (Country.)

" J S H Lind " (Signed personally. RP 105 fn 2) (J S H Lind)

Brig (Rank.)

Date 9 Feb 45

Commanding 12 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CF(AFS) (1st Sch. of AFA) 60/P & S/1697 (4621)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

K. R. (CAN) Para 557

I certify that I have this morning examined K-42491 HENRY E.W. of the Westminster Regt (M) and in my opinion he is fit to undergo trial by Court Martial.

Field
10 Feb 45

" C V Waugh " Capt
Medical Officer.

PLEA IN MITIGATION

Accd enlisted June 40 served 3 yrs overseas. Came over here with Westmr. Had been in line and accd decided to take some leave. May have realized folly of this. Is a married man and any sentence you pass I hope will not mar him now or in later life.

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT SEC 163 (1) (i)

I certify that K-42491 Pte HENRY E.W. of the WESTMINSTER REGIMENT was a arrested at ROME at 1130 hrs on the 14th January 1945.

Signature of P.M., A.P.M., or other officer into whose custody the above named person was taken on arrest. (" C. S. Giss "
(Capt
(Commanding
111 Prov Coy., C.M.Police.

Dated 14th January 1945.

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT SEC 163 (1) (i)

I certify that K-42491 Pte HENRY E.W. of the Support Coy, The Westminster Regiment was arrested at TERNI at 1545 hrs on the 31st day of December 44.

Signature of P.M.,A.P.M., or other officer into whose custody the above named person was taken on arrest. (" C. Patter "
(Capt.
(D.A.P.M., 71 Sub-Area

Dated 4 January 1945.

SUMMARY OF EVIDENCE in the case of K42491 Pte Elmer William HENRY of the Westminster Regiment (Motor).

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS K47292 Sgt Jones J.D., Sp Coy of the Westminster Regiment (Mot) having been duly sworn, states:

I am K47292 Sgt Jones J.D., Sp Coy, The Westminster Regiment (Mot) and was so at all times material hereto. At approximately 1900 hrs 26 Dec 44 in a forward area in Ravenna where we were resting after considerable time in action, I was called to an "O" Group and while there informed that we were to return to the front. Alll vehicles were to be loaded and personnel to be accounted for by 1100 hrs 27 Dec 44 and that we would be clear of town by 1300 hrs the same day. At 0700 hrs 27 Dec 44 I went around to all sections and warned ~~xxixmxx~~ them of the move. Pte Henry was duly warned and ordered to be on the advance party. I have not seen the accused until I was called as a witness at Sp Coy Ord Rm on 24 Jan 45.

The accused declines to question the witness.

SECOND WITNESS K42809 Cpl Gingell K.I.D., Sp Coy The Westminster Regiment (Mot) having been duly sworn, states:

I am K42809 Cpl Gingell, K.I.D., Sp Coy The Westminster Regiment (Motor) and was at all times material hereto. At 0700 hrs 27 Dec 44 Sgt Jones warned myself and my section who were all present, including the accused, that we were returning to the front and must be loaded and ready to leave by 1100 hrs. The accused was absent at the1100 hrs parade so I reported his absence to Sgt Jones, he was still absent when we left Ravenna at 1300 hrs. I did not see him again until called as a witness at Sp Coy Ord Rm on the 24th day of Jan 1945.

The accused declines to question the witness.

THIRD WITNESS G1113 Pte Flewwelling M.H., Sp Coy The Westminster Regiment (Mot) having been duly sworn, states:

I am G1113 Pte Flewwelling M.H. of Sp Coy The Westminster Regiment (Motor) and was so at all times material hereto. On 10 Jan 45 I was proceeding on draft to the regt from 4 Bn when a CSM took myself and two other soldiers to the guardhouse and had me sign for five prisoners, whom I was to take to the regt. At approx 1230 hrs we stopped for lunch at the Corps Reception Centre, Cesenatica. After lunch three of the prisoners including the accused asked to go for a walk so I told Pte Nire to keep an eye on them. About five minutes later I checked the prisoners and found three of them missing. I searched the whole area for approx twenty-five minuts and not finding them reported the matter to the Cops Receiptiem Centre CSM. Asmy transportation was leaving I had to discontinue the search and so reported their escape to CSM Abbott at "B" Echelon The Westminster Regiment (Motor) I did not see the Pte Henry again until called as a witness at Sp Coy Ord Rm on 24 Jan 45.

The accused declines to question the witness.

FOURTH WITNESS L100172 Pte Nire S, The Westminster Regiment (Motor) having been duly sworn, states:

I am L100172 Pte Nire S, of the Westminster Regiment (Motor) and was so at all times material hereto. On 10 Jan 45 I was asked to keep an eye On Pte Henry and two other prisoners. While I was putting my equipment aboard the truck they disappeared. I searched for them about twenty minutes or so and then had to discontinue as the trucks were moving off.

The accused declines to question the witness.

FIFTH WITNESS Capt E.B.Robertson, Adjutant of The Westminster Regiment (Motor) having been duly sworn, states:

I am Capt E.B. Robertson, Adjutant, The Westminster Regiment (Motor) and was so at all times material hereto. I hereby present two certificates of apprehension in accordance with Army Act 163 (1) (j) purporting to be signed by Officer Commanding 111 Provost Company, and DAPM 71 Sub Area.

The accused declines to question this witness.

The certificates referredto by the witness, produced, read over to the accused, marked exhibit "A" and "B" respectively, signed by me and attached hereto.

" W C Brumpton " Lieut

(W C Brumpton) Lieut.

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you will give will be taken down in writing and may be used in evidence.

The accused declines to make a statement.

" E W HENRY "

K42491 Pte HENRY E.W.

I certify that R.P. 4 (C) (D) (E) and (F) have been complied with.

Taken by me, in the field, in the presence and hearing of the accused, this 24th day of January 1945.

" W C Brumpton " Lieut

(W C Brumpton) Lieut.

LIST OF WITNESSES

FOR PROSECUTION

K47292	Sgt Jones J.D.	The Westminster Regiment (Motor)
K42809	Cpl Gingell K.I.D.	The Westminster Regiment (Motor)
G1113	Pte Flewwelling M.H.	The Westminster Regiment (Motor)
L100172	Pte Niro S.	The Westminster Regiment (Motor)
Capt E. B. Robertson		The Westminster Regiment (Motor)

FOR DEFENCE

NIL

LIST OF EXHIBITS

TWO CERTIFICATES OF APPREHENSION.

I desire the convening officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

" E W Henry "

(Pte HENRY E. W.).

I hereby acknowledge receipt of one copy of the Charge Sheet and one copy of the Summary of Evidence of my forthcoming trial by Field General Court Martial.

" E W Henry "

(Pte HENRY E. W.)

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
7-42401	Pte	Henry, E.W.	THE WESTMINSTER REGT.(M)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months		* Since Enlistment	
For	A.A. Sec 15(1)	times	4	times
For	A.A. Sec 40	times	1	times
For		times		times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct NIL

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for NIL beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 37 days in military custody, making a total of 37 days, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ EMR is 27 yrs attestation paper

6. The date of his ~~commission~~ EMR specified in his ~~record of service~~ EMR is 3/7/40 attestation paper

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 5 mos

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs 5 mos service.

9. The accused is entitled to reckon 4 yrs 5 mos service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*). CVSW and C

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated and in his regiment (*or corps or* department) the rank of dated

W.3760/1319 20M. 5/40. P. Ltd. T31-3.

H.Q. 3 W.W.S.

Schedule of Convictions by a Court Martial or Civil Court, of **summary awards** under Section 47 of the Army **Act and of cases in which trial has been dispensed with of accused.**

No. [illegible] *Rank* Pte Name [illegible] of [illegible] Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FDCM	Field 10 Jun 44	A.A. Sec 15(1) AWL from 0800 hrs 10 May till 2330 hrs 1[illegible] May 44	90 days detn	
FDCM	Field 2 Aug 44	A.A. Sec 15(1) AWL from 2330 hrs 1[illegible] Jun till 2150 hrs 2 Jul 44.	100 days detn	51 days

I HEREBY CERTIFY that the foregoing schedule of convictions **and dispensations** with trial is a true extract **from the regimental books in my custody.**

Signed this 10th **day of** Feb 1945 [illegible] Robertson, Capt & Adjt

13. **The accused has served as a non-commissioned officer** continuously, without reduction, to the present date.

In the rank of [illegible] years.

In the rank of [illegible] years.

In the rank of [illegible] years.

Date of Promotion.

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such source as are available and the paragraph concerned amended accordingly.)

No. W42491 Name Henry, R.W. | Sqn, Battery, or Company | Corps CIC | Date of enlistment 3/7/40 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAM/126 (5442)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Nanaimo	8/10/41	Pte		AWL from 0400 hrs 8/10/41 to 1200 hrs 24/10/41 Total 16 days 6 hrs. AA 15(1)	A/Cpl Porter A.P. Sgt Burton P.	14 days C.B.	29/10/41	Lt-Col JR Wood	Forf 17 dys pay FRI 149 (1)(a)
Field	15/8/42	Pte		AWL from 2230 hrs till 0400 hrs 16/8/42 Sec 15(1) A.A.	Cpl J.F. McWilliams	7 days C.B. 2 extra Fatigues	17/8/42	J.F. Mahoney Capt	
Field	24 Jan 43	Pte		AA Sec 15(1) AWL from 2300 hrs 24 Jan 43 till 31 Jan 43 when he returned 23 hrs (7 days)	CSM J.E. St.Lawrence	Forf 14dys pay 1 Feb AA 46.2(d) FRI 149(2)	43	J.E. Sager Lt-Col	Forf 7 days pay FRI 149 (1)(a)
Field	29 Mar 43	Pte		AA Sec 15(1) AWL from 2300 hrs 29 Mar 43 till 1400 hrs 29 Mar 43 (15 hrs)	CSM J.E. St.Lawrence	Forf 7 dys pay 30 7 days C.B.	Mar 43	J.E. Sager Lt-Col	Forf 14dys pay FRI 149(1)a

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Wield	31 Aug 43	Pte		A.A. Sec 40 Cond to the Prej	A/Cpl W.A. Robinson	7 days C.B.	31 Aug 43	W.J. Neill Capt	Total forf 121 days pay
Wield	10 May 44	Cpl		AA Sec 15(1) AWL from 0800 hrs 10 May till 2330 hrs 18 May 44	FCCM	90days deth Reverts to pte [illegible] 180 days Deth	10 Jun 44	FCCM	
Wield	18 Jun 44	Pte		AA Sec 15(1) AWL from 2330 hrs 18 Jun till 2150 hrs 8 Jul 44.	FCCM		2 Aug 44	FCCM	Net Forf 143 days pay
				Released from 3rd Fd Punish Camp 1 Dec 44. Remission earned 58 days.					Sentence expired
				CERTIFIED TRUE COPY FROM REGIMENTAL RECORD IN MY CUSTODY					
				31 Jan 45 (sgd) C.L. Robertson, Capt & Adjt					

10 Nov 45

D.I.C. Nov

Original proceedings despatched Bomber to D.D.

This H.Q. 10/Henry EW/11
Dated 8 Oct 45

J. D. Kerr
Capt

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K-42491 Pte Elmer William HENRY, Master R(M)

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 482 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ... beginning on (date) ... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 37 days, of which 213 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer penal servitude for a term of seven years.

(Sgd) "F.M.W.Shaw" Capt — 20 Feb 45 — (Sgd) "D.J.Burke" Major
Judge-Advocate, if any. — Date awarded. — President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the finding and sentence of the Court.

Date 20 Feb 45 (Sgd) "J.J.Ling" Brig — Commanding 12 Can Inf Bde

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the findings(s) and sentence set forth in Part I is:

"I confirm the finding and sentence but I remit three years penal servitude."

~~I direct that the accused be not committed to prison or detention barracks until further orders.(1)~~
(1. AA 57A. Delete if not used.)

Date 20 Mar 45 (Sgd) "E.L.Girouard" Major General i/c administration
Commanding Canadian Military Headquarters
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
K 42491 Pte HENRY, EW	19 APR 45	Comdg, I Can Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 16 Mar 45 JAG BRANCH CMHQ

RECORDED AT CMHQ IN AB 160, p 58-56

FIELD GENERAL COURT-MARTIAL

CFAB6 (To Hdqs of AFAB) 40/P & R/1698 (4000) 4/38B

Convened by Order of Brig J. J. Ling Comd 12 C.I.B. dated 9 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-42491	Pte	Elmer William	HENRY	

CERTIFIED TRUE COPY

PROCEEDINGS REVIEWED
"R V Laithley Capt
23 Mar 45
REVIEWING OFFICER, JAG BRANCH CMHQ.

J K Kidd Lieut
A/Reg'l Sgt
Asst D.J.A.G. (E) Echelon

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 20 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RoA. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereto. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1350 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 562(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ... as interpreter? Ans ...
~~The Interpreter is sworn.(1) Do you object to~~ ... as shorthand writer? Ans ...
~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No sir.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D. J. Burke	4 FDS
Member	Capt	R. E. Ashurst	12 CIE Regt
Member	Lieut	R. J. McKenzie	LE R&R
Judge-Advocate	Capt	W. W. W. Shaw	HQ 5 Cdn Inf Div
Prosecutor	Lieut	R. C. Trumpton	Master R
Defending Offr	Lieut	R. E. Mannering	Master R

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No. (2)
(1. RP 26, 27, 109, 110. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ... before arraignment make(s) (no) (~~a~~) plea. (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is sworn and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. Yes sir (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (4). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by comparing with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No sir (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence, and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. [illegible] Do you intend to call witnesses on your behalf ? Ans. Are they witnesses as to character only ? Ans.

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (5), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans. No sir

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)

(1. *MFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes sir, I do. (2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(5), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty, RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas NO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 138. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused K-42491 Pte Elmer William HENRY, The Westminster Regiment (M), a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE
AA Sec 12(1)(a)

In that he

In the field on 27 Dec 44, after being warned that he was to move to the front, absented himself without leave from The Westmr R (M) from approximately 1100 hrs 27 Dec 44 until apprehended by the CMP at TILMI at 1745 hrs 31 Dec 44, with intent to avoid so moving.

SECOND CHARGE
AA Sec 1(1) WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

In the field on 10 Jan 45, when duly transported under escort from A Battalion to The Westmr R (M) at approximately 1230 hrs 10 Jan 45, absented himself without leave until apprehended by the CMP at NIJMEGEN at 1130 hrs 14 Jan 45.

" G C Corbould "

(G C Corbould DSO) Lt Col
Comd
THE Westminster Regiment (M)

In the Field
9 Feb 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

" J S Lind "

(J S F Lind) Brig
Comd 12 Can Inf Bde

9 Feb 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 187, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
[illegible]	Pte		Elmer William	HENRY	WESTMR R (M)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 9 Feb 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D. J. Burke	4 FDSL

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by CO 12 Cdn Inf Bde Wksp RCEME	
Capt or Lt	to be detailed by CO LAE & MEN 3CDT R	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	to be detailed by CO WESTMR R (M)	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	W. M. W. Shaw	HQ 5 Cdn Armd Div

On Active Service in the Fd

in ITALY (Country.) "J S H Lind" (J S H LIND) (Signed personally. RP 105 fn 2.) Brig (Rank.)

Date 9 Feb 45 Commanding 12 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA68 (To take place of AFA3) 80-7 & 8-1697 (4601)

(See overleaf for oaths and notes for use on trial.)

Wmds

MEDICAL OFFICER'S CERTIFICATE

A. A. (C.M.) Para 76V

I certify that I have this morning examined R-42491 HENRY S.W. of the Westminster Regt (SI) and in my opinion he is fit to undergo trial by Court Martial.

Field
10 Feb 45

C V Waugh Capt
Medical Officer.

PLEA IN MITIGATION

Aged enlisted June 40 served 5½yrs overseas. Came over here with Westor. Had been in line and good section to take some leave. Guy has realised folly of this. Is a married man and any sentence you pass I know will not cause him to do it again.

Waugh Capt

SUMMARY OF EVIDENCE in the case of K42491 Pte Elmer William HENRY of the Westminster Regiment (Motor).

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS K47292 Sgt Jones J.D., Sp Coy of the Westminster Regiment (Mot) having been duly sworn, states:

I am K47292 Sgt Jones J.D., Sp Coy, The Westminster Regiment (Mot) and was so at all times material hereto. At approximately 1900 hrs 26 Dec 44 in a forward area in Ravenna where we were resting after considerable time in action, I was called to an "O" Group and while there informed that we were to return to the front. All vehicles were to be loaded and personnel to be accounted for by 1100 hrs 27 Dec 44 and that we would be clear of town by 1300 hrs the same day. At 0700 hrs 27 Dec 44 I went around to all sections and warned them of the move. Pte Henry was duly warned and ordered to join the advance party. I have not seen the accused until I was called as a witness at Sp Coy Ord Rm on 24 Jan 45.

The accused declines to question the witness.

SECOND WITNESS K42500 Sgt Cinnell R.I.D., Sp Coy The Westminster Regiment (Mot) having been duly sworn, states:

I am K42500 Sgt Cinnell R.I.D., Sp Coy The Westminster Regiment (Motor) and was at all times material hereto. At approx 1900 hrs 26 Dec Sgt Jones warned myself and my section who were all present, including the accused, that we were returning to the front and must be loaded and ready to leave by 1100 hrs. The accused was absent at the 1100 hrs parade so I reported his absence to Sgt Jones, he was still absent when we left Ravenna at 1300 hrs. I did not see him again until called as a witness at Sp Coy Ord Rm on the 24th day of Jan 1945.

The accused declines to question the witness.

THIRD WITNESS G1113 Pte Flewwelling W.H., Sp Coy The Westminster Regiment (Mot) having been duly sworn, states:

I am G1113 Pte Flewwelling W.H. of Sp Coy The Westminster Regiment (Motor) and was so at all times material hereto. On 10 Jan 45 I was proceeding on draft to the rest Camp 4 in when a CSM took myself and other soldiers to the surrender and had us sign for the prisoners, then I was to take to the rest. At approx 1230 hrs we stopped for lunch at the Corps Reception Centre, Cesenatico. After lunch three of the prisoners including the accused asked to go for a walk so I told Pte Mire to keep an eye on them. About five minutes later I checked the prisoners and found three of them missing. I searched the whole area for approx twenty-five minutes and not finding them reported the matter to the Corps Reception Centre CSM. Asay transportation was leaving I had to discontinue the search and so reported them escape to CSM Abbot at "P" Echelon The Westminster Regiment (Motor) I did not see Pte Henry again until called as a witness at Sp Coy Ord Rm on 24 Jan 45.

The accused declines to question the witness.

YOUTH WITNESS L100172 Pte Mire S. The Westminster Regiment (Motor) having been duly sworn, states:

I am L100172 Pte Mire S, of the Westminster Regiment (Motor) and was so at all times material hereto. On 10 Jan 45 I was asked to keep an eye on Pte Henry and two other prisoners. While I was putting my equipment aboard the truck they disappeared. I searched for them about twenty minutes or so and then had to discontinue as the trucks were moving off.

The accused declines to question the witness.

"A"
WITNS

Civil Witness Capt E.E.Robertson, Adjutant of The Westminster Regiment (Motor) having been duly sworn, states:

I am Capt E.E. Robertson, Adjutant, The Westminster Regiment (Motor) and was so at all times material hereto. I hereby present two certificates of apprehension in accordance with Army Act 103 (1) (j) purporting to be signed by Officer Commanding 1 I Provost Company, and DAPM 71 sub area.

The accused declines to question this witness.

The certificates referred to by the witness, produced, read over to the accused, marked exhibit "A" and "B" respectively, signed by me and attached hereto.

" W C Brumpton " Lieut

(W C Brumpton) Lieut.

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement.

" W C BRUMPTON "

(10040) Pte BRUMPTON W.C.

I certify that R.P. 4 (C) (D) (E) and (F) have been complied with.

Taken by me, in the field, in the presence and hearing of the accused, this 24th day of January 1945.

" W C Brumpton " Lieut

(W C Brumpton) Lieut.

"A"

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT SEC 161 (1) (d)

I certify that [illegible] arrested at ROME at 1130 hrs on the 14th January 1945.

Signature of P.M., A.P.M., or other officer into whose custody the above named person was taken on arrest.

Capt
Commanding
111 Prov Coy., C.M.P.

Dated 14th January 1945.

App A.

Witness

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT SEC 161 (1) (d)

I certify that [illegible] arrested at [illegible] on the [illegible] December at [illegible]

Signature of P.M., A.P.M., or other officer into whose custody the above named person was taken on arrest.

Capt.
P.A.P.M., 7) Sub-Area

Dated 4 January 1945.

App B.

Witness

Exhibit "B" in the case of K42491
Pte Henry E.V.
"W Bolington"

Exhibit "A" in the case of K42491
Pte Henry E.V.
"W Bolington" Lieut

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
K-42491	Pte	Henry, E.W.	THE WESTMINSTER REGT.(M)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.
† See para. 677, K.R., 1940.
* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.
INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For A.A. Sec 15(1)	times	4 times
For A.A. Sec 40	times	1 times
For	times	times
For	times	times
For	times	times

[redacted] E.S.R.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* [redacted] E.S.R.

beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for no days in civil custody, and 37 days in military custody, making a total of 37 days, of which no days were spent in hospital.

5. The present age of the accused according to his [redacted] E.S.R. is 27 yrs
attestation paper

6. The date of his [redacted] E.S.R. specified in his [redacted] E.S.R. is 3/7/40
attestation attestation paper

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 5 mos

8. The accused is entitled to deferred pay or gratuity in respect of 4yrs 5 mos service.

9. The accused is entitled to reckon 4 yrs 5 mos service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*). CVSM and C

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or corps or* department) the rank of dated

Wt.37637/3319 20M. 5/44. P. Ltd. T31-1.

"C" W.M.W.S.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. K-42491 *Rank* Pte *Name* Henry, E.W. of Westmr R Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	Field 10 Jun 44	A.A. Sec 15(1) AWL from 0800 hrs 10 May til 2330 hrs 18 May 44	90 days detn	
FGCM	Field 2 Aug 44	A.A. Sec 15(1) AWL from 2330 hrs 18 Jun till 2150 hrs 8 Jul 44.	180 days detn	58 days

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th **day of** Feb 1945 R.B. Robertson, Capt & Adjt

13. **The accused has served as a non-commissioned officer continuously, without reduction, to the present date.**

In the rank of ____ years.

In the rank of ____ years.

In the rank of ____ years.

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraphs must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs completed accordingly.)

Date of Promotion.

No. K42491 Name Henry, E.W. | Sqn, Battery, or Company | Corps CIC | Date of enlistment 3/7/40 | GC Badges | Service or Proficiency Pay | 3/17 MFM

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Nanaimo	8/10/41	Pte		AWL from 0400 hrs 8/10/41 to 1200 hrs 24/10/41 Total 16 days 6 hrs. AA 15(1)	A/Cpl Porter A.P. Sgt Burton F.	14 days C.B.	29/10/41	Lt-Col JE "ood	Forf 17 dys pay FRI 149 (1)(a)
Field	15/8/42	Pte		AWL from 2230 hrs till 0400 hrs 16/8/42 Sec 15(1) A.A.	Cpl J.W. McWilliams	7 days C.B. 2 extra fatigues	17/8/42	J.K.Mahoney Capt	
Field	24 Jan 43	Pte		AA Sec 15(1) AWL from 2300 hrs 24 Jan 43 till 31 Jan 43 when he returned 23 hrs (7 days)	CSM J.E. St.Lawrence	Forf 14dys pay AA 46.2(d) FRI 149(2)	1 Feb 43	J.E. Sager Lt-Col	Forf 7 days pay FRI 149 (1)(a)
Field	28 Mar 43	Pte		AA Sec 15(1) AWL from 2300 hrs 28 Mar 43 till 1400 hrs 29 Mar 43 (15hrs)	CSM JE St.Lawrence	Forf 7 dys pay 7 days C.B.	30 Mar 43	J.E. Sager Lt-Col	Forf 1dypay FRI 149(1)a

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31 Aug 43	Pte		A.A. Sec 40 Cond to the Prej	A/Cpl M.A. Robinson	7 days C.B.	31 Aug 43	W.J. Neill Capt	
						90dys detn	10 Jun 44	FGCM	Total forf 121 days pay
Field	10 May 44	Cpl		AA Sec 15(1) AWL from 0800 hrs 10 May till 2330 hrs 18 May 44	FGCM	Reverts to pte			
						180 days Detn	2 Aug 44	FGCM	Net Forf 143 days pay
Field	18 Jun 44	Pte		AA Sec 15(1) AWL from 2330 hrs 18 Jun till 2150 hrs 8 Jul 44.					
				Released from 2nd Fd Punish Camp 1 Dec 44. Remission earned 58 days.					Sentence expired

CERTIFIED TRUE COPY FROM REGIMENTAL BOOKS IN MY CUSTODY

31 Jan 45 (sgd) E.B. Robertson, Capt & Adjt

LIST OF WITNESSES

FOR PROSECUTION

847292 Sgt Jones J.T.	The Westminster Regiment (Motor)
M42809 Cpl Gilgell K.I.T.	The Westminster Regiment (Motor)
61113 Pte Flewelling W.H.	The Westminster Regiment (Motor)
L100172 Pte Niro S.	The Westminster Regiment (Motor)
Capt E. B. Robertson	The Westminster Regiment (Motor)

FOR DEFENCE

NIL

LIST OF EXHIBITS

I desire the convening officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

" E.W Henry "

(Pte HENRY E. W.).

I hereby acknowledge receipt of one copy of the Charge Sheet and one copy of the Summary of Evidence of my forthcoming trial by Field General Court Martial.

" E.W Henry "

(Pte HENRY E. W.)

COUNTER NUMBER 17433

HOUR 8:50

OPERATOR'S INITIALS JR

RELIEVING OPERATOR RD

QQQ-109
CPL HENRY E.W.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K.42491 Cpl HENRY Elmer William

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty.	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: Reduction to permanent rank of private and three months Detention

10 - JUNE - 1944 (Sgd) [signature] President RP 45, 50(1)
Date awarded.

(Sgd) ..... Judge-Advocate, if any.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I vary the sentence so that it shall be as follows: ' to be reduced to his permanent rank of private and to undergo detention for ninety days, ' and I confirm the finding and sentence as so varied.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) [signature]

Date 10 June 44. Commanding 5 Cdn Armd Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

K74337 Rfl HenryEW — 11 June 44 — [signature] Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

8 JUL 1944 JAG BRANCH

FIELD GENERAL COU

Convened by Order of Brig I H Cumberland, OBE Comd 5

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons rank, and (b) apptmt. A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 3

Number. (a) Prmnt R. (b) Apptmt. A/R or A/Appmt. Full Christian N

K.42491 Cpl Elmer Willia

11 Jul 44

REVIEWING OFFICER, [illegible] BRANCH

77

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 1 Jun 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OF JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto (1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 2. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. As to hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial (1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (2) (3) (Delete, if not applicable.)
(1. KR Con 537. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 540(a). 3. [illegible])

A5. President to accused: Do you object to [illegible] as interpreter? Ans

The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer? Ans

The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

President	Maj	J G TUNNEY	9 Cdn Armd Regt
Member	Lieut	P W M BRUNET	2 Cdn Armd Regt
Member	Capt	O E LEWIS	5 Cdn Armd Regt
Judge-Advocate			
Prosecutor	Lieut	J A CAMBRIDGE	WESTMR REGT (M)
Defending Offr	Lieut	J S MOORE	WESTMR REGT (M)

Questions by President: Is the Prosecutor a lawyer? Ans No Sir Is the Defending Offr a lawyer? Ans No Sir.
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (3) and fn 2 were not followed. See DI p 3.)

A8. The accused K74337 Pte E W HENRY before arraignment makes(s) (no) (1) plea (2) in bar of trial (RP 36), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP stated. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 36, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 52; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is cleared and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ■ 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No Stmt (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change ~~his (their)~~ plea(s) of Guilty to Not Guilty on 1 charge(s). The accused is ~~(are)~~ so informed, ~~and he (they) change(s) his (their) plea(s) on charge(s)~~. Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex B, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Stmt
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES Stmt. Mitigation Only (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORDED AT CMHQ IN AB 160 - 444 109

8 JUL 1944 JAG BRANCH CMHQ

FIELD GENERAL COURT-MARTIAL

(Convened by Order of Brig I H Cumberland, OBE Comd 5 Cdn Armd Bde)

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) per rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.
K.42491	Cpl	-	Elmer William	HENRY (Mot)

REVIEWING OFFICER, JAG BRANCH CMHQ

11 Jul 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 10TH Jun 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns in ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 102, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto (1). The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 8. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0710 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial (1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (1).~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 557(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~my~~ as interpreter ? Ans

The Interpreter is sworn.(1) Do you object to as shorthand writer ? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 98(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	J G TURNLEY	9 Cdn Armd Regt
Member	LIEUT	PWM BRUNET	2 Cdn Armd Regt
Member	CAPT	OE LEWIS	5 Cdn Armd Regt
Judge-Advocate			
Prosecutor	LIEUT	JA CAMBRIDGE	WESTMR REGT(M)
Defending Offr	LIEUT	J S MOORE	WESTMR REGT(M)

Questions by President: Is the Prosecutor a lawyer ? Ans No Sir Is the Defending Offr a lawyer ? Ans No Sir.

(1. RP 25, 27, 109, 111. List of offrs under instrs will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (8) and fn 2 were not followed. See Di p 2.)

A8. The accused K74331 Pte W HENRY before arraignment makes(s) (no) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet (3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 3. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K42491 Cpl HENRY Elmer William

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY.	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for (1) beginning on (date)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: Reduction to permanent rank of private and two months Detention

10 - JUNE - 1944 (Sgd) Trumbley Mayor President. RP 45, 50.

(Sgd) Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I vary the sentence so that it shall be as follows: to be reduced to his permanent rank of private and to undergo detention for ninety days, and I confirm the finding and sentence as so varied.

~~I direct that the accused be put committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd)

Date 10 June 44. Commanding 5 Cdn Armd Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

K74331 Pte Henry E W — 11 June 44 — W R Featherstone Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K42491 Cpl HENRY Elmer William

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) .....
(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.) (1)

Time in confinement awaiting present trial—a total of 19 days, of which Nil days were spent in hospital.(1)
(I. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: Reduction to permanent rank of private and three months Detention

(Sgd) .....
Judge-Advocate, if any.

10 - JUNE - 1944
Date awarded.

(Sgd) .....
President. RP 45, 50

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) .....
Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I vary the sentence so that it shall be as follows; ' to be reduced to his permanent rank of private and to undergo detention for ninety days, ' and I confirm the finding and sentence as so varied.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (I. AA 57A. Delete if not used.)

Date 10 Jun 44. (Sgd) .....
Commanding 5 Cdn Armd Bde.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
K74337 Pte Henry EW	11 Jun 44	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 494-109 H 119
8 JUL 1944 JAG BRANCH CMHQ

FIELD GENERAL COURT-MARTIAL

(Convened By Order of Brig I H Cumberland, OBE Comd 5 Cdn Armd Bde dated 9 Jun 44)

CPAGE (in lieu of AFA3) 40-P-W-S-1608 (2604)

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K.42491	Cpl	Elmer William	HENRY	WESTER R (Mot)

11 Jul 44 (77)

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 10th Jun 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto. The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(I. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0910 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial. The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO. (1)
(I. KR Can 555. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 556(1). Delete, if not applicable.)

A5. President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
The Interpreter is sworn.(1) Do you object to ..... as interpreter? Ans .....
The shorthand writer is sworn.(1) ..... as shorthand writer? Ans .....
(I. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(2)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No Sir (3)
(I. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	J G TURNLEY	9 Cdn Armd Regt
Member	Lieut	P W M BRUNET	2 Cdn Armd Regt
Member	Capt	O E LEWIS	5 Cdn Armd Regt
Judge-Advocate			
Prosecutor	Lieut	J A CAMBRIDGE	WESTMR REGT (M)
Defending Offr	Lieut	J S MOORE	WESTMR REGT (M)

Questions by President: Is the Prosecutor a lawyer? Ans No Sir Is the Defending Offr a lawyer? Ans No Sir.
(I. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and fn 2 were not followed. See Di p 3.)

A8. The accused K74337 Pte HENRY EW before arraignment tendered(ed) (no) plea (RP 34, 35(A), 113), or on bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in full rank and name of the accused making the plea.) (1)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet. (3) The President records the pleas in Part I of the Schedule.
(I. RP 31, 112. See paras 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 105; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; securing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No Stmt.(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his ~~(their)~~ plea(s) of Guilty to Not Guilty on 1st charge(s). The accused is (~~are~~) so informed, ~~and he (they) changed(s) his (their) plea(s) on charge(s).~~ Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex B, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, see second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will be given by you with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....Do you intend to call witnesses on your behalf? Ans .....Are they witnesses as to character only? Ans .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans No Stmt.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1); (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)
(1. AFB 355 or AFB 296. 2. AFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans YES Stmt. MITIGATION ONLY.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 89, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, K42491 Corporal Henry, Elmer William, The Westminster Regiment (Motor) a soldier of the Canadian Army Overseas, is charged with:

First Charge
A.A. Sec. 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

in the field on 10 May 1944, absented himself without leave from his regiment, The Westminster Regt. (M), from 0800 hrs 10 May 44 until he surrendered himself [redacted] at or about 2230 hrs 18 May 44,

In the Field
6 Jun 44

.....
(G.C. Cortould) Lt.col.
Comd
The Westminster Regt. (M)

To be tried by Field General Court Martial.

(T R Cumberland) Brig
Comd 5 Cdn Armd Bde

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/FA95/1097 (2582)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K.42491	Cpl	-	Elmer William	HENRY	WESTMR R (Mot)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 9 Jun 44 endorsed by me, ~~or by an offr of my staff for me~~, "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	J G TURNLEY	9 Cdn Armd Regt

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
~~Lieut~~	~~P W M BRUNET~~	
Capt or Lt	(to be detailed)	2 Cdn Armd Regt
~~Capt~~	~~D E HEWIS~~	
Capt or Lt	(to be detailed)	5 Cdn Armd Regt

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	(to be detailed)	WESTMR R (Mot)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY (Country.)

(I H Cumberland) (Signed personally. RP 105 fn 2.)

Brig (Rank.)

Date 9 Jun 44

Commanding 5 Cdn Armd Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 90(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 40(*E*), *KR Can* 563(*a*).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 163 (1) (*g*) (A).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 52(9), *RP* 118(*C*), *MML p* 739.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S REPORT.

K.R. (Can) Para. 537.

I certify that I have this morning examined No K.X.3491 Rank Col. Name HISCOTT, E.W.
Unit Lieut-Col. A.D.M.S.
and in my opinion he is fit ~~unfit~~ to undergo trial by Court Martial.

Station. In the Field.
Date 10 Jun 44

Examined
R.C.A.M.C. Capt

Extra of mitigation of sentence in the case of:- Ex E. 2177.
K 42491 Capt. Henry C.W. - Westmr Regt (Motor) (C.A.) C.M.F.

The accused, in pleading guilty is not making any effort to evade punishment although he is fully aware of the gravity of the situation.

This N.C.O.'s work within the platoon is of a good standard and he has served in the line with his unit with no cause for complaint from his superiors.

A strong point in his favour, I believe, is the fact that this N.C.O. surrendered himself to the authorities, voluntarily.

He has 3 years and 11 months service.

In the field
June 10th 1944

Lt. J.S. Moore
Westminster Regt (Motor)
(C.A.) C.M.F.

EXHIBIT B 3477

Summary of evidence in the case of K42491 Cpl. Henry, E.W. of the Westminster Regiment (M) Canadian Army Overseas in the Field 8 May 1944.

The Commanding Officer directs that the evidence be taken on oath.

First Witness:

K47487 Sgt. Macdonald, K.E., Westminster Regiment (M), having been duly sworn states:-

I am K47487 Sgt. Macdonald, K.E. Support Company, Westminster Regiment (M) Platoon Sergeant of #16 Platoon of which Cpl. Henry is a member.
At 0800 hrs. 10 May '44 when I called the roll on the usual morning parade, Cpl. Henry, E.W. did not answer to his name being called. I instituted a search but could not discover his whereabouts. I then reported his absence to the C.S.M. Cpl. Henry, E.W. did not attend any further parades of the platoon until placed in my custody on 2 June 1944.

The accused declines to cross-examine this witness.

K E Macdonald (Sgt)

Second Witness:

Capt. E.B. Robertson, Westminster Regiment (M) having been duly sworn states:-

I am Capt. E.B. Robertson Adjutant of the Westminster Regiment (M). I herewith submit the certificate of surrender of K42491 Cpl. Henry, E.W. to be produced as an exhibit.

The accused declines to cross-examine this witness.

E B Robertson

The accused was warned as follows:

Do you wish to make any statement or give evidence upon oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused: I have nothing to say.

E W Henry

I certify that R.P. (4) has been complied with.

Taken by me in the Field in the hearing of the accused. this 8th day of June '44.

Lieut-Colonel

Sheet one destroyed 8/5/41

EX D

No K4249 Name Henry E.W. Sqn. Battery or Company Corps C.I.C. Date of enlistment 3/7/40 OC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Nanaimo	8/10/41	Pte.		AWL from 0600 hrs 8/10/41 to 1200 hrs 24/10/41. Total 16 days 6 hrs. A.A. 15(1)	A/Cpl Porter Sgt. Burton	A.D. Awarded 14 days C.B.	29/10/41	Lt.-col. J.E. Wood	Forfeits 17 days pay. by Art 149(1)(a) FR&I
Field	15/8/42	Pte.		AWL from 2230 hrs 15/8/42 till 0400 hrs 16/8/42. Sec. 15(1)A.A.	Cpl. J.W. McWilliams	7 days C.B. 2 extra fatigues	17/8/42	J.K. Mahony Capt.	
Field	24 Jan 43	Pte.		A.A. Sec 15(1) AWL from 2300 hrs 24 Jan 43 till 31 Jan 43 when he returned at 2300 hrs. (7 days)	C.S.M. St. Lawrence	Forf 14 days pay (AA 46, 2d) FR&I 149(2)	1 Feb 43	Lt.-col J.F. Sager	Forf 7 days pay FR&I 149, 1(a)

(PTO)

This is Exhibit "J" in the case of
K 42471 Cpl. Henry E. M.

CERTIFICATE OF SURRENDER UNDER A.A. SEC 263(1)(3)

I, LT COL. MORRISON W. certify that No. K 42 471

Rank. CPL. Name. HENRY E. M. Unit. SUPPLY Coy. WESTMINSTER

REGT. (MOTORISED) CANADIAN ARMY surrendered himself to No. 981122 Rank. L/CPL.

Name. CYRIL T. Unit. 231 PROVOST COMPANY - C.M.P.

at 8TH ARMY REST CAMP about 2230 hrs on the 18TH day of

MAY. 1944 as a ~~Deserter~~/Absentee without leave. He was

dressed in uniform/~~civilian~~ clothes.

Date. 18TH MAY 1944

Lieut. Col,
Commandant, Eighth Army Rest Camps.

Sheet one destroyed 8/5/41

No. K4249 Name Henry E.W. Sqn. Battery or Company Corps C.I.C. Date of enlistment 3/7/40 GC Badges Service or Proficiency Pay Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Nanaimo	8/10/41	Pte.		AWL from 0600 hrs 8/10/41 to 1200 hrs 24/10/41. Total 16 days 6 hrs. A.A. 15(1)	A/Cpl Porter Sgt. Burton	A.D. Awarded 14 days C.B.	29/10/41	Lt.-col. J.E. Wood	Forfeits 17 days pay. by Art 149(1)(a) KR&I
Field	15/8/42	Pte.		AWL from 2230 hrs 15/8/42 till 0400 hrs 16/8/42. Sec. 15(1)A.A.	Cpl. J.W. McWilliams	7 days C.B. 2 extra fatigues	17/8/42	J.K. Mahony Capt.	
Field	24 Jan 43	Pte.		A.A. Sec 15(1) AWL from 2300 hrs 24 Jan 43 till 31 Jan 43 when he returned at 2300 hrs. (7 days)	C.S.M. St. Lawrence	Forf 14 days pay AA 46, 2d) KR&I 149(2)	1 Feb 43	Lt.-col J.M. Sager	Forf 7 days pay KR&I 149, 1(a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Mar 43	Pte.		AA Sec 15(1) AWL from 2300 hrs 26 Mar 43 until he returned of his own accord at 1400 hrs 29 Mar 43. (15 hrs)	CSM St. Lawrence	For 7 days pay AA Sec 46.2d) MI 149(2)	30 Mar 43	W.P. Sager Lt.-col.	For 1 days pay MI 149, 11(a)
Field	31 Aug 43	Pte.		A.A. Sec 40 Cond to the Prej. Malingering in bed after reveille	A/Cpl N.A. Robinson	7 days C.B.	31 Aug 43	W.J. Neill Capt	

CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY

.....Capt

This is Exhibit "A" in the case of
K 42491 Cpl. Henry E. M.

CERTIFICATE OF SURRENDER UNDER A.A. SEC 163(1)(3)

I, LT COL. MORRISON-WH. certify that No. K 42 491
Rank. CPL. Name. HENRY E M Unit. SUPPLY Coy WESTMINSTER
REGT. MOTORISED CANADIAN ARMY surrendered himself to me, 981172 Rank. A/SPL.
Name. CYRIL F. Unit. 231 PROVOST COMPANY - C. M. P.
at 8TH ARMY REST CAMP about 2230 hrs on the 18TH day of
MAY. 1944 as a Deserter/Absentee without leave. He was
dressed in uniform/civilian clothes.

Date. 18TH MAY 1944

Lieut. Col,
Commandant, Eighth Army Rest Camp.

Ex. e.

ARMY FORM [illegible] (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K42491	Cpl	Henry E.W.	Westminster Regt. (M)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, consecutive being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct revealed on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	A.A. Sec 15(1)	4 times.
For	A.A. Sec 40	1 times.
For		times.
For		times.

Date of first entry in Field Conduct Sheet 8 Oct 41

Date of last entry in Field Conduct Sheet 31 Aug 41

2. ~~Previous convictions of the accused by a court martial or a civil court are set out~~ As the Schedule overleaf. N/A

*Strike out if not applicable.

*3. ~~The accused at the present time is under sentence of~~ Field

beginning on the day of

4. The accused has been awaiting trial on the present charges for Nil days in civil custody : and for 19 days days in military custody, i.e., days in open arrest, 19 days in close arrest ; of which nil days were spent in hospital.

5. The present age of the accused is 26

6. The date of his attestation is 3 Jul 40

7. The service which the accused is allowed to reckon is 3 yrs 11 mos

8. The accused is in possession of: Nil L/V S.B. & Lanyard

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of Cpl	1 Mar 46
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

[illegible] W1.28670/688 100,000 6/42 A.A. & E.W. Ltd. Gp.698 Forms/S.294(W.a)/2

*Insert the military decorations (if any) held by accused.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court	Punishment remitted or sentence suspended.
		Trial		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 6 day of June 44

Capt.

XXX-35

PTE HENRY EW

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K 42491 Pte Henry. Elmer William

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for minor offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for 90 days (I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.) beginning on (date) 10 June 44 (1)

Time in confinement awaiting present trial—a total of 25 days, of which Nil days were spent in hospital.(1)
(I. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

180 days detention

(Sgd) _____ Judge-Advocate, if any. 2 Aug 44 Date awarded. (Sgd) [signature] President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm

I direct that the accused be not committed to prison or detention barracks until further ordered. (I. AA 57(2). Delete if not used.) RS

Date 2 Aug 44 (Sgd) J.C. Spry Maj

Commanding 12 Can. Inf. Bde.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
K 42491 Pte Henry E.W	3 Aug 44	[signature] Capt.

FILE WESTMINSTER REGIMENT (MOTOR)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 2 Sept 1944 CMHQ BRANCH

RECORDED AT CMHQ IN AB 160 XXX-35

FIELD GENERAL COURT-MARTIAL

(PAMS (In lieu of AFA3) 40-P & S-1698 (2864))

Convened at Bty D C Sqy Comd 12 C.I.B dated 1 Aug 44

ACCUSED.

(As to accused of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit
K 42491	Pte	Elmer William	Henry.	W.R.

PROCEEDINGS REVIEWED [illegible] 27 Aug 44 (date)

REVIEWING OFFICE [illegible] BRANCH A.M.H.Q.

57

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) [illegible] on (date(s)) 2 Aug 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed. 2A 57

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(2)
(I. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 0900 hours trial commences. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(1)

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(2)
(I. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to —— as interpreter? Ans N/A
The Interpreter is sworn.(1) Do you object to —— as shorthand writer? Ans N/A
The shorthand writer is sworn.(1)
(I. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)
(I. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.B. Lawson	4 F.L.D.G.
Member	Capt.	W.J. Neill	Westminsters
Member	Lieut.	D.E. Jeans.	89 Fd Lt Regt
Judge-Advocate			
Prosecutor	Lieut.	R.B. Fenston	Westminsters
Defending Offr	Lieut.	J.S. Moore.	Westminsters

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No. (2)
(I. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused K 42491 Pte Henry. E.W. before arraignment makes(s) (no) ~~objection~~ (1)
(I. If a special plea is made for separate trial on one or more charges (RP 62(E), (G)), or as to the jurisdiction of the Court (RP 34, 35(A), (B)), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(I. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s). (1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex H, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (F), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans .....
Do you intend to call witnesses on your behalf ? Ans .....
Are they witnesses as to character only ? Ans .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (d), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)
(*1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes — Exhibit G.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 306, 230, 563-566, Overseas RO 309, 2323, MML p 80, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(15), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 66(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, K42491 Pte. HENRY, Elmer William
The Westminster Regiment (Motor) a soldier
of the Canadian Army Overseas is charged with:

First Charge
A.A. Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, absented himself without leave from his Regiment, The Westminster Regt.(M) whilst under close arrest from 2330 hrs 16 Jun 44 till he surrendered himself to the Military Police in Naples at 2150 hrs 6 Jul 44.
(Absent 19 days 22 hrs 20 mins.)

In the Field
21 Jul 44

(G.C. Corbould) Lt.-col
Comd
The Westminster Regt. (M)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

1 AUG 44

(D C Spry) Brig
Comd 12 Can Inf Bde

Ex D8

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/P&R/1697 (D668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-42491	Pte		Elmer William Henry	Westmr r	(M)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 1 AUG 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ MP

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ MP

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ MP

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	James Bruce Lawson	4 PLDG
(Rank.)	*(Must be named. RP 106.)*	*(Unit.)*

MEMBERS.

Capt	To be detailed by CO Westmr R (M)	
Lt	To be detailed by CO 89/109 Inf Bn	
(Rank.)	*(Named or detailed. RP 106.)*	*(Unit.)*

WAITING MEMBER.

Lt	To be detailed by CO 4 PLDG	
(Rank.)	*(Named or detailed, if any. RP 106.)*	*(Unit.)*

JUDGE-ADVOCATE.

	N/A	
(Rank.)	*(Must be named, if any. RP 106.)*	*(Unit.)*

On Active Service in the Fd

in ITALY *(Country.)*

D. C. Spry *(Signed personally. RP 105 (n 2.)*

(D C Spry)

Brig *(Rank.)*

Date 1 AUG 44

Commanding 12 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 88(A) and 114(B), may be recorded in narrative form as follows:
First Witness for Prosecution.
A 12345 Cpl H. Jones, RWB, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (or, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".
RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections used not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the ~~para~~ in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:
(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 88(C).*)
(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)
(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:
(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 567.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 162 (1) (g) (k).*)
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S REPORT.

F.S. (Con) Form. C37.

I certify that I have this morning examined
No. K[illegible] Rank Lt. Name HENRY E.W.
Unit Westminster Regt (MG)
and in my opinion he is fit to undergo trial by
Court Martial.

Station. In the Field
Date 2 Aug 44

WESTMINSTER REGIMENT
AUG 2 1944
ORDERLY ROOM

Signature
Capt
R.C.A.M.C.

Plea of mitigation of sentence in the case of K 42491 Pte. Henry, E.W.

This soldier, Pte. Henry E.W. has been in the Canadian Army over four years. He came to the Westminster Regt. in July 1942. He has served in the line with his platoon and his conduct whilst under fire was good.

In pleading guilty the accused, although realizing the gravity of the charge, has not endeavoured to evade punishment.

This man desires to go into action with his unit.

In the Field
2 Aug. 1944.

J.S. Moore, Lt.
Westmr Regt. (Motor)

SUMMARY OF EVIDENCE in the case of K42491 Pte. Henry, E.W. of the Westminster Regt. (M) Canadian Army Overseas is charged with:-

1. ~~Whilst on Active Service~~
~~Breaking barracks whilst under close arrest at approx 2330 hrs. 18 Jun 44 A.A. Sec 22~~

2. Whilst on Active Service
Absent without leave from 2330 hrs. 18 Jun 44 until 2150 hrs. 8 Jul 44 A.A. Sec. 15 (L)
TOTAL TIME ABSENT 19 days 22 hrs. and 20 min.

THE COMMANDING OFFICER DIRECTS THAT EVIDENCE BE TAKEN ON OATH:

1st Witness K47661 Sgt. DeAnna, A., "A" Coy. Westminster Regt. (M) having been duly sworn states:-
I am K47661 Cpl. DeAnna, A. of "A" Coy Westmr Regt. (M) and was K47661 Sgt. DeAnna, A. on the 18 Jun 44, I was in charge of Bn. Guard on the night 18-19 Jun 44 and K42491 Pte. Henry, E.W. whom I recognize was under close arrest at that time. The Guard Room was a tent which held Guard and Prisoners. On rain starting the tent leaked.
Later the prisoner went to his quarters just outside. At approx 2300 hrs. I went to look at the prisoner and did not find him. I searched the vicinity then and again at daylight but the prisoner had diappeared.
I reported this to R.S.M. Clifford.

The accused declines to cross examine this witness.

A De Anna

2nd Witness Sgt. E.R. Robertson, Westminster Regiment (M)

2nd Witness

Capt E.B. Robertson Westmr Regt (M) C.A.C. having been duly sworn states:

A1

I am Capt E.B. Robertson Adjt of the Westmr Regt (M) and was sonon 18 Jun 44

K42491 Pte Henry E.W. was reported as having broken close arrest and missing from 2330 hrs 18 Jun 44 and he did not attend any Unit Parade until returned by Provost on 15 Jul 44.

I hereby submit Certificate of Surrender in the case of K42491 Pte Henry E.W.

The accused declines to cross examine this Witness,

E.B. Robertson Capt.

Certificate of Surrender marked Exhibit A and attached.

A. Mountain Lt.

The accused having been duly warned as follows:

Do you wish to make any statement ot to give evidence upon oath .. you are not obliged to say anything or give evidence unless you wish to do do but whatever you say or any evidence you give will be taken down in writing and may be used as evidence.

The accused I have nothing to say at this time.

I certify that R.P. 4 (C.D.E.F.G.) has been complied with.

Taken by me in the Field in the presence and hearing of the accused this 20th day of July 1944.

Respectfully submitted this 20 day of July 1944.

CR: K42491

PRIVATE HENRY EW SUPPORT C.M.F.
WESTMINISTER

8TH JULY — CENTRAL
SOLDIER — 2210

ABSENT

777243 H. Agreed the
510. PROVOST COY.

EXHIBIT "A"

A: 31

I, CAPT. R.L. OSBORNE.

Army Act Section 163 (1) (d).

K42491 PTE. Name HENRY E.W

Unit WESTMINISTER REGT. 5TH C DN DIVISION

No D-81753 L/cpl Name MACDONALD W.J. AT:- MAPLES.

at 2150 on the 8th July 1944 as a deserter (or absentee without leave).

Commanding Officer of the person or portion of His Majesty's Forces to whom the surrender was made.

Commanding,
510 Provost Coy. C.M.P.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A42491	Pte.	Henry , S.W.	Wester R (M)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, precaution being given to the most recent offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

		* Within last 12 months.	* Since Enlistment.
For	AA Sec 15(1)	1 times	4 times.
For	AA Sec 40	1 times	1 times.
For		times	times.
For		times	times.
For		times	times.

[redacted] GBR

or

[redacted] GBR

2. The [redacted] GBR

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The [redacted] The accused at the present time is under sentence for 90 days (det) beginning on the 10 day of Jun 44

4. The accused has been in confinement, awaiting trial on the present charges, for 13 days in civil custody, and 13 days in military custody, making a total of 13 days, of which no days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 3 Jul 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). GVSM & C

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or corps or* department) the rank of dated

(*22547) W.51703/1917 10,000 10/42 A.& E.W.Ltd. Gp.698
(22907) W.36058/297 12,000 5/43

Sheet one destroyed 8-5-41

No. K42491 Name Henry E.W. | Sqn, Battery or Company | Corps CIC | Date of enlistment 327240 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) AO/PAM/136 (3438)

Date of last entry in Company Conduct Sheet: NA | No and date of last drunk: NIL | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Charnier

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Nanaimo B.C.	8-10-41	Pte		AWL from 0600 hrs 8-10-41 to 1200 hrs 24-10-41 Total 16 days 6 hrs AA 15-1	L/Cpl Porter Sgt Burton	Awarded 14 F. days C.B.	29-10-41	Lt-Col J.E. WOOD	Forfeits 17 days Pay Auth Art 149 1 (a) FR&I C.A.
Field	15-8-42	Pte		AWL from 2230 hrs 15-8-42 till 0400 hrs 16-8-42 AA Sec 15-1	Cpl J.W. McWilliams	7 days C.B. 2 Extra Fat.	17-8-42	J.F. Mahoney Capt	
Field	24-1-43	Pte		(AA Sec 15(1) AWL from 2300 hrs 24 Jan 43 till 31 Jan 43 when he returned at 2300 hrs (7 days)	CSM StLawrence	Forf 14 days pay AA 46 2d FR&I 149 2	1-2-43	J.R. Sager Lt Col	Fors 7 days pay FR&I 149 1(a)

(FTO)

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A42491	Rte.	Henry . E.W.	Nestmr R (M)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not inserted in the proceedings.

† See para. 677, K.R., 1940.

* The offences herein stated should correspond with the number of entries in the conduct sheets, precedence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

	* Within last 12 months.	*Since Enlistment.
For AA Sec 15(1)	1 times	4 times.
For AA Sec 40	1 times	1 times.
For	times	times.
For	times	times.
For	times	times.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

[redacted] GBR

or

[redacted] GBR

2. The [redacted] GBR

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The [redacted] The accused at the present time is under sentence for 90 days (det)

beginning on the 10 day of Jun 44

4. The accused has been in confinement, awaiting trial on the present charges, for 13 days in civil custody, and 13 days in military custody, making a total of 13 days, of which no days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 3 Jul 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). GVSM & C

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of dated and in his regiment (*or* corps *or* department) the rank of dated

(*22847) W.21703/1877 10,000 10/42 A.A.F.W.Ltd. Gp.698
(3396) W.32853/1227 32,000 2/43

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. K42491 Rank Pte. Name Henry E.W. of Westminster Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority dispensing of the charge, or order of the dispensing authority	Punishment remitted
FGCM	10 Jun 44	A.A. Sec 15(1) AWL	90 days detention	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21 day of July 44

× E.B.D. Sutton Capt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

In the rank of ..... years,

In the rank of ..... years,

In the rank of ..... years,

In the rank of .....

Date of Promotion.

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28-3-44	Pte		AA Sec 15(1) AWL from 2300 hrs 28 Mar 43 until he returned of his own accord at 1400 hrs 29 Mar 43 (15 hrs)	CSM St Lawrence	Forf 7 dys pay(AA Sec 46 2d) (FR&I 149 2)	30-3-43	J.E. Sager Lt Col	Forf 1 dys pay(FR&I 149 1a)
Field	31-8-43	Pte		AA Sec 40 Conduct to the pred of good order and military disc Malingering in bed after reviell	A/Cpl Robinson	7 dys C.B.	31 Aug 43	W.J. Neill Capt	
Enfield	10 Jun 44	Col		4A Sec 15(1) Certified True Copy [signature]	FGCM held 10 Jun 44	Reduced to Pte undergo 3 mos detention	10 Jun 44	FGCM	Forf 4 days [illegible] 22 days [illegible] 30 days [illegible] Total forf 56 days pay

Sheet one destroyed 8-5-41

No. K42491 Name Henry E.W. | Sqn, Battery or Company | Corps CIC | Date of enlistment 3?7?40 | GC Badges | Service or Proficiency Pay | E & B | MFM 6 (AFB 122) (AD/P&S/136 (3438))

Date of last entry in Company Conduct Sheet: NA | No and date of last drunk: NIL | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Charlpier

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Nanaimo B.C.	8-10-41	Pte		AWL from 0600 hrs 8-10-41 to 1200 hrs 24-10-41 Total 16 days 6 hrs AA 15-1	L/Cpl Porter Sgt Burton	Awarded 14 F. days C.B.	29-10-41	Lt-Col J.E. WOOD	Forfeits 17 days pay Auth AFt 149 1 (a) FR&I C.A.
Field	15-8-42	Pte		AWL from 2230 hrs 15-8-42 till 0 0400 hrs 16-8-42 AA Sec 15-1	Cpl J.W. McWilliams	7 days C.B. 2 Extra Fat.	17-8-42	J.F. Mahoney Capt	
Field	24-1-43	Pte		(AA Sec 15(1) AWL from 2300 hrs 24 Jan 43 till 31 Jan 43 when he returned at 2300 hrs (7 days)	CSM StLawrence	Forf 14 days pay AA 46 2d FR&I 149 2	1-2-43	J.E. Sager Lt Col	Fors 7 days pay FR&I 149 1(a)

(P70)

5 U-152

Cpl. Henry, N. K.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-116725 CPL. HERMAN KINGSLEY HENRY ALG REGT

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. 15 (1)	Guilty	Guilty	
2nd	A.A. 15 (6)	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 33 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: TO BE REDUCED TO THE RANK OF PTE and UNDER GO DETN. FOR A PERIOD OF NINETY DAYS (90 DAYS)

(Sgd) ..... Judge-Advocate, if any. 23 Oct 45 Date awarded. (Sgd) J. L. Dandy Maj President. (RP 45, 56)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I ~~direct that the accused be not committed to military detention Barracks until further orders~~ (1)
(1. AA 57A. Delete if not used.)

Date 29 Oct 45 (Sgd) H. Burrows Lt Gen
Commanding 10 Can Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A/116725 Cpl H.K. HENRY	31 Oct 45	E.D. Lakeman Lt Col. Algonquin Regt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

54-152

FIELD GENERAL COURT-MARTIAL

CPA86 (To Req of AFA21) 40/P & R/1808 (10/45)

Convened by Order of Brig. H.P. Bell Irving Comd 10 C.I.B. dated 23 Oct 45

12 Nov 45

4/38B

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names	Surname.	Unit.
A-116725	Cpl.		Herman Kingsley	Henry	Alg Regt.

PROCEEDINGS REVIEWED
12 Nov 45
[illegible] Capt
REVIEWING OFFICER, JAG BRANCH, CMHQ

38/43

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 23 Oct 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. This Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 558. 2. AA 46(2), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans~~
~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans~~
~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJ.	J.L. DANDY	LINC & WELD REGT
Member	CAPT.	J.P. CURLEY	29 CDN ARMD REGT
Member	LIEUT.	D.J. SPARLING	10 CDN INDEP. M & L COY
~~Judge-Advocate~~			~~ALG REGT~~
Prosecutor	LIEUT.	G.E. NEIL.	ALG REGT
Defending Offr	LIEUT	J.W. AYMER	ALG REGT

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (b) and fn 2 were not followed. See DI p 3.)

A8. The accused A-116725 CPL HENRY H.K. before arraignment make(s) (no) (~~one~~) objection(s).
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~adjourns~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B 7 E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HQ 4 CAD AB 160 VOL. IV P. 132.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc. offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY, and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate in result of its decision. See M M L p 744 f-notes (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 80(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc. see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.~~(1) ~~The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s).~~ ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s).~~ Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole if part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114; KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges see second alternative in para D6.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf A93. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42. 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42. 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (6), RP 43, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. [redacted] CAPT SUNSTRUM IS MY CHARACTER WITNESS
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy [redacted] of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)
(1. *MFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES, THROUGH MY DEFENDING OFFICER.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 68. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas AO 109, 2,023, MML p 82, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A-116725 Cpl. Henry, H. K.
Algonquin Regt.

Field
23 Oct 45

C A Sands Capt.

J L D.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on an active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A116705	Cpl		Herman Kingsley	HENRY	Alq R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 21 Oct 45 endorsed by me, (~~for the purpose of any such trial~~) be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior qualified authority~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I hereby appoint as Judge-Advocate thereof the Offr mentioned in Appendix "A" hereto~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereof the Offr mentioned hereunder~~ (RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj (Rank.)	J L Dandy (Must be named. RP 106.)	Line & Weild R (Unit.)

MEMBERS.

Capt (Rank.)	J P Curley	29 Cdn Armd Recce Regt (Unit.)
Lt (Rank.)	D J Sparling (Named or detailed. RP 106.)	10 Cdn Indep MG Coy (Unit.)

WAITING MEMBER.

Lt (Rank.)	B J Walker (Named or detailed, if any. RP 106.)	Alq R (Unit.)

JUDGE-ADVOCATE.

~~Maj~~ (Rank.)	E E Wesson (Must be named, if any. RP 106.)	HQ 4 Cdn Armd Div (Unit.)

On Active Service in the Fd

in Holland (Country.)

Date 21 Oct 45

(Signed personally. RP 105 fn 2.) Brig (Rank.)

Commanding 10 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 96 (1st Rev of AFA 3) 40/P & S/1607 (8148)

J L Dandy Maj
Pres

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:
First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (*or*, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".
RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:
(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn. 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(v) Closing address (on matters other than to mitigation of punishment) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 563(a).*)
(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.
2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:
(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 557.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)
(vi) Summary of Evidence, if not already an exhibit.
3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)
4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

CHARGE SHEET

The accused, No. A 116725, Cpl. Henry, H. K., of the Algonquin Regiment, Canadian Army Overseas, is charged with:

First Charge
A.A. Sec 15 (1) WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

on 18 Sep 45 did absent himself without leave from 1800 hours 18 Sep 45 until he returned to barracks at 0945 hours 21 Sep 45. Absent 2 days, 15 hours, 45 minutes.

Second Charge
A.A. Sec 15 (1) WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

on 24 Sep 45, while under open arrest, did absent himself without leave from 0955 hours 24 Sep 45 until apprehended by the Military Police in Amsterdam at 1845 hours 24 Sep 45. Absent 8 hours and 50 minutes.

Lt.-Col.
(J. R. R. Akehurst, D.S.O.)
Officer Commanding
The Algonquin Regiment.

In the field
1 Oct 45.

To be tried by Field General Court Martial

(H P Bell-Irving) Brig
Comd 10 Cdn Inf Bde

In the Field
21 Oct 45

J.A.D.

Exhibit A

K.D.

Summary of Evidence in the case of No. A 116725 Cpl. Henry, H. K., the Algonquin Regiment, Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

First Witness — No. B 54688, C. S. M. Clouthier, E., the Algonquin Regiment, having been duly sworn, states:

On Sep 18, 1945, at 1600hours, when afternoon parade ended, I had occasion to want to see Cpl. Henry but could not locate him. I searched the school building where the Company is billeted and he was not there; again at 1800 hours I searched the billets and still could not find him so presumed him to be absent without leave.

On three days, Sep 19, 20 and 21, 1945, at 0700 hours and several times during these days, I personally checked Cpl. Henry's quarters and he was absent.

On the morning of 21 Sep 45 at 0945 hours, Cpl. Henry reported in to L/Cpl. Bell, the acting company orderly copporal. Cpl. Bell reported the accused's presence to me and I went to his quarters and found him sleeping on his bed. I placed him under open arrest and warned that he was for orderly room the next morning.

On the morning of 22 Sep 45 Cpl. Henry was up for Orderly Room and was remanded to the Commanding Officer. I then marched Cpl. Henry out of the orderly room, explained to him again what the Company Commander had said. "You are remanded to the Commanding Officer at 1100 hours tomorrow and you are confined to barracks until then."

On the 23rd Sep 45 C.O.'s Orders were cancelled until the following day and I warned Cpl. Henry then that he would appear for orders on the 24th at 1100 hours. The morning of 24 Sep 45 the Bn. Orderly Room called D Coy and informed us that Orders had been advanced to 1000 hours. At 0955 hours I went to warn Cpl. Henry to get ready for Orders. He was absent. He had broken out of barracks. I reported to the Bn. Orderly Room that Cpl. Henry was absent. The next time I saw Cpl. Henry he was in custody of the regimental police at C. O.'s orders on 28 Sep 45.

E Clouthier C.S.M.

The accused declines to cross-examine this witness.

J.F.D.

Second Witness — No. A-117644, L/Cpl. Bell, R. L., the Algonquin Regiment, having been duly sworn, states:

On 21 Sep 45 I was acting orderly corporal for D company. At 0945 hours that day, Cpl. Henry came into D company Orderly Room and reported to me. He said he was spposed to report to the Orderly Room. Since Cpl. Henry was listed as being absent without leave I marked down the time of his return and reported the matter to C. S.M. Clouthier.

R L Bell L/Cpl.

The accused declines to cross-examine this witness.

Third Witness — No. F-64761, Cpl. Rennehan, R. V. (Provost Corps)

I certify that, owing to the exigencies of the service, the attendance of this witness cannot be readily procured. A statement of documentary evidence from this witness has been marked "exhibit A" and attached hereto. Certificate of Arrest has been marked "exhibit B" and attached hereto.

F. E. Lail Lieut.

The accused:

I certify that I do not require the presence of No. F 64761 Cpl. Rennehan for cross-examination.

H. K. Henry Cpl.

J.L.D.

The accused was warned as follows:

"Do you wish to m ake any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The Accused:

No. A1167?5, C pl. Henry, H. K. states:

After afternoon parades I am in the habit of occasionally leaving billets and visiting friends in the town. On the 18th of Sep 45 I went out to visit my friend and we decided to have a party. We went to a cafe and had a few drinks of gin. After the cafe closed we bought a bottle of liquer and it was due to this that I did not return to billets that night.

I returned to camp on the 21st Sep 45 and reported my return to the orderly corporal. I appeared before my Company Commander on 22 Sep and was warned for C. O.'s Orders the next day.

I had promised my friend that I would meet him later. Although I was under open arrest it didn't appear that I would be up for orders that day since orders had been cancelled the previous day, so I took a chance and went to m eet my friend.

H K Henry Cpl.

I certify that Rules of Proceedure 4 (c), (d), (e), (f), and (g) have been complied with.

Lieut.
Officer detailed to take this summary of evidence.

In the Field
Algonquin Regt.
1 Oct 45.

STATEMENT OF THE ACCUSED:

I certify that I have received free of charge a copy of the charge sheet, summary of evidence, list of witnesses and list of exhibits.

(H K Henry) Cpl

I desire the services of an officer to represent me at my trial.

(H K Henry) Cpl

J.L.D.

1st witness – Capt. J.J. Sunstrum, O.C. of "D" Coy of the Algonquin Regt. having been duly sworn states:

I am Capt. Sunstrum, O.C. of "D" Coy of the Algonquin Regt. Corporal Henry has been under my command since the 4th of March 1915. He has been a good soldier in action and has never caused any trouble until this period of N.W.L. ~~often~~. It appears to me that he has considered now that the war is over there is no need to soldier.

PLEA OF MITIGATION.

I wish to enter a plea for leniency on behalf of the accused on the grounds that he was a very good soldier when it was necessary to be a good soldier - in action.

The accused joined the regiment in November and came thro' six months of its action the hard way - in a rifle company. In all these months there was no better fighting soldier. In April he was promoted to the rank of Cpl. on his record in action, and he carried out his duties in a very capable manner at all times.

Now the war has been over for six months and the real duties of a soldier have long ceased mistakes are more easily and more often made and usually under the influence of liquor. In this case the incidents would have not happened had it not been for drink.

We know that drunkeness is no excuse but on the basis of the accused fine fighting record ~~xxx~~ in action, leniency should be shown in passing judgment on this man.

EXHIBIT 'B'

SCHEDULE 'B'

CERTIFICATE IN ACCORDANCE WITH P.C. 2787 of 10 APR 45.

I certify that No. A116725 Rank C/L Name HENRY . H. K.
Unit 10 C.I.B. ALGE. REGT.
was arrested at Amsterdam (place) on 24-9-45 (date)
and at the time of his arrest he was wearing (military uniform) or civilian clothes.

Signature of ~~commanding officer~~ ~~officer in charge of the detachment of the Canadian Provost Corps~~ warrant officer, ~~non-commissioned officer in charge of the detachment of the Canadian Provost Corps~~ Canadian Army into whose custody the above named person was taken on arrest.

W/Spistorick C.S.M.
7 Cdn Prov. Coy.

Strike out part inapplicable.

CHARGE D/286 EXHIBIT 'C'

Army Form B 252
(See King's Regulations)

THE ALGONQUIN REGT 10 CIB 4th DIV Regiment
"D" COMPANY Battery / Squadron / Troop or / Company

CHARGE against No. A-116725 Rank Cpl.

Name HENRY H K

Place AMSTERDAM Date of Offence 24 Sep 45

OFFENCE W O A S

1. A W L from ..... until arrest by
No 7 Can Provost Coy

J.C.P. Bourke Captain
Officer Commanding
No 7 Cnd Provost Coy

Names of Witnesses :—

F-44761 Cpl. RENNEHAN R V No 7 Can Pro Coy

D-7219 Cpl. HOLLGATE H G No 7 Can Pro Coy

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O

EXHIBIT "B"

In the case of:

A-116725
Cpl. GENRY H K
ALGONQUIN REGT
"B" COMPANY
10 C I B
4 CDN DIV

EVIDENCE

At approx 1845 hrs, on the 24 Sep 45, whil on patrol in the city of AMSTERDAM, accompanied by D-7219 Cpl. HOLLGATE H G, of this company, I had occasion to check the a/m soldier on LEIDSCHE PLEIN. I had been informed by the Ord/Sgt before proceeding on patrol, to be on the look out for him.

While proceeding along LEIDSCHE PLEIN I saw the a/m soldier who answered the description that was given to me.

On checking I found it to be the soldier who had been described, when asked how long he had been away from his Unit he stated that he had left in the afternoon of the above date.

I then ordered him into the jeep and escorted him to the Town Guard Room, where he is being held in close arrest awaiting an escort from his Unit.

R. V. Rennehan Cpl.
(F-64761 RENNEHAN R V)

I have read over and corroborate the above evidence.

Hollgate H.G. Cpl.

REMARKS (D-7219 HOLLGATE HG)

RESULT OF CHARGE TO BE FORWARDED DIRECT TO "A" BRANCH OF FORMATION.

EXHIBIT D

Army Form B 295 (Mar)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED
(For use at Trials by Field General Court-Martial only)

Number	Rank	Name	Regiment
A.116725	CPL	HENRY, Herman Kingsley	THE ALGONQUIN REGIMENT

1. The following is a fair and true summary of the entries in the Field Conduct sheet of the accused, exclusive of convictions by a court martial or a civil court:-

For: AA 15(1) - 7 charges

~~For:~~
~~For:~~
~~For:~~
~~For:~~
~~For:~~

Date of First entry in Field Conduct Sheet ..... 28 Dec 42 .....

Date of Last entry in Field Conduct Sheet ..... 23 Dec 44 .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the schedule overleaf.

~~3. The accused at the present time under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been waiting trial on the present charges for .....Nil.....days in civil custody; and for ~~11.33~~ ..days in military custody, i.e.,.Nil.....days in open arrest and... ~~11.33~~ ....days in close arrest, of which..Nil.....days were spent in hospital.

5. The present age of the accused is..... 24 years .....

6. The date of his attestation is..... 26 Nov 42 .....

7. The service which the accused is allowed to reckon is

2 yrs and 11 months

8. The accused is in possession of: Can Vol Serv Medal and Clasp
France and Germany Star

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date:

	Date of Promotion
In the substantive rank of....Corporal.....	21 Apr 45

~~In the warrant rank of..... Nil .....~~

~~In the acting rank of..... Nil .....~~

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the Regimental Books in my custody, are correct to the best of my knowledge and belief.

Signed this 5th 23 day of Oct 194...

[signature] Capt/Adjt

The Algonquin Regiment

EXHIBIT E

No A116725 Name HENRY, Herman Kingsley | Sqn, Battery or Company | Corps CIC | Date of enlistment 26Nov42 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/Pam/136 (9438)

Date of last entry in Company Conduct Sheet | No pay date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet Destroyed 26 Nov 44					
Stratford, Ont.	28 Dec 42	Pte		AWL from 0600 hrs 28 Dec 42 to 1445 hrs 11 Mar 43 (73 dys 8hrs 45 mins)		27 dys detent.	18Mar43	Maj Bartleman	
Stratford Ont.	21 Jun 43	Pte		AWL from 0600hrs 21Jun43 to 1415 hrs 30Jul43 (39dys 8hrs 15mins)		27 dys Detent.	4Aug43	Maj Bartleman	
Camp Ipperwash				BLOOD DONOR 4 Nov 43 1st					
Ipperwash Ont.	7 Dec 43			AWL from 1200hrs 7Dec43 til 0115 hrs 16Dec43 (8dys 13hrs 15mins) AA16(1)	L/C Caughlin	168 hrs detn	16Dec43	A. Garrod Lt.Col	FOP 9 days FRI 149(1)(a)
Ipperwash	28Feb44	Pte		AWL from 1200hrs 28Feb44 til surrendering at 0145hrs 20Mar44 (20 dys 13 hrs 25 mins)	Pte Mutterback(Doc'y)	28dys Detn	21Mar44	A. Garrod Lt.Col	FOP 21 days FRI 149(1)(a)

(OVER)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Ipperwash	17Apr 44	Pte		AWL from 0200hrs 17Apr44 to 1100 hrs 24Apr44(Absence 7dys 9hrs) AA 15(1)	L/C Meharry	FOP 14 dys 46(2)(d) AA	25 Apr 44	A. Garrod Major	FOP 8 dys 149(1)(a)FRI.
Debert,NS	29May 44	Pte		AA15(1) AWL from 0600hrs 29May44 until apprehended at 1700hrs 22 Jun44 and returned to unit with costs of app: $24.80. Total Absence 24 days 11 hrs. CLOSE ARREST	CSM Fox R E L/C Roth H L/C Galbraith D.M.	28 days Detention AA 46	19 Jul 44	J.G.Cumming Major	Forf 25 days pay. FRAI Stopp. $24.80. Forf 26 dys pay period of Close Arrest. 4 dys remission of sentence
Field	23 Dec 44	Pte		AA15(1) AWL from 1800hrs 23Dec44 until 2330hrs 23Dec44 (5hrs 30mins) Granted 7 days Privilege Leave to Paris 6 Jun 45	Sgt Livingston R.	Admonished	25Dec44	G.L.Cassidy Major	

CERTIFIED TRUE COPY FROM REGIMENTAL RECORDS IN MY POSSESSION.

5 Oct 45 — 45 L Cohen Capt/Adjt

4/B-132

PTE HENRY H.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B65041 Pte Howard Robert Henry 2 Can Corps Reinmt Pl 1 Sub Unit

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A A Sec 40	Guilty	Guilty	
2nd A A Sec 40	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 482 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and inclos of Kit see RP 44 fn 6.)

To undergo sentence for ... beginning on (date) ... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer 60 days Field Punishment and to forfeit 60 days pay.

(Sgd) Judge-Advocate, if any. 26 Oct 44 Date awarded. (Sgd) R. R. Trudel Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding ...

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

confirmed Reg

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 26 Oct 44 (Sgd) ... Commanding COMD ARMY TROOPS AREA, FIRST CDN ARMY. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. B-65041 Pte HENRY Howard Robert Date. 28 Oct 44 Signature of Offr. R. R. Trudel Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 1 NOV 1944 JAG BRANCH

RECORDED AT CMHQ IN AB 160. 48-132

FIELD GENERAL COURT-MARTIAL

CFAB6 (In lieu of AFA3) 40-P 32 R (1) 48 (2664)

Convened at ... by Brig. R.R. Gordon Comd A Troops dated 24 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent (confirmed) rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B65041	Pte.		Howard Robert Henry		2 Can Corps Reinmt Pl 1 Sub Unit

PROCEEDINGS REVIEWED
J.A. Campbell Major
11 Nov 44
REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS RECEIVED Date 2 NOV 1944 GHQ 2 Echelon Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 26 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 12/87

A1. The President, Members, waiting Member, JA, if any, and ~~Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(4), RP 60 fn 3. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you~~ object to ... as interpreter? (Ans ~~No~~) ~~as interpreter is sworn (4). Do you object to ... as shorthand writer? Ans~~ ~~the shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major R.R. Trudel. C.I.C. 4 Can Corps.
Member	Capt. E.W. Saunderson 4 Mob. Lndry Bath Unit
Member	Lt. J.N. Campbell. 2 Mob. Lndry & Bath Unit
Judge-Advocate	Capt D.G. Dean HQ Army Troops Area
Prosecutor	Capt W.A. Ambrose 3 Can Corps Reinmt Unit
Defending Offr	Lt B. Woodworth " " "

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B65041 Pte. Henry ~~No~~ before arraignment make(s) (no) objections.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D & E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A)). As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused : Do you wish to make a statement ? Ans None[5]
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~charge(s).~~ The accused is (are) so informed, and he (they) ~~(has) (have)~~ altered plea(s) on charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.[1]
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Add hereof Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....[1]
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.[1]
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.[1]
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(b).)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?[1]
Ans None
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C, respectively.[3]
(1. MFB 355 or AFB 296. 2. MFW 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?[1] Ans Yes through my defending officer
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to speak on both anything here or previously stated which would affect the account of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 96(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RRS

CHARGE SHEET

The accused, B.65041 Pte HR HENRY, 3 Cdn Corps & Army Tps Ord Sub Park, a soldier of the Cdn Army Overseas is charged with:

FIRST CHARGE
AA Sec 40

WHILE ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, on 16 Oct 44, improperly and without authority did take and use a WD vehicle WD No. Z-550161.

SECOND CHARGE
AA Sec 40

WHILE ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field at about 0015 hrs 17 Oct 44 was away from his unit when his duty required him to be with his unit.

K. W. Trot Smith Maj
Officer Commanding,
3 Cdn Corps & Army Tps Ord Sub Park

In the field
23 Oct 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

Kyoung
(JRB Gough) Brig
Comd A Tps Area, First Cdn Army

In the field
24 Oct 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B.65041	Pte	Pte	H R	HENRY	3 Cdn Corps & Army Tps Ord Sub Park

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 24 Oct 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	RR FULTZ CIC		11 Bn CBRG

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	F.W. SWINBURNE		9 Mob Lndy & Bath Unit
Lieutenant	G.N. CAMPBELL		8 Mob Lndy & Bath Unit

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Captain	D.G. DEAN, ADJA		HQ A Tps Area, First Cdn Army

On Active Service in the Fd

in Belgium (Country.)

Date 24 Oct 44

(signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(J.R.R. Gough)
Commanding A Tps Area, First Cdn Army
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA96 (In lieu of AFA3)
40/P & S/1697 (4021)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (*AA 52, KR Can 562, RP 26, 29, 111.*)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (*AA 52, MML 762, RP 82, 111.*)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (*RO (Con) 2693.*)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(*Referred to throughout CF A 96 as "Notes".*)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (*or*, None.)
Re-exam: None.
Exam by Court: He said—" I've had enough parades ".

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)
(vii) Summing up by JA, if any. (*RP 43.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 867.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used. (*As to admitting in evidence a certified copy in lieu of original see KR Can 580. As to certified copies of regimental books see AA 163 (1) (g) (h).*)
(v) Exhibits numbered Ex A, Ex B, etc.
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE

I certify that No B-65041 Pte Henry H.R.

3 CDN CORPS & ARMY TPS ORD SUB PARK

is (x) fit to undergo trial by Court-Martial

R Woodward Capt RAMC

Signature of Medical Officer

Date 26/Oct/44

(x) Insert "fit" or "unfit"

Defending Officer in Mr Hegarty
Pte. has been in army since 1942. His
conduct has been pretty good. He has been
doing a good job & just slipped over the
traces. He has pleaded guilty & com
clean.

KRR

SUMMARY OF EVIDENCE IN THE CASE OF

B-65041 Pte HENRY H.R.

3 CDN CORPS & ARMY TPS ORD SUB PARK

CHARGED WITH, IMPROPERLY AND WITHOUT AUTHORITY TAKING & USING A W. D. VEHICLE NO. W.D. Z-550161l (SEC 40 A.A.)

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness C-15514 SQMS KERR, J.T. 3 CDN CORPS & ARMY TPS ORD SUB PARK, sworn, states:

On 16 Oct 44, I was duty officer. At approximately 2200 hrs, L/Cpl Murphy, A.P. (B-58014) N.C.O. i/c Guard told me a vehicle was missing. Being duty officer I had not authorized any vehicle to leave area, so I immediately started investigation. At approximately 0015 hrs, 17 Oct 44, S/Sgt. Ashby, L.H.T. (C-15699) and Sgt. Foreman, D.B. (L-9062) informed me they had picked up Pte Henry, H.R. (B-65041) and Pte Herbert, E.J. (M-66507) in one of our reserve vehicles. They informed me they had placed the men under arrest and I reported the matter to the O.C.

Q. Did you authorize any trip out of camp?

A. No Sir.

Q. Did anyone ask you permission to take a vehicle out of camp?

A. No Sir.

The accused declines to cross-examine this witness.

J.T. KERR, SQMS

Second Witness C-15699 S/Sgt. Ashby, L.H. 3 CDN CORPS & ARMY TPS ORD SUB PARK, sworn, states:

On 16 Oct 44, at approximately 2230 hrs, I was given an order by SQMS Kerr to block the main road leading into Lede at the railroad crossing between Lede and the main highway from Ghent to Brussels. I was accompanied by Sgt. Foreman. At approximately 0015 hrs, 17 Oct 44, a W.D. vehicle approached. Sgt. Foreman signalled the vehicle down and it stopped. Sgt. Foreman approached the vehicle and identified the occupants which were Pte Herbert, passenger and Pte Henry driver. I approached to left side and told the driver to park his vehicle besides the railroad track. He started to drive straight ahead and I cautioned him to halt, which he did.

Summary of Evidence - B-65041 Pte Henry, H.R. (Cont'd)

Second Witness C-15699 S/Sgt. ASHBY, L.H.T.(Cont'd)

He then parked his vehicle and both occupants got out. I placed them under arrest and they were told to take a seat in the jeep. We drove back to camp and into unit lines where I placed Pte Henry under close arrest and Pte Herbert under open arrest. I turned them over to the Guard Cpl and reported to SQMS Kerr.

Q. Did the accused resist arrest?

A. No Sir, not at all Sir.

Cross-examined by the accused:-

Q. When I started forward with the vehicle, did you think I was trying to get away?

A. I did not know.

L.H.T. ASHBY, S/Sgt.

Third Witness L/9062 Sgt. FOREMAN, D.B. 3 CDN CORPS & ARMY TPS ORD SUB PARK, sworn, states:

At approximately 2230 hrs, 16 Oct 44, I was called out of my quarters by Sgt. Major Kerr and detailed with S/Sgt. Ashby to stop all military vehicles coming towards Lede from the main Brussels highway. At approximately 0015 hrs, 17 Oct 44, a military vehicle approached. We stopped it, and upon examination, the driver was found to be Pte Henry, and the passenger Pte Herbert. S/Sgt. Ashby ordered Pte Henry to drive the vehicle off to side of road and get out. He placed both men under arrest. We brought the men back to guard house & turned them over to guard Cpl. We then informed Sgt.Major Kerr of the whereabouts of Ptes Henry and Herbert and went out and brought back the vehicle to camp.

Q. Was there any resistance to arrest?

A. No Sir.

Cross-examined by the accused:-

Q. When we got out of the vehicle who was doing all the talking?

A. Pte Herbert.

Q. Could you say what he said?

A. Pte Herbert asked why he was placed under arrest and what was the charge.

D.B. FOREMAN Sgt

Fourth Witness B-58014 L/Cpl MURPHY, A.P. 3 CDN CORPS & ARMY TPS ORD SUB PARK, sworn, states:

I was Cpl of the Guard on 16 Oct 44 and when I made my rounds, Pte Boyce, J. (B-9275) reported to me that a vehicle had been taken. This was reported to me by Pte. Boyce at approximately 1945 hrs. I reported this to the Major, as the Sgt.Major was not around. At 0030 hrs, 17 Oct 44, S/Sgt. Ashby and Sgt. Foreman brought Ptes Herbert and Henry back in a jeep. They put Pte Henry under close arrest in my charge. They went out after, to get the vehicle and brought it back.

Q. Did anyone tell you that any vehicle would be going out?

A. When I mounted the guard, I was told by Orderly Officer, SQMS Kerr, to have guards stop all vehicles in our camp area, that they would have to have a properly signed chit to go out. He told me to bring anyone in who was caught moving a vehicle.

The accused declines to cross-examine this witness.

A.P. MURPHY L/Cpl

Fifth Witness B-9275 Pte BOYCE, J. 3 CDN CORPS & ARMY TPS ORD SUB PARK, sworn, states:

On night of 16 Oct 44, I was on guard between the hours of 1800 to 2200 hrs. Between 1900 and 1930 hrs, Pte. Herbert approached me about taking a vehicle out of the Park. There were 2 (two) other soldiers with him, unknown to me . I told him there was no chance of taking any vehicle. In the meantime, Pte Henry came up and made the remark: "No trucks to-night?" The four soldiers went into a huddle. Pte Henry approached me regarding taking a truck out. I told him there was no chance of a truck leaving the Park. So he replied he would take the damn truck out and that I should not be standing in the way.

Pte Henry left. When he was leaving, Pte Herbert shouted to him that he would see him down the road. Shortly after, Pte Henry came round with a truck. I tried to halt the truck but as he was approaching me, He turned the convoy light on. I would have fired at the vehicle, only there were several civilians in the near vicinity. About three hundred (300) yards down the main road, the truck came to a stop. I could hear soldiers running to get in the truck.

Q. Did Pte Henry say anything to you when passing in the vehicle?

A. No Sir.

Q. What attempt did you make to stop the vehicle?

A. I proceeded to the center of the road, raised my right hand. At that moment, he put the convoy light on and increased the speed of the vehicle, so I moved over to the side.

Summary of Evidence - B-65041, Pte Henry, H.R. (Cont'd.)

Fifth Witness B-9275 Pte BOYCE, J.(Cont'd)

Cross-examined by accused:-

Q. How do you know it was me driving the truck?

A. I saw you start the truck, from the corner of the street where I was standing.

Q. Were you still at the corner where Herbert and the bunch of the boys were, when you saw me start the vehicle?

A. I moved down from the corner about 50 yards. I followed the sound of your foot-steps to the vehicle.

Q. Could you tell me just what street and where the spot is where the vehicle was parked?

A. On right hand corner at bottom of street; from my guard post, I walked back about 50 yards. Guard post is on street corner on the street directly behing entrance to Institute.

Q. Could you prove it was me starting that vehicle and did you see me starting the vehicle?

A. I could not definitely say that I could, but I followed your foot-steps down to the vehicle. I had reasons to believe it to be you as when you left me, you told me you were taking a vehicle.

Q. Could you prove the vehicle came off that street?

A. By the noise from the engine and lights showing, I could.

Q. Then, you could not definitely prove that I was driving the vehicle?

A. Not definitely prove.

J. Boyce

J. BOYCE Pte

The accused was cautioned as follows:

Q. Do you wish to make any statement or to give evidence under oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I do not wish to make a statement.

The accused does not call any witness.

R.23.

Summary of Evidence - B-65041, Pte Henry, H.R.(Cont'd.)

I certify that the foregoing Summary of Evidence, consisting of four pages, was taken down by me in the presence of the accused and that RP 4 (C), (D), (E), and (F) have been complied with.

(H.L. BARKER), Lieut.
Adjutant
3 CDN CORPS & ARMY TPS ORD SUB PARK

The Field
19 Oct 44

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-65041	Pte	Henry, H.R.	3 Cdn Corps & Army Tps Wrd Sub Park

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recorded instance of gallantry or distinguished conduct entered in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL AA Sec 15 (2) 2 times.

For AA Sec 9 (2) Disobeying a lawful command 1 times.

For AA Sec 40 4 times.

For ..... times.

Date of first entry in Field Conduct Sheet 10 Nov 42

Date of last entry in Field Conduct Sheet 6 Oct 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for 28 days FDF for being AWOL & 7 days in his possession. beginning on the 6th day of October 44

4. The accused has been awaiting trial on the present charge(s) for ..... days in civil custody, and for ~~.....~~ days in military custody, viz., ~~.....~~ days in open arrest, nine days in close arrest, of which ~~.....~~ days were spent in hospital.

5. The present age of the accused is 21 years 1 month

6. The date of his attestation / ~~taking up for military service~~ is 18 Mar 42

7. The service which the accused is allowed to reckon is 2 years 7 months

[State the military decoration (if any) held by accused.

~~8. THE ACCUSED IS NOT POSSESSED OF~~

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21214) W1.3950/668 100,000 6/42 A. & E.W.Ltd. Gp.698
(22459) W1.2926/1872 50,000 9/42 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 26th day of October 44

W O Barker Lt (adgt)

5-H-113

Mt Henry H.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-65041 Pte Howard Robert HENRY X-8 List 3 Cdn NETD

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec. 41	Not Guilty	Guilty	
2nd AA Sec. 41	Not Guilty	Not Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 482 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of NG see RP 44 fn 6.)

~~No~~ [illegible] present trial sentence for ~~beginning on (date)~~

(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 28 days, of which Nil days were spent in hospital.(1)

(I. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under 22.)

Sentence Awarded by the Court:

To undergo 180 days detention

(Sgd) [illegible] 21/April/45
Judge-Advocate, if any. Date Awarded.

(Sgd) [illegible] President. (RP 45, 52.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (I. AA 57A. Delete if not used.)

Date 26 APR 45 (Sgd) (G S N Gostling) Brigadier,
Commanding 2 Cdn Base Rft Gp
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B65041 Pte HENRY, Howard Robert	27 April 45	[illegible] Major OC 3 INF BDE

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 19 MAY 1945 CMHQ

RECORDED AT CMHQ IN AB 160. 5/1-113.

FIELD GENERAL COURT-MARTIAL

CPA66 (To face of 40/P & B/1[illegible])

Convened by Order of Brigadier G S N Gostling, ED Comd 2 CBRD dated 3 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-65041	Pte	Howard Robert	HENRY	X-8 List 3 Cdn NETD

PROCEEDINGS REVIEWED

19 May 45 A J Brody Capt
REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 21 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p. 6. Cautions do NOT include all relevant fms RDs. For guidance on procedure when a variation in this form occurs, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to M-66043 2/Lt M-RAOUTRAA as interpreter? Ans No

The Interpreter is sworn.(1) ~~Do you object to~~ as interpreter? Ans

~~The shorthand writer is sworn.~~ as shorthand writer? Ans

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 57, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G G MacKENZIE MBE	FGH X-9 List 3 Cdn NETD
Member	LIEUT	~~N.S. GRAY~~ [illegible]	[illegible]
Member	LIEUT	M J HOFFMAN	10 CBR BN
Judge-Advocate	LIEUT	G E COLLINS	CIC 2 CBR BN.
Prosecutor	LIEUT	G K BISSETT	[illegible] ROYAL 2 CBRD.
Defending Offr	LIEUT.	R. BROCHU	CIC 10 CBR BN

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 2a, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B-65041 Pte Howard Robert HENRY before arraignment make(s) (no) ~~no~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 3. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 495 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & C.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vol 6 P. 100.

RECORDED AT CMHQ IN AB 160. 5/H-113.

FIELD GENERAL COURT-MARTIAL

CPA&R (TD 1900 of AFA31) 40/19 & 21/1045 (6000) 4/38B

Convened by Order of Brigadier G S N Gostling, ED Comd 2 CBRG dated 3 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit
B-65041	Pte	Howard Robert	HENRY	X-8 List 3 Cdn NETD

PROCEEDINGS REVIEWED

19 May 45 A.J. Brody Capt

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 21 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Cmdtions do NOT include all relevant instr RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto (1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 243.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

M.60 43-1 Capt M. RADFORD.

A5. President to accused: Do you object to as interpreter? Ans NIL

The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NIL (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G G MacKENZIE MBE	FGH X-9 List 3 Cdn NETD
Member	LIEUT	~~D.S. GRAY~~ [illegible]	6th BN CBR BN
Member	LIEUT	M J HOFFMAN	CIC 2CBR BN.
Judge-Advocate	LIEUT	G E COLLINS	[illegible] HQTR. 2 CBRG.
Prosecutor	LIEUT	G K BISSETT	CIC 10 CBR BN.
Defending Offr	LIEUT.	R. BROCHU	CIC. 10 CBR BN.

Questions by President: Is the Prosecutor a lawyer? Ans NIL Is the Defending Offr a lawyer? Ans NIL (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Cmdr (Offr).
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B-65041 Pte Howard Robert HENRY before arraignment make(s) (no) (a) plea (s)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instr's p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B + C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-65041 Pte Howard Robert HENRY X-8 List 3 Cdn NETD

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 41	Not Guilty	Guilty	
2nd AA Sec 41	Not Guilty	Not Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lots of kit see RP 44 fn 6.)

~~Nil~~ present under sentence for ~~beginning on (date)~~ ~~Nil~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 28 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo 180 days detention

(Sgd) [illegible] 21/April/45 (Sgd) [illegible]

Judge-Advocate, if any. Date Awarded. President. (RP 41, 52.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

Date 25 APR 45 (Sgd) (G S N Gostling) Brigadier, Commanding 2 Cdn Base Rft Gp

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B65041 Pte HENRY, Howard Robert	27 April 45	[illegible] Major OC 2 CBRG

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. *If pleas to all charges are GUILTY, use Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, use Record Form D on p 3.*

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 37(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea pending as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (his) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the Second charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and allowed on the Second charge(s), ~~is disallowed on the.....charge(s)~~, and that, accordingly, the trial will proceed on the former, but the accused is (~~are~~) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. Yes. Do you intend to call witnesses on your behalf?
Ans. Yes. Are they witnesses as to character only? Ans. NO.
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, ~~if~~ states to the accused that the finding(s) of the Court on the First charge(s), being subject to confirmation, will be promulgated later.(1) ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith.~~ ~~and that the proceedings are accordingly terminated. Para 1 of the Schedule is dated and signed by him.~~
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: ~~Do you wish to give evidence yourself or to call any witnesses as to your character?~~(1)
Ans.....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A. and Ex B. respectively.(3)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes. Later. NO
(1. *RP* 37(*C*), 46(*D*). 2. *Address recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*e*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 40. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1B), 98(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B65041 Pte HENRY, Howard Robert, on the strength of the X8 List No. 3 Canadian Non-Effective Transit Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
AA Sec. 41

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, COMMON ASSAULT,

in that he

in the field in Belgium, at approximately 1945 hrs, 23 Mar 45 did grasp and strike on the mouth a civilian, namely Vermeiren Helene.

SECOND CHARGE
AA Sec.41

WHEN ON ACTIVE SERVICE , COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, COMMON ASSAULT,

in that he

in the field in Belgium, at approximately 1945 hrs, 23 Mar 45 did strike on the mouth a civilian, namely Mertz Roland.

Dated in the Field
30 Mar 45.

(V.G.H.Phillips) Major
Commanding
No. 3 Cdn. N.E.T.D.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
3 Apr 45

(G S N Dostling) Brigadier
Commander
2 Cdn Base Rft Gp

Approved on behalf of the JUDGE ADVOCATE GENERAL pursuant to KR (Can) 540.

In the Field
3 Apr 45

(H H Griffin) Capt
ADJA
HQ 2 Cdn Base Rft Gp

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-65041	Pte		Howard Robert	HENRY	X-8 List 3 Cdn N E T D

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 3 Apr 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G G MacKENZIE MBE	FGH X-9 List 3 Cdn NETD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lt	to be detailed by OC 10 CHR Bn	10 CHR Bn
Lt	to be detailed by OC ~~2~~ 3 ~~CHR~~ 11 CHR Bn	3 11 CHR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Lt	G E COLLINS, CAC, Legal Offr, att HQ 2 CBRD	

On Active Service in the Fd

in BELGIUM (Country.)

Dat: 3 Apr 45

(Signed personally, RP 105(a) 2.)
(G F Cowling)

Brigadier (Rank.)

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40 R & S/1947 (6143) (See overleaf for oaths and notes for use on trial.)

On behalf of the JAG Cdn Army Overseas I approve the appointment of Lt G E COLLINS as Judge-Advocate the said Lt COLLINS having legal qualifications.

(H H Griffin) Capt
ADJA, HQ 2 CBRD

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RQ (Can) 2693.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(D)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:
First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. *(or, None.)*
Re-exam: None.
Exam by Court: He said—" I've had enough parades ".
RP 83(B) complied with.
2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.
3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.
4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:
(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)
(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.
2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:
(i) Charge Sheet. *(On top.)*
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 557.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)
(vi) Summary of Evidence, if not already an exhibit.
3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 113(C), MML p 739.*)
4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined B650H1
(No.)

Pte HENRY, H.R.
(Rank) (Name)

and in my opinion he is

fit to undergo trial by Court-Martial.

Station Field

Date 21 APR 45

[illegible] Capt (S Cl)
Medical Officer

11 CBR Bn
(Unit)

Case of R65041, Pte Henry H.R. 28 Coy M.E.T.D. &c

Civil Witness Lenny being sworn states:- 23 Gubbins Road Poplar
I am Mrs. Vermeulen, Malay ~~Regiment~~ Police.
I recognise accused Pte Henry H.R.

On ~~the~~ I was at home looking after the house. On 23rd May at 3 o'clock I left home to see a doctor. I remained talking there for about half an hour. On my way to see the doctor I met the accused in the street. He asked me where I was going & told him I was going to the doctor. He asked him if he could accompany me to the doctor's office. He went with me & said he would wait for me. The first place we went to I asked him to wait in the cafe as he could not accompany me to the doctor's. I do not know the name of the cafe. When I returned from the doctor's I went into the cafe and met the accused. We had a ~~glass~~ two or three glasses of cognac together. We had been there together with a friend during my absence. We left the cafe & went to a cinema. We obtained tickets for the cinema. I told the accused I had to go home to do an errand and would come back and meet him at the cinema. I had to go and then was arrested by the police who worked in the cafe Jute. The time was 6.20 to 7 P.M. At the time I was arrested I was sitting in the cafe for. In my statement I said I was waiting in the cafe for ~~twenty~~ minutes when the accused came in. He came over to me and asked me to go upstairs but I refused. Upon that he took me by the shoulder and looked me again & I walked him away. He came back and again grabbed me. Another soldier - the one that had the first hold of me took

He would like to ask how many more times I'll be
embarrassed I say no. I want always. He then hit
me and I fell over and cannot remember
anything any more.

D. I am a waitress and was allowed to drink
with the customers. I obtained a certain sum of
the money paid by customers to him. I met
the accused in January at the [illegible] Bar. The
accused struck me & he used his knee first.
When he hit me I remember falling then
he left me & I got up and he became
unconscious. The accused had locked me out
& he left with my head jammed in wall.
The accused has probably been in prison
with other men. ~~I was not allowed~~ At that
time I was unable to go into prison. The doctor
had forbidden any driving no. I ~~was not~~ had served
notice and had not V.D. When he hit me it was
a fortnight. I did not give the accused any reason
why I could not go into prison. He had been in prison
with me before. He was a little drunk.

R P 83.B confirmed and

[illegible] 16

Several Witnesses Statements were taken

I am 1722959 L/Cpl Rasmussen, C, 283 Coy Military Police Coy. Identify the accused.

On 23rd May 45 I was on Steel Patrol. At 1945 hrs with Battalion Patrol Coy. Lt Peel was accompanied by L/Cpl Clyne. We saw Coy Sgt Major was a commotion and a woman ran out shouting. We entered the Kraal and found the accused with three other soldiers in company with Miss Nemeira and Roland Maty. On the order of accusation given by Miss Helena Nemeira I immediately charged and escorted the accused to the Provost Coy. The woman was covered with blood. Roland Maty & Miss Helena Nemeira and the accused had left them. The woman's dress was covered with blood. The accused denied the charge, and was not placed under arrest until we reached Provost Coy.

RP 83 B. completed with

Prosecution closes case.

The defense intends that the prosecution has failed to show a prima facie case against the accused on the second charge.

The prosecution states that it has been unable to produce the evidence required on the second charge.

~~The submission~~ The submission is a formal

7th Def. Witness

B 1x9 981 Pte H. Litwalk, W.S. Corps Seaforth
having been sworn states.
I identify the accused 1 & 2 Gunner H.R.
At 1900 hrs 19 Mar 18 I was on a café
the name of which I cannot remember. I had
a drink with me and we walked out the café
& I saw a c. here and when we got out I heard an
argument going on between a girl whose name
I don't know, and the accused. My chum I
had a few words and when we finished the
I went up & got another. The girl gave the
accused a slight shove. I looked at the two
and proceeded up the lane. My chum was down
my back was to them. He then started down
I looked & saw girl following in the direction of
but saw the girl falling in the direction of
the store which was kept by ~~the woman~~
~~a woman who I don't know by sight~~
~~and pointed to the accused's back~~ & did not
see any more as I left, but I ~~did not know~~
think he had the store when he fell. I identify
Mrs Helena Vermeiren as being the woman involved.
I had no conversation with the accused.

Four examined by Counsel the witness states.
Neither the accused or the woman were drunk. The
woman was against the wall facing the accused when
he kicked her. I don't know whether or not
her body was against the wall but I would
judge she was within 6 inches of it. The store is
about 2 feet from the wall but I cannot be
certain. I think the floor was wooden
certain.

[illegible] did not notice any [illegible] below station. At last the woman struck the accused & stood back. There was no blood on the stone, but when the woman on the floor got back. She fell on between the bar and the stone but I cannot tell the position of her head. I then saw the accused strike the stone at a man in shirtsleeves. I did not take notice where the head was in relation to the stone. The man was bleeding when the man on the floor.

RP 83 B continued

Pte B6504 Henry RAR being duly sworn states

I entered the bar [illegible] at about 9.20 p.m. I went to the bar and took a position wherein I could see over by the wall. I asked for a [illegible] for which I would pay for. She said no. I asked for the same [illegible] but she did not answer. She then put me a bank and I turned around and started to walk away. When I was about 4 ft and the door the person accused and she said that I had struck her. The person then struck me under eyes and took me to the police station. I did not strike the girl or touch her.

Cross examined by accused

I had met an Englishman by [illegible] and drank about six coloneys when the girl [illegible] me, I started to leave the cafe after

telling her if could go elsewhere. I did not notice
any blood on the stone until we arrived at the
police station. When I left the girl was standing
next to her bed as well. I don't think
Miss Helen Vernon was drunk. When she
looked at me I did not think she was
in pain. She is quite strong and not the type of woman who
would suddenly faint or fall. We were about
twelve feet from the bar. When she looked at
me there was an engineer about three feet from me
sitting down at a table. I am twenty years of age
actually but army records show me as being 21yrs.
When I left the cafe the engineer was still sitting at
the table

Court

When she looked at me I did not look to
back I cannot give any reason why she should
have liked as she was still standing next to her.

RP 83 B confirmed not

The defence has no closing remarks

Prosecutor sums up - attached - end (i)

J.A. addresses the court - attached - end (ii)

Defendant's offer no plea in mitigation

Mr. President and Members of the Court, the Prosecution has shown that Helene Vermeiren was struck a blow by the accused. The Defense has produced no evidence to disprove these facts. Gentlemen this is not a case of Moral obligquity but one of Common Assault, the Prosecution is not denying the fact that the woman Vermeiren is a prostitute but you Gentlemen are only concerned with the case as charged. It remains Gentlemen, for you in the interests of Justice and for the good of the Canadian Army to find the accused guilty.

J.K. Beattie Capt.

(ii) Judge Advocate Addresses

It is part of my duty as judge advocate to sum up the evidence and advise the court on the law.

The court is, however, the sole judge of the facts, and anything I say now or may have said previously, in directing my personal knowledge as to the facts should be entirely disregarded.

The offence embodied in the charge is that of common assault. This offence is satisfactorily defined for our purposes in the MCM at 113 - which I now read.

The battery is included in the "assault".

There is no question of indecent assault in this case. I do not believe it is necessary to say anything further as to the offence itself.

I must remind the court that the accused is entitled to the benefit of any reasonable doubt. I mean by that, some doubt which is based upon the facts before the court and not some doubt which is purely imaginary.

The onus is on the prosecution. It is not for the accused to prove himself innocent - it is for the prosecution to prove him guilty.

That is all I have to say unless the Court or the Defending Off or Prosecutor require explanation on some point I may have overlooked.

Mr. President are there any points on which you wish me to address the Court? no

Mr. Defending Off ... ? no.

Mr. Prosecuting Off ... ? no.

Sgt Hollins WS

D. A.

ARMY FORM B.296 (WAR). E&B

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
B65041	Pte	HENRY, Howard Robert	X-8 List #3 Cdn N.E.T.D.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, punishments being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 15 (1) — 2 times.
For A.A. Sec 9 (2) — 1 times.
For A.A. Sec 40 — 5 times.
For ____ — ____ times.

Date of first entry in Field Conduct Sheet 10 Nov 42
Date of last entry in Field Conduct Sheet 11 Dec 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. ~~XXXX

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	FIELD 17 Oct 44	FIRST CHARGE WOAS Misuse of Mil veh without authority. AA Sec 40 SECOND CHARGE WOAS being away from unit when duty called him at unit. AA Sec 40	60 Days F.P. 60 Days Pay FR&I 149 (2)	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 31 st day of March 1945

H.W. Ward Capt Adjt
(H.W.A. Ward)
No 3 Cin N.E.T.D.

MFM 6 (AFB 122) 40/F&S/126 (3488)

No. B65041 Name HENRY, HOWARD ROBERT | Sqn, Battery, or Company | Corps RCOC | Date of enlistment 18-3-42 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 3-6-42 | No and date of last drunk NIL | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc C. Gauthier Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet # 1 destroyed on completion of 6 Months service 18-9-42						(sgd) C.G. Capt			
Barriefield	10 Nov 42	Pte		AWL 10-11-42 to 13-11-42	Documentary	5 Dys C.B.	14 Nov 42	Maj WE Scott	4 Dys Pay FR&I 149(1)(a)
Barriefield	25 Nov 42	Pte		AWL from 1800 hrs 25 Nov 42 to 1700 hrs 25 Nov 42	Documentary	7 Dys C.B.	26 Nov 42	Lt J.C. Morss	
Field	27 Dec 43	Pte		AA Sec 2(2) Disobeying a lawful command given by his superior offr, refused to clean out the drain in kitchen when ordered to to so	Sgt W.D. Curley Pte Cassey	28 Days F.P. 28 Days Pay FR&I 149 (1)(d)	28 Dec 43	Lt Col P.M. Irwin	

(P10)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13 Jul 44			AA Sec 40 WOAS Neglect to the prejudice of good order & military discipline, in that he, at Wentworth Hall on 12 Jul 44 so negligently operated a veh CM 423316 as to cause it to strike a wall thereby causing injuries to K75395 Cpl Harrison AE RCASC, a passenger in said Cdn Mil Veh	Documentary	3 Dys Pay FR&I 149 (2)	26 Jul 44	Major RW McBride	
Field	17 Sep 44			AA Sec 40 WOAS Neglect to the prejudice etc neglect to appear for guard duties	C15814 SQMS Kerr J.T.	14 Days Pay FR&I 149 (2)	18 Sep 44	Major RW McBride	
Field	30 Sep 44			AA Sec 40 WOAS Neglect to the prejudice etc Neglect to carry out duties detailed by SQMS Kerr, J.T.	C15814 SQMS Kerr J.T.	7 Day Pay FR&I 149 (2)	2 Oct 44	Major RW McBride	

CERTIFIED TRUE COPY

(H.W.A. Ward) Capt Adjt - No 3 Cdn N.E.T.D.

NB65041 Name HENRY, HOWARD ROBERT | Sqn, Battery, or Company | Corps RCOC | Date of enlistment 18-3-42 | GC Badge | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/136 (D498)

Date of last entry in Company Conduct Sheet | No and date of last drunk NIL | Period not reckoning towards freedom from extra fine | Sheet No 3 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6 Oct 44	Pte		AA Sec 40 WCAS Conduct to the prejudice of good order and mil discipline - was improperly in possession of Army Rations	Documentary	28 Days Pay FR&I 149 (2)	6 Oct 44	Major RW McBride	
Field	17 Oct 44	Pte		AA Sec 40 Misuse of mil veh without authority. AA Sec 40 Self away from unit when duty called him at unit		60 Days F.P. 60 Days Pay FR&I 149 (2)	26 Oct 44	F.G.C.M.	Aut Forf of 6 Dys Pay while close arrest FR&I 149(1)(c)(1)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial with trial	By whom awarded	Remarks
Fielil	11 Dec 44	Pte		AA Sec 40 Speeding	Documentary	3 Dys Pay FR&I 149 (2)	19 Dec 44	Major RW McBride	

CERTIFIED TRUE COPY

(R.W.A. Ward) Capt Adjt
No 3 Cdn N.E.T.D.

SUMMARY OF EVIDENCE

In the case of B65041 Pte. HENRY, Howard Robert, on the strength of the X8 List #3 Cdn N.E.T.D., a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

INTERPRETER: M60043 Pte. Radstaak, J., 2 Cdn L of C Prov Coy, Ghent Det., having been sworn in as follows:

I swear by Almighty God that I will to the best of my ability truly interpret and translate the matter before this taking of evidence.

Proceeds to translate.

FIRst WITNESS: Mr.Mertz Roland
having been duly sworn states:

At approximately 2000 hrs on 23 Mar 45 I heard a discussion which was going on between a soldier and Miss Helene. I didn't understand whatsoever, but I suddenly saw the soldier grasping Miss Helene by the throat and he also struck her on the mouth. She fainted, while blood was coming from her mouth. I said to the soldier "Look what you did", but he then also struck me on the mouth. I don't remember any more as I had fainted. I can identify the soldier who hit me.

(Signed) Roland Mertz

.....
M60043 Pte. Radstaak, J.

The accused declines the right to cross-examine this witness.

INTERPRETER: L. De La Croix of 2 Cdn L of C Prov Coy, Ghent Det., having been sworn in as follows:

I swear by Almighty God that I will to the best of my ability truly interpret and translate the matter before this taking of evidence.

Proceeds to translate.

SECOND WITNESS: Miss Vermeiren Helene, 15 Bagetten Straat, having been duly sworn states:

At approximately 1700 hrs 23 Mar 45, I left the Cafe, Taverne Jose, Ghent, in Bagetten Straat. I met a Canadian soldier whom I know as Bob and whom I hadn't seen since January. I asked him to accompany me on my walk to go and get examined by a doctor. I asked the soldier to wait fro me in a Cafe. At approximately 1830 hrs we met again and had three liquors. After that the soldier went to the show. I promised to join him there.

I went home and at 1930 hrs the soldier entered my Cafe. Three of his friends where already there. The soldier asked me three or four times to go upstairs with him, and as I refused he grasped me by the threat. I kicked him off but he pushed me into a corner and grapped me again by the throat and asked me how many times I would say "no". I answered always. At this time two of his friends excited him by saying "go ahead". The soldier then struck me on the mouth. That is all I remember as I fainted. I can definitely identify the soldier.

(Signed) Vermeiren Helene

L. De La Croix.....

The accused declines the right to cross-examine the witness.

The accused was cautioned as follows:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

I have nothing to say at this time.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f), and (g) have been complied with.

R. Shupé
.....
Capt. R. Shupé
Officer detailed to take
the Summary of Evidence.

In the field
28 Mar 45.

Exhibit (A) Cpl X Shpe March 29/45

Statement of Mety Roland, 15 Nagatte St.

Sent. Taverne Jose. having been duly warned states

At approx. 2000 hrs on 23/3/45. I hear a discussion which was going on between a soldier and Miss Helene but I didn't understand whatsoever, but I suddenly saw the soldier grasping Miss Helene by the throat and he also struck her on the mouth. She fainted, while blood was coming from her mouth. I said to the soldier "Look what you did," but he then also struck me on the mouth. I don't remember anymore as I had fainted I can identify the soldier who hit me

Roland Mety

The above statement was translated from Flemish to English by the interpreter
Sgt 2 de Lgf C. Prov. Coy.
St. Radstaak J. 141-60043

Radstaak

The accused declin to cross-examine the witness

Officer Taking Statement.

Cpl X Shpe.

Exhibit (B) Capt V. Shipe Marcel 29/25.

Statement of Mrs Hermeiness Helena 19 Bagetten Straat. Having been duly sworn state

Ct. apprx. 1700 hrs 23 Mar 25. I left the Cafe, "Toreno Jose Ant" in Bagetten Str. I met a Sp: soldier whom I know as Bob and whom I had not seen since Jan. I asked him to accompany me on my walk to go and get examined by a doctor. I asked the soldier to wait for me in a Cafe. At apprx 1830 hrs. we met again and had 3 liquors. After that the soldier went to the show. I promised to join him there.

I went home and at 1930 hrs the soldier entered my Cafe. Three of his friends were already there. The soldier asked me three or four times to go upstairs with him. and as I refused he grasped me by the throat. I kicked him off but he pushed me into a corner and grasped me again by the throat and asked me how many times I would say "no" I answered always. At this time two of his friends excited him by saying "go ahead" the soldier then struck me on the mouth. That is all I remember as I fainted. I can definitely identify the soldier.

Hermeiness Helena

The above statement was translated from Flemish to English by J. De La. Croix Interpreter of Prov. Sec.

Witness

Officer Taking summary Capt V. Shipe

ADDITIONAL SUMMARY OF EVIDENCE

In the case of B65041 Pte. HENRY, Howard Robert, on the strength of the X8 List #3 Cdn. N.E.T.D., a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

THIRD WITNESS: 1722959 L/Cpl. Rasmussen J., 243 Corps Military Police Coy., Ghent, having been duly sworn states:

At approximately 1945 hrs., 23 March 45, I was on patrol duty accompanied by L/Cpl. Cryer, CM. Police. When passing Taverne Jose, #15 Bagetten Straat, I heard a commotion and a woman came out shouting. As a result of this I entered the Premises I found the accused whom I now know to be B65041 Pte. Henry, H.R. and because of accusations made by the woman, Mlle. Vermeiren Helene, I placed the accused under arrest. I then procured transport and escorted the accused, Mlle. Helene and another civilian, M. Metz Roland, to the Canadian Provost H.Q. to be dealt with.

.....
1722959 L/Cpl. Rasmussen J.

The accused declined to cross-examine this witness.

The accused was cautioned as follows:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declined to make a statement or to give evidence.

I certify that the foregoing Additional Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

.....
Capt. A.H. Scrafield
Officer detailed to take the Additional Summary of Evidence.

In the field
30 Mar. 45.

LIST OF WITNESSES 31 Mar. 45

For the Prosecution

M. Mertz Roland,
15 Bagatten Straat,
Ghent.

Mlle. Vermeiren Helene,
15 Bagatten Straat,
Ghent.

#1722959 L/Cpl. Rasmussen J.,
243 Coy. C.M. Police,
Ghent.

For the Defence

#B-149981 Pte. Whitworth W.S.,
Essex Scottish,
44 Coy.
13 Bn. C.B.R.G.

#H-39177 Spr. Huard C.,
R.C.E.,
61 Coy.,
9 Bn. C.B.R.G.

#F-78526 Spr. Davidson A.F.
R.C.E.
61 Coy.,
9 Bn. C.B.R.G.

CERTIFICATE

The accused desires the Convening Officer to assign an Officer to represent him at his forthcoming Field General Court Martial.

In addition to the above I have on this day received free of cost a copy of the Charge Sheet and Summary and Additional Summary of Evidence.

Time of Sig. 1500 Hrs.
31 March 45

B-65041 Pte. Henry H.R.

4L30.
R.Q.M.S. Henry. I.P.

RECORDED AT CMHQ IN AB 160.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B67093 RQMS. Hardy, J.P. R Regt. C.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd	Not Guilty	Guilty	
3rd	Not Guilty	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of Kit see RP 44 fn 6.)

Nil [illegible] to undergo sentence for ____ beginning on (date) ____ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: to be severely reprimanded

(Sgd) [illegible] 14 Nov 44 (Sgd) J. Barrow Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ____ (Sgd) ____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Questns after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the findings and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further ordered. (1. AA 57A. Delete if not appl.)

(Sgd) [illegible]

Date 26 Nov 44

Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B67093 RQMS Hardy J.P.	28 Nov 44	Kit 2 i/c Head Capt. Adjt 1st R. Regt. C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160. Reference WO 71 - 42-30

FIELD GENERAL COURT-MARTIAL

Convened by Order of BRIG F N CARELDU Comd 4 CDN INF BDE dated 13 Nov 44

ACCUSED.

(1. In the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, rank (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-67093	RQMS	Joseph Patrick	HENRY	R Regt C

PROCEEDINGS REVIEWED 17 Jan 45

R. Beaubille Capt

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 14 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns KRs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for units and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53; RP 56, 63-70, 73, 74, 94, 103, 119, 122).

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1420 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt summarily by the CO.~~ (1)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans. No

The Interpreter is sworn.(1) Do you object to D36590 S/Sgt. Parks, RV as shorthand writer? Ans. No
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj.	R J Carrell	R Regt
Member	Capt.	D S Noble	11 Cdn Fd Regt
Member	Lt.	R W Merriwell	Essex Scot
Judge-Advocate	Capt.	E. K. McDougall	HQ 2 Can Corps
Prosecutor	Capt.	T. R. Wilcox	R Regt
Defending Offr	Lieut.	A. M. Mowatt	HQ 4 C I B

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused B 67093 RQMS Hardy, J. P. before arraignment make(s) (no) (a) plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 26, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB160 Ref - Vol II Fol 44

RECORDED AT CMHQ IN AB 160

FIELD GENERAL COURT-MARTIAL

Order of BRIG F.N. CABELDU

ACCUSED. Comdt. ODN INF BDE dated 23 Nov 44

(a) Pvmnt R. (b) Appmt, A/R or A/Appmt. Full Christian Names. Surname.

B-67093 RCNS

PROCEEDINGS RECEIVED 17 Jan 45 [illegible]

Held in the Fd in (country) HOLLAND on (date(s)) 14 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fms KRs. For guidance on procedure when a variation in this form arises, see form for GCM in MAM, pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate evidence or preceding para number herein. See back of Convening Order, CF A85, for oaths and instrs on how to record witnesses' evidence etc, which instrs are hereafter called "instrs". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) each charge discloses an offence.(1)

A3. The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and

A4. The Court is opened. The accused is (are) brought before the Court. At 1420 hours trial commences.(2)

A5. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial (1) Delete, if not applicable. (2) As to interpreter, see AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.) (1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable. (1. KR Con 357. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable. (1. RP 72. Delete, if none employed.)

The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt summarily by the CO (1) [illegible]

The Interpreter is sworn.(1) Do you object to D 36720 Sgt. Parks, RV. as interpreter ? Ans. None

shorthand writer is sworn.(1) Do you object to D 36720 Sgt. Parks, RV. as shorthand writer ? Ans. None

President to accused: Do you object to be tried by me as President or by any of the Members of the Court ? (1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 31, RP 25, 71, (8, MAM, p 742).)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court ? Ans. None

The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the names and units of the offrs comprising the Court, etc:

May Capt. Lt. Capt Capt. Lt

RJ Carroll DS Noble RW Merriwell EK McDonald TR Wilcox AM Mowatt

11 Cdn Fd Amb Essex Scot 1 Cdn Inf Div. R Regt 1404 C.I.B.

The Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans Yes

of offrs under instr will be returned separately with proceedings for information of Conv Offr accused is entitled to an adjournment when RP 60 (8) and fn 2 were not followed. See before arraignment make(s) (no

RSMS Hawkes, J.P.

separate trial on one or more charges (RP 62(5), (6)), or as to the jurisdiction of the trial (AA 130, RP 34), or as to accused's mental fitness to stand trial (AA 130, RP to be tried separately (RP 16, 71), such from the evidence(2) made in support or opposition thereto. Insert per Accsd. For forms of record see references in fn1 to RsP cited. Insert

) on all charges in the charge sheet.(1) The

amendment to be made to the Charge Sheet.(2) The

1. When more than one Charge Sheet see RP 62. 2. RP 31, RP 33. When

ses of CF A86 to record proceedings.

Instrs on Procedure after Arr

ALL PRE

RECORDED AT CMHQ IN AB 160. 4L-30

FIELD GENERAL COURT-MARTIAL

4/388

Convened by Order of BRIG F N CAMELDU Comd 4 CDN INF BDE dated 13 Nov 44

ACCUSED.

(If the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, rate, (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.
B-67093	RQMS	Joseph Patrick	HENRYS

PROCEEDINGS REVIEWED 17 Jan 45

R. Beaulieu Capt

PROCEEDINGS REVIEWED Date 1st Sec GHQ 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND at CMHQ on (date(s)) 14 Nov 44

RECORD FORM A--OPENING PROCEEDINGS AND ARRAIGNMENT. 15/13

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variations will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1420 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to~~ as interpreter? Ans

The Interpreter is sworn.(1) Do you object to D36590 S/Sgt Parks, RV as shorthand writer? Ans No Sir

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	R J Carroll	R H A
Member	Capt	D S Noble	11 Cdn Fd Regt
Member	Lt	R W Mennell	Essex Scot
Judge-Advocate	Capt	E K McDougall	HQ 2 Cdn Inf Div
Prosecutor	Capt	T R Wilcox	R Regt C
Defending Offr	Lieut	A M Monnin	HQ 4 C I B

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B 67093 RQMS Henrys, J P before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

NBibo Ref - Vol II Fol 45

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Adv .....(5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3. MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (C).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive on Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B67093 R.Q.M.S. Henry, J.P. R Regt. C.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd	Not Guilty	Guilty	
3rd	Not Guilty	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

~~Accused present under sentence for~~ ..... ~~beginning on (date)~~ ..... (1) ~~—~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: to be severely reprimanded

(Sgd) [signature] Judge-Advocate, if any. 14 Nov. 44 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5); RP 120(F), MML p 746.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-5a, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1. AA 57A. Delete if not appl.)

Date 26 Nov 44 (Sgd) [signature] Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B67093 RQMS Henry J.P.	28 Nov 44	[signature] Capt. & Adjt. 1/The R. Regt. C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No Sir (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes his (no) opening address.(1) Nil

(1. RP 39(B), 60(A)(B), 90, 92(C)(D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D)(E).)

D4. The Prosecution is closed.(1) ~~Before reading Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the ~~charge(s)~~ charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ~~charge(s)~~ charge(s), and allowed on the ~~charge(s)~~ charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the ~~latter charge(s).~~(4) ~~—~~

(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ? ~~Will Court not rec'd. Evidence on oath~~ Do you intend to call witnesses on your behalf ? Ans. ~~Yes~~ No — Nil

Ans. ~~Yes~~ No Are they witnesses as to character only ? Ans. ~~—~~ Nil

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the ~~charge(s)~~ charge(s), being subject to confirmation, will be promulgated later.(1) Nil

~~Or, The President announces that the accused is found Not Guilty on all charges and as to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2) Nil

(1. AA 54(3)(b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. No Sir

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 3. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l)(g)(h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex Y and Ex Z respectively.(3)

(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes Sir, I rely on my Defending Officer (2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No B-67093 RQMS HENRY, Joseph Patrick, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE — Sec 9 (2) Army Act

WHEN ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

- in that he -

In the Field, when ordered by Capt D.R. Wilkie at "B" Echelon, 1 Bn The Royal Regiment of Canada, at approximately 1710 hrs, 22 Oct 44, to stay in Camp, disobeyed the said order and did not stay in Camp.

SECOND CHARGE — Sec 40 Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

- in that he -

In the Field, at approximately 1840 hrs, 22 Oct 44, improperly used a Govt vehicle No CL-4251640 for his own purpose.

THIRD CHARGE — Sec 15 (1) Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

- in that he -

In the Field, absented himself without leave from 1840 hrs, 22 Oct 44, until he reported to "B" Echelon, 1 Bn The Royal Regiment of Canada, at 0701 hrs, 23 Oct 44. (Total Time Absent: 12 hrs, 21 mins.)

IN THE FIELD
2 Nov 44

(R.K. Lendrum) Lt-Col,
Officer Commanding,
1 Bn The Royal Regt of Canada.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

IN THE FIELD
13 NOV 44

(F N GARELDU) BRIG
COMD - 4 CDN INF BDE

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(6).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B67093	RQMS		Joseph Patrick	HENRY	R Regt C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 13 NOV 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior competent offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	R J CARROLL	RHLI

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
	A Capt to be detailed by OC 11 Cdn Fd Amb	
	A ~~Lt~~ Capt to be detailed by OC Essex Scot	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	A Capt to be detailed by OC R Regt C	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Captain	E K McDOUGALL	HQ 2 Cdn Inf Div

On Active Service in the Fd

in HOLLAND
(Country.)

Date 13 Nov 44

(FN CABELDU)
(Signed personally. RP 105 fn 2.)

Brigadier
(Rank.)

Commanding 4 CDN INF BDE

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (*AA 52, KR Can 562, RP 26, 29, 111.*)

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (*AA 52, MML 762, RP 27, 111.*)

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (*AA 52, MML 762, RP 27, 111.*)

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (*AA 52, MML 762, RP 27, 111.*)

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (*AA 52, MML 762, RP 27, 111.*)

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (*AA 52, MML 763, RP 82, 111.*)

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (*RO (Can) 2693.*)

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(*Referred to throughout CF A 96 as "Notes".*)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the paras in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(4).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

14 Nov 44

I hereby certify that I have this afternoon examined B67093 RCHS Henry J.P. and he is fit in my opinion medically fit to undergo trial by court martial

14 Nov 44 1400 hrs

J. M. Armstrong Capt
R.C.A.M.C

TRANSCRIPT OF EVIDENCE IN THE TRIAL BY FGCM OF B-67093 RQMS JOSEPH PATRICK HENRY, R REGT C, HELD ON 14 NOV 44.

First Witness for the Prosecution, Capt D R Wilkie, QM R Regt C, having been duly sworn is examined by the Prosecutor.

Q.1 - You are Capt D R Wilkie, R Regt C?
A.1 - Yes, sir.
Q.2 - You are employed, I believe, as QM of the R Regt C?
A.2 - Yes, sir.
Q.3 - Do you recognize the accused?
A.3 - I do (indicating accused).
Q.4 - Would you explain what took place with reference to this case on the 22 Oct 44, starting with your movements at about 1700 hrs?
A.4 - At 1710 hrs on that date I left with Capt Wallace of Bn HQ for B Ech of the 8 Recce Regt. Before leaving I spoke to RQMS Henry and I told him to stay put. Forty minutes later I returned to the QM Stores and found RQMS Henry missing and the ration truck missing. RQMS Henry did not return until 0700 hrs in the morning.
Q.5 - Was there a driver with the ration truck?
A.5 - Yes.
Q.6 - What was the name of the driver?
A.6 - Pte Kellar.
Q.7 - What wording or words - the exact words - were used when you left for B Ech of the 8 Cdn Recce Regt?
A.7 - I told RQMS Henry to "stay put" in camp.
Q.8 - Did you see the accused at any time prior to 0700 hrs the following morning?
A.8 - No, sir.
Q.9 - Did he return return to "B" Ech of the Royals before 0700 hrs in the morning?
A.9 - Not to my knowledge.
Q.10 - Would you have known if he had returned, in the normal course of events?
A.10 - Yes, I would have. I would have heard the ration truck come in. I heard the ration truck come in at 0700 hrs. I checked it.
Q.11 - As QM, RQMS Henry is directly under your control, your RQMS, is he not?
A.11 - That's right.

Cross-examined by the Defending Officer.

Q.12 - Your exact words to RQMS Henry that evening were "stay pub in in Camp" or just "stay put"?
A.12 - I can't really remember. I don't think there was any doubt in anybody's mind as to what I meant. The order was understood.
Q.13 - How long did you say it took you to go to the 8 Recce Bn and return?
A.13 - About 40 minutes.
Q.14 - You left at about 1710 hrs? And returned about 1750 hrs?
A.14 - Yes.
Q.15 - What are the duties of the RQMS in respect to taking over in your absence? Normally when you are away does he take over?
A.15 - Yes, if necessary in my absence.
Q.16 - Would he normally visit "A" Ech or "B" Ech for the purpose of taking up or picking up rations? In a vehicle?
A.16 - Yes.
Q.17 - Also to go to the RAP for treatment of injuries sustained by anybody in B Ech? In a vehicle?
A.17 - Yes, he could.
Q.18 - During your absence in this particular case, was he in charge of B Ech?
A.18 - He was the senior man there, yes.
Q.19 - What kind of vehicle is the ration truck?
A.19 - A three-tonner.

The Prosecutor declines to re-examine this witness.

JA

Q.20 - Have you known RQMS for some time?
A.20 - For a year and a half, sir.
Q.21 - And at 0700 hrs the next morning you saw the truck come in?
A.21 - I saw the truck come in. Looked out through the door.
Q.22 - Who was in the truck?
A.22 - RQMS Henry and Pte Kellar.
Q.23 - RQMS Henry had no authority to go out that night?
A.23 - No.
Q.24 - Who gives the authority for vehicles to go out?
A.24 - I give the authority.

Defending Officer puts the following question through the Court.

Q.25 - Capt Wilkie, when you returned at about 1800 hrs approx, did that put an end to the order given to the accused to stay put in camp?
A.25 - No, I told him to stay put for that evening, not until I returned.

JA

Q.26 - What you told RQMS Henry was stay put in camp - no more and no less?
A.26 - No more or no less, yes.

In the opinion of the Court and JA it is unnecessary to comply with RP 83(B).

The witness withdraws.

Second Witness for the Prosecution, B-66820 Pte Kellar, M M, R Regt C, having been duly sworn, is examined by the Prosecutor.

Q.27 - You are B66820 Pte Kellar, M M?
A.27 - Yes, sir.
Q.28 - Employed at B Ech?
A.28 - Yes, sir.
Q.29 - Do you know the accused?
A.29 - Yes, sir.
Q.30 - Pte Kellar, on the night of 22 Oct 44 certain events took place which bear on this case. Will you tell the Court in your own words what happened?
A.30 - Yes, sir. RQMS Henry ordered me to drive him. At first I refused to do this and told him I had been driving all the night before. Then he gave me a definite order. Said it was an order. He said he wanted to go to the hospital in Antwerp. I drove him to Antwerp and we couldn't find the hospital. We ~~then~~ looked for it and couldn't find it. Then we drove back to barracks. On the way back we stopped at a pub for ~~an~~ out 3/4 of an hour, then returned to B Ech. When we got to B Ech he said to drive to F Ech. We went to F Ech and stayed there until 0630 hrs the next morning.
Q.31 - What time did you leave B Ech?
A.31 - At 1815 hrs, sir.
Q.32 - Do you know who the accused saw at F Ech?
A.32 - CQMS King, sir.

The Defending Officer declines to cross-examine this witness.

Questioned by the Court.

Q.33 - What was the reason for the trip to the Hospital in Antwerp?
A.33 - The RQ said he had hurt his hand.
Q.34 - RQMS Henry said he wanted treatment for his hand?
A.34 - Yes, sir.
Q.35 - Before returning to B Ech did you visit any medical installation?
A.35 - No, sir.
Q.36 - Is there an RAP at B Ech?
A.36 - No, sir.

Q.37 - Where was B Ech?
A.37 - Just outside Capellan, sir.
Q.38 - How did you go in to Antwerp, down the main road?
A.38 - Yes, sir.
Q.39 - What was the matter with the accused, did he say?
A.39 - He said his hand was paining him, sir.
Q.40 - Was his hand bandaged?
A.40 - No, it was not, sir.
Q.41 - And after you couldn't find the 6th Gen Hosp, did you try to find any other hosp?
A.41 - No, sir.
Q.42 - In Antwerp, did the accused go to the Command Post of the CMPs and ask where the hospital was?
A.42 - No, he didn't, sir. He just asked to Provosts on the street, sir.
Q.43 - After you started back, did the accused complain of his hand in any way?
A.43 - He mentioned it to me. He said it was paining him, sir.
Q.44 - Well didn't he go to any other RAP or FDS of any kind?
A.44 - No, sir.
Q.45 - Can you tell us the No. of the vehicle?
A.45 - I know it was a 4m truck. I think I'd know the number if I saw it.
Q.46 - Was it No. CL-4251640?
A.46 - Yes, sir, I looked up that number when I gave my evidence.
Q.47 - What time did you leave B Ech?
A.47 - Around 1815 - or I started to get ready to leave then. We left a bit later.
Q.48 - And you returned at 0700 hrs next morning?
A.48 - Yes, sir.
Q.49 - And as far as you are concerned, you drove on orders from the RQMS?
A.49 - Yes, sir.
Q.50 - Was it in your regular line of duty to drive to 6 Gen Hosp in Antwerp, and then from B to F Ech? In the ration truck?
A.50 - I don't know, sir. There was no other vehicle available at the time.
Q.51 -Did you talk to anyone at F Ech?
A.51 - No, sir.
Q.52 - Did the RQMS tell you why he wanted to go to F Ech?
A.52 - No, sir. But I talked to him at F Ech, when I wanted to ask him to come away. He was playing cards with CQMS King.
Q.53 - What time was that?
A.53 - I can't say, sir.
Q.54 - Was it after midnight?
A.54 - Yes, sir.

In the opinion of the Court and JA it is unnecessary to comply with RP 83(8).

Third Witness for the Prosecution, B-67271 CQMS King, P E, R Regt C, was not called at the Summary of Evidence. According, the Accused, through his Defending Officer, waived his right to an adjournment of 24 hrs, and the trial proceedings. CQMS King, after being duly sworn, is examined by the Prosecutor.

Q.55 - Will you identify yourself to the Court, please?
A.55 - I am B67271 CQMS King, P E, R Regt C, now employed as CQMS of C Coy.
Q.56 - Do you recognize the accused?
A.56 - Yes, sir (indicating accused).
Q.57 - Certain events in connection with this case took place on 22 Oct 44. Do you recall that date?
A.57 - Yes, sir.
Q.58 - The accused is said to have gone to F Ech on the night of 22 Oct 44. Were you there then?
A.58 - Yes, sir.
Q.59 - What time did he arrived?
A.59 - That I am not sure of. 8 or 9 o'clock, sir.
Q.60 - Did he have any business with you?
A.60 - No, sir.
Q.61 - How did you spend the time?

A.61 - I suggested a game of cards.
Q.62 - Did you play cards?
A.62 - Yes, sir.
Q.63 - Until what time?
A.63 - Around 0300 hrs 25 Oct 44.
Q.64 - Did you see him after that?
A.64 - No,sir.
Q.65 - Do you know what time he left F Ech?
A.65 - No, sir.

The Defending Officer declines to cross-examine this witness.

Questioned by the Court.

Q.66 - While you were playing cards did the accused complain in any way of a sore hand?
A.66- I don't recall, sir.
Q.67 - Was his hand bandaged in any way?
A.67 - That I don't recall, sir.
Q.68 - While he was with youdid he refer to where he had been?
A.68 - He said he had been looking for a hospital, sir.
Q.69 - Is there an RAP at F Ech?
A.69 - Not to my knowledge, sir.
Q.70 - Where was the RAP at that time?
A.70 - At that time, between where I was stationed and the TAC HQ.
Q.71 - Approximately how far was that - from A to F Ech?
A.71 - About 1/2 to 3/4 of a mile, sir.
Q.72 - How far was A Ech from B Ech?
A.72 - That I would not know, sir. B Ech was quite a ways from here.

In the opinion of the Court and JA it is not necessary to comply with AP 83(B).

The witness withdrawa.

First Witness for the Defence, the accused, B-67093 RQMS Henry, J P, R Regt C, having been duly sworn, is examined by the Defending Officer.

Q.73 - Give your appointment, number and rank to the Court?
A.73 - I am B-67093 RQMS Henry, J P, RQMS of R Regt C.
Q.74 - I believe you have held that post since two months prior to the Dieppe raid in 1942, in June. What was your position before that?
A.74 - Sir, I joined the 1 Bn R Regt C on Sep 15, 1939.
Q.75 - Do you remember any instances which occurred on 22 Oct this year?
A.75 - Yes, sir.
Q.76 - Will you please relate them to the Court?
A.76 - At approx 1615 hrs on the night I ordered Pte Kellar, the driver of the ration truck, to take me to Antwerp with a view to getting an X-ray of my right hand which previously I had in a cast because of the fact it was broken. The second finger knuckle. They said to keep the cast on for a month, but in two weeks it irritated and I took it off myself. I asked Capt Wilkie about it before I took the cast off, that it hurt and I should have an X-ray, and he replied 'You know damn well that the MO's know their job - leave it on for a month. Two days after that the hand began to swell - after I broke off the cast myself. Again I asked him if I could get it X-rayed. He said who took off the cast. I told him I did. I went to 76 CCS near Capellan and he told me I would have to go to 6 Gen Hosp in Antwerp to get an X-ray. So after the hand was still sore I decided to go to the hospt to see if it was broken and I needed a new cast. I went to Antwerp but couldn't find 6 Gen Hosp. We looked around, asked to English Police but they couldn't tell us. I said to Kellar, drive off home. I saw a cafe on a side street. I told him to stop and went into the bar where I had 4 Belgian beers. Then I got into the cab again and we drove back to B Ech. But there was no recreation or amusement there, no moves, no means of entertainment, so I decided to visit F Ech. I ordered Kellar to drive to F Ech. I visited CQMS King there. We talked for a while, then he suggested a game of cards. I played until 3 or 4 in the morning. King said it was about time to go to bed. King and I decided to quit and go to bed. I got up at 6:30 and drove back to B Ech at the time stated.
Q.77 - In your normal course of duties, would you drive from B to A and to F Ech?
A.77 - Yes, sir.
Q.78 - And would you give the necessary order for the vehicle?
A.78 - Yes, sir.
Q.79 - You would go there to check on things?
A.79 - As a matter of fact I seldom went to check up. I waited for trouble to come to me. I figures if the Coy CQs wanted anything they'd see me.
Q.80 - Did you have any conversation with Cap Wilkie on that day?
A.80 - In what respect?
Q.81 - In respect to him telling you to stay put?
A.81 - He left to go to 8 Recce Bn and said stay put. He mentioned no set time. Later I turned camp over to Sgt Huggins, told him where I was going, to Antwerp.
Q.82 - Was your hand more painful that day?
A.82 - Yes, sir, it was.
Q.83 - Was that the only reason you went to Antwerp?
A.83 - Yes, sir, it was, for an X-ray of my hand, only.

Cross-examined by the Prosecutor.

Q.84 - You have been in the Army since 1939. You must know quite well about ordinary military procedure. Ordinarily you don't just to to a Gen Hosp yourself and report.
A.84 - I had thought I would get a cast puton, then see my own MO.

Q.85 - The regular practice is to go on sick parade isn't it?
A.85 - Yes, sir.
Q.86 - When you go to a hospital you get an authority, a chit from your MO. Is that correct?
A.86 - Yes, sir.
Q.87 - There must have been a number of MOs at the CCP, ADS, or at your own B Ech?
A.87 - Yes, sir.
Q.88 - Good practice would have been to have gone to one of these and let them decide whether an X-ray was necessary or not?
A.88 - I did, sir.
Q.89 - Not at that time. As I recall you had a cast on your hand and you took that cast off. You should have left it on for the X-ray.
A.89 - One doctor told me to keep it on a month and another told me - another MO - 2 weeks.
Q.90 - Well when you went to the MO did you tell him how long you had to keep the cast on?
A.90 - I told him that the MO who put the cast on didn't say. He said two weeks was enough. So in two weeks I removed the cast.
Q.91 - Ordinarily in your course of duty you would go to Antwerp fairly frequently would you not?
A.91 - No, sir.
Q.92 - Well don't you have to go back to Antwerp for supplies?
A.92 - No, sir.
Q.93 - Why did you suddenly decide one hour after the time Capt Wilkie left to take a 60-cwt and drive into Antwerp?
A.93 - I got up into the truck looking for a certain box. The lid of a box struck me on the hand.
Q.94 - Why not go to the MO?
A.94 - Experience told me an X-ray was needed. I know previously I should have got my hand X-rayed.
Q.95 - What was the reason you went from B Ech to F Ech? For amusement?
A.95 - I went to pay a visit and to combine business with pleasure. CSM Wing didn't mention business.
Q.96 - Ordinarily you wouldn't take a 60-cwt for that trip would you?
A.96 - If no other vehicle was available, yes.
Q.97 - Did you go up to F Ech with the rations usually?
A.97 - No the ration Sgt went with the rations. Sometimes I would go up with Capt Wilkie or with a jeep. But at no set times.

The Defending Officer declines to re-examine the witness.

Questioned by the Court.

Q.98 - I would like to get a few things in chronological order. How long after this cast was applied did you take it off?
A.98 - After two weeks, sir.
Q.99 - And the cast was rubbing the flesh?
A.99 - Yes, sir.
Q.100 - For how long?
A.100 - From the second day I had it.
Q.101 - How long did you have the cast off before you started your trip to Antwerp? How many days?
A.101 - I'm not sure of the time, sir.
Q.102 - Well you had it off for some days?
A.102 - That's right, sir.
Q.103 - Where was F Ech that night?
A.103 - I don't know. Not very far from B Ech.

JA

Q.104 - Why didn't you ask where 6 Cdn Gen Hosp was before you left the unit?
A.104 - They could not tell me, nobody knew. Both officers were absent, sir.
Q.105 - Why didn't you go into one of the other HQ you passed on the way to Antwerp and find out where 6 Gen Hosp was?
A.105 - I missed a bet there, sir.

Q.106 - You have told us that night your hand was painful, and you couldn't find the hospital. Why didn't you go to the MO?
A.106 - I figured it was no use. They told me it was no use until I had the X-ray.
Q.107 - Didn't you jam a box on it?
A.107 - Yes, sir, but I knew it was no good soaking it in hot water, like the MO told me next day.
Q.108 - Why wasn't it any good that day?
A.108 - I wanted the X-ray first, sir.
Q.109 - You'd rather play cards with a broken hand than go to the MO?
A.109 - If the hand was still broken, sir, I wanted to know it. Have it X-rayed and have another cast or plastic bandage put on it if necessary.
Q.110 - You had already taken one cast off yourself?
A.110 - That is right.
Q.111 - Did you think No 6 Gen Hosp would take an X-ray without an authorization from your MO?
A.111 - I had a chit, sir. When I went previous to No 76 CCS, before we moved to Capellan, I had the cast on and they said they couldn't examine it, only X-ray could do that, and they gave me a chit to No 6 Cdn Gen Hosp.
Q.112 - How long did you have the chit?
A.112 - Before this night. Two or three days.
Q.113 - Have you got this chit now?
A.113 - I handed it in to the hospital, sir, No 6 Gen Hosp?
Q.114 - When?
A.114 - A few days later, sir. The 25 or 26 Oct

Court

Q.115 - In short, you arranged for the X-ray about 14 days after you removed the cats. Is that right?
A.115 - Yes, sir, around 14 days, because I left it on for 14 days, and 2 or 3 days after it started to swell I got the chit.
Q.116 - After you received the order and had been told to stay in camp by Capt Wilkie, don't you think you should have stayed in?
A.116 - Well I didn't like the order, sir. He didn't mention any specific time. He said saty put, stand by while I am away, I thought. When he came back, he took over.
Q.117 - Do you have to have the time in an order?
A.117 - No, sir. Until I hurt my hand I intended to stay in camp.

In the opinion of the Court and Judge Advocate it is not necessary to comply with RP 83(3).

The Defence is closed.

The Prosecutor makes the following closing address.

Mr. President, gentlemen. There are three different charges in this case. They are (reads the charges). On the first charge, as I understand it, the elements of that charge are first, disobeying, second that the command disobeyed was a lawful command, and third, that it was given by the accused's superior officer. On the latter, I think there is no question. The QM is the superior officer of the RQMS. There is no question about that. As to it being a lawful command, there is no question about that. It is certainly within military law to say to the RQMS stay put in camp while I have gone to the 8th Recce Bn, 8 Bde. With regard to the question of disobedience. The accused has alleged he suffered an accident to his hand in some way that required medical attention. I give the court several propositions. Is it reasonable for a senior WO in a Bn, ordered by his superior officer to stay in camp for him to turn over this Camp, 8 Bde, to the ration Sgt, take a 60-cwt truck, drive off to Antwerp without any clear idea of where he was going, looking for a hospital of a certain number. He knows it is No.6. In the second event, assuming that this is his only purpose in going, or reason, would he, having just in injured hishand, be more interested in getting treatment for it at several places much closer than Antwerp than going to this hospital for an X-ray. The MO was much nearer than No 6 Gen Hosp. If you were a senior WO in 8ech Bde, ordered to stay

An camp, by your superior officer while he left camp, and you hurt your hand , and required certain treatment, would you not get treatment as soon as you got back to camp after not being able to find the hospital outside camp, and then carry on with your orders. Instead of being more interested in getting back in good time this senior WO dtopped in a pub for 3/4 of an hour, and when he returned to camp he didn't even stop in to see whether his superior officer wanted him, whether anything had come up for him to do, but went to call on a friend in another camp, at F Ech, and played cards half the night, returning in the morning. I don not think that is a reasonable course to follow. I think that answers the charge. As regards the second charge, we have evidence that there was no other vehicle at B Ech available at the time than this 60-cwt. Ordinarily this is not a vehicle to take and make trips around the country with. You run around in a 5-cwt on trips. The accused took it to F Ech. He had already been on a trip in it to Antwerp. He didn't ascertain whether it was needed for anything else at B Ech before leaving for F Ech and staying all night. He returned around 0700 hrs in the morning. It is quite clear from the evidence in this case that Capt Wilkie would ordinarily authorize such trips, unless they were emergency trips, necessary trips, which could be authorized by the RQMS. Leaving aside the trip to Antwerp, the trip to F Ech was certainly not in an emergency and I think it was certainly required to have that trip authorized by a responsible officer at camp. Even if the trip to Antwerp was an emergency, I can see no possible excuse for the trip from B Ech to F Ech. And no authority was granted for the trip to F Ech. The accused simply took the vehicle on his own and went. The third charge speaks for itself. The accused was ordered to stay in camp. He left camp for emergency treatment, failed to accomplish this purpose but also failed to report back to B Ech. He left B Ech for F Ech around 2000 hrs, and there can be no question that from that time until 0700 hrs the next morning he absented himself without leave. The accused said he went to F Ech on a combined business and pleasure trip and then says no business was discussed, not with the CQMS there. Instead they played cards. The Court can draw its own conclusions, from its own experience, not only as to whether the evidence proves the third charge but also in regard to all three charges.

The Defending Officer makes the following closing address.

With reference to the first charge whichwith this lawful command that was given. I don't think I will take any of the Court's time to discuss whether the command was lawful or not. But it definitely was a very ambiguous command which could be interpreted in different ways. Was it a proper command, a properly given command? I submit that it was not, and that is material to this case. With reference to the second charge, I don't think it should stand. It is true that the accused used this vehicle for the purpose of going to No 6 Cdn Gen Hosp. That was his primary purpose. A review of his evidence shows also that his visit to CQMS King was also a business trip, and heleft for that purpose. He could not find the hospital so he came back and went to visit another QM stores. There is no ffence there. The evidence shows that it was in the normal course of his duty to authorize trips for various reasons, for rations, transporting of personnel for emergency treatment medically, and to check up on other Coy QM stores. I submit that the evidence before you definitely shows there was no other vehicle in camp that night but this 60-cwt ration truck, and that RQMS Henry authorized the use of this truck for an emergency medical treatment and then for a routine visit to one of his subordinates, as he normally would. The latter is substantiated by the evidence of CQMS King. A lot of details have been brought out as to the extent of the injury to RQMS Henry's hand. The circumstances show the gravity of the injury and the definite intention of the accused to obtain treatment, to have his hand X-rayed. Whether he was right or not in this intention is not what is to be decided in this case. Taking a vehicle to the Hospital and then taking it to [illegible] F Ech is within his rights. He was examined on that point and the evidence clearly shows that it was almost an everyday occurence for him to take a vehicle and visit other Coy QMs. Consequently, I submit that the accused did not take this

vehicle improperly. The second charge does not stand up. The third charge alleges AWL. Whether or not he disobeyd an order is not material to this charge. He was in charge of B Ech and decided to get medical treatment. He turned the camp over to a senior NCO, then went to look for the necessary hospital, but could not find it. Then he proceeded back to B Ech and went on to F Ech. He went out in the normal course of his duties. I submit it is impossible to charge a man with AWL when he is doing something in the normal course of duty. He was definitely not AWL.

The JA sums up as follows.

I will deal with the charges one at a time. On the first charge, then. Before convicting on a charge under AA 9(2) you must have the following items. Was a lawful command given, was it a lawful command and was it given by the superior officer of the person receiving the command. The Defending Officer states the person receiving the command must have known it was his superior officer who was giving the command. There is little law involved outside of that. Was there a command given or not? You will have to decide that. Then decide whether the command was obeyed or disobeyed. That is strictly and entirely to be judged on the facts. You are masters of the facts, I am only here to help you with the law. On the second charge, in my opinion the crux of the matter is the word improperly. The particulars allege that the accused used a vehicle improperly, which is considered to be without authority. He cruised round Antwerp, went to a Cafe, and with that he did not return to B Ech but carried on away to F Ech and sat there playing cards. The Defending Officer states he did not have the vehicle improperly. He says the accused's superior officer testified that the accused had authority to take a vehicle out, and contends it was an emergency trip into the hospital. The Defending Officer also contends that the accused had the right to take a vehicle to his F Ech. With this charge you will just have to consider all the circumstances and decide yourselves as to whether or not the use of that vehicle was improper. You are all regimental officers and I think you know what constitutes improper use of a vehicle with a bn, probably better than I do. The third charge alleges AWL. Whether or not the AWL was committed is simply a matter of proof. You have to be satisfied that the start of the AWL is proved, that some continued period of AWL is shown, and you must be satisfied that the end of the AWL is shown. There you have all three charges. With every charge you will have to decide whether the particulars of the charge have been proved. If you decide that they have been proved, you must decide whether the particulars as proved constitute the offences alleged in the statements of the offences. Concerning the second charge, I must advise you that before you can convict on conduct to the prejudice of good order and military discipline you must be satisfied that the conduct alleged was prejudicial to both good order and military discipline. With regard to all the charges, as to what weight you wish to attach to the evidence of the various witnesses you have heard, this is entirely for you to decide. You have heard and seen the witnesses. Their credibility is entirely a matter for the Court to judge. Consider all the circumstances of the case and decide which witnesses are telling the truth and which are not. In closing, I will remind the Court that under British Law every man is innocent until he is proved guilty beyond reasonable doubt. The accused is never in a position where he has to prove his innocence. The onus is upon the prosecution and he is always innocent until proved guilty. And in the matter of reasonable doubt, this must be such a doubt as would make the Court, as reasonable men in the conduct of their own affairs and business, stop and consider whether the thing they are about to do is just and wise. It must be no idle reflection or fanciful doubt conjured up in their minds. But if the find this reasonable doubt they are bound by law to constru it on behalf of the accused.

Mr. President are there any further matters on which you wish me to advise the Court?
- No.

. Prosecuting Officer, are there any matters further matters on which u wish me to advise the Court?
- No, sir.

Mr. Defending Officer, are there any further matters on which you wish me to advise the Court?
A. - No, sir.

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The Defending Officer makes the following plea in mitigation of punishment.

There are just a few things I would like to bring to the attention The accused has 5 years and one months service. Most of the time he hasbeen a senior NCO in this Bn and has done a very good job. And I request the court to be very lenient in meeting out any punishment for this accused. He did not mean to do anything wrong, and had done the same sort of thing before without question. He had every reasonable excuse to proceed towards a hospital for medical treatment, and then, afterwards, to proceed to his F.Sch. I respectfully ask the court to consider the length of time that this ~~xxhimxxx~~ man has held his present job and present rank, to look into the facts and to bear in mind the manner in which, as you have seen from his appearance, hmm he has carried out his regimental duties. And I believe you will find that whatever he did was done at least with no intention of offence but in line with his normal duties.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No B-67093 RQMS HENRY, Joseph Patrick, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas:-

By Direction of the Commanding Officer the Summary of Evidence is taken on oath.

FIRST WITNESS

For the Prosecution

Capt D.R. Wilkie, 1 Bn The Royal Regiment of Canada, an officer of the Canadian Army Overseas, having been duly sworn, states:

I am Capt D.R. Wilkie, and employed as Quartermaster, 1 Bn The Royal Regiment of Canada. At 1710 hrs, on 22 Oct 44, I went over to the "B" Echelon of the 8th Recce Bn. Prior to my leaving "B" Echelon, 1 Bn The Royal Regiment of Canada, I ordered the accused, No B-67093 RQMS Henry, J.P., whom I now recognize, to "stay put" in Camp and told him where I was going. At 1840 hrs, 22 Oct 44, I returned to Camp and noticed the ration truck was missing. On inquiring I found that RQMS Henry had taken the truck and driver, Pte Kellar, M.M., out with him. RQMS Henry, the driver, Pte Kellar, M.M., returned at 0701 hrs, the following morning, 23 Oct 44.

(D.R. Wilkie) Capt.

Questions by the accused:

Q. Why did not Capt Wallace order me to remain in Camp whom I believe to be in charge of the "B" Echelon of 1 Bn The Royal Regiment of Canada?
A. Because I am your superior officer.

Q. What do you mean by the phrase "stay put?"
A. I mean not to leave the "B" Echelon of The Royal Regiment of Canada.

Q. Why did you not use proper English?
A. Because I considered you understood me and did not query or ask for an explanation of what it meant.

Q. Did you order me to ground all vehicles in "B" Echelon on that particular date?
A. No. The only person I grounded was RQMS Henry, J.P.

Q. Who would be next in charge if I left?
A. Sjt Huggins.

(D.R. Wilkie) Capt.

SECOND WITNESS

For the Prosecution

B-66820 Pte Kellar, M.M., 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am B-66820 Pte Kellar, M.M., and employed as Dvr IC at "B" Echelon, 1 Bn The Royal Regiment of Canada. On the 22nd Oct 44, at approximately 1615 hrs, the accused, B-67093 RQMS Henry, J.P., whom I now recognize, ordered me to drive him to the 6th Canadian General Hospital at Antwerp. At first I refused to comply with his order, stating that I did not want to go. He then stated it was a definite order, whereupon I took him in vehicle No CL-4251640 to Antwerp. The accused then asked a provost to direct him to the 6th Canadian General Hospital. I spent almost 15 to 20 minutes looking for it, but was unable to find it and gave up the search. Thereupon, I was ordered to drive the accused to a pub which was in Antwerp, and the accused went into the pub where he remained for almost three-quarters of an hour, while I remained outside guarding my lorry. He then ordered me to drive my vehicle to "F" Echelon, 1 Bn The Royal Regiment of Canada, and he remained there until 0630 hrs, the

SECOND WITNESS (continued)

morning of the 23 Oct 44. I then following his orders proceeded back to "B" Echelon, 1 Bn The Royal Regiment of Canada, and arrived there at 0700 hrs, 23 Oct 44.

Kellar M.M.

(B-66820 Pte Kellar, M.M.)

The accused declines to cross-examine this witness.

The accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or to give evidence on oath or to call witnesses in his defence at this point.

I certify that the foregoing Summary of Evidence, consisting of TWO pages, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

A.H. Krieger Lt

(A.H. Krieger) Lt,
Officer Detailed to Take Summary.

IN THE FIELD
30 Oct 44

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
B-67093	RQMS	Henry, J.P.	1 Bn The Royal Regt of Canada

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For	Nil times	Nil times
For	times	times
For	times	times
For	times	times
For	times	times

[redacted]

2. The accused has not been previously convicted, *or* [redacted]

3. The accused is not under sentence at the present time. [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 22 (Now over) days in military custody, making a total of 22 (Now over) days, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 38 yrs

6. The date of his [redacted] attestation specified in his record of service is 15 Sept 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 5 yrs 1½ mos

8. The accused is entitled to deferred pay or gratuity in respect of 5 yrs 1½ mos service.

9. The accused is entitled to reckon 5 yrs 1½ mos service for the purpose of determining his pension, etc.

10. [redacted]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of CQMS

12. [redacted]

W1.5767/1559 20M. 5/44. P. Ltd. T31-3.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ *Rank* _____ Name _____ of _____ Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating there convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 2nd day of Nov 44

G A James Lt & Asst Adjt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date

		Date of Promotion
In the rank of	A/CQMS (confirmed 1 Dec 39) 2½ years	15 Sept 39
In the rank of	A/RQMS (confirmed 23 Sep 42) 2 5/12 yrs.	3 June 42
In the rank of	years.	

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such inquiry as are available and the paragraph endorsed accordingly.*)

No. B-6709 Name HENRY J.P. ~~Sqn., Batt'ry,~~ or Company H.Q. Corps 1st Bn RR of C Date of enlistment 15/9/39 G.C. Badges

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Service or Proficiency Pay

M.F.M. 6
(A.F. B.122)
40/F de 50/58 (2069)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order placing area with unit	By whom awarded	Remarks
									Character
				Certified True and Correct Copy:					

(P.T.O.)

49-65

Tpr. Henry L. W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H-77532 Tpr Leonard Wesley HENRY, X-4 List CAC, 9 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Charge See 15(1)	~~Not~~ Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 20 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo 180 days detention

(Sgd) ... President. (RP 45, 50.)

20 Dec 1944 Date awarded.

(Sgd) ... Judge-Advocate (if any).

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) ... Confirming Officer.

Date 23 Dec '44 Commanding 2CBRG Brig

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

H 77532 Tpr Leonard Wesley Henry, X4 List CAC 9CBRG — 26 Dec'44 — Capt A. Hunt, 9 Bn, 2 C.B.R. Gp.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4d-65

CPA66 (To Issue of AFA31) 40/P & S/1698 (40/10) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig C Francoeur Comd 2 CBRG dated 12 DEC 44

2 FEB 1945

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) Appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Permit R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-77532	Tpr	Leonard Wesley	HENRY	9 CBR Bn

PROCEEDINGS REVIEWED

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 12/12 20

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for duties and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~were~~ amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1010 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~as interpreter~~ ~~as shorthand writer~~? Ans ~~The Interpreter is sworn~~(1). ~~Do you object to~~ ~~The shorthand writer is sworn~~?(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NC (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.L. Ellis,	CMP,	2C CBR Bn
Member	Capt	J.D. Terell	ROCS	9 CBR Bn
Member	Lieut	F.A. Grobb	ROCS	9 CBR Bn
Judge-Advocate				
Prosecutor	Major	G.L. Macdougall	CAC	9 CBR Bn.
Defending Offr	Major	J.M. Munro	CAC	9 CBR Bn.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with procendings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 31.)

A8. The accused H-77532 Tpr HENRY L W. before arraignment make(s) (no) ~~or~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~were~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~they~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2CBRG Vol 2 p 98

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60*(*C*) ; *powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60*(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP 60*(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans Yes (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~Each~~ the charge(s). The accused is ~~(are)~~ so informed, ~~and he (they) changed his (their) plea(s) on~~ charge(s). ~~Part I of the Schedule is amended accordingly~~.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, deal with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if charged to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes — three witnesses
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~extract~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

OTR

CHARGE SHEET

The accused, H-77532 Tpr Leonard Weslay, HENRY, X-4 List CAC, on strength 9 Bn, 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SEC 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 0600 hours, 22 Nov 44, until surrending himself at 2359 hours, 30 Nov 44. Total time absent, 8 days , 17 hours, 59 minutes.

(H.S.Rick), Lt.-Col.
Commanding
9 Bn, 2 C.B.R.Gp.

In the Field

15 Dec 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G Francoeur) Brig
Comd
2 Cdn Base Rft Gp

In the Field
19 Dec 44

OIR

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-77532	Tpr		Leonard Wesley	HENRY	X-4 Liet CAC, 9 Bn, 2 CBRG

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 19 DEC 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate the Offr mentioned hereunder.~~

(RP 106(E). Delete if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J L KLUE,	GIC, 10 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by OC 9 CBR Bn Capt J.D. Tomell RCCS.	9 CBR Bn
Lieut	To be detailed by OC 9 CBR Bn Lieut R.A. Grobb RCCS.	9 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	To be detailed by OC 12 CBR Bn	12 CBR Bn

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

G Francoeur (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(G Francoeur)

Date 19 DEC 44

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (PAM 40/P & S/1807 (Edit.) (In lieu of AFAS)) (See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 89.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 587.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

B/B

MEDICAL OFFICER'S CERTIFICATE

(KR(Can)Para 557)
CMHQ CL 173

I certify that I have this day examined H 77832
(Number)

TPR HENRELW and in my opinion he is
(Rank) (Name)

fit to undergo trial by Court Martial

JAD Thompson Capt (Sgd)
Medical Officer

Station FIELD

Date 20 DEC 44 (Unit) H.Q. 9 C.B.R.

F. G. C. M.

Trial of H77532, Tpr. Leonard Wesley Harry
X-4 Cost, CHC, 9 CBRBn.

Medical certificate is produced by prosecuting Officer and marked "B".
The accused pleads guilty to the charge as read.
The accused makes the following statement: B2
I learned that my squadron of 12th Man. Dragoons were having 92 hours leave in Brussels. Being with the Regt. for over 3 years I had a great many friends there which I desired to see. Being in the dumps and thinking it impossible to have leave from CBRB to Brussels, I let the urge to go overcome my better judgement. I proceeded to Brussels joining my friends. On this last night were having quite a get-together in our company were a party of fliers, having many friends in hospital in England our conversation centred there. At the suggestion of the fliers I had them up to fly to England the next day, at the time thinking it a good idea. However, arriving in England. I had misgivings, resolved as soon as I had seen my friends to return to CBRB. At 2059, 30 Nov. 44 I made my way to 1 CHC RA reported myself into the Guard Room there, remaining under close arrest since that date.
Summary of Evidence, marked "A" is read by the President of the Court.
Accused
First witness as to character for accused.
Lt. J. W. Barlow, 18th Armoured Car Regt. 12th Man. Dragoons. 2nd Cdn. Corps. at present with 9 C.B.R. Bn.

E.I.P.2

The witness states that
He an Officer of the Armoured Car
Regt. I knew Tpr. Henry and have no
hesitation in vouching for his good character
and ability as a Tradesman while he served
with the Regt. He is an original member with
the Regt. and during his services earned a
good conduct Badge. His anxiety to return
to the Regt. was expressed to me last August
while he was in C.B.R.C. in Danville. As a
tradesman not as employed for the previous
six weeks he was quite disatisfied and
asked me if he could possibly return to
the Regt.

Second character witness for the accused:
H63517 Sgt. McLeod. J. W. R. of the
12th Manr. Dragoons. at present with 4 C.B.R.C.
The accused having been duly sworn
states: I have known Tpr. Henry personally
since 1941. Tpr. Henry was in my troop from
Nov. 41 until May 43, during that time I
always found Tpr. Henry fully reliable. He
was in charge of a Light D.R. detail in
Jan. 42 and he ran it to a high degree of
satisfaction. He was always ambitious to
further himself in the Army and to my
recollections he was never up for orders.

Third character witness for the accused
C 505 Sgt. Jones attached to the 4 C.B.R.C.
of the R.C.A.S.C.
The witness
Having been duly sworn, states:—
I have known Tpr. Henry for about
3 months during which time he was in my
employ in the kitchen. I found him very hard
working, very dependable and he always
did a good job. Tpr. Henry appeared

dissatisfied at times but always did his job.

E 3

The defending Officer for the accused makes the following plea of mitigation.

It is felt that the court should show leniency to the accused because.

(1) The accused is a well trained man - qualified as a motor mechanic, Class B., drawing T.P. He has spent last five months in the kitchen at 9 B C B K Bn. This soldier has been dissatisfied and had a keen desire to get to the field. He has gone as far to as to approach an Officer of his Regt. and beg this Officer to do anything on his power to get him to the field Army. The accused had no leave for over 12 months and had no leave while at C.B.D Bn. It is felt that there is some reasonable provocation for his offence.

(2) This type has committed an offence against the Army act and he fully does realizes this. Before going he realized the consequences and was prepared to accept them. He did not initially intend to fly to England. It is a tremendous shock and latent humiliation to this type to have been tried by F.G.C.M. This is the accused's first major crime with only one other minor crime. This is a very severe punishment in itself and it is felt that this trial is an injustice to the accused.

This man is needed by the field army. He is A1, qualified in a difficult trade, can accept responsibility, he shows, and from his conduct can soldier under discipline. He has open initiative and ingenuity in his offence which could be used by an Army

in the field. This man has already spent 20 days in confinement and has learned a lasting lesson.

SUMMARY OF EVIDENCE

in the case of

"A"
JLB

H-77532, Tpr. Leonard Wesley, HENRY, K-4 List CAC on strength 9 Bn, 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, who is charged with:

(1) WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE. A.A. Sec 15(1)

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS

A-515, Sgt. Jones, A., Royal Canadian Army Service Corps, R.E. 9 Bn, 2 C.B.R.Dp., having been duly sworn, states:-

"At 0600 hours on 22 Nov 44, Tpr Henry did not report for duty. At 0800 hours the same date I reported his absence to CSM Coflin.

Q.1. Did you see the accused at any time between 22 Nov 44 and 30 Nov 44?
A.1. No, Sir

Q.2. Was he regularly employed in the kitchen under your supervision?
A.2. Yes, Sir.

The accused declines to cross-examine the witness:

Sgt. A Jones

A-515 Sgt Jones, A.

SECOND WITNESS
(Absent Witness)

H-77743, Sgt McCarthy, W.J., No.1 C.A.C.R.U.

"I certify that in my opinion, the attendance of, H-77743, Sgt McCarthy, W.J., is, owing to expense & time involved, not readily procurable; a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as Exhibit "A".

(G.L.MacDougall) Major
Officer detailed to
take Summary of Evidence

I do not require the attendance of H-77743, Sgt McCarthy, W.J., for the purpose of cross-examination.

L.W. Henry

H-77532 Tpr Henry, L.W.

The accused was questioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused made the following statement on oath:-

"I had my last leave on December 22, 1943. I came to 9 Bn, 2 C.B.R.G. in June 1944 as a Motor Mechanic Gp "B", when we arrived in France I inquired as to being posted to a unit with other qualifications which I have. I met with no success as I could not revert my qualifications. I worked continually in the kitchen since then until 21 Nov 44. At that time my Squadron of 12 Dragoons had 3 days leave in Brussels. I went to Brussels as we had a great many things to talk over, and we had quite a get-together, drinking and so on. During the evening of the 3rd day while drinking I met some chaps who were flying to England in the morning. I thought it quite a good idea at the time as it was desirable that I see some intimate friends. On arriving in England I thought better of it and after a few days I went to 1 C.A.C.R.U. to hand myself in to return to C.B.R.G., since then I have been under close arrest to this date.

Les. Henry

H-77532 Tpr Henry, L.W.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of two pages, was taken down by me in the presence of the accused and that Rules of Procedure 4 (c),(d),(e), and (f) have been complied with

(G.L. MacDougall) Major
Officer detailed to take
Summary of Evidence.

In the Field

15 Dec 44.

A
1B

No. 1 CANADIAN ARMOURED CORPS
REINFORCEMENT UNIT

STATEMENT OF H-77743 Sgt McCarthy, W.J. 2 Dec 44

"I Regt. No. H-77743 Sgt McCarthy, W J member of the Regimental Police No. 1 C.A.C.R.U. certify that Regt. No. H-77532 Tpr Henry, L W of the 12th Manitoba Dragoons surrendered himself to the Guard Room at No. 1 C.A.C.R.U. at 2359 hrs on the 30th day of November 1944 as an absentee without leave.

W. J. McCarthy.

(W.J.McCarthy)Sgt.,
Provost Sergeant,
No. 1 C.A.C.R.U.

"This is Exhibit "A" referred to in the Summary of Evidence in the case of H-77532 Tpr. Henry, L.W., taken before me this 15th day of December 1944.

(G.L.MacDonald) Major,
Officer detailed to take
Summary of Evidence.

D. 116

Exhibit. B-E 2

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
N-77532	Tpr	HENRY L.W.	X-4 List CAC 9 Bn, 2 CBRG.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be attached to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Absent Without Leave ..... One times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 6 Aug 43

Date of last entry in Field Conduct Sheet 6 Aug 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

[Strike out if not applicable.] ~~3. The accused at the present time is under sentence to ..... beginning on the ..... day of .....~~

4. The accused has been awaiting trial on the present charges for NO days in civil custody; and for 20 days in military custody, i.e., NO days in open arrest, 20 days in close arrest; of which NO days were spent in hospital.

5. The present age of the accused is 28 yrs

6. The date of his attestation is 24 Jun 1941

~~enlistment for military service~~

7. The service which the accused is allowed to reckon is 3 yrs 5 mos 22 days

[State the military Decorations (if any) held by accused.] 8. The accused is in possession of‡ CVSM & Clasp

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

~~(a) as the substantive rank of .....~~

~~(b) in the war substantive rank of .....~~

~~(c) in the acting rank of .....~~

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) Wt.34779/665 100,000 1/42 A. & E. W. Ltd. Gp. 688
(32469) Wt.20456/1473 80,000 1/42 " " Forms/B.296/War/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 10 day of DECEMBER 1944

(C.L.Nelson) Capt & Adjutant
9 Bn, 2 C.B.R.Gp.

Exhibit "C"

3/17 MFM 6
(AFB 122)
40/PAS/136(5418)

No. H-77538 Name HENRY, L.W. Sqn, Battery, or Company Corps C.A.C. Date of enlistment 26-4-41 GC Badges One Service or Proficiency Pay

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine Sheet No 1 Signature OC Company, etc D.W. Lovelelles Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	6-8-43	Tpr		A.A. Sec 15(1) AWL from 2359 hrs 6 Aug 43 to 1350 hrs 7 Aug 44 (13 hrs 51 mins)	Cpl Crone Cpl Nichol	4 days C.B.	9-8-43	Lt.Col	Forf 1 days pay FR&E
PREVIOUS SHEET DESTROYED AFTER 2 YEARS SERVICE W.E.F. 26 JUN 43 (Sgd) D.W. Lovelelles.									

Certified true copy of Regt'l Books and documents held in my possession

.....

(C.L.Nelson) Capt & Adjt DEC 16 1944
9 Bn, 2 C.B.H.Gp.

(FTO)

RRR-38
BPR HENRY D I

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : H-102951 Spr Owen Irvin HENRY, RCE, 13 CBR Bn

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15(1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of list see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which —— days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court :

Forty days detention

5 Jul HH (Sgd) D N MacLeod Major
(Sgd) ..... Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further orders~~. (1. AA 57A. Delete if not used.)

(Sgd) G Francoeur

Date 6 Jul 44 Commanding (G. Francoeur) Brig Comd 2 Can Base Rr Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

H102951 Spr Owen Irvin Henry 7 July 44 M L Frank Capt Adjt. 13 C. B. R. Bn.

C.R. 347 (RCE) 1/ 7 Jul 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED ATTACHED IN AB 160 WWII 38

CPA96 (In lieu of AFA21) 40 P & S 1/1808 (6000) 4/38B

FIELD GENERAL COURT-MARTIAL

RECEIVED 13 JUL 1944 Sec GHQ 21 Army Gp

Convened by Order of Brig G Francoeur Comd 2 CBRG dated 5 JUL 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit
H-102951	Spr	Owen Irvin	HENRY	RCE 13 CBR Bn

PROCEEDINGS REVIEWED 13 Jul 44 Marshall Capt REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED Date 13 JUL 44 DJA Sec GHQ 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 5 JUL 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A85, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~if any~~ amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 [illegible] AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~if any~~ brought before the Court at 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~if any~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ~~if any~~ ~~the Interpreter~~ no interpreter ? Ans ~~The Interpreter is sworn.(1) Do you object to the shorthand writer ? Ans. The shorthand writer is sworn.~~ as shorthand writer ? Ans.

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, ~~waiting Member~~ retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	D N MacLEOD	ROSS, 13 CBR Bn
Member	~~MAJ~~ CAPT	D E MCFEE	RCA 12 CBR BN
Member	LIEUT	R P ST PIERRE	RCCS 13 CBR BN
Judge-Advocate			
Prosecutor	LIEUT.	H. I. STEVENSON	RCE 13 CBR BN
Defending Offr	LIEUT.	H. D. DE PIERRO	RCE 13 CBR BN

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO(1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See [illegible])

A8. The accused H-102951 Spr HENRY O I before arraignment makes(s) (no) ~~a~~ plea(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposed, the evidence, if any, and finding are requested per Notes. For forms of record see references in fns to RoF cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~if any~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~if any~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG. Vol. 1. p. 133

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offences.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 80, 87(*C*), 92(*B*), *and of witnesses and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *swearing of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO .....(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~Charge~~ charge(s). The accused is (are) so informed, and he (they) (~~their~~) plea(s) of Guilty to ~~the~~ charge(s). Part I of the Schedule is amended accordingly.

~~charge(s) his (their) plea(s) on~~ charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be cleared to consider the statement.* Delete whole or ~~part~~ as applied.)

B4. On the charge~~s~~ to which the plea~~s~~ of Guilty is (are) not changed the President records finding~~s~~ of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above, ~~as~~ as are relevant to the charges dealt with under C2.

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

File here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(1. *If "Yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answers and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB : If trial proceeds, accused must be allowed ~~cross~~ full opportunity for cross-examination in defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, *KR Con* 555.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans .....

Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

Ans .....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 64(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(3) (6), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans NO

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldiers having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statements and Conduct Sheet(s) and in mitigation of punishment ?(1) Ans Address by Defending Offr .....(2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(6). *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, as to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182. *RP* 46-50, 69, 118, 119(*A*). *KR Con* 308, 330, 563-566. *Overseas RO* 309, 2323. *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5). *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1B), 68(1). *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 547. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

FIRST CHARGE
AA Sec 15 (1)

The accused H.102951 Spr OWEN IRVEN HENRY, RCE, 13 Bn 2 CBRD, a soldier of the Canadian Army Overseas is charged with

WHEN ON ACTIVE SERVICE - ABSENTING HIMSELF WITHOUT LEAVE,

in that he

In the field absented himself without leave from 2200 hrs 11 Jun 44 until 0600 hrs 23 Jun 44 when he surrendered himself to the Civil Police at SOUTHAMPTON. Pleads guilty

Total time absent (11 days 10 hrs).

Costs of apprehension (£1.1.10).

In the Field
3 Jul 44

(W.J. Stewart) Lt.col
Commanding,
13 Bn., 2 C.B.R. Gp.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G Francoeur) Brig
Comd
2 Cdn Base Rft Gp

In the Field
5 JUL 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-102951	Spr		Owen Irvin	HENRY	RCE, 13 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 JUL 44 endorsed by me, ~~(or by an offr of my staff for me)~~. " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	D N MacLEOD (Must be named. RP 106.)	RCOS,	13 CBR Bn (Unit.)

MEMBERS.

Capt	to be detailed by OC 12 CBR Bn	12 CBR Bn
Lieut (Rank.)	to be detailed by OC 13 CBR Bn (Named or detailed. RP 106.)	13 CBR Bn (Unit.)

WAITING MEMBER.

Capt (Rank.)	to be detailed by OC 13 CBR Bn (Named or detailed, if any. RP 106.)	13 CBR Bn (Unit.)

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 5 JUL 44

(G Francoeur)
Commanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAAS (In lieu of AFAS 40/P & S/1697 (4501))

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2692.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 16 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statements by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 46 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 46 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 537.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 3(b). As to certified copies of regimental books see AA 162 (1) (g) (ii).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined H.102951 (No.)

SPR (Rank) HENRY O.J (Name) and in my opinion he is

~~fit~~ ~~unfit~~ to undergo trial by Court-Martial.

Station Field

Date. 5 July 44

K. Laing Capt (Sgd)
Medical Officer
(unit) 13 Bn 2 C.B.R.D.

#. 102951 Sp. Owen Drum Henry

Plea of Mitigation of sentence

The accused was on the strength of the 16th Cdn Fd Coy RCE. which left this country with the invasion troops on D day. The accused had been with this unit for some time and was very happy there.

He had underwent all the intensive training with the unit preparatory for the invasion, and was eagerly looking forward to the great event, when he was suddenly taken off draft with from the unit and sent to a Residue camp for no apparent reason. This move greatly discouraged the accused, as it would any one.

This disappointment was the cause of his going AWL. He was certainly not unwilling to go into action, had he remained with the unit. — The date of his going AWL June 11th — 5 days after the unit had left — is enough to prove this.

He had also never mentioned certain disabilities, so as not to have his category lowered — & prevent his going overseas.

I wish to remind you of — These facts:- in favour of accused.

1. According to his conduct sheet - no offences were committed prior to April of this year — (These probably due to being browned off")
2. He also surrendered himself to the police of his own accord willingly

W. De Pietro Lieut. RCE.
13 Bn. CBRG.

EX "A"

SUMMARY OF EVIDENCE IN THE CASE OF

H.102951 Spr OWEN IRVEN HENRY, RCE, 13 Bn 2 CBRG, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, all evidence is given on oath.

FIRST WITNESS FOR PROSECUTION

Lt W.A. MURRAY, Records Officer, 13 Bn 2 CBRG, having been duly sworn, states: -

"I am Lt W.A. MURRAY, Records Officer, 13 Bn, 2 CBRG and present the following documents pertaining to the accused H.102951 Spr HENRY, O.I."

(1) Certified true copy of a Part II Order extract 16 Cdn Fd Coy, RCE, showing H.102951 Spr HENRY, O.I. as AWL from 2200 hrs 11 Jun 44.

(2) A.F.C. 1617 certificate of surrender showing H.102951 Spr HENRY, O.I. as surrendering to the Civil Police at SOUTHAMPTON at 0600 hrs 23 Jun 44.

(3) C.M.H.Q. 100:55 Expense form showing costs of returning H.102951 Spr HENRY, O.I. to Unit as £1. 1. 10.

W A Murray

(W.A. Murray) Lt

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.
The accused was cautioned in accordance with Rules of Procedure 4 (e) of the Army Act.
The accused declines to make a statement as this time.

I certify that the foregoing S of E consisting of 1 page was taken down by men in the presence and hearing of the accused and that Rules of Procedure 4 (c) (d) and (e) have been complied with.

J Miller Lt

(J.E. Miller) Lt
Officer Taking Summary of Evidence
13 Bn 2 CBRG

Exhibit (b)

PART II ORDER EXTRACT FORM

TO:

99/20/16 FD COY/1 (A5b

30 JUN 44 19

EXTRACTS FROM: Unit 16 CDN FD COY RCE

Part II Order No. 28 dated 27 JUN 44

ABSENT WITHOUT LEAVE

(a) AWL from 2200 hrs 11 JUN 44
H102951 Spr HENRY O I

[redacted]

Certified true copy of document held in my possession

HGF?

Originating Clerk's Initials

(R.E. FULLERTON) Captain

Officer in Charge Records B

Canadian Section, GHQ, 2nd Echelon

ECH—6
40-P-A-S 1276 (8032)

...ATED IN HOSPITAL

Canadian
Brit. Military
E.M.S.

Location

FOR THE MONTH OF 194

DIAGNOSIS				ADMITTED	Discharged Date	HOSPITAL DAYS	DISPOSITION	PROSTHETIC APPLIANCES ARE ISSUED (ARM, EYES)	REMARKS
	Operation	SECONDARY	Operation						

IMMEDIATE.

Army Form Os 6.7
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

---

* Stations of Units and Depots are shown in the Monthly Army List.

† Note.—Special instructions apply in war for the disposal of absentees and deserters from the Army, who surrender to the civil police; e.g., such personnel will be taken over from the civil authorities by the O.C. the nearest (primary) unit or the O.C. Troops at the nearest military station. (A.C.I. 489 /1940).

(22742) W1.28205/171 25,000 3/42 A.A.E.W.Ltd. Gp.459
(21826) W1.44525/1259 40,000 5/42 " " Forms/O.1617/54

Exhibit 12

I CERTIFY that the man whose personal description is given below surrendered himself to G. J. Andrews PS 66 at Southampton at (hour) 8 a.m. on the 23rd day of June 1944 as being No. 4104321, (Rank and Name) Pte. Irven, Henry Owen a deserter (or absentee without leave) from 12th June 1944 and it appears to me from his confession that he is a deserter or absentee without leave.

*After the word "is" to be inserted the name and rank of the police officer concerned.

Age 26 Height 5' Feet 6 Inches

Complexion Fresh Hair Brown

Eyes Brown

Marks —

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	30-10-42 Winnipeg, Man, Canada
Probable Date of Desertion or beginning of absence, and from what place	13-6-44 Townhill Camp Southampton

Jack Andrews PS 50.

Signature and Rank of Police Officer in charge of ____ Station

Date of Signature

Exhibit 137

Expense Voucher Re—:

Ref: K.R. & O. (Can) 539

Reg. No. H107951 Rank Spr. Name Henry, O. J Unit 16 Fd Coy

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ Unit ~~From~~ London from Southampton

Date	Particulars	Amount £	s	d
	Escorts return fare from LONDON To Southampton		12	1
24 June 44	Prisoners single fare to LONDON From Southampton To		6	1
	Prisoners fare from		3	8
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares			
	Total £	1	1	10

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

W.E. Birch LIEUT.

R. E. BIRCH Capt.
ADJUTANT OFFICER—D.P.M's BR.

Officer Issuing Railway Warrant and Expenses
No. 6 Provost Company, Canadian Provost Corps, London C. M. H. Q.

C.M.H.Q. 1000-55
40/P & S/483

EX "C"

M.F.M. 6
(A.F. B.122)
40/1 & 7/8136 (2965)

No. H102951 Name HENRY, Owen, Irvin. Sqn., Battery, or Company | Corps | Date of enlistment | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
16 Fd Coy	18-4-44	Spr		AA 15(1). Awarded 3 days C.B. Forf. 3 days pay.					
Awd. 7 days C.B. AA 15(1). Tot. forf. 6 days pay.									
16 Fd Coy	8-5-44	Spr		AWL. Awd. 14 days F.P. For. 16 days pay. AA 15(1).					
16 Fd Coy	24-5-44	Spr		Awd. 10 days F.P. & Total forf. 11 days pay. AA 15(1).					
				CERTIFIED TRUE EXTRACT FROM M.F.M. 1 & 2a. J.E. Miller, Lt July 3' 44					

(P.T.O.)

EX "B"
Court.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
H.102951	Spr	HENRY, O.I.	13 Bn 2 CBRG

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:-

For A.A.Sec 15 (1) — 3 times
For _____ — _____ times
For _____ — _____ times
For _____ — _____ times

Date of first entry in Field Conduct Sheet 18 April 44

Date of last entry in Field Conduct Sheet 24 May 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3. The accused at the present time is under sentence for na beginning on the na day of _____

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 34 days in military custody, i.e., nil days in open arrest, 34 days in close arrest; of which N/A days were spent in hospital.

5. The present age of the accused is 25

6. The date of his attestation ~~enlisting up for military service~~ is 30 Oct 42

7. The service which the accused is allowed to reckon is 1 yr 8 months

8. The accused is in possession of ?

9. (If the accused is a warrant officer or N.C.O.) The accused has served continuously, without reduction, to the present date:

	Date of promotion
In the substantive rank of _____	na
In the war substantive rank of _____	na
In the acting rank of _____	na

INSTRUCTION: If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

NOTE: The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 5th day of July 1944

J E Miller Lt

(J. E. Miller) Lt
13 Bn 2 CBRG

KK-146

PTE HENRY R

RR-146

Correspondence to be PINNED here

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this ----twenty-Second--------day of ------July----------, 1943.

Whereas it appears to me, the undersigned, an officer in Command of ---9th Canadian Infantry Brigade----- ---------- , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*[I am unable to appoint :—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

for the following reasons, namely :—]

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	H.G. Mason	S.D.&G. Highrs

Members.

Rank.	Name.	Regiment.
Capt	J.G. Chapman	Nth N S Highrs
Lt	K.S. Bird	Nth N S Highrs

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (T.G. Gibson) Brig

Commanding 9 Can Inf Bde

Convening Officer.

Evidence and Charge Sheets (if necessary) to be PINNED here.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A.4184 Pte. Henry, R. Highland Light Infantry of Canada	First Charge Neglect to the prejudice. A.A. Sec 40	not guilty	not guilty 23 JUL 43 R.S. Mason, Major	Confirmed DLR

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) D.V. Gibson (Signed) Robert S. Mason, Major
(D.V.G. Gibson) Brig
Commanding 3 Cdn Inf Bde — *Convening Officer* (*e*)
A/Lt-Col (A.A.) — *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23rd day of July, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) 23rd
*(4. ~~The officers under instruction~~) 23rd

* Omit if not applicable.

were duly sworn.

Signed this 23rd day of July 1943.

Robert S. Mason, Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial. 23rd

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.) DLR

Signed this 26th day of Jul 1943

D.V. Gibson Brig
Confirming Officer.

Promulgated and extracts taken in the case of A4184 Pte. Henry, R.

(*a*) (Dated) 28 July 43 (Signed) [illegible], Capt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

App A

CHARGE SHEET

The accused No. A.4104 Private Henry, Robert, The Highland Light Infantry of Canada, a Canadian soldier on active service is charged with:-

ARMY ACT SEC 40 NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, on the night of 31 May-1 June 1943 did so negligently handle Sten Machine Carbine #FD 72065 causing it to discharge and injure his index finger and thumb, right hand.

DM Griffith Maj. 2 i/c
Lt.-Col.
In the Field
20 Jul 43 C.O. The Highland Light Infantry of Canada

To be tried by Field General Court Martial.

In the Field
22 Jul 43

(T.G. Gibson) Brig
Comd 9 Cdn Inf Bde

DGM

Appx. "H"

Medical Officers' Certificate.
K.R. (Can) Para. 557.

I certify that I have this morning examined No. F.4184

Pte. Henry Robert and in my opinion he is fit to
(rank) (name)

Undergo trial by Court Martial.

Station.

Date 23/7/43. (Sgd) [signature] Capt. Clerk
(Medical Officer)

W.G.M.

App "B"

SUMMARY OF EVIDENCE in the case of

No. A.4184 Pte. Henry, Robert, The Highland Light Infantry of Canada.

The Commanding Officer directs that all evidence be taken on oath.

First Witness for Prosecution

A.37384 Sgt. Hare, Frederick Walter, The Highland Light Infantry of Canada having been duly sworn states:

" On the night of 31 May-1 June 43, while I was Sergeant of the guard, A.4184 Pte. Henry, Robert, a member of the guard reported in from post #3 to the guard room and told me that his Sten Gun #FD 72065 had accidentally discharged and wounded him in the index finger and thumb of his right hand. I took Pte. Henry, Robert, to the R.A.P. and reported the accident to the Orderly Officer. When I checked Pte. Henry's Sten Gun after the accident the magazine had been removed and naturally there was no round in the breech."

The accused declines to cross examine the witness.

.....Sgt. Hare.....

App. 'C'

Third Witness for Prosecution

D.71902 Pte. McLeod, Malcolm John, The Highland Light Infantry of Canada having been duly sworn States:

" On the night of 31 May-1 June 1943 I was a member of the guard, and at approximately 2359 hrs 31 May 1943 Pte. Henry, R. and I were posted to #3 post by Cpl. Desjarlais, and we took up positions on opposite sides of the road. At about 0155 hrs 1 June 1943 Pte. Henry, R. complained of being chilly and walked across the road towards me. I heard him say "My sling seems loose", he then stopped to adjust it. I heard the butt of the gun strike the ground, Pte Henry, R. had bent forward trying to catch the gun, which discharged, wounding him in the right index finger and thumb. The gun was lying on the ground. Being unable to leave my post and not having any means of calling the corporal of the guard I told Pte. Henry, R. I would stay while he got his hand attended to. He picked up the gun and reported to the guard room. I cannot state due to the fact that it was raining and quite dark whether or not the gun was cocked."

The accused declines to cross examine the witness.

H.G.M

Pte. M.J. McLeod

App. D

Fourth Witness for Prosecution

A.37550 Sgt. Chapman, Edward Bryson, The Highland Light Infantry of Canada, having been duly sworn states:

" I am the medical Sgt of the H.L.I. of C. At approximately 0215 hrs 1 June 1943 I attended to Pte. Henry, R. who was suffering from a gunshot wound in the right index finger and slight laceration of the right thumb. He was also suffering from slight shock. After attending to him I sent him back to his quarters and ordered him to appear on sick parade the following morning".

The accused declines to cross examine the witness.

H.M.

Edw. Chapman Sgt.

App "E"

The accused No. A.4184 Pte. Henry, Robert, The Highland Light Infantry of Canada, having been duly cautioned in accordance with Rules of Procedure 4 (e) states:

" On the night of 31 May-1 June 1943 I was on guard at #3 post with Pte. McLeod, M.J. from midnight until 0200 hrs 1 June 43. At approximately 0155 hrs whilst I walked across the road towards Pte. McLeod, M.J. the sling of my Sten Gun came loose allowing it to fall towards the ground. As it fell I bent forward to catch it but the butt of the gun struck the ground and discharged. It wounded me in the right index finger and right thumb. Pte. McLeod, M.J. told me to have it attended to and I reported to the guard room. Sgt. Hare, F.W., the guard commander took me to the R.A.P. where the wound was dressed and I was ordered to bed. The gun was not cocked but the magazine was on the gun in accordance with instructions from the guard commander."

.....Pte. R. Henry.....

The accused declines to call any witnesses on his behalf.

HBM

The Court convened at 1000 hrs 28 July 43.
The accused A 41794 Pte Kinney, R.C.Inf is arraigned before the Court.
The President & members were duly sworn.
The accused has no objections to being tried by the Court.
Charge was read to accused. (App A)
First Witness called.
A 37884 Sgt Haw F.W. having been duly sworn states.
Evidence given as per Summary of Evidence. (App B)

Q. It is possible for sling to come loose from rifle.
A. Yes. The sling used was a rifle sling and there is no attachment on the gun for it & it is very easy to slip loose.

Question by defence
Q Was it the custom in the Bde at that time to carry a loaded mag on the Sten gun, without having the gun cocked.
A. yes sir.

Second Witness
D 11902 Pte Mac Lsod. M.S. having been duly sworn gives evidence as per his statement in Summary of Evidence. (App C)
Defence asks no questions

Third Witness
A 37850 Sgt Chapman, E.B. having been duly sworn gives evidence as per his statement in Summary of Evidence. (App D)
No questions by defence.

The accused makes a statement the same as his statement given in Summary of Evidence (App E)

The defence submits a written statement. (Appendix 5 attached)

The prosecution wishes to offer no further evidence

There being no further evidence the Court is closed for consideration of finding.

Medical cert. attached as appendix H

NOTE

Second Witness in the Summary of Evidence was not available due to the fact that he has been SOS to NSTD. His evidence was not considered necessary by the Court (App G)

J.G.M.

(Appendix F)

The President
The R.G.C.M.:

I submit that the prosecution has not proven the charge of neglect for the following reasons:

1. None of the witnesses can say that they saw neglect on the accused part. He was on duty at the time and the orders that had been laid down were being complied with.

2. A Court of Inquiry was held and from the findings no charge of neglect could be brought against the accused. The only reason the Court Martial is being held is because higher authorities said he must be tried by an R.G.C.M.

3. In the pamphlet War June 26/43 (page 3) there is a paragraph by an adjutant of a Parachute Battalion regarding many small points learnt in the North African Campaign. In one place he states and I quote "We had several casualties from men knocking a Sten gun against something and the gun firing two or three rounds". If this is the case with some of our more experienced battalions it could easily happen in our own battalion. It is laid down by our Division that these pamphlets be read and their contents be looked upon as confirmed doctrine.

I sum up by saying that there has been no evidence to prove wilful and culpable neglect on the part of the accused and for the accused to be guilty it must be proven as such see 40 (Note: Paragraph 2).

Lt. Col. Commanding (Standing) Officer

App 'G'

Second Witness for Prosecution

A.82235 Cpl. Desjarlais, Robert, Paul, The Oxford Rifles attached to the Highland Light Infantry of Canada having been duly sworn states:

" On the night of 31 May-1 June 1943 I was Cpl of the guard and at 2359 hrs 31 May I posted Pte. Henry, Robert and Pte. McLeod, M.J. to #3 Post. At approximately 0155 hrs 1 June Pte. Henry, R. reported to the guard room stating that he had been wounded in his right index finger and thumb. I inspected and cleaned his Sten Gun #FD 72065 and with Sgt. Hare, F.W. took Pte. Henry, R. to the R.A.P. where the medical Sgt, Sgt. Chapman, E.B., dressed the wounds and on his instructions I took Pte. Henry, R. to his quarters and put him to bed. When Pte. Henry, R. was posted his Sten Gun was not cocked but had a loaded magazine and a rifle sling was being used for carrying Sten Guns but were not satisfactory as they had a tendency to slip off since there were no attachments on the gun for it.

The accused declines to cross examine the witness.

R.M.

...Cpl. R.P. Desjarlais.....

I certify that the foregoing Summary of Evidence consisting of 5 pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

J. Fiddes Hunt
The R.L.I. of Canada

In the Field

X3771.

RECEIVED
5-4-1
27 JUL 1943
H.Q.
9 Cdn. Inf. Bde.

A4184 PTE. HENRY, R. The H. L. I. of C.

31 May 43 — 14 July 43

15 July 43 — 26 July 43

22 July 43 — 23 July 43 — 26 July 43

28 July 43

8 days

5 days

Delay between dates of "Summary taken" and "Appl'n for F. G. C. M" was caused due to the fact that the NFMC of the accused did not reach the unit until the 20th. Phone request for this went to I Cdn. 15 July.

R. Beauty Lt. Col.
H. L. I. of CANADA

There appears to be no undue delay in the above proceedings.

(T.G. Gibson) Brig
Comd 9 Cdn Inf Bde

00076

IPR HENRY V

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-4023 Tpr Victor HENRY, 12 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AUG 15(1)(a)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~B/C~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which N/K days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on IMF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

2 ~~forfeit~~ all ordinary days for a period of 30 days

(Sgd) Judge-Advocate, if any. 12 June 44 Date awarded. (Sgd) President. (RP 43, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1) ~~Sd~~

(1. AA 57A. Delete if not used.)

Date 13 Jun 44 (Sgd) C Francoeur

Commanding (C. Francoeur) Brig Comd 2 Can Base Rr Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D4023 TPR. HENRY, VICTOR. Y. 4 LIST CAC (ARMD REGT) 12 CBR BN.	14 JUNE 44	A Howard Lt-Col O.C., 12 Bn., 2 C.B.R. Group

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Vol 1/2 CBRG Proceedings in CMHQ IN AB 160 1 000-76

CPA96 (1st Issue of AFA8) 40/P & S/1898 (1002)

4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig G Francoeur Comd 2 CBRG dated 9 JUN 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apppmt, A/rank or A/apppmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-4023	Tpr	Victor	HENRY	12 CBR Bn

PROCEEDINGS REVIEWED 11 Jun 44 [illegible]

REVIEWED [illegible], JAG BRANCH, CMHQ

PROCEEDINGS REVIEWED Date 12 JUN 44 D.J.A., Dirn Sec GHQ 2 Ech, 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 12 JUN 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 749. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0745 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (type)~~ N/K

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~/~~ ~~/~~ ~~/~~ an interpreter? Ans ~~Nil~~

The Interpreter is sworn.(1) Do you object to ~~/~~ as shorthand writer? Ans ~~Nil~~

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F B COURTNEY	SSR,	11 CBR Bn
Member	Capt	G G McKNIGHT	CAC	12 CBR Bn
Member	Lieut	A R BOWLES	RCCS	13 CBR Bn
Judge-Advocate				
Prosecutor	Major	J S Hart		12 CBR Bn
Defending Offr	Major	W K Bingham		12 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused D 4023 Tpr. Henry V before arraignment make(s) (no) ~~/~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; recalling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans. No.....[5]
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B, initialled and read aloud by the President.[1]
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No.....[1]
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is re-opened, and the President announces that the submission is closed, and considers the submission.[3] The Court is re-opened, and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans. .....

..... Do you intend to call witnesses on your behalf?

Ans. .....

Ans. ..... Are they witnesses as to character only? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(C). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CS A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(*1. AA 54(3) (d), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]

Ans. No Sir.
(*1. If evidence not already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.[3]
(*1. MFB 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans. In mitigation only.....[2]
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

D-4023 Tpr. Henry, Victor, 57 Coy, 12 Bn., 2 C.B.H. Group, a soldier in the Canadian Army (Overseas) is charged with:-

FIRST CHARGE
A.A. 16(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the field, did absent himself without leave from 1300 hours 5 June 44, until 1450 hours 6 June 44. Total absence 1 day, 1 hr, 30 mins.

In the field
7 June 44

A.C. Hood
.....Lt.-Col.
(A.C. Hood)
Commanding 12 Bn. 2 C.B.H. Gp.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G Francoeur) Brig
Comd
2 Cdn Base Rft Gp

In the Field
9 JUN 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 22, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for shewing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-4023	Tpr	Victor	HENRY	12 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 9 Jun 44 endorsed by me, (~~as by an offr of appointed for the case~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior specified offr~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have stated hereto.~~

5. ~~I also appoint an Judge Advocate to attend the Court and perform the duties hereunder.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)		
Major	F B COURTNEY		SSR,	11 CBR Bn (Unit.)

MEMBERS.

(Rank.)			
Capt	G G McKNIGHT		11 CBR Bn
Lieut	A R BOWLES	CAC	12 CBR Bn
		RCCS	13 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J H CAMPBELL	12 CBR Bn

(Named or detailed, if any. RP 106.)

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

Date 9 JUN 44

(Signed personally. RP 105 (e).)

(G Francoeur) Brig — Brigadier (Rank.)

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFAES (In lieu of AFA3) 90-P & S/1691 (4691))

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)* b, and 114(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (*or*, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".
RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:
(i) Opening address by Defending Offr. (*See RP 41 fn 3, 45 fn 1, 80.*)
(ii) At option of accused, statement by accused (not sworn or subject to cross-exam by Prosecutor, Court or JA (*RP 40 fn 10*) b, or evidence by accused, statement by accused (not sworn or subject to cross-exam by Prosecutor, Court or JA (*RP 40 fn 10*) b, or to prove previous convictions when accused or any evidence given as to character. (*RP 86(C).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to character. (*RP 86(C).*)
(iii) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)* b, or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(iv) Evidence of witnesses for accused as to facts or his character or both. (*See RP 41 fn 3, 45 fn 1, 80.*)
(v) Closing address for prosecution. (*See RP 40 fn 7, 87(C), 92(C) (D).*) Prosecutor has no right to address Court on subject of sentence except as provided by *RP 46(E), KR Can 563(a).*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D).*) Prosecutor has no right to address Court on subject of sentence except as provided by *RP 46(E), KR Can 563(a).*)
(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corners to p 3 of CF A 96 in following order:
(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 257.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting an evidence is certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)
(vi) Summary of Evidence, if not already an exhibit.
(vii) Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute awarded. (*AA 53(9), RP 118(C), MML p 769.*)

The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", otherwise directed.

MEDICAL OFFICER'S CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined D4023 (No.)

TPR. (Rank) HENRY. V. (Name) and in my opinion he is

~~fit~~ unfit to undergo trial by Court-Martial.

Station Ireland.

Date. 12 June 44

(Medical Officer)

(unit) 19 C.B.R. Bn.

Plea in Mitigation

D-4023 Tpr. Henry V.

The defending officer stated that the accused and two other soldiers won a considerable sum jointly in a "Crap Game". They proceeded to Aldershot and after visiting several public houses became "under the influence". They found themselves on "D Day" absent without leave and made all haste to get back to Camp.

The accused is a Driver 1/c and has been with a field unit for some time and is very anxious to return to the field. His past record in over two and a half years service has been good.

D. Hamilton Major

SUMMARY OF EVIDENCE IN THE CASE OF

D-4023 TPR. HENRY, VICTOR, 57 COY, 12 BN. 2 C.B.R. GP.

The Commanding Officer directs that the evidence be taken on oath.

First Witness for the Prosecution

H-26442 L/Sgt. Gauthier, R.D. 57 Coy, 12 Bn. 2 C.B.R.Gp having been duly sworn, states:-

On the 5 June 44, on the afternoon parade, I called the troop roll. I found the accused absent. I immediately placed his name on the absentee report. Later on I sent Cpl. MacAuley through the lines to look for Tpr. Henry, Victor. Cpl. MacAuley reported to me that the accused could not be found.

The accused declines to cross-examine this witness.

R. Gauthier
(L/Sgt. Gauthier, R.D.)
57 Coy, 12 Bn. 2 C.B.R. Group

Second Witness for the Prosecution

A-44039 Sgt. Heddle, H.S., 57 Coy, 12 Bn. 2 C.B.R. Gp having been duly sworn, states:

On 6 June 44 I was on duty as Coy Orderly Sgt. Tprs. Thornton, W.G., Hovelle, K.S. and Henry, V. reported to me as a body at 1450 hrs 6 June 44. I placed them under close arrest and charged them with being absent without leave.

The accused declines to cross-examine this witness.

H.S. Heddle
(Sgt. Heddle, H.S.)
57 Coy, 12 Bn. 2 C.B.R. Gp.

"B"

The accused was cautioned as follows:

Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution, the accused declined to give any statement or evidence.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of two (2) pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (C), (D), (E) & (F) have been complied with.

In the field
7 June 44

.....Capt.
(W.A. Howard)
12 Bn. 2 C.B.S. Group

"B"

No D4023 Name Henry, V. Sqn, Battery, or Company — Corps CAC — Date of enlistment 23-9-41 GC Badges N/A — Service or Proficiency Pay N/A

MFM 6 (AFB 122) 40/PAS/136 (3428)

Date of last entry in Company Conduct Sheet 23-3-42 — No and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No 2 — Signature OC Company, etc

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6-11-42	Tpr		Previous sheet destroyed 23-3-42 AA 40 "Neglect to the prejudice -----Dirty rifle.	E.M. Harding, Major P1559 Sgn SW	7 days C.B.	6-11-42	Major E.M. Harding	
Field	16-3-43	Pr		AA 40 "Conduct to the prejudice --used insolent language to an NCO	P3188 L/Sgt Evans, J.L.	7 days C.B.	11-3-43	A/Capt. P.W.Pearce	

Ex 'D'

CERTIFIED TRUE COPY OF RECORDS IN MY CUSTODY

L.B.Skinner
.....Capt.
(L.B. Skinner)
Adjutant 12 Fd. 2 C.B.H. Group

(PTO)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
D-4023	Gnr.	Henry, V.	12 Bn. 2 C.B.S. Group

* 1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:-

For AA 40 — Two times

For _____ — _____ times

For _____ — _____ times

For _____ — _____ times

Date of first entry in Field Conduct Sheet 6 Nov. 42

Date of last entry in Field Conduct Sheet 10 May 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3. The accused at the present time is under sentence for _____ beginning on the _____ day of _____

4. The accused has been awaiting trial on the present charges for _____ days in civil custody; and for _____ days in military custody, i.e., _____ days in open arrest, 2 days in close arrest; of which _____ days were spent in hospital.

5. The present age of the accused is 22 years 3 mos.

6. The date of his ~~enlisting up for military service~~ attestation is 23 Sept. 41

7. The service which the accused is allowed to reckon is 2 yrs, 8 mos, 14 dys

8. The accused is in possession of†

9. (If the accused is a warrant officer or N.C.O.) The accused has served continuously, without reduction, to the present date:

	Date of promotion
In the substantive rank of _____	_____
In the war substantive rank of _____	_____
In the acting rank of _____	_____

INSTRUCTION: If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

NOTE* The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

†Strike out if not applicable.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Discription of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 18th day of [illegible]

L B Skinner

HJ-114

PRE HENSHAW SH.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F43759 Pte Sheldon Manning HENSHAW, Perth

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not guilty	Not guilty of desertion but guilty of awk.	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

WMS ~~As present under sentence for~~ ~~(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)~~ ~~beginning on (date)~~ (1)

Time in confinement awaiting present trial—a total of 36 days, of which nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for one year.

(Sgd) W M W Shaw Capt — Judge-Advocate, if any

20 Nov 44 — Date awarded

(Sgd) [illegible] — President (RP 45, 50.)

(See back of Convening Order re assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally: AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the Court.

I direct that the accused be not committed to prison or detention barracks until further order.(1) (1. AA 57A. Delete if not used.)

(Sgd) [illegible] Johnston Brig

Date 21 Nov 44 — Commanding 11 Cdn Inf Bde — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

F43759 Pte Sheldon Manning HENSHAW 21 Nov 44 [illegible]

~~SHORED~~

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 1-JAN 1945 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160, 45-114

CFA98 (In lieu of AF A3) 40-P & S/1608 (2804)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig I S Johnston., DSO., ED, Comd 11 Cdn Inf Bde dated 15 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
F 43759	Pte	Capt	Sheldon Manning	HENSHAW	Perth

PROCEEDINGS REVIEWED 14 Jan 45 2 Jan 45

REVIEWING OFFICER JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 20 Nov 44 2E-149

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Cautions do NOT include all relevant fns RPs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial. The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ~~an interpreter? Ans~~ ~~a shorthand writer? Ans~~

The Interpreter is sworn.(1) Do you object to

The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F S Walker	Perth
Member	Capt	S McKinnon	CBH
Member	Capt	J R Hanley	3 RC
Judge-Advocate	Capt	W M W Shaw	HQ 5 Cdn Armd Div
Prosecutor	Capt	R S Chamberlain	Perth
Defending Offr	Capt	T Cooper	Perth

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) plea.(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

23/51

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ■ 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 86, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court viz see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(*1. RP 37(B). 2. RP 37(C) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to that Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No, Sir. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the~~ accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Yes, Sir. Give evidence
Ans Yes, Sir. One witness and I shall make a statement. Do you intend to call witnesses on your behalf ?
Are they witnesses as to character only ? No, Sir
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 101(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) ~~(a) The President announces that the accused is found Not Guilty on all charges and as to the relevant law in that the proceedings are accordingly terminated. Part II of this Schedule is (not) used. (2)~~
(*1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. ~~President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?~~(1)
Ans .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. AFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 552. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes Sir, I do.(2)
(*1. RP 37(C), 44(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F 43759 Private Sheldon Manning Renshaw, The Perth Regiment, C.A., a soldier of the Canadian Army, CA(CMF), is charged with:

CHARGE
Section 12 (1)(a)
Army Act

WHILE ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he did

At the Field, absent himself without leave from 2300 hours 6 October 1944 until apprehended at 1200 hours 8 October 1944 in Fescamp, with intent to avoid front line service.
Total absence, 1 day, 12 hours, 30 minutes.

At the Field
7 Nov 44.

Lieutenant-Col
(A.E. Andrews)
Comd. Perth Regt.

"To be tried by Field General Court Martial".

Field
16 Nov 44

(I S Johnston) Brig
Comd 11 Can Inf Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
F 43759	Pte		Sheldon Manning	HENSHAW	Perth R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[s] named above as the accused, being subject to military law, has [~~have~~] committed the offence(s) set forth in the Charge Sheet[s] attached and on (date) 16 Nov 44 endorsed by me, [~~the Charge Sheet~~] "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person[s], and to consist of the Offrs appointed or detailed hereunder.

4. [~~I also appoint as President of the Court, if not otherwise detailed, the senior Officer~~] [~~detailed hereto~~]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	P S Walker (Must be named. RP 106.)	Perth (Unit.)

MEMBERS.

Capt	S McKinnon	CBH
Capt (Rank.)	H R Handley (Named or detailed. RP 106.)	IRC (Unit.)

WAITING MEMBER.

Capt (Rank.)	R L Simmonds (Named or detailed, if any. RP 106.)	PL F (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.)	W M W Shaw (Must be named, if any. RP 106.)	HQ 5 Cdn Inf Bde (Unit.)

On Active Service in the Fd

in Italy (Country.)

(I S Johnston) (Signed personally. RP 105 fn 2.)

Brig (Rank.)

Date 16 Nov 44

Commanding 11 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (FAAG (In lieu of AFAS) 10/F & S/1697 (4231))

I certify that I have this morning examined No. 7437.5 ....

Rank. P.T.C. ..... Name. H.C.N.S.H.A.W. S.M. .... Unit. R.A.F. .....

and in my opinion he is fit/unfit to undergo trial by court martial.

Station. .....

Date. 20.2.44 .....

.....Medical Officer

1st Wit Pros] B78058 Sgt Dickson, R.J. Perth, duly sworn, states:
Am in 12 Pl. Perth.
Recognize Henshaw, he is accd. (pointing)
On 6 Oct my Pl in reserve position on Pallicon
river. 2 was Pl comd.
2 called Pl together at 0900 hrs + told them on one
hrs notice to move to front. Called Pl into one
room of house, had sec ldrs check secs + 2 checked
Pl. Henshaw in 9 sec.
Had hourly roll calls after 1700 hrs. On 2300 hr
roll call accd was missing.
Gave no cancellation of warning order.
Pl did move fwd next day + accd was not
with us.
XX m:- 2 instructed sec comds to check - no one
reported accd missing. Had 3 O/ps that
day + at each were instructed to be ready - were
with sec comds.
Sec comd reported him present.- asked each sec
comd if all present + correct.
Re-exam: nil.
Court:- Had been in line + moved out for 3 or 4 days
+ were preparing to move back in again. We were
about 1 mile from the front did not see accd
again until approx end of Oct. He was not
with Pl in meantime. In reserve no opportunity
when might come out to rest.
2 here with Pl only one month myself.
RP 83(3) complied with

2nd Wit Pros] A50126 L/Cpl Day, J.E. Perth, duly sworn, states:-
Recognize Henshaw, he is accd (indicating)
On 6 Oct 2 was in 12 Pl on reserve position on
Pallicon river. Sgt assembled Pl into one room
+ told us on one hours notice to move to front.
2 was sec comd. 2 checked my sec. Accd was
in my sec. All my men incl accd were present.
XX m:- 2 knew every man + did not call roll - were
7 men in my sec. 2 looked + called their names at
same time. 2 called each name.
Did not go fwd until following day. Was an order
from Sgt that notice was lifted - 2 told my sec
they moved forward - did not get in any beaps.
Re-exam:- Around 2300 hrs told notice lifted. Whole
Pl told. Can't remember if told again that on notice
Court:- Henshaw present when notice given. He was
not present when notice lifted. Had no info
prior to 2300 hrs that notice being lifted.
Had not seen him during night so 2 did not notice
till late that evening whether he had gone or not.
RP 83(3) complied with

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 1P2, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 43759	Pte		Sheldon Manning	HENSHAW	Perth R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 16 Nov 44 endorsed by me, (~~are hereby ordered to be tried~~) "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~And I hereby appoint (a) the said Court to be the Court, in which~~ I appoint as President for the reason that ~~I am the senior officer.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	P S Walker (Must be named. RP 106.)	Perth (Unit.)

MEMBERS.

Capt	S McKinnon	CBH
Capt (Rank.)	H R Handley (Named or detailed. RP 106.)	IRC (Unit.)

WAITING MEMBER.

Capt (Rank.)	R L Simmonds (Named or detailed, if any. RP 106.)	PL P (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.)	W M W Shaw (Must be named, if any. RP 106.)	HQ 5 Cdn Inf Bde (Unit.)

On Active Service in the Fd

in Italy (Country.)

(I S Johnston) (Signed personally. RP 105 fn 2.)

Brig (Rank.)

Date 16 Nov 44

Commanding 11 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAES (1) (2) Dirs of AFA2) 40/P & S/1947 (4801)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (*AA 52, KR Can 562, RP 26, 29, 111.*)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (*AA 52, MML 763, RP 82, 111.*)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (*RO (Can) 2692.*)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(*Referred to throughout CF A 96 as "Notes".*)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (*or*, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".
RP 85(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 85(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 1*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(B), KR Can 563(a).*)
(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 557.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (5).*)
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part 1 of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

I certify that I have this morning examined No. 743759
Rank. F/Sgt. Name. HANSHAW S.M. Unit. RAAF
and in my opinion he is fit/~~unfit~~ to undergo trial by court martial.
Station. [illegible]
Date 7-10-44 [illegible] Medical Officer

1st Lieut Pros] B73086 Sgt Dickson, R.J. Perth. duly sworn, states:
am in 12 Pl. Perth.
Recognize Henshaw, he is accd. (Secretary)
On 6 Oct my Pl in reserve position on Pallicon river. 2 was Pl comd
2 called Pl together at 0900 hrs & told them on one hrs notice to move to front. Called Pl into one room of house, had sec Cdrs check secs & 2 checked Pl. Henshaw in 9 sec.
Had hourly roll calls after 1700 hrs. On 2300 hrs roll call accd was missing.
Gave no cancellation of warning order.
Pl did move fwd next day & accd was not with us.
XX ns:- I instructed sec comds to check - no one reported accd missing. Had 3 O/Rs that day & at each were instructed to be ready - were with sec comds.
Sec comd reported him present - asked each sec comd if all present & correct.
Re-exam: nil.
Court:- Had been in line & moved out for 3 or 4 days & were preparing to move back in again. We were about 1 mile from the front. Did not see accd again until approx end of Oct. He was not with Pl in meantime. On reserve no info on when might come out to rest.
2 have been with Pl only one month myself.
RP 83(3) complied with

2nd Lieut Pros] A50126 L/Cpl Day, J.E. Perth, duly sworn, states:
Recognize Henshaw, he is accd (in dressing).
On 6 Oct 2 was in 12 Pl on reserve position on Pallicon river. Sgt assembled Pl into one room & told us on one hours notice to move to front. 2 was sec comd 2 checked my sec. Accd was in my sec. All my men incl accd were present.
XX ns:- 2 knew every man & did not call roll - were 7 men in my sec. 2 looked & called their names at same time. 2 called each name.
Did not go fwd until following day. Was an order from sgt that notice was lifted - 2 told my sec they moved forward - did not get in any barge.
Re-exam:- Around 2300 hrs told notice lifted. Whole Pl told. Don't remember if told again that on notice
Court:- Henshaw present when notice given. He was not present when notice lifted. Had no info prior to 2300 hrs that notice being lifted. Had not seen him during night so I did not notice. Will ask that evening whether he had gone or not.
RP 73(3) complied with

3rd wit Pros] The prosecutor, duly sworn, states:-
2 present art of appnd relating to accd (Exh "A")
XX-m:- nil
Court:- Pescara approx 5 miles behind Rubicon.
RPT3(B) complied with
Pros closed.

Accd wit Def] The accd, duly sworn, states:-
Remember 6 Oct. 2 went absent but did not know regt was going into action. When started out had no definite place to go. 2 went alone.
(Witness asked why he went absent & did not answer).
Do not remember Cpl Day calling my name going fwd.
XX-m:- Do not remember being told Pt would be
Re-exam:- nil
Court:- Had been in action with Pl & had been in on the Rubicon. Had been out for ~~days~~ two or 3 days when 2 went absent.
2 was working in the kitchen on morning of 6 Oct. Was working by myself. Was shot at mortar fire at place on river where we went for showers. (Witness again asked why he went absent & after several min indicated that would soon find answer. When pressed he replied, 2 do not remember)
RPT3(B) complied with.

1st Wit Character] A11869 Sgt Plume, NJ., Perth R, duly sworn, states:-
2 was formerly Cpl in B Coy & accd was under my comd. He just came before Liri valley came under heavy fire after & he was right there all the time. He is young but was a good soldier when he was with me. He never gave any indication that he would let me down.
XX-m:- nil
Court:- Got along well with other men. Considered one of the gang. Knowledge limited to actually in action, 2 left Pl after Liri valley
RPT3(B) complied with

Pros in closing:- Have proved warning to 12 Pl & accd definitely there. Cpl Day says order lifted but accd not there when they were told.
Def offr in closing:- Evidence of intent not sufficient. Certainly reasonable doubt. If confusion in orders could certainly be confusion otherwise. Character witness has seen accd under fire.

WMMS

admits awk but ask court to reduce to awk.
J.A. sums up:- Functions of court, credibility of witnesses, no required, presumption of innocence, burden of proof, reasonable doubt, desertion, intent, awk, AA56 4 RP 44(D)

Def off in mitigation :-

Acsd in Italy 5 mos & never had leave.
young soldier - joined when 16 yrs
always been a good soldier before.
admits awk.
ask court for leniency.

W.M.W. Shaw
capt.

CERTIFICATE IN ACCORDANCE WITH THE
ARMY ACT SEC. 163 (I) (ii)

I certify that

No. F 43759 Rank Pte Name HENSHAW. S.

of the 6th Regt 5 Canadian Div.

was arrested at Lescare at 1200 hours

on the 8th day of Oct 1944

(Signature of P.M., A.P.M., or other officer)
into whose custody the above named person
was taken on arrest.

Appointment (if any) [illegible] DET "23" PROVOST COY. ADJ
CORPS OF MILITARY POLICE

Commanding

Date 9/Oct/44 1944.

Appendix "A"

Substitute for AFB 296
or MFB 354

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

No. [illegible] Rank [illegible] Name [illegible] Unit [illegible]

Age 19 Married or Single [illegible] No of Dependents Nil

Date of Attestation 29 Oct 42

Number of days in Close arrest awaiting trial 36 days

Civil Nil Military Nil Hospital Nil Total 36

Dates of appointments, promotions etc (if any) W.I.

Decorations OVSM and clasp

In the Field
20
Nov 44
Date

[illegible]
(Officer i/c Regtl Books)

[illegible]
(Unit)

Note: Certified true copy of MFB 6 must accompany this form.

"B"
Nominos

No 7.43759 Name [illegible] B.M. Sqn, Battery, or Company [illegible] Corps C.I.C. Date of enlistment 3 Nov 42 GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40(P4)5/156 (3438)

Date of last entry in Company Conduct Sheet 18 Jan 43 Nil No and date of last drunk Nil Period not reckoning towards freedom from extra fine Nil Sheet No One Signature OC Company, etc [illegible] Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
[illegible]	[illegible]	[illegible]	[illegible]	Original sheet destroyed as at 5 May 43 date of last entry 18 Jan 43 date of last drunk Nil					
Alamburg Bks	27 Feb 43	Pte		Conduct to the prej etc in that he at that Bks was found asleep, AA40	Cpl Bloot	AA 40(2)(d)	28 Feb 43	G.Carmichael Lt Col	
Alamburg Bks	16 Jul 43	Pte		(Open arrest) Cond to prej etc at Post 58 was found asleep, AA40	Pte Simpson,T Pte Redmond,TM	14 days CB	17 Jul 43	G Carmichael Lt Col	
Queenston	12 Aug 43	Pte		Cond to prej etc wilfully damaged (NCO property-stripped bark off tree - AA40.	L/Cpl Jennings	5 days CB	13 Aug 43	WB Curtis Capt	
Alamburg Bks	3 Sep 43	Pte		AWL 1 day 2 hrs 45 mins (A"15(1) AWL 5 days 30 mins(Open Arrest	L/Cpl Chindemi Cpl Bourgue Dooy	10 dys fap 28 dys detn. 28 dys f.e.p.	9 Aug 43 13 Sep 43	G.Carmichael Lt-Col G.Carmichael Lt-Col	Tot.12 dys 4 dys susp.6.9.43 f.e.p.
CAMP Upperwash				Blood Donor (2nd) 2 Dec 43					

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11 Jun 44	Pte		AWOL AWL from 2130 hrs 10 Apr 44 until 2300 hrs 10 Apr (1 hr 30min)	Cpl McDonald Pte Coulter	3 days CB	17 Apr 44	Capt J Christiansen	
Field	11 Jun 44	Pte		AA 15(1) WOA8 AWL from 1800 hrs 11 Jun 44 to 1815 hrs 11 Jun 44 (15mins)	Sgt Read AW	5 days CB	12 Jun 44	MA Shelgrove Major	
Field	26 Jun 44	Pte		AA 15(1) AWL from 0930 hrs 26 Jun 44 to 1410 hrs 28 Jun 44 (Total 2 days 7 hrs, 10 mins)	Cpl Howlett Doc	28 days FP 28 days F.e.p. AMI 149(2)	16 Sep 44	MW Andrew Lt-Col	Forf 3 dys pay AMI 149(1)(a) Total f.e.p.31 days pay.

I certify that this is a true copy of the original document held in my possession as custodian of the regt'l documents.

(D. Thompson) Lieut
A/Adjt, The Perth Regt.

The Perth Regiment, C.A.(W.A.)

7 November 1944

SUMMARY OF EVIDENCE

Summary of Evidence in the case of [illegible] Private Sheldon Manning Henshaw, The Perth Regiment, C.A.(W.A.), charged with

1. While on active Service deserting His Majesty's Service.

The Commanding Officer directs that all evidence be taken on oath.

[illegible] 43086 Sgt. Dickson, R.C.A., 6th Platoon, "D" Company, The Perth Regiment, C.A.(W.A.), having been duly sworn, stated:

"I am [illegible] Sgt. Dickson, R.C.A. 6th Platoon "D" Company, The Perth Regiment, C.A.(W.A.).

Sir, at 0900 hours 6 October 1944, while the company was in a reserve position in the area of the Authion River, I warned the platoon that from 0900 hours on they were on one hours notice to move to the front. At 2300 hours 6 October 1944, when I called the roll of the platoon, Private Henshaw, S.M. did not answer his name. I checked my platoon area and failed to find Private Henshaw, S.M.

Did you take any steps to make sure the whole platoon was present before you warned them that they were on one hours notice to move to the front as of 0900 hours 6 October 1944?

I told the section leaders to check their sections and they did not report any absentees.

R.J. Dickson
(No 43086 Sgt. Dickson, R.C.A.)

WITNESS

The accused declines to cross-examine the witness.

S.M. Henshaw
(No 43759 Pte. Henshaw, S.M.)

(Page Two)

Second Witness

I am 6012[illegible] L/Cpl. Hay, J.A. of 1st Platoon, "D" Company, The Perth Regiment, C.I.(W.A.), having been duly sworn states:

"I am 6012[illegible] L/Cpl. Hay, J.A., Commander of number nine section of 1st platoon.

When Sgt. Dickson told the section Commanders to check their sections I immediately did so and Pte. Gunshaw, J.A. was present in the room at 0900 hrs 6 October 1944.

J6 Day

(6012[illegible] L/Cpl. Hay, J.A.)

The accused declines to cross-examine the witness:

J. Gunshaw

(J 40759 Pte. Gunshaw, J.A.)

Witness

Accused

(Cont'd from p.m.)

Capt. R.S. Chamberlain, M.C., "B" Company, The Perth Regiment, C.A.(Can), having been duly sworn states:

"I am Capt. R.S. Chamberlain, M.C., "B" Company, The Perth Regiment, C.A.(Can)

A precept certificate under s.s. 163(1)(a), purporting to be a signed statement by Lieut. Calloway, C.C. Provost Det at Ranocas, dated 9 October 1944, [redacted]. This statement is attached hereto and is marked Exhibit 'A'."

(R.S. Chamberlain, Capt.)

The accused was questioned as follows:

"Do you wish to make any statement or give evidence on oath? You are not obliged to do so, but whatever you say or do in giving evidence will be taken down in writing and may be given in evidence.

The accused at this time does not wish to make any statement or give evidence on oath.

(J 40708 Pte. Hughes, J.W.)

The accused declines to call any witnesses in his behalf.

Rules of Procedure 4 (1) (a) (i) have been complied with and this Summary of Evidence was taken down by me in the presence and hearing of the accused this seventh day of November 1944.

This Summary of Evidence consists of three pages.

(R.S. Chamberlain, M.C., Capt.
Officer detailed to take this Summary of Evidence,
The Perth Regiment, C.A.(Can)

F G C M F.43759 Pte Sheldon Manning HENSHAW
The Perth Regiment C. A.(CMF)

LIST OF WITNESSES FOR THE PROSECUTION

B.43086 Sgt Dickson R.J. Perth Regiment C.A.

A.80126 L/Cpl Day J.E. Perth Regiment C.A.

F G C M F.43759 Pte Sheldon Manning HENSHAW
The Perth Regiment C.A.(CMF)

LIST OF WITNESSES FOR THE DEFENCE

N I L

F G C M F.43759 Pte Sheldon Manning HENSHAW
The Perth Regiment C.A.(CMF)

LIST OF EXHIBITS

Exhibit 'A' Certificate of apprehension under Army Act Sec 163(1)(j) purporting to be a signed statement of Lieut Galloway, O.C. Det 231 Provost Coy, C.M.P.

F G C M F.43759 Pte Sheldon Manning HENSHAW
The Perth Regiment C.A.(CMF)

I do/~~do not~~ desire the Convening Officer to appoint an officer to represent me at my forthcoming trial by FIELD GENERAL COURT-MARTIAL.

I desire the services of Capt Smith

If he is available.

S. M. Henshaw
(F.43759 Pte Henshaw S.M.)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F 43759 Pte Sheldon Manning HENSHAW , Perth

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Not Guilty of Desertion but Guilty of AWL	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

"WOMS" ~~[illegible]~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 45(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 36 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under f2.)

Sentence Awarded by the Court : To undergo detention for one year

(Sgd) "W.M.W. Shaw" Capt — 20 Nov 44 — (Sgd) "F.S.Walker" Major
Judge-Advocate, if any. — Date awarded. — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I confirm the finding and sentence of the Court "ISJ"

I ~~[illegible]~~ (1. If not used. Delete if not used.)

(Sgd) "Ian S Johnston," Brig

Date 21 Nov 44 — Commanding 11 Cdn Inf Bde — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F43757 Pte Sheldon Manning HENSHAW	21 Nov 44	"D.L. Thompson Lt"

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY

(D. L. Thompson) Capt

Adjt

Can Sec GHQ 2 Echn AAI

FIELD GENERAL COURT-MARTIAL

(Page 1 of [illegible] Pages) 4/388

(Convened by Order of Brig I S Johnston., DSO., ED. Comd 11 Cdn Inf Bde Dated 15 Nov 44)

15 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 306, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 43759	Pte	Sheldon Manning	HENSHAW	Perth R.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 20 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. For oaths and instrs on how to record evidence, etc, which items are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial (1) ~~[illegible]~~

"WOMS" ~~[illegible]~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

"WOMS" ~~[illegible]~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	F.S. Walker	Perth C.B.H.
Member	Capt	S. McKinnon	I.R.C.
Member	Capt	J.R. Hanley	
Judge-Advocate	Capt	W.M.W. Shaw	Hq 5 Cdn Armd Div
Prosecutor	Capt	R.S. Chamberlain	Perth
Defending Offr	Capt	T. Cooper	Perth

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ~~[illegible]~~ before arraignment make(s) (no) (a) plea "WOMS" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsF cited. Insert in A8 rank and name of the accused making the plea.)

"WOMS" A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

"WOMS" A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 50, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused : Do you wish to make a statement ? Ans .....(3)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No Sir .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

"MWS" D2. The Prosecutor makes (an) [redacted] opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) [redacted] "WLWS" [redacted]
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)*
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Give Evidence

"MWS" Do you intend to call witnesses on your behalf ?
Ans Yes Sir One witness as to character. "WLWS"
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
"MWS" [redacted]
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 46, 117. The alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

"MWS" E[redacted]
Ans .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(j) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes Thru def Offr .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 138, 119(A), KR Con 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, # 43759 Private Sheldon Manning Henshaw, The Perth Regiment, C.A. a soldier of the Canadian Army, CA(CMF), is charged with:

CHARGE
Section 12(1)(a)
Army Act — WHILE ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he did

In the Field, absent himself without leave from 2300 hours 6 October 1944 until apprehended at 1200 hours 8 October 1944 in Pescara, with intent to avoid front line service.

Total absence, 1 day, 12 hours, 30 minutes.

"M.W. Andrew" Lt-Col.
(M.W. Andrew)
Comd Perth Regt.

In the Field
7 Nov 44

"To be tried by Field General Court Martial"

"Ian S Johnston"
(I.S. Johnston) Brig
Comd 11 Can Inf Bde

Field
16 Nov 44

"[illegible]"

"PSW"

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/PAM/1697 (1668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F 43759	Pte		Sheldon Manning	HENSHAW	Perth R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused," ISJ " being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 16 NOV 44 endorsed by me, (~~for the~~ an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ " ISJ " attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	F.S. Walker	Perth

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	S. McKinnon	C.B.H.
Capt	H.R. Handley	I.R.C.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	R.L. Simmonds	P.L.F.

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	W.M.W. Shaw	Hq 5 Cdn Inf Bde

On Active Service in the Fd

in Italy
(Country.)

"Ian S Johnston"
(I.S. Johnston)
(Signed personally. RP 105 fn 2.)

Brig
(Rank.)

Date 16 Nov 44

Commanding 11 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"WMWS"

"FSW"

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2692.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in *CF A 96*, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 585(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of *CF A 96* in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, *etc.* (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of *CF A 96* and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part 1 of Schedule on p 4 after minute of sentence awarded. (*AA 53(8), RP 118(C), MML p 750.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

I certify that I have this morning examined No.

F 43759 Rank Pte Name WENSHAW S.M. Unit Perth and in my opinion he is fit to undergo trial by Court Martial.

Station Field

Date Nov 20th 44

"Undecipherable" Capt
Medical Officer

"WAWS"

1st wit)
Pros'n)

B43086 Sgt Dickson, R.J. Perth, duly sworn states:-

Am in 12 Pl Perth.
Recognize Henshaw, he is accused, (Pointing)
On 6 Oct my Pl in reserve position on Rubicon River. I was Pl Comd. I called Pl together at 0900 hrs & told them on one hrs notice to move to front. Called Pl into one room of house, had sec ldrs check secs & I checked Pl. Had Henshaw in 9 sec. Had hourly roll calls after 1700 hrs. On 2300 hrs roll call acsd was missing.
Gave no cancellation of warning order. Pl did move fwd next day & acsd was not with us.
Adm:- I instructed sec comds to check - no one reported acsd missing. Had 3 'O'Grps that day & at each were instructed to be ready- were with sec comds.
Sec Comd reported him present - asked each sec comd if all present & correct.
Re-Exam:- Nil
Court:- Had been in line & moved out for 3 or 4 days & were preparing to move back in again. We were about one mile from the front. Did not see acsd again until approx end of Oct. He was not with Pl in meantime. In reserve no infm on when might come out to rest. I have been with Pl only one month myself-

R.P. 83(b) Complied with

2nd wit)
Pros'n)

A50126 L/Cpl Day, J.E. Perth, duly sworn, states:
Recognize Henshaw, he is acsd (indicating).
On 6 Oct I was in 12 Pl on reserve position on Rubicon River Sgt assembled Pl into one room & told us on one hours notice to move to front. I was sec Comd. I checked my sec. Acsd was in my sec. all my men incl acsd were present.
Adm:- I knew every man & did not call roll - were 7 men in my sec. All I looked & called their names at same time. I called each name. Did not go fwd until following day. Was an order from Sgt that notice was lifted - I told my sec - Coy moved forward did not get in any scrap.
Re-Exam:- Around 2300 hrs told notice lifted - whole Pl told. Don't remember if told again that on notice.
Court:- Henshaw present when notice given. He was not present when notice lifted. Had no infm prior 2300 hrs that notice being lifted. Had not seen him during night so I did not notice till late that evening whether he had gone or not.

R.P. 83 (b) Complied with.

rd Wit)
ros'n)

The prosecutor duly sworn states.

I present Cert of appreh relating to acsd (Exh "A")
Adm:- Nil
Court :- Pchara approx 50 miles behind Rubicon

R.P. 83 (b) Complied with

Pros'n Closed.

st)
)q
)

The acsd, duly sworn, states:-
Remember 6 Oct. I went absent but did not know Regt was going into action. When started out had no definate place to go. I went alone.
(Witness asked why he went absent & did not answer)
Adm:- Do not remember Cpl Day calling my name.
Re-Exam:- Nil
Court:- Do not remember being told Pl would be going fwd. Had been in action with Pl & had been in on Rubicon. Had been out for two or 3 days when I went absent. I was working in the kitchen on morning of 6 Oct . Was working by myself. Was shell or mortar fire at place on river where we went for showers. (Witness again asked why he went AWL & after several minutes indicated that would sooner not answer. When pressed he replied, I do not remember)

R.P. 83(b) Complied with.

Page 2 Cont'd

1st wit) Character)

A11869 Sgt Plume, N.J. Perth R, duly sworn states:-
I was ~~formerly~~ formerly Cpl in B Coy, & acsd was under my comd. He first came before Liri valley, came under heavy fire often & he was right there all the time. He is young but was a good soldier when he was with me. He never gave any indication that he would let me down.

AAM:- Nil

Court:- Got along well with other men, considered one of the gang. Knowledge limited to actually in action, I left Pl after Liri valley.

R.P. 83 (b) Complied with

Pros in closing:- Have proved warning to 12 Pl & acsd definately there. L/Cpl Day says order lifted but acsd not there when they were told.

Def Offr in closing :- Evidence of intent not sufficient . Certainly reasonable doubt. If confusion in orders could certainly be confusion otherwise. Character witness has seen & been with acsd under fire.

"WMS"

111

Admits AWL but ask court to reduce ~~XXX~~ to ~~XXX~~ AWL.

J.A. sums up :- Functions of court, credibility of witnesses, no. required, presumption of innocence, burden of proof, reasonable doubt, desertion, intent, AWL. AA 56 &R.P. 44 (b)

Def Offr in Mitigation:-

Acsd in Italy 8 mos & never had leave . Young soldier - joined when 16 yrs always been good soldier before. Admits AWL.

Ask Court for leniency.

"W.M.W. Shaw"
Capt

CERTIFICATE IN ACCORDANCE WITH THE
ARMY ACT SEC. 163 (I) (JJ)

Certify that

No. F 43759 Rank Pte Name HENSHAW S. of the Perth Regt

5 Canadian Div was arrested at Pescara at 1200 hours on

the 8th day of Oct 1944.

Signature of P.M. A.P.M., or other officer
into whose custody the above ~~person~~ named
person was taken on arrest.

"Galloway"

Appointment (If Any) T/C Det 231 Provost
Company, Corps of Military
Commanding Police

Date 9/Oct/44

Appendix "A" "RSC" "A"
"WMWS"

Substitute for AFB 296

or MFB 356

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

No. F 43759 Rank Pte Name SHELDON MANNING HENSHAW Unit Perth Regt

Age 19 Married or Single Single No of Dependants Nil

Date of Attestation 29 Oct 42

Number of days in close arrest awaiting trial 36 days

Civil Nil Military Nil Hospital Nil Total 36

Dates of appointments, promotions etc (if any) Nil

Decorations CVSM and Clasp

Inthe Field

20 Nov 44
Date

"D.L. Thompson" Lt"
(officer i/c Regtl Books)

Perth Regiment C.A.
(Unit)

Note: Certified true copy of MFM 6 must accompany this form.

"B"
"WMWS"

MFM 6
(AFB 122)
40/PAS/126 (5438)

No. F. 43759 Name HUNSHAW S. M. | Sqn, Battery, or Company B | Corps C.I.C. | Date of enlistment 13 Nov 42 | QC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet 18 Jan 43 | No. and date of last drunk NIL | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc WL Hogart, Lieut

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Original sheet destroyed as of 3 May 43 date of last entry 18 Jan 43 date of last drunk Nil WL Hogart									
Allanburg Bks	27 Jun 43	Pte		Conduct to the prejudice etc in that he at Post 14 was found asleep AA 40 (Open Arrest)	Sgt Dankert	5 days P&A AA 45(2)(d)	29 Jun 43	G Carmichael Lt-Col	
Allanburg Bks	16 Jul 43	Pte		Cond to prejetc at post 58 was found asleep AA 40	Pte Simpson Pte Redmond	AP 14 days CB	19 Jul 43	G Carmichael Lt-Col	"C" "AAAS"
Queenston	12 Aug 43	Pte		Cond tp prej etc wilfully damaged HEPC property-stripped bark off tree - AA 40.	L/Cpl Jennings	5 days CB	13 Aug 43	WB Curtis Capt	
Queenston	12 Aug 43	Pte		AWL 1 day 2 hrs 45 mins (AA15(1)	L/Cpl Chin	demi lo dys fop	9 Aug 43	G Carmichael Lt-Col	pot 12 fop dys aut
ALLANBURG-	3 Sep 43	Pte		AWL 5 days 30 mins(Open arrest	Cpl Bourque Docy	28 dys detn 28 dys f.o.p.	13 Sep 43	G. Carmichael Lt-Col	6 dys auto f.op.
Camp Ipperwash				Blood Donor (2nd) 2 Dec 43					

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13 Apr 44	Pte		WOAS AWL from 2130 hrs 13 Apr 44 until 2300 hrs 13 Apr (1 hrx 3 min)	Cpl McDonald Cpl Coulter	3 days CB	17 Apr 44	Capt W Christianson	
Field	11 Jun 44	Pte		AA 15(1) WOAS AWL from 1800 hrs 11 Jun to 1815 hrs 11 Jun 44 (15mins)	Sgt Read AW	5 days CB	12 Jun 44	HA Snelgrove Major	
Field	26 Jul 44	Pte		AA 15(1) AWL from 0700 hrs 26 Jul 44 until 1410 hrs 28 Jul 44 (Total 2 days 7 hrs, 10 mins)	Cpl Howlett Doc	28 days FP 28 days f.o.p. FRI 149(2)	16 Sep 44	LN And rewLt-Col	Forf 3 dys pay FRI 149 (1)(a) Total f.o.p. 31 days pay.

I certify that this is a true copy of the Original document held in my possession as custodian of the regt'l documents.

"D.L. Thompson, Lt"
D.L. Thompson, Lieut
A/Adjt, The Perth Regt.

54-5

Pte. Henshaw, L.M.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F-43759 Pte HENSHAW, Sheldon Manning - 2 CGRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn (m).)

At present under sentence for [illegible] (beginning) on (date) 20 NOV 45 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of six (6) months and to be put under stoppages of pay until he has made good £5-2-0 the expenses of his return to his unit

(Sgd) _____ Judge-Advocate, if any. Date awarded. (Sgd) _____ President. (RP 43, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 2 Sept 45 (Sgd) H.N. Brownfield Brigadier, Commanding "C" Group, Con Reinforcement Units. Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F-43759 Pte HENSHAW S.M.	24 Sept 45	[illegible]

Published in 2 CGRU DO part II No 55/26 Sep 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 164 [illegible] 5-4-5

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA81, 40/P & B/1008 (B144)) 4/38B

Convened by Order of Brig HON Brownfield CBE MC, Comd "C" Gp, CRU dated 17 Sep 45

8 OCT 1945 JAG BRANCH G.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F-43759	Pte	Sheldon Manning	HENSHAW	2 CGRU

PROCEEDINGS REVIEWED

1703 4 octs 45 Prod, nec

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) at [illegible] on (date(s)) 20 SEP 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr~~, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for instrs and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1200 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ... an interpreter? Ans ...~~

~~The Interpreter is sworn.~~(1) Do you object to C 96167 Sgt Bonnerjee shorthand writer? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO, SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L. REDMAN	HQ CRU
Member	CAPT	A.C. HOLLAND	1 CGRU
Member	LIEUT	M.J. FRASER	1 CGRU
~~Judge-Advocate~~			
Prosecutor	CAPT	J.C.P. HARDY	2 CGRU
Defending Offr	LIEUT	L.G. GIBBINS	2 CGRU

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ... before arraignment make(s) (no) (a) plea ...(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, ete, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; securing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO. SIR (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... .(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....
Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(C). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The Court is re-opened.(2) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(3)
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans NO - SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits in the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans NO - I WISH TO CALL A WITNESS (2)
(*1. RP 37(C), 46(D). 2. Address, if not recorded per Notes. Court should permit accused or his witnesses to prove on such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 90, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F.43759, Pte. Sheldon Manning HENSHAW, CIC, on strength of No. 2 Cdn. Gen. Reinf. Unit, a soldier of the Cdn. Army Overseas, is charged with:

FIRST CHARGE
Sec. 15(1)
Army Act.

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, did absent himself without leave from 2359 hrs. 6 Jul 45, until apprehended by the Cdn. Provost Corps in Edinburgh at 2130 hrs. 6 Sep 45, thereby incurring costs of apprehension and return to his unit in the amount of £5-2-0.

(Time Absent:- 61 days, 21 hrs. 31 min.)

In the Field.

14 Sept. 45.

(W.A.Townsley) Colonel.
Commanding Officer
No.2 Cdn.Gen.Reinf.Unit.

To be tried by Field General Court Martial

Brigadier
Commanding "C" Group, Cdn Reinforcement Units
(Convening Officer)

17 Sep 45
Bordon, Hants.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-43759	Pte		Sheldon Manning	HENSHAW	2 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has (~~he~~) committed the offence set forth in the Charge Sheet attached and on (date) this date endorsed by me, (~~he~~) to be tried by Field General Court-Martial". 1/13

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial; (a~~he~~ [redacted] 1/13

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. [redacted] 1/13

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted] 1/13

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt-Colonel	D.L. Redman, VD		HQ CRU

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	To be detailed by CO		1 CGRU
Lieutenant	To be detailed by CO		1 CGRU

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

Dat 17 Sep 45

H.W. Brownfield Brigadier (Rank.)
(Signed personally. RP 105 fn 2.)

Commanding "C" Group, Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 96 (To Sect of AFA 3) 40-9 A&E/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2692.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 13 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563.(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 123 (1) (g) (A).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

Medical Offr's Certificate
K R (Can) para 557

I certify that I have this morning examined No: F. 42759 (W.R.) Pte.
HENSHAW, S.M. (Name) of H.C.D.Bn and in my opinion he is
fit to undergo trial by Court Martial.

Station Borden
Date 20-9-45

SGD [signature] (Medical Offr)

Plea of Mitigation

In the case of F.43759 Pte. E.M. HENSHAW, G.I.C., No. 9 C.G.R.U.

This man pleads guilty of the charge, and places himself upon the mercy of the Court.

However, there are three things in this man's story which I would respectfully request that the Court take into consideration.

First, he claims that since he received his embarkation leave in Canada, he has had no leave whatsoever, except for two days down to Salerno in Italy. He has never been given any reason why leave was never granted despite frequent requests.

Secondly, and perhaps this is the most important, this man had no mail from his home for the last year, despite his letters home. He has been very worried about it, and instituted enquiries through the unit padre's office, but nothing has come of it.

The third fact is that whilst in Italy, a Field Court-martial sentenced him to one year's detention for an absence without leave of only thirty six hours, and the accused feels that the sentence was out of all proportion to the crime.

The combination of these three facts produced in him a state of mind where it was rather easy to go absent without leave, and much easier to stay away.

E-3

SUMMARY OF EVIDENCE

In the case of F.43759, Pte. Sheldon Manning HENSHAW, CIC, on strength of No. 2 Cdn. Gen. Reinf. Unit, a soldier of the Cdn. Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

First Witness Prosecution.

Capt. W.C. Mathews, 2 C.G.R.U., having been duly sworn states as follows:-

"I am Capt. W.C. Mathews, 2 C.G.R.U. and I produce the following documents pursuant to Overseas R.O. 5352, which have been read over and shown to the accused and which are attached hereto as exhibits:-

Exhibit "A":- Certified True Extract of 4 CITR Pt. II D.C. No. 195, d/28 Aug 45, showing F.43759, Pte. Henshaw, S.M. A.W.L. from 2359 hrs. 6 Jul 45 and still A.W.L. at 2359 Hrs. 28 Jul 45 (22nd day).

Exhibit "B":- Certificate in accordance with P.C. 2797, showing F.43759, Pte. Henshaw, S.M. was arrested at Edinburgh by the Cdn. Provost Corps at 2130 hrs. 6 Sep 45.

Exhibit "C":- Certificate of Expenses (Expense Voucher) showing costs of apprehension & return of F.43759 Pte. Henshaw, S.M. to his unit in the amount of £5-2-0.

Which above exhibits pertain to the accused herein."

The accused declines to cross-examine this witness.

W.C. Mathews
---Capt.
(W.C.Mathews)

The accused was cautioned as follows:-

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C) (D) (E) and (F) have been complied with.

In the Field.

14 Sep 45.

J.R. Mathieu
---Lieut.
(J.R.Mathieu)
Officer detailed to take Summary.

EXA

m

Last Order
194
25 Aug.45.

4 Cdn. Inf. Training Regt.,
Daily Orders Pt.II
issued by
Colonel R.C. Clark, DSO, Officer Commanding.

This Order
195
28 Aug 45.

7. ABSENT WITHOUT LEAVE

7-D. A.W.L. from 2359 hrs. 6 Jul 45. Still A.W.L. at 2359 hrs. 28 Jul 45 (22nd day)

F.43759, Pte. Henshaw, S.M. (Perth R)

(Sgd). (K.J.C.Ridley) Captain,
for Major i/c Administration
4 Cdn. Inf. Trg. Regt.

Certified True Extract,

14 Sept 45.

----------Lieut.
(J.R.Mathieu)
Officer having custody of original.

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42. B

I certify that No. F.43759 Rank. Pte. Name Henshaw,S.M.

Unit 4.C.I.T.B. Was arrested at Edinburgh (Place)

at 21.30 (Hour) on 6-Sept.45 (date) and that at the time of his arrest, he was wearing (Military Uniform) ~~CIVILIAN CLOTHES~~. Signature of Provost Marshal, Assistant Provost Marshal, or other officer of the Commanding officer of the portion of His Majesty's Forces or the Officer, Warrant Officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army) into whose custody the above named person was taken on arrest. (Strike out part inapplicable.)

London

10-Sept.-45

(R.J.Swinson) Capt.
D.A.P.M. C.M.H.Q.

C

Expense Voucher Re—

Ref: KR & O (Can) 539

Reg No. F-43759 Rank Pte. Name Henshaw, S.W. Unit 4 C.I.T.R.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit from London from Edinburgh

Date	Particulars	Amount £	s.	d.
10 Sept 44	Escorts return fare from LONDON To Edinburgh	3	0	8
	Prisoners single fare to LONDON From Edinburgh	1	10	4
	Prisoners fare from to	—	11	—
	Escorts & Prisoners expenses for Bed, Meals, Bus fares	—	7	0
	Total £	5	7	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Capt

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London

PM

1/35 CMHQ 100-35
40/P & S/482 (6762)

LIST OF WITNESSES

In the case of F.43759, Pte. Henshaw, S.M.

CIC, on strength of 2 C.C.R.U. a soldier of the Cdn. Army Overseas.

(For Prosecution)

1. Capt. W.C.Mathews. 2 C.C.R.U.

(For Defence)

NIL.

LIST OF EXHIBITS

(For Prosecution)

Exhibit "A":- Certified True Extract of 4 CITR Pt. II D.O. No. 195, 4/28 Aug 45, showing accused AWL from 2359 hrs. 6 Jul 45.

Exhibit "B":- Certif. in accord. with P.C. 2797, showing accused arrested at Edinburgh at 2130 hrs. 6 Sep 45.

Exhibit "C":- Expense Voucher showing costs of apprehn. and & return of accused in amt of £5-2-0.

(For Defence)

NIL.

REQUEST FOR DEFENDING OFFICER

I, F.43759, Pte. Henshaw, S.M. hereby request that the Convening Officer appoint Any English Speaking Officer to represent me at my forthcoming trial by Court-Martial, should he be available.

In the Field,
14 Sep 45.

S M Henshaw Pte.
(S.M.Henshaw)

RECEIPT FOR DOCUMENTS

I, F.43759, Pte. Henshaw, S.M. hereby acknowledge that I have received a true copy of the Summary of Evidence taken in England preliminary to my Court-Martial, and I further acknowledge receipt of a true copy of the charge sheet under which I am being brought to Court-Martial.

14 Sep 45.

S M Henshaw Pte.
(S.M.Henshaw)

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F.43759.	Pte.	Henshaw, S.M.	2 CGRU

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Sec.40 ..... 3 ..... times.

For Sec. 15(1) ..... 3 ..... times.

For .... times.

For .... times.

Date of first entry in Field Conduct Sheet 27 June 43

Date of last entry in Field Conduct Sheet 6 Oct 44.

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~3. The accused at the present time is under sentence of~~

~~beginning on the day~~

4. The accused has been awaiting trial on the present charges for N/- days in civil custody; and for 13 days in military custody, i.e., NIL days in open arrest, NIL days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 20 yrs. 10 mon.

6. The date of his ~~(1)~~ attestation ~~enlisting up for military service~~ 29 May 41.

~~7. The service which the accused is allowed to reckon is~~

†Strike the subsequent paragraphs out if not held to be required.

8. The accused is in possession of‡ CVSM & CLASP, 1939-45 Star. Italy Star.

9. *(If the accused is a warrant officer or N.C.O.).* The accused has served continuously without reduction, to the present date—

Date of Promotion.

In the substantive rank of .....

In the war substantive rank of .....

In the acting rank of .....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

CXB

(72507) Wt.30721/3707 25,000 3/44 A.& E.W. Ltd. Gp.690

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	Italy 20 Nov 44	Sec.12(1) Desertion.	Detention for period of One Year.	~~6 months HL~~ ~~reduction~~. Suspended wef 25-5-45

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 20 day of Feb 45

J. R. Matheson Lt
Officer having custody of regtl Books.

No. F43759 Name Henshaw, S.M. Sqn., Battery, or Company

COPY

Corps

Date of enlistment 3 Nov 42 G.C. Badges

Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 17SM—7-41 (1219-20) H.Q. 1772-39-1852

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No. 1

Signature O.C. Company, etc.

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Original sheet destroyed on at 3 May 43. Date of last entry: 18 Jan 43. Last drunk: Nil.					
Allenburg Area.	27 Jun 42			Sec.40 Conduct to Prej. in that he was found asleep at Post 14.	Sgt. Lenkont. Cpl.Bucci.	5 days F.&D. Am 45(2)(a)	29 Jun 43	Lt-Col. Carmichael.	
Allenburg Area.	16 Jul 42			Sec.40 Conduct to Prej. in that he was found asleep at post 58.	Pte.Glasgow	14 days CB	19 Jul 43	"	
Queenston	18 Aug 42	Pte.		Sec.40 Conduct to Prej. in that he wilfully damaged RAPC property (stripped bark off a tree)	Pte.Redmond. L/Cpl.Jennings	5 days CB	13 Aug 43	Capt.Curtis. W.S.	
Queenston	7 Aug 43	Pte.		Sec.15(1) AWL 1 day 2 hrs 45 min.	L/Cpl.Cairdmel. A.	10 days FP.	9 Aug 43	Lt-Col. Carmichael	

(Over)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Nature of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Ipperwash				BLOOD DONOR (2nd) 2 Dec 43.					
Field	13 Apr 44	Pte.		Sec.15(1) "A" AWL 1 hr 30 min.	Sgt.Reed,	5 days C.B.	12 Jun 44	Maj Snelgrove	
Field	26 Jul 44	Pte.		Sec.15(1) AWL 2 days 7 hrs. 10 min.	Cpl.Howlett	28 days FP			
Field	6 Oct 44			Sec.15(1) (a) desertion. In that he was sent AWL at 2300 hrs.6 Oct 44with intent to avoid front line duty. servicesuntil apprehd.at 1300 hrs. 8 Oct 44. (1 day, 15 hrs.30 min)		Forf 28 dys 15 Sep pay FRI 149(1) Detention for One Year. (Remitted 25 May 45)	44 20 Nov 44	Lt-Col. [illegible]	

14 Sep 45. Certified true copy consisting of two pages.

[signature] Lt,
Offr having custody of original.

NAME Henson, L.J.

Reg. No. L.8934

Tr. Centre No.

Clearing Depot No.

Contents

M. F. M. 99 or 99A (Enrol. Form)

M. F. M. 101 or 101A (Enrol. Form)

M. F. M. 82 or 82A (Enrol. Form)

N. W. .S 1AR or 1AR FR (Med. Exam)

M. F. B. 227 (Med. Board)

CASE HISTORY SHEETS

MORNING SICK REPORT (M. F. B. 292)

CONDUCT SHEETS

DECLARATION of C. of I.
(Copy of Record from M. B. 65)

M. F. M. 110 (Particulars of Family)

M. F. M. 25 or 25A (X-Ray Report)

M. F. B. 228A (Last Pay Certificate)

M. F. B. 209 or 209A DISCHARGE CERT. (Copy)

M. F. M. 7A or 7C DISCHARGE CERT. (Dup.)

M. F. B. 483 DESERTERS-DESCRIPTIVE RETURN OF

M.F.B. 228A
(Last Pay Certificate)

H. Q. File No.

D/D
A/789-1-1-32
A/807-2-12-38
A466-101-209

SECRET

DISCHARGE PAPERS

Non-Effective By

99/37
[illegible]/HENSON CS/1

FAK 203

H 8934 Pte L/Cpl Henson CS

CENTRAL REGISTRY	DATE	P.A. OR B.F.	INITIALS	REFERRED TO	FOR REMARKS	INITIALS	DATE
JUN 19 1945	[illegible]	[illegible]	[illegible]	AG 12	Papers	CR	17-6-45
JUN 26 1945	[illegible]	[illegible]	[illegible]	AG12	WITH PAPERS	C.R	JUN 25 1945
JUL 2-1945	[illegible]	[illegible]	[illegible]	AG12	[illegible]	C.R.	2 July
JUL 7 1945	[illegible]	[illegible]	[illegible]	AG12	PER B.F.	C.R.	JUL 7-1945
JUL 11 1945	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
				[illegible]	PER B.F. PAPERS	C.R.	JUL 17 1945
JUL 31 1945	20 Aug	[illegible]	DSC	ADC	Signature GOi/c	DSC	25 Jul
				[illegible]	[illegible]	[illegible]	[illegible]
				ADC	Signature GOi/c	DSC	17 Aug
[illegible]	3 Nov	[illegible]	DSC	AG12		[illegible]	18 Aug
5 NOV 1945	3 DEC	[illegible]	[illegible]	A8	B.F.	[illegible]	3/11
1 DEC 1945	[illegible]	[illegible]	[illegible]	A8	B.F.	[illegible]	[illegible]
5 DEC 1945	[illegible]	[illegible]	[illegible]	A8	B.F.	[illegible]	[illegible]
4 DEC 1945	10 Jul 45	[illegible]	[illegible]	A8	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]				

99/37/ HENSON CS

15 Mar 46

Canadian Military Headquarters
2 Cockspur St
London, SW 1

H8934 Rfn Henson C.S.
4/Regina Rif CASF

1 yr detn	29 May 45	24 Aug 45	GOC 3 Cdn Inf Div CASF on 1 Mar 46

(J A P de Salaberry) Major
DAAG Pers
for OIC Records CMHQ

Please ensure that correct casualty return has been rendered and documentation of rendition is completed

XI.

Space for further Review (continued from page 2).

Date	Direction	Signature and Appointment of Authority giving the direction	If sentence suspended, date of release, No. of marks earned to count towards remission, and Signature of O.C. Prison or Detention Barracks

XII.—Remarks and recommendations of C.O. on Second Trial.

Date		Signature

XIII.—Remarks and recommendations of Confirming Officer on Second Trial.

Date		Signature

CERTIFIED TRUE COPY

E. Clapperton Capt

Army Form A 3104.

REVIEW OF SENTENCES AWARDED BY COURT MARTIAL.

I.—Case of No. H.8934 L/Cpl HENSON C S Unit South Sask Regt

Sentenced to 1 year detention on 29 May 45

Age on, and date of, enlistment 19 29 Mar 43 Term of service 2 yrs 2 mons

FIRST TRIAL.

For details of offences, see paragraph VII.
For C.O.'s remarks, see paragraph IX.

II.—To .....
Superior Military Authority.

I have directed that the above-named be not committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) for reasons given in paragraph X.

Place .....

Date .....
Confirming Authority.

III.—I direct that the sentence (which I hereby commute to .....) (of which I remit .....) (1) (2) (be suspended) (be put into execution) (1) and be reviewed on .....(3).

Place .....

Date .....
Superior Military Authority (4).

(For action on review, see paragraph VI.)

SECOND TRIAL.

For details of offence, see paragraph VIII.
For C.O.'s remarks, see paragraph XII.

IV.—(5) To .....
Superior Military Authority.

This man was again convicted on ..... and sentenced to .....
and I have directed that he shall not be committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) and run (concurrently) (consecutively) (1) with the previous (6) sentence for the reasons given in paragraph XIII.

Place .....

Date .....
Confirming Authority.

V.—(5) I direct that the sentence (which I hereby commute to .....) (of which I remit .....) (1) (2) (be suspended) (be put into execution) and that it run (concurrently) (consecutively) (1) with the previous (6) sentence of ..... and be reviewed on .....(3).

Place .....

Date .....
Superior Military Authority (4).

(1) Erase words not required, and initial erasures.
(2) A sentence of penal servitude or imprisonment, combined with Discharge with Ignominy, cannot be suspended unless the Discharge with Ignominy is remitted.
(3) A suspended sentence must be reviewed at least once every three months, and a sentence put into execution should be reviewed in not more than six months.
(4) An order directing a sentence to be put into execution must be signed by the Superior Military Authority personally.
(5) This paragraph to be left unused until required. If the man is convicted a third time, a fresh form, using only paragraphs IV and V, will be made out and attached to this form, and all further reviews will be on the attached form.
(6) A previous sentence of imprisonment or detention in a state of suspension is avoided by the award of a subsequent sentence of penal servitude.

(*26502) W1.49340/115 26,000 1/44 A.&E.W.Ltd. Gp.A/98 Forms/A.3104/12

VI. **Action on Review.**

(Whether the sentence or sentences are suspended or in execution.)

Any Reviewing Authority *under Section 57 of the Army Act* may under that Section mitigate, remit or commute a sentence which is in execution, and if the sentence as commuted or mitigated is penal servitude, imprisonment or detention, it will remain subject to the powers granted by Section 57A of the Army Act. A partial remission of a sentence in suspension is not legal.

All recommendations, etc., considered upon review, should be pasted here.

Date	Directions	Signature and Appointment of Authority giving the directions.	If sentence suspended, actual date of release and marks earned to count towards remission, and signature of O.C. Prison or Detention Barracks
	No remission BF 30 Aug 45	"ELM Burns" Maj-Gen GOIC Cdn Sec 1 Ech HQ 21 Army Gp 27 Jul 1945	
	Suspend w.e.f. 24 Aug 45	"ELM Burns" Maj-Gen GOIC Cdn Sec 1 Ech HQ 21 Army Gp ~ 19 Aug 1945	sent susp wef 24 Aug 45 marks earned wef 24 Aug 45- 704 days in susp 277 released 24 Aug 45 WD Cain, Major, Comd 1 Cdn Detn & PP Bks
	remain in suspension BF 1 Mar 46	C Vokes, Maj-Gen GOC 3 CID CAOF 24 Nov 45	
	remit remainder of sentence	do 1 Mar 46	

(Continued on page 4.)

Charge or Charges giving particulars	Date of Offence	Date of Trial
FIRST CHARGE:- AA Sec 40 - Conduct to the prejudice of good order etc. in that he at approx 2315 hrs on 5 May 45 fraternized with Mrs. Frieda neumann, an inhabitant of Germany by having sexual intercourse with her at Ofen, Germany. SECOND CHARGE:- AA Sec 6 - Being a soldier acting as a sentinal leaving his post before he was regularly relieved in that he at 2315 hrs on 5 May 45 when on duty as a sentry left his post before he was relieved. "J H Bond" Lieut Signature of Officer making entry.	5 May 45	29 May 45

If further space required, an additional slip should be pasted here.

VIII.—Second Trial.

Signature of Officer making entry.

IX.—C.O.'s remarks and recommendations on First Trial.

Date		Signature
5 Jun 45	Nil	"y Stott" Lt-Col South Sask Regt.

X.—Confirming Officer's remarks and recommendations on First Trial.

Date		Signature
6 Jun 45	I recommend that the sentence be served in full.	? ? K ? ? ? ? Brig Comd 6 Cdn Inf Bde.

99/37/ HENSON CS /1 (AG)

2ND ECHELON HEADQUARTERS CAOF

DATE 7 Feb 46

HQ
3 Cdn Inf Div CAOF

REVIEW OF SUSPENDED SENTENCE
~~H6984 Pte Henson C.S.~~
4/Regina Rif CAOF

1 AF J81C4 is enclosed herewith for action in accordance with Overseas RO 4732, para 6 (b).

2 On completion of Part VI, may the form be returned direct by the reviewing authority to this HQ.

(W H Pope) Capt
for Officer i/c
2nd Echelon Headquarters CAOF

ENCL(1)

99/37/ Henson CS /1 (HQ)

CDN GRD & SCH TO 79TH ARMY ON THE RHINE

Date 3 Dec 45

HQ
3 Cdn Inf Div CAOF

H.8934 Pte. Henson C S.
4/Reg R1F Regt CAOF

1
3 Nov 45.

Ref this HQ let nr of even file hereto dated

2
To date the AB106 has not been returned to this HQ. May it be traced and its return expedited, please.

6.

(J A V Code) Major
for Officer i/c
Cdn Sec 2 gp [illegible] Brit Army of the Rhine

HENSON CS

HQ
3 Cdn Inf Div CAOF

5 Nov 45

H89934 Pte Henson C.S.
4/Reg Rif Regt CAOF

OFA

R.S.C.

1 CD/FP/BKS/ 1833

1 CDN DETN & FP BKS
CDN PRO CORPS

24 Aug-45

Aug

ATT AG 11

Cdn Sec 1 Ech
HQ 21 A Gp

AG 12

SUSPENSION OF SENTENCE
H-8934 Pte HENSON C S

1. Under Auth:- Cdn Sec 1 Ech HQ 21 A Gp 510/HENSON C S/1 (AG 12)d 20 Aug-45 the m/n soldier's sentence has been placed in suspension wef 24 Aug-45 and he was despatched to 13 CBR Bn Attached please find AF A3104 with Pt VI Completed.

2. For your information, please

H S Hain. Major
COMMANDANT
1 CDN DETN & FP BKS
CDN PRO CORPS

WDC/el

A/Reg Fd

AE-12
1/8

510/PERS FILES/1 (AG 12)

20 Aug 45

Comd
1 Cdn Detn & FP Bks

SENTENCES PLACED IN SUSPENSION

1. The u/m soldiers are serving sentences awarded by FGCM at 1 Cdn Detn & FP Bks. The sentence of each soldier was reviewed by the GO i/c this HQ on 19 Aug 45 and it was directed in each case that the sentence be suspended w.e.f. 24 Aug 45.

A.54509	PTE	BEAHAN	J C
G.23377	PTE	DOIRON	E J
H.22245	RFN	HARDER	A D
H.8934	PTE	HENSON	C B
A.22434	PTE	HOLLY	H C
F.16213	PTE	MERCER	J G
F.86153	PTE	METLIN	L

2. Each soldier on release, will be paraded to his CO and the following explained to him:-

(a) that his sentence is suspended NOT remitted,

(b) that unsatisfactory conduct may lead to its reimposition,

(c) that he is being posted to a unit until such time as he earns by effective service, the final remission of his sentence,

(d) that when remission has been earned he will be eligible for reallocation in accordance with his point score and CF A376.

3. Herewith AF A3104 bearing direction in para 1 above, in the case of each soldier. May Part VI be completed showing the actual date of release and remission marks earned, and the form returned to this HQ with a statement that the instructions in para 2 above have been carried out.

4. Cdn Sec 2 Ech HQ 21 A Gp will issue necessary instructions to post and despatch each soldier in accordance with the present policy. Copy of instructions will be forwarded to this HQ. One copy of this letter is forwarded for each soldier shown above.

(H. D. Moran) Colonel
Col i/c Adm
Cdn Sec 1 Ech HQ 21 A Gp

REGISTERED SDS/
SDS/APO/HAND
Encl/
Copies to:- Cdn Sec 2 Ech HQ 21 A Gp (Attn:- Records)
Cdn Sec 2 Ech HQ 21 A Gp (Attn:- P. & T.)
CPM, Cdn Army Overseas,
Govt Bldg, Bromyard Ave.,
ACTON, W.3 (Attn:- Pay 2C)

2nd Review

1 Cdn Detn & FP/1833

1 Cdn Detn & FP Bks
Cdn Pro Corps

13 August 1945

Cdn Sec 1 Ech
H.Q. 21 A Gp

(Attention AG 12)

REVIEW OF SENTENCE
PERSONNEL SENTENCED FOR H-8934 Pte Henson CS
FRATERNIZATION

1. Reference your 520/FRAT REVIEW/1 (AG 12) dated 1 Aug 45.

2. In accordance with your instructions, the u/m report relative to sentence under review for the m/n soldier is forwarded.

Date of sentence	- 29 May 45
Numbers of Marks earned	- 600
Date of release	- 23 Jan 46
Conduct and deportment	- Favorable
CAFF Volunteer	- No
COF Volunteer	- Yes
Wishes to redeem himself	- Yes

3. It is considered that he will render useful service upon release from Imp/Detn.

4. It is recommended that consideration be given towards suspension of sentence, and he be posted for COF.

W.D. Cain, Major
Commandant
1 Cdn Detn & FP Bks
Cdn Pro Corps

WDC/fa

PFPR

510/HENSON C S/1 (AG 12)

WORK SHEET

REVIEW OF SENTENCES AWARDED BY COURTS-MARTIAL

1. ADC to GO i/c

Date 25 Jul 45

11. No H.8924 Rank PTE Name HENSON C S

Unit S Sask R Coy 21

Date of Enlistment 29 Mar 43

Offence: AA Sec 40 - Fraternization
AA Sec 6(2)(h) - when on duty as a sentry left his post before he was regularly relieved.
(Found guilty on both charges)

Sentence: To undergo detn for one (1) year.

WEF 29 May 45 Last Reviewed FIRST REVIEW

111. Extenuating Circumstances: Nil

Rec by Court: Nil

Character (previous convictions): (Only previous offence) Awarded 7 days CB on 12 Apr 44 for one offence under AA 15(1) - AWL 12 minutes and one offence under AA Sec 40 - Tinshaven). Landed with Regt and wounded at Falaise. Returned and served continuously throughout clearing of the Scheldt and until the end of the war.

IV. Rec by GO: S Sask R - Nil

V. Rec by next senior officer: Comd 6 Cdn Inf Bde:-

I recommend that the sentence be served in full.

VI. Rec re review by AG.10:

Henson was posted as a guard. On a check on the guard he was found absent from his post and was found in a German woman's bedroom. He had had sexual intercourse with the woman.

By Comd, 1 Cdn Detn & F P Bks:

A. Yes (COF)
B. Satisfactory
C. Yes

1945 JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
A C S

1946 JAN FEB MAR APR MAY
A C

E.S. Clapperton

(D. S. Clapperton) Capt.
AG.12
Cdn Sec 1 Rch HQ 21 A Gp

CDN SVC X ROH No. 81 A OP

30 Jul 45

Comd,
1 Cdn Detn & F P Bks

Reviews of Sentences

The sentences awarded by FGCM to the u/k personnel were reviewed by the JO i/c this Bk on 27 Jul 45 and in each case it was directed that there be no remission of sentence and that they be 'promulgated' on date shown opposite each soldier's name:

[illegible]	Pte.	Archibald T.	15 Sep 45
[illegible]	Pte.	Bird J H	30 Oct 45
[illegible]	Pte.	Boldrewski [illegible]	30 Sep 45
[illegible]	Pte.	Carr [illegible]	30 Oct 45
[illegible]	Pte.	Challis [illegible]	15 Sep 45
[illegible]	Pte.	Conlon M C	15 Oct 45
[illegible]	Tpr.	Currier G J	30 Oct 45
[illegible]	Pte.	Harrison R J	20 Oct 45
[illegible]	Pte.	Hayes J	20 Oct 45
[illegible]	Pte.	Henson C S	30 Aug 45
[illegible]	Pte.	Hiscott G.	15 Sep 45
[illegible]	Pte.	Jaulson [illegible]	30 Oct 45
[illegible]	Pte.	Karjala K	30 Sep 45
[illegible]	Pte.	Laurzman A P	30 Oct 45
[illegible]	Pte.	Langlais J G	15 Sep 45
[illegible]	Pte.	Larocque E J	15 Oct 45
[illegible]	Pte.	Lashoway D	30 Oct 45
[illegible]	Sgt.	Moncour J J	30 Oct 45
[illegible]	Pte.	Lalonde J M	30 Oct 45
[illegible]	Pte.	Lefebvre L G	20 Oct 45
[illegible]	Pte.	Mayhead E	30 Oct 45
G.57541	Pte.	Robichaud O	15 Sep 45
C.646	Gnr.	Rowe H F	Nil

for L. C. Brand Lt.-Col
CO
Cdn Svc X Roh No. 81 A Cn

Work Sheet

No 1 Cdn Detn/ 1833
No 1 Cdn Detn & FP Bks Cdn Pro C

13 July 1945

Cdn Sec GHQ
1 Ech 21 A GP

SENTENCE UNDER REVIEW

H6934 Pte Henson C S

1. Reference 510/1833/A2539/d/10 Jul 45 relative to sentence under review for the m/n soldier

2. The u/m infm is appended:

(a) Date sentenced by FGCM - 29 May 45
(b) Date admitted to detn bks - 7 Jun 45
(c) Number of days remission already lost - NIL
(d) Number of marks already earned - 352
(e) Date of release with full remaining remission - 25 Jan 46

3. Attentiveness to drill and parade square work - Attentive
Reaction to strict military discipline - Favorable
Appearance and bearing - Smart and soldierly
Cleanliness in person and clothing - Clean in person and kit

4. Application to work and ingenuity - Employed in Paint School

5. Military employment upon release from detn - Has applied for COF

6 (a) The m/n soldier wishes to redeem himself and has already volunteered for COF service prior to his Court Martial

(b) His conduct and deportment have been satisfactory.

(c) A young man of 21 years, first misconduct since enlistment, average intelligence and quite frank. It is considered he would render useful service to the army, therefore it is recommended that sentence be suspended and he be earmarked for COF service.

Lt Col
Commandant (APM)
1 Cdn Detn & FP Bks
Cdn Pro Corps

COR/fa



K 230 22.3.45

ARMY FORM C 2136 (Large)
40/PBS/2434 (5/50)

5710/HENSON C 8/1 (AG 12)

MESSAGE FORM

Call	Srl No.	Priority	Register No.
			Transmission Instructions

ABOVE THIS LINE FOR SIGNALS USE ONLY

FROM (A) Originator: CANFOR (EXFOR REAR)

Date-Time of Origin: 10 1231 B JUL

Office Date Stamp

For Action

1 CDN DETN & F P BKS

TO

(W) For Information (INFO)

Message Instructions | GR

Originator's No.

A. 2539 UNCLASSIFIED (.) EXPEDITE REPORT REVIEW OF SENTENCE H.8934 PTE HENSON C S

THIS MESSAGE MAY BE SENT AS WRITTEN BY ANY MEANS EXCEPT WIRELESS

Signed: A.B. Clapp

Capt

IF LIABLE TO BE INTERCEPTED OR TO FALL INTO ENEMY HANDS THIS MESSAGE MUST BE SENT IN CIPHER

Signed

ORIGINATOR'S INSTRUCTIONS DEGREE OF PRIORITY

Time	System	Op.
THI or TOR		
Time Cleared		

W1: 28570/3609 344,000 pads 8/44 MP 51-8121

ARMY FORM C 2136 (Large)

510/PERS FILES/1 (AG 12)

MESSAGE FORM

Call	Srl. No.	Priority	Transmission Instructions	Register No.
				4

ABOVE THIS LINE FOR SIGNALS USE ONLY.

FROM (A) CANFOR (EXFOR REAR) — Originator — Date-Time of Origin: 25 B JUN — Office Date Stamp

For Action.

TO 1 CDN DETN & P P BRE

(W) For Information (INFO)

Originator's No. A. 2467 — Message Instructions: GR

DECLASSIFIED (.)

FORWARD REPORTS BOOMERT REVIEW OF BRUTENCE

D.156086 Pte LAFLETE L
H.133344 Pte LEROUX E J
H.8934 Pte HENSON C S

Message may be sent WRITTEN by any means / WIRELESS.	If liable to be intercepted or to fall into enemy hands this message must be sent IN CIPHER.	Originator's Instructions. Degree of Priority.	Time	System	Op.
Cant	Signed.		TH or TOR		
			Time Cleared		

2

B10/Pers Files/1 (.G.1E)

CDN SEC 1 GCH H, 21 A GP

19 Jun 45

Attn: Card Index

Location of Personnel

1. Any request disposition of the a/m personnel be received at this HQ one week, please:

P.8093 Pte. Brown, G.
R.134060 Pte. Doucet, C. W.
R.86921 Pte. White, L. A.
R.69966 Pte. Addie, M. H.
R.9604 Pte. Boudreau, V. L.
R.118169 Gnr. Hayes, J. L.
R.163892 Pte. Coulson, H. G.
R.115066 Pte. Dumont, T.
R.139001 Pte. Dennis, [illegible] D.
R.66888 Gnr. Goodwin, T. G.
R.65376 Pte. Harris, R.
R.8094 Pte. Hewson, C. J. - - S Sask Regt. 17 Oct 44.
R.139011 Pte. Leary, H. L.
R.133564 Pte. Lemaire, A. T.
R.76684 Pte. Madder, W. J.
R.80307 Pte. Mayfield, D. R.
C.56668 Gnr. Murdock, C. V.

2. Sufficient copies of this letter are enclosed to enable you to give a reply on the soldier on an individual letter, so that when returned to this HQ there will be a letter for each personal file.

for (H. C. Brown) Lt.-Col
A.A.G.
Cdn Sec 1 Cdn H, 21 Army Gp

CDN/AG/H.1E

C.R.
25 JUN 1945

M. Allen Capt
Casualties Section
Cdn. Sec. G.H.Q. 1 Cdn. 21 Army Gp.

2

B1O/Pers Files/1 (A.G.12)

CDN SEC 1 ARMY H.Q. 21 A GP

19 Jun 45

CIC
Cdn Sec 2 Army H.Q. 21 Gp

Abt'ns Gen'l Index

Transfer of Personnel Att'n A.....

1. May present disposition of the u/m personnel be received at this H.Q. earliest, please:

F.88938	Pte.	Brow , H.
B.134080	Pte.	Tem inn, G. E.
A.86921	Pte.	Whi , L. A.
P.49950	Pte.	Wil , H. M.
B.9604	Pte.	Ba hard, F. L.
A.118169	Gnr.	Ir n, J. L.
B.143068	Pte.	Co lon, P. C.
B.116066	Pte.	D ico, J.
B.139061	Pte.	D er, A. D.
F.85568	Gnr.	Goodwin, T. O.
C.63376	Pte.	Hart, R.
H.8936	Pte.	Jackson, C. B.
B.186018	Pte.	Kelly, G. L.
B.133544	Pte.	Lavoie, R. J.
K.76154	Pte.	McFadden, D. J.
B.85307	Pte.	Sturfield, D. B.
C.58366	Gnr.	Warnock, G. V.

2. Sufficient copies of this letter are enclosed to enable you to give a reply on the soldier on an individual letter, so that when returned to this H.Q. there will be a letter for each personal file.

for (E. C. Brown) Lt.-Col
A.G
Cdn Sec 1 Army H.Q. 21 Army Gp

MAG/A.PO/21 GP

529/HENSON CS/1(DJA Rev)

Cdn Sec 1 Ech HQ 21 Army Gp
15 Jun 45

DAAG (Dis)

FGCM - 29 May 45 (33/3)
H.8934 Pte(L/Cpl) Henson, CS
S Sask R

1. Enclosed herewith is certified true copy of proceedings of the m/n FGCM, together with AF A3104, for review of sentence and custody.

(W.H. Waugh) Major
DJA Rev
Cdn Sec 1 Ech
HQ 21 Army Gp

Encl.
HAND

C.R.
CDN REG SEC 1 ECH
21 ARMY GROUP

52-19.

L/Cpl. Henson, G.S.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H.8934 L/CPL CHARLES SIDNEY HENSON S.SASK.R.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	GUILTY	
2nd	NOT GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lack of alt see RP 44 fn 6.)

~~At present under sentence of~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for one (1) year.

(Sgd) W. B. Bate Maj. — Judge-Advocate, if any. 29 MAY 45 — Date awarded. (Sgd) John Southam Lt Col — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 740.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6; 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) [illegible] Lt Col

Date 4 Jun 45 — A/Commanding 6 Cdn Inf Bde — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
H.8934 L/Cpl Jackman, C.S.	5 Jun 45	[illegible] Maj. with Para 4

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 18 JUN 1945 JAG BRANCH CMHQ

RECORDED AT CMHQ IN AB 160 52-89

CPA66 (To lieu of PAM) 40-P-36-8-(1)(6) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by LT-COL V. STOTT A/Comd 6 CDN INF BDE dated 25 MAY 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or can[illegible] rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H.8934	L/CPL	CHARLES SIDNEY	HENSON	S.SASK R.

PROCEEDINGS REVIEWED 21 Jun 45 [illegible] REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) GERMANY on (date(s)) 29 MAY 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant from RQs. For guidance on procedure when a variation in this form arises, see Form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 54, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to CAPT J.W. HENLEY as interpreter? Ans NO SIR.

The Interpreter is sworn.(1) ~~Do you object to the shorthand writer is sworn.~~(1) as shorthand writer? Ans [illegible]

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT.COL	J.D.SOUTHAM		2 CDN ATK REGT RCA
Member	MAJ.	J.W.K.SHORTREED		R.REGT C.
Member	MAJ.	J.G.BONGARD		TOR SCOT (MG)
Judge-Advocate	MAJ.	W.B.BATE	DJA	CDN SEC 1 ECH 21 A.GP
Prosecutor	LT.	G.W.NICOLS		S.SASK.R.
Defending Offr	CAPT	H.A.OSBORN		S.SASK R.

~~Court adjourned at 0940 hrs. Court re-opened at 1500 hrs, accused~~ [illegible]

Questions by President: Is the Prosecutor a lawyer? Ans No I.O. Is the Defending Offr a lawyer? Ans No I.O.(1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (5) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment makes(s) (no) ~~to~~ plea(s) (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Volt Fdc2

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s) and Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO SIR.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans Do neither sir. Do you intend to call witnesses on your behalf?
Ans Yes, sir. Are they witnesses as to character only? Ans Yes sir.
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 4a(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1st and 2nd charge(s), being subject to confirmation, will be promulgated later.(1) (Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed etc.) and there are pleas of Guilty outstanding and dealt with under Record Form B or C.)
(1. *AA 54(3) (c), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there*

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans Do neither sir.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (extract) of Conduct Sheet(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex H respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes they may be regarding my offr. (2)
(1. *RP 27(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its punishm, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused H8934 L/Cpl Clarence Sydney HENSON, South Saskatchewan Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
A.A. Sec 40

WHEN ON ACTIVE SERVICE

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he

In the Field at approximately 2315 hrs on 5 May 45 fraternized with Mrs. Frieda Neumann, an inhabitant of Germany, by having sexual intercourse with her at Ofen, Germany.

SECOND CHARGE
A.A. Sec 6 (2)(h)

WHEN ON ACTIVE SERVICE

BEING A SOLDIER ACTING AS A SENTINEL LEAVING HIS POST BEFORE HE WAS REGULARLY RELIEVED

IN THAT HE

In the Field at 2315 hrs on 5 May 45 when on duty as a sentry left his post before he was regularly relieved.

In the Field
7 May 45.

Geo B. Buchanan Major.
~~Lieut-Colonel~~
Officer Commanding
South Saskatchewan Regiment

To be tried by FGCM.

25 May 45.

(V Stott) Lt-col.
A/Comd 6 Cdn Inf Bde.

JBB 63 B.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330,)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H8934		L/Cpl	Charles Sidney	HENSON	S. Sask R.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[s] named above as the accused, being subject to military law, has [have] committed the offence[s] set forth in the Charge Sheet[s] attached and on (date) 25 May 45 endorsed by me, ~~[or by an offr of my staff for me]~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence[s] should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior (natural) offr)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person[s], and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt Col	J. D Southam		2 Cdn A Tk Regt.

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Maj.	J.W.K. Shortreed		R Regt C.
Maj.	J.G. Bonnard		Ter Sect (M.G.)

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt.	N. Sutherland		R. de Mais.

JUDGE-ADVOCATE.

(Rank.)			(Must be named, if any. RP 106.)	(Unit.)
MAS.	W.B. BATE	DJA		CDN SEC I ECM 21 A. GP.

On Active Service in the Fd

in GERMANY (Country.)

(Signed personally. RP 105(2).) Lt. Col. (Rank.)

Dat 25 May 45 A/Commanding 6 Cdn Inf Bde. Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:
First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accused to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (or, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".
RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:
(i) Opening address by Defending Offr. (*RP 95(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Con 562(a).*)
(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:
(i) Charge Sheet. (On top.)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Con 557.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy or part of original see KR Con 560. As to certified copies of regimental books see AA 163 (1) (g) (A).*)
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(3), RP 115(C), MML p 709.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICERS CERTIFICATE
(K.R. Can Para 557)

I certify that I have this morning examined No. H.6914
Capt. [illegible] C.S. of South Saskatchewan Regiment and in my opinion he is fit/[illegible] to undergo trial by Court Martial.

Station. Field

Date. 31.7.45

[signature]
Medical Officer

Offr. Under Instruction. 188

A.T. Lt. E.J.O. Harvey RCEME att'd 2 Can A. Wk. Regt RCA.

D.3. First Witness Pros. } Lt. J.C.M. St. Pierre, S. Sask R. duly sworn is exam by the Pros.

I am the O.C. 14 Fd. C. Coy S. Sask. R. I recognise the acc. On the night of 5 May 45, in company with my pl. sgt, Sgt. Mc Kee, I checked the gd. & the pl. area at approx 2355 hrs. I did not find the gd. on duty at the house where the acc. was billeted. It was supposed to be a 2 man gd. I enquired from Cpl. Keller, the sec. leader, where the gds. were. As a result of what he told me I searched the billets in order to find them. On opening the door of one of the rooms in the house, I found the acc. sitting on the edge of a bed. There was a German woman in the bed. I told the acc. to go back where he belonged. We were billeted in a farm-house about 3 km. from Open, Germany. This was the third night we had been billeted there. I do not know the names of the inhabitants of the house.

Cross-exam:

I looked in that particular room to see if any of my sec. or the gds. were there. The door opened quite freely. It did not feel as if anyone on the inside had hold of the handle. The acc. was sitting on the edge of the bed. I do not recall what position his hands were in. He came out of the room immediately. A minute or two afterwards the Gladue came out of the room. The first person I saw in the room was the acc. The German woman was sitting up in the bed, clothed in a nightgown or some similar garment. The acc. was fully dressed except that his tunic was unbuttoned. He was sitting on the bed nearest to the door. I saw no one else in that bed. I only saw the three in the room and the German woman. I was not at the billets at 2255 hrs that night. To my knowledge the gd. had not been inspected prior to my arrival that evg. I merely told the acc. to get back to his gd. I said nothing else to him.

No re-exam:

By the Court.

When I opened the door I flashed my flashlight around the bedroom. The acc. only had his tunic unbuttoned nothing else. He did not have his boots off. The Coy Comd. laid on the gd. I passed on the orders viz. 2 men of the sec. would be on gd. at all times. Cpl. Keller was to detail the gd. One post was by the door of the billet.

I said to the acc. "Get out of here and go back where you belong." Those were the actual words I used. There was no indication that the acc. had been drinking. The acc. said nothing to me. He was not carrying a weapon when he came out of the room.

By the JA.:

The room in which I found the acc. was situated in the front part of the house. The post near the door leading into the house was about 15' from the room in question. (witness draws a sketch of the house - admitted & marked Ex 'F'). The room I have marked "bedroom" was the one in which I found the acc. The post marked "X" is the one I detailed. Two men would be able to cover all the whole of the front of the house & the roadway. The sgt. was not beside me when I opened the door. He was further along in the back of the billet. opening doors. R.P. 83(B) complied with.

Second Witness Pros. | Frau Frieda Neumann, Bauerhaus, Wehnen, Germany, duly sworn is exam by the Pros. through the Interpreter.

On 5 May 45 I was living at Wehnen in a house in which some Cdns. were billeted. I recognise this soldier (pointing to the acc.). I had not seen him prior to 5 May 45. On the night of 5/6 May 45 Frau Parchem & I had gone to sleep. The acc. came into our bedroom He came up to me in bed & offered to have intercourse with me. I permitted him to do so. It lasted approx. 10 - 20 mins. Then this soldier left the room. He did not molest me in anyway. No one opened the door when he was with me. There were 3 beds in the room in which we were sleeping. My two children & one of Mrs. Parchems children slept in my bed.

Cross-exam:

It was a couple of mins after 11.00 PM when the acc. came into our room. There was a bright moon that night. I had not blacked out the room. It was light enough to recognise anyone in the room. I am quite sure it was this soldier (indicating the acc.) who was in the room with me. There were 7 people in the room - not incl. this soldier. I have 3 soldiers. I do not know where my husband is — in East Prussia, perhaps. He has been a soldier for only 5 mos. There was no room to stand up in the bedroom. Any one coming in the room would have to sit on the bed which was right up against the door. This soldier left the room of his own accord. I saw an Offr there afterwards. He illuminated the room with his flashlight. The following day we

JGB

were brought before the C.O. He questioned me. In the beginning we did not know that Allied soldiers were not to have anything to do with German women. The C.O. told us so. I did not know it before. I did not deny having sexual intercourse with this soldier when the C.O. first asked me about it. It was several days later that I made a statement in writing before an Offr.
No re-exam.

By the Court:

I admit having had sexual intercourse with the acc. on the night of 5 May 45. Frau Parchem was in the room too. There was another soldier with her. I was wrong before. There were two soldiers in the room, not one. The acc. had been out of the room a couple of mins. before the Offr. shone his torch around it. The acc. closed the door when he went out. The Offr. opened the door when he came in. The other soldier was with Frau Parchem then. There was no soldier with me then. The acc. when he was with me had his clothes on.

By the SA:

I do not speak English. Acc did not speak in German but in English. I could tell the acc. desired to have intercourse by the feel of his body. He was starting to open his trousers.

RP 83 (B) complied with.

Third Witness
Pros. | L.846014 Sgt. MacKee, T.G., S. Sask R. duly sworn is exam by Pros.

I recognise the acc. On the night of 5 May 45 at approx 2359 hrs on making a check of No 4 sec. Qd. I found no one on the sentry post, which was at the rear entrance to a civilian farm-house where the sec. was billeted. I went into the quarters & woke up Cpl. Keller, the sec. leader. As a result of what he told me I went looking for the sentry. I saw the acc. come from a room in the house & go back to his post. Lt. St. Pierre accompanied me when I was checking the rooms. It was Lt. St. Pierre not I who opened the door to the room out of which the acc. came. I saw the acc. pass through the doorway but I did not see who was in the room.

Cross-exam:

Cpl. Keller did ask, at one time, to have the sec. moved from the house where they were. As far as I know, no action was taken. When I went to the check the Qd. I expected to find the qd. within the area of the rear entrance. There were two qds. on duty. The points on the sketch I have marked 'A' & 'B' (witness marks sketch.

JBB

Ex. F) are the places where the qds. were supposed to be stationed. There were no obstacles between points A & B. The qd. at point B was under the roof an open shed. The qd. at point B, when I found him, was seated down & was dozing. It was possible to see the qd. at point A from point B. The qd. at point A was missing from his post. I cannot say if he was at his post at 2315 hrs. or not. I sent no one to check that post at that time. I did not receive any report concerning a sentry being absent from his post at 2315 hrs. that night.

No re-exam.

By the Court:

The acc. was fully dressed when I saw him coming out of that room. There was no definite post laid down as a definite post. That was our custom. Had we not found the sentries in the house I would have searched the rear area. I did not search the area surrounding the house before entering the house. The area at the rear entrance was the most likely place for a qd. to be posted. Cpl. Keller did not tell me the exact location of the posts & I was not sure of their exact location. The acc. accompanied me to the post marked B on the sketch (Ex. F) when the other sentry was found there. I do not know if that sentry was on when I went into the house. I was not halted. There was artificial half-light - from searchlights - that night. One could see a fair distance.

R.P. 83(B) complied with.

Fourth Witness } B.87396 Cpl. Keller H.K., S. Sask R.
Pros. } duly sworn is exam by Pros.

I recognize the acc. On the night of 5 May 45 I was i/c the acc. qd. The qds. had a definite beat to patrol that night. They all knew it. I posted the qds - the acc & another man - at 2200 hrs myself. Their hour of duty was 3 hrs. I gave neither of them permission to leave his post. After posting the acc. I retired to bed. Mrs. St. Pierre & Sgt. Mc Kee wakened me at 2345 hrs. By the time I got dressed & had my boots on the acc. was at his post. When they wakened me. Mrs. St. Pierre & Sgt. Mc Kee wanted to know where the qd. were.

Cross-exam:

Two men were on qd. that night. Acc's post was at the entrance to the house. The other man was posted in front of a barn at the right of the driveway leading to the house. The man on that post could not be able to see the acc on his post. The barn obstructed his view. The posts were some 35ˣ to 40ˣ apart. If the acc. had wished to leave the vicinity of the entrance of the house to

SBB

investigate something suspicious, the other gd. was too far away for it to be practicable for the acc. to go over to the other gd. & tell that gd. what he proposed doing. The door leading into the bedroom was only 5 or 6 steps from the acc's post. The acc. was able to hear that bedroom door opening or closing when on his post. If the acc. heard a noise inside the house it was quite in order for him to go in & investigate. That was one reason I had a gd. posted near the door to the house. Anyone entering the bedroom in question would have to close the door & sit on the bed. The bed was right up against the door. The door opened outwards into the scullery. I do not know if anyone checked the gd. at 2315 hrs. I did not report that any gd. was not doing his duty at 2315 hrs.

No re-exam.

By the Court:

I went out with the acc. to his post at 2200 hrs. I did not lay down any hrs of duty then. But I told both gds. their hours of duty when we were in the house just before posting them. I told the acc. he was to patrol from one corner of the house to the other i.e. the frontage of the house & to listen for any noises in the house. There were only 3 men & myself in the sec. at that time. It was for this reason that the acc, an NCO, was doing gd. duty. The night was dark & windy. I do not recall there being any searchlights in the sky when I went to bed at 2215 hrs.

R.P. 83(B) complied with.

Pros. did not call Cpl A.P.W. Wallinson. Def. Offr. did not require his presence for cross-exam.

D6 - First Witness Def | B. 87396 Cpl. Hobbs, H.K. S. Sask R. already sworn is exam. by the Def. Offr.

I have known the acc. for about 6 mos. We have been in the same sec. for some 3 mos. I considered him a good soldier & very trustworthy. I was never afraid to leave the sec in his charge because I knew he would do the job as well as I could. I had a very high respect for him as a soldier

No cross-exam.

By the Court:

I was made sec A/Cpl approx 25 Jan 45. The acc was made 2 i/c of the sec. at the same time. I came to this sec. from a different pl. than the acc. did.

R.P. 83(B) complied with.

Court adjourned at 1750 hrs. Court re-Opened at 2010 hrs, same members present. In the interests of the service it is necessary for the Court to sit after 1900 hrs.

Prosecution Summary in the Case of JBB
H8934 H/Gl. Clarence Sydney Hanson South Staffs Regt.

On the first charge.

The prosecution has been attempting to prove that H/Gl Hanson fraternized by having sexual intercourse with Mdlle. Frieda Neumann at Opln, Germany on the night of May 5th 1945. We have the evidence of H. & C. H. Sgt Pierce own gl. Commander and Sgt McKee G. his gl. sgt. to prove that he was in the room with a German woman. We also have the evidence of Mdlle. Frieda Neumann that H/Gl. Hanson was in the room with her and that they had sexual intercourse on the night in question. ~~He was not clean at that time by reason of the room [illegible] was not empty.~~

On the second charge.

What the prosecution had to prove here was that H/Gl. Hanson, acting as a sentinel left his post before he was regularly relieved. We have the evidence of his own section leader Gl. Tilley who was also a Corporate witness for H/Gl. Hanson, that Hanson was posted by him at 2200 hrs. for a tour of three hours. We also have the evidence of Lt. H. Pierce and Sgt. McKee that Hanson was not at his post at 2359 hours when he should have been.

H. G.W. Nicholl.
Prosecuting.

Defence Summary in the case of 486
H 8934 L/Cpl Clarence Sydney Henson

On the first charge the prosecution has not proven that sexual intercourse took place but rather that the stage was set for such an act and a German woman was asked the simple question and on her answer alone rests the whole of the proof. The evidence ~~of such an act~~ up to a point was based on eye witness testimony but from the time Cpl Henson entered the door ~~his fate~~ until he came out is assumed - unless the German witness cares to say a few words that would seal his fate.

The evidence the enemy witness gave was ~~as~~ mixed up as it was cooked up. As far as we know from what she says Cpl Henson never left his sitting position on the bed. A Police Officer opened the door shone his flashlight into the room and saw

Henson sitting on the bed yet she says he had left the room before the Officer entered. W6(B)

Her husband is away somewhere up Russia - if she is the type of a woman who would lye back on her word to her husband by having sexual intercourse with other men, her husbands best friend is supposed to be her, then would she hesitate to lie about a soldier who means nothing to her.

On the second charge the time the charge is laid is 2315 hrs yet there has not been one witness who has said that there was a check made at this time. Is it possible to put any time down and then show that he was absent at some time during the day. The prosecution has not proven the charge as pleaded to.

H Osborn Capt

UBB

J.A. Summing Up.

(a) - Court is the sole judge of the facts. Court should consider the evidence in arriving at its findings - only the evidence.

(b) - The function of the JA is to advise the Court re the law.

(c) - "first charge - analyses - proto-urination".

(d) - Second Charge - AA 6(2)(h) - analysed - fns 2 & 7 to AA 6. - MML p. 430.

(e) - Special findings. RP 444(D) & fn 6 - MML pp 648-9

(f) - Acc. presumed to be innocent until proved guilty. Burden of proof on P.

(g) - Acc. entitled to the benefit of any reasonable doubt as to his guilt on either charge. Reasonable doubt" defined.

Plea in Mitigation 10 / Punishment on behalf of H 8934 L/Cpl. Clarence Sydney Henson. WBB

E3.- ~~L/Cpl Henson is a young Canadian soldier who has already [illegible] 2 years and has men in the army 2 yrs and 2 mos.~~

To find Character witnesses for this man was easy the whole coy wanted to come, but I took the men who should know & best and the men who could give the clearest picture to the Court.

Henson is one of the men that we all owe a lot to - the people in Canada declared a two-day holiday to celebrate his work they are able only to read or hear of the result of all that he has done but you as Regt Officers know what it means to have good fighting men under you so that when a job was given to you to do you know it could be done because your men, men like Henson, were willing to carry out your every order.

Now the work has been brought to a close in this sector and now you are faced with passing a fair punishment on a man who deserve consideration.

His crime sheet is one that must be considered clear because he serves days CB. for having a dirty cap happens [illegible]

WBB

a year ago.

He is one of the few "originals" left in the unit. He landed with the first and was wounded ~~at~~ at Salerno but returned to fight again ~~during~~ ~~to~~ ~~Feb~~ at Hodgenhuis, North of Putte and serves at the front continuously through the clearing of the Scheldt and the Winter defense at Mook. He has fought during the whole of the Spring offensive up to the last day of the war. Few men have lasted as long at the front as this man has and now he is to be punished for a crime that can only happen when the fighting stops. The irony of war - spend ten months killing Germans and then the day the war ends one German woman sends you jail.

W. Hobson Capt
Lash. R.

EXHIBIT F.

Ex. A. Baltzer
Judge Advocate



EXHIBIT 'G'

ARMY FORM B 199.

W. B. Waite Maj.
Judge Advocate

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H8934	L/C	Henson C.S.	S Sask R.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number in entries in the conduct sheets, provisions being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA Sec 15 (1)	NIL times	One times.
For AA Sec 40	NIL times	One times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, NIL

or

There are no entries in the conduct sheets of the accused. N/A

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set forth in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for _____ beginning on the _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 21 days in military custody, making a total of 21 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 21

6. The date of his ~~commission~~ ~~attestation~~ specified in his ~~attestation paper~~ record of service is 29 Jan 43.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is _____

8. The accused is entitled to deferred pay or gratuity in respect of _____ service.

9. The accused is entitled to reckon _____ service for the purpose of determining his pension, etc.

10. The accused is in possession of, *or* entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of _____

12. (*In the case of an officer.*) The accused holds in the army the rank of _____ dated _____, and in his regiment (*or* corps *or* department) the rank of _____ dated _____

(*25000) W1.24726/1750 50,000 10/43 A.& E.W.Ltd. Gp.698
(25000) W1.20254/1300 12,000 1/44 " "

In the case of H-8934 Saskatchewan Regiment, charged with:

(1) WOAS - CONDUCT TO ORDER AND

(2) WOAS - CONDUCT T ORDER AND

By direction of the C taken on oath.

FIRST WITNESS: Lieu ment, Canadian Army (

I am Lieut. J.C.H. S On 5 May 45 at appro on duty, I discovere quty I found that t time was L/Cpl HENSO surrounding building in my platoon area) in my platoon of my pation of one of my were for the occupa the bedrooms set as The accused was get habitant of Germany on any official bus which was occupied covering the accuse his post. He then

The accused declin

SECOND WITNESS: I ment, Canadian Arm

I am L-84604 Sgt while accompanying imately 2355 hrs, sentry detailed f section leader I to be on duty. W oon area. In on building had been Henson. The accu the inhabitants a official busines accused leaving

The accused dec

sured to his po

STD/

MFM 6
(AFB
40/P&S/13

No H-8934 Name HENSON, CS | Sqn, Battery or Company N/A | Corps CIC Infantry | Date of enlistment 29-3-43 | GC Badges one | Service or Proficiency Pay HA | Character

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No | Signature OC Company, etc Dawson Major

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 29-9-43 last entry Nil Cases of drunkenness - Nil. (Sged) (H.G. Dawson) Major					EXHIBIT 'H'
	1-4-44	Pte		AWL 12 min AA Sec 15 (1) Cond to prejudice of(Unshaven) AA Sec 40	Sgt K.L. Huff	7 days CB	14-4-44	Lieut. Judge Advocate.	

CERTIFIED TRUE COPY IN POSSESSION OF UNIT

(A.P.W. Watkinson) Capt & Adjt
South Sask Regt

(P.T.O.)

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EXHIBIT 'G'

ARMY F[illegible]

W. B. Watts Maj.
Judge Advocate

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
H8934	L/C	Henson C. S.	S Sask'R.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary must be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein entered should correspond with the number or entries in the conduct sheets, the prosecutor being given by the Field service officers in each entry, and to any recommended special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA Sec 15 (1)	NIL times	One times.
For AA Sec 40	NIL times	One times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, NIL

or

There are no entries in the conduct sheets of the accused. N/A

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set forth in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for _____ beginning on the _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 21 days in military custody, making a total of 21 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 21

6. The date of his ~~attestation~~ attestation specified in his ~~attestation paper~~ record of service is 29 Nov 43.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is _____

8. The accused is entitled to deferred pay or gratuity in respect of _____ service.

9. The accused is entitled to reckon _____ service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of _____

12. (*In the case of an officer.*) The accused holds in the army the rank of _____ dated _____ and in his regiment (*or* corps *or* department) the rank of _____ dated _____

(*21600) Wt.24600/1750 20,000 10/43 A.& E. W.,Ltd. Gp.698
(30000) Wt.50918/1499 12,000 5/44

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. H8934 Rank L/C Name Henson CS of 5 Sask Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 29th day of May 45

W. Watkinson Capt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of Lance Corporal 3 months 1 day years. Date of Promotion. 26-1-45

In the rank of , years

In the rank of , years

(INSTRUCTIONS.—*If any matter in any of the above five lengths entered from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be inserted from such sources as are available and the paragraph concerned amended accordingly.*)

MFM 6/120
(AFB 136)
40/P&S/1[illegible] (3438)

No H-8934 Name HENSON, CS | Sqn, Battery or Company N/A | Corps CIC Infantry | Date of enlistment 29-3-43 | GC Badges one | Service or Proficiency Pay HA | Signature OC Company, etc Dawson Major | Character

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
							EXHIBIT "H"		
				Sheet destroyed 29-9-43 last entry Nil Cases of drunkenness - Nil. (Sgd) (H.G. Dawson) Major					
	12-4-44	Pte		AWL 12 min AA Sec 15 (1) Cond to prejudice of(Unshaven) AA Sec 40	Sgt K.L. Huff	7 days CB	14-4-44	Lieut. Judge Advocate	
				CERTIFIED TRUE COPY IN POSSESSION OF UNIT A.P.W. Watkinson Capt. (A.P.W. Watkinson) Capt & Adjt South Sask Regt					

(PTO)

SUMMARY OF EVIDENCE

In the case of H-8934 L/Cpl Clarence Sydney HENSON, of the South Saskatchewan Regiment, a soldier of the Canadian Army Overseas, charged with:

(1) WOAS - CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE - A.A. Sec 40

(2) WOAS - CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE. - A.A. Sec 40

By direction of the Commanding Officer the evidence is to be taken on oath.

FIRST WITNESS: Lieut. J.C.H. St. Pierre, South Saskatchewan Regiment, Canadian Army Overseas, sworn states:

I am Lieut. J.C.H. St. Pierre of C coy South Saskatchewan Regiment. On 5 May 45 at approximately 2355 hrs while on check of the guards on duty, I discovered that the sentry was not at his post. On inquiry I found that the man who was supposed to be on duty at the time was L/Cpl HENSON, C.S. I then went in search of him in the surrounding buildings of my platoon area. In one of the buildings in my platoon area I had set aside two rooms for the use and occupation of one of my sections. The remaining rooms in the building were for the occupation of the German inhabitants only. In one of the bedrooms set aside for the inhabitants I discovered L/Cpl Henson. The accused was getting off a bed in which there was one female inhabitant of Germany. The accused L/Cpl Henson was not in the bedroom on any official business nor had he permission to enter the room which was occupied and set aside for the inhabitants. Upon discovering the accused in the said room I ordered him to return to his post. He then returned to complete his tour of duty.

The accused declines to cross-examine the witness.

J.C.H. St Pierre

(J.C.H. St. Pierre) Lieut.
South Saskatchewan Regiment

SECOND WITNESS: L-84604 Sgt McKee, T.G., South Saskatchewan Regiment, Canadian Army Overseas, sworn states:

I am L-84604 Sgt McKee, T.G. of C coy South Saskatchewan Regiment. While accompanying my platoon commander Lieut. St. Pierre at approximately 2355 hrs 5 May 45 on a check of the guard, I found that the sentry detailed for duty was not at his post. Upon inquiry of the section leader I found that the accused L/Cpl Henson was supposed to be on duty. We then made a check of the buildings in the platoon area. In one of the houses of which two of the rooms in the building had been set aside for one of our sections, we found L/Cpl Henson. The accused was in a bedroom which had been set aside for the inhabitants and L/Cpl Henson was not in the bedroom on any official business. In the bedroom at the time I discovered the accused leaving was one German female. L/Cpl Henson then returned to his post to complete his tour of duty.

The accused declines to cross-examine the witness.

J. T. McKee

(L-84604 Sgt McKee, T.G.)
South Saskatchewan Regiment

THIRD WITNESS: B-87396 Cpl KELLER, H.K., South Saskatchewan Regiment Canadian Army Overseas, sworn states:

I am B-87396 Cpl KELLER, H.K. of C coy South Saskatchewan Regiment. Being a section leader in Lieut. St. Pierre's platoon I made up the guard list and put L/Cpl Henson on sentry duty from 2200 hrs 5 May 45 to 0100 hrs 6 May 45. After seeing that the accused went to his post at 2200 hrs I retired to bed. I was awakened by Lieut. St. Pierre and Sgt McKee at approx 2355 hrs 5 May 45 and they inquired of me who was supposed to be on guard duty at that time. I informed them then that L/Cpl Henson was supposed to be on duty. They then went in search of the accused and by the time I was dressed I found that L/Cpl Henson was back at his post completing his tour of duty.

The accused does not wish to cross-examine the witness.

H K Keller

(B-87396 Cpl KELLER, H.K.)
South Saskatchewan Regiment

FOURTH WITNESS: Capt. A.P.W. Watkinson, South Saskatchewan Regiment, Canadian Army Overseas, sworn states:

I, Captain A.P.W. Watkinson am Adjutant of the South Saskatchewan Regiment. I am in charge of Records and hold the signatures of all officers and ORs of the Battalion on Fraternization. Before the signatures were procured from each individual they were duly instructed that fraternization with German inhabitants was absolutely forbidden and the meaning of fraternization was duly explained. I hold the signature of H-8934 L/Cpl HENSON, C.S.

The accused declines to cross-examine the witness.

A P W Watkinson Capt.

(A.P.W. Watkinson) Capt.
South Saskatchewan Regiment

The accused having been duly cautioned in accordance with R.P. 4 (e) states:
"I do not wish to make a statement." L S Henson

(H-8934 L/Cpl HENSON, C.S.)
South Saskatchewan Regiment

The accused does not wish to call witnesses in his defence.
"I, H-8934 L/Cpl HENSON, C.S., desire the services of an officer to defend me, if one is available.

L S Henson

(H-8934 L/Cpl HENSON, C.S.)
South Saskatchewan Regiment

I certify that the foregoing Summary of Evidence of two pages was taken down by me in the presence of the accused and that R.P. 4 (c) (d) (e) and (f) have been complied with.

G B Gunderson

In the Field
7 May 45

(G.B. Gunderson) Lieut.
Officer Detailed to take the Summary)

SUPPLEMENTARY SUMMARY OF EVIDENCE

In the case of H8934 L/Cpl Clarence Sydney HENSON, of the South Saskatchewan Regiment, a soldier of the Canadian Army Overseas,

FIFTH WITNESS: Mrs. Frieda Neumann, Busselmann, Wehnen.

A written statement of this witness' evidence purporting to be signed by her, has been read to the accused and is included in this Summary (Attached as Exhibit "A")

Having regard to the exigencies of the service, the attendance of this witness, cannot in my opinion, be readily procured.

The accused does not demand the attendance of this witness.

(G.B. Gunderson) Lieut.
Officer detailed to take the Summary.

"I, H8934 L/Cpl HENSON, C.S., do not demand the attendance of Mrs. Frieda Neumann, of Busselmann, Wehnen, at my trial."

(H8934 L/Cpl HENSON, C.S.)
South Saskatchewan Regiment

I certify that the foregoing supplementary Summary of Evidence of One page was taken down by me in the presence of the accused and that R.P. 4 (c) (d) (e) and (f) have been complied with.

In the Field
21 May 45.

(G.B. Gunderson) Lieut.
Officer detailed to take the Summary

Mrs. Frieda Neumann of Bisselmann, Wehnen, having been sworn states:

I am Mrs Frieda Neumann of Bisselmann, Wehnen. I was born 24 February 1921 and am an inhabitant of Germany. I am a German. At approx 2315 hrs the 5 May 45 the accused whom I now recognize, entered my room. I was in my bed sleeping when the accused came into my room, without my permission. He, the accused, asked me if he could get into bed with me and I consented. We then had sexual intercourse immediately following. At approx 2355 hrs 5 May 45 the accused left the room and an officer came in and I know a flashlight in my face. That is all I have to say.

Frieda Neumann

The accused declines to cross-examine

I certify that the foregoing evidence was translated to and approved by the witness, Mrs Frieda Neumann.

2nd Lt AGD

13 Prov. Det.
(Information Bureau)

Exhibit "A"

LIST OF WITNESSES:

For Prosecution:	Lieut. J.C.H. St. Pierre	- South Sask Regt.
	L84604 Sgt. McKee, T.C.	- South Sask Regt.
	B87396 Cpl. Keller, H.K.	- South Sask Regt.
	Capt. A.P.W. Watkinson	- South Sask Regt.
	Mrs. Frieda Neumann,	- Busselmann, Wehmen.
For Defence:	Nil	

LIST OF EXHIBITS -

Exhibit "A" Written statement of Mrs. Frieda Neumann, of Busselmenn, Wehnen.

Statement of the accused H-8934 L/Cpl Henson, C.S.

"This is to certify that I have received gratis a copy of the Charge Sheet, Summery of Evidence and list of witnesses."

L.J. Henson

(H8934 L/Cpl Henson, C.S.)
South Saskatchewan Regiment

COUNTER NUMBER 167722

HOUR 9 12

OPERATOR'S INITIALS AD

RELIEVING OPERATOR _____

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : H 8934 L/Cpl Charles Sidney HENSON S Sask R

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd	Not Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 36, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of list see RP 44 fn 8.)

At present under sentence for ... beginning on (date) ... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : To undergo detention for one (1) year.

(Sgd) "W B Bate" Maj — Judge-Advocate, if any. — 29 May 45 — Date awarded. — (Sgd) "J D Southam" LtCol — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.(1)~~

(1. AA 57A. Delete if not used.)

(Sgd) "V Stott" Lt Col

Date 4 Jun 45 — A/Commanding — 6 Cdn Inf Bde — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
H 8934 L/Cpl Henson C S	6 Jun 45	"Geo B Buchanan" Maj South Sask Regt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

51-89

FIELD GENERAL COURT-MARTIAL

CFA66 (In lieu of AFA51) 40/37 & 41/1698 (1670) 4/38B

Convened by Order of Lt Col V Stott A/Comd 6 Cdn Inf Bde dated 25 May 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or substantive rank, and (b) apptmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H 8934	L/Cpl	Charles Sidney	HENSON	S Sask R

CHRISTIAN NAME ONLY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) GERMANY on (date(s)) 29 May 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant from RDs. For guidance on procedure when a variation in this form occurs, see form for GCM in MML pp 741 to 759. A brief record of such variation CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to Capt JV Henley as interpreter ? Ans No Sir

The Interpreter is sworn.(1) ~~Do you object to~~ ~~The shorthand writer is sworn.(1)~~ ~~shorthand writer ? Ans~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ? Ans No Sir(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt Col	J D SOUTHAM	2 Cdn A Tk Regt RCA
Member	Maj	J W K SMITHERMAN	R Regt C
Member	Maj	J G BOUGARD	Tor Scot (MG)
Judge-Advocate	Maj	W B BATE	DJA Cdn Sec 1 Ech 21 A Gp
Prosecutor	Lt	G W NICOLS	S Sask R
Defending Offr	Capt	E A OSBURN	S Sask R

Court adjourned at 0940 hrs. Court re-opened at 1500 hrs, same members present.

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused before arraignment make(s) (no) (~~a~~) plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 25(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(general conf)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 90(A)* (*B*); *duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; see of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s).(2) The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole if part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No Sir.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (his) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. No neither sir. Do you intend to call witnesses on your behalf? Ans. Yes Sir. Are they witnesses as to character only? Ans. Yes sir.
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF AP5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the 1st and 2nd charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans. No neither sir.....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 4 and Ex 5 respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Nor by my defending Offr.....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should not permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

JDS
WHR

CHARGE SHEET

The accused H8934 L/Cpl Clarence Sydney HENSON, South Saskatchewan Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
AA Sec 40

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field at approximately 2315 hrs on 5 May 45 fraternized with Mrs. Frieda Neumann, an inhabitant of Germany, by having sexual intercourse with her at Ofen, Germany.

SECOND CHARGE
AA Sec 6(2)(h)

WHEN ON ACTIVE SERVICE
BEING A SOLDIER ACTING AS A SENTINEL LEAVING HIS POST BEFORE HE WAS REGULARLY RELIEVED

in that he

In the Field at 2315 hrs on 5 May 45 when on duty as a sentry left his post before he was regularly relieved.

In the Field
7 May 45

"Geo B Buchanan" Major
(V Stott) Lt Col
for Officer Commanding
South Saskatchewan Regiment.

To be tried by FGCM.

25 May 45.

"V Stott" Lt Col
(V Stott) Lt Col
A/Comd 6 Can Inf Bde.

JDS
EBB

FIELD GENERAL COURT-MARTIAL

CFAA6 (In lieu of AFA3)
40/PAM/1697 (2668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H 80354	L/Cpl		Charles Sidney	HENSON	S Sask R.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 May 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial". V S

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr;)
(Delete part in brackets when not required for compliance with RP 105(C).) V S

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ V S
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	J D DOUGHAM	2 Cdn A Tk Regt

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Maj	J W K SHORTREED	R Regt C
Maj	J G BOUCARD	Tor Scot (MG)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	N SUTHERLAND	R de Mais

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Maj	W B BATE	DJA Cdn Sec 1 Mch 21 A Gp

On Active Service in the Fd

(Country.)	(Signed personally. RP 105 fn 2.)	
in Germany	"y Stott"	Lt Col (Rank.)

Date 25 May 45 A/ Commanding 6 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

JDS

MEDICAL OFFICER'S CERTIFICATE (KR(Can) Para 567)

I certify that I have this morning examined No. H 8934 L/Cpl Henson C S of South Saskatchewan Regt. and in my opinion he is fit to undergo trial by Court Martial.

Station Field

Date May 29/45

"C J Benoit" Capt
Medical Officer

Unit

Offr Under Instruction.

A-7 Lt E J O Harvey RCEME att'd 2 Cdn A Tk Regt RCA

D-3 First Witness Pros.
Lt J C H St Pierre S.Sask R. duly sworn is exam by the Pros.
I am the OC 14 Pl "C" Coy 3 Sask R. I recognise the acc. On the night of 5 May 45, in company with my pl. sgt Sgt McKee, I checked the gd. and the pl. area at approx 2355 hrs. I did not find the gd. on duty at the house where the sec. was billeted. It was supposed to be a 2 man gd. I enquired from Cpl Keller the sec leader where the gds were. As a result of what he told me I searched the billets in order to find them. On opening the door of one of the rooms in the house, I found the acc. sitting on the edge of a bed. There was a German woman in the bed. I told the acc. to go back where he belonged. We were billeted in a farm house about 3 km. from Ofen, Germany. This was the third night we had been billeted there. I do not know the names of the inhabitants of the house.

Cross-exam:
I looked in that particular room to see if any of my sec or the gd. were there. The door opened quite freely. It did not feel as if anyone on the inside had hold of the handle. The acc. was sitting on the edge of the bed. I do not recall what position his hands were in. He came out of the room immediately. A minute or so afterwards the Cpl also came out of the room. The first person I saw in the room was the acc. The German woman was sitting up in the bed, clothed in a nightgown or some similar garment. The acc. was fully dressed except that his tunic was unbuttoned. He was sitting on the bed nearest to the door. I saw no one else in that bed. I only saw the three in the room with the German woman. I was not at the billets at 2255 hrs that night. To my knowledge the gd. had not been inspected prior to my arrival that evg. I merely told the acc. to get back to his gd. I said nothing else to him.

No re-exam:

By the Court:
When I opened the door I flashed my flashlight around the bedroom. The acc. only had his tunic unbuttoned nothing else. He did not have his boots off. The Coy Comd laid on the gd. I passed on the orders vig. 2 men of the sec. would be on gd. at all times. Cpl Keller was to detail the gd. One post was by the door of the bldg. I said to the acc. "Get out of here and go back where you belong". Those were the actual words I used. There was no indication that the acc. had been drinking. The acc. said nothing to me. He was not carrying a weapon when he came out of the room.

By JA:
The room in which I found the acc. was situated in the front part of the house. The post near the door leading into the house was about 15 from the room in question. (witness draws a sketch of the house - admitted and marked Ex "P"). The room I have marked "bedroom" was the one in which I found the acc. The post marked "X" is the one I detailed. Two men would be able to cover off the whole of the front of the house and the roadway. The sgt. was not beside me when I opened the door. He was further along in the back of the bldg. opening doors.
R.P. 83(b) complied with.

Second Witness Pros:
Frau Frieda Neumann Busselmann Wehmen, Germany, duly sworn is exam by the Pros through the Interpreter.
On 5 May 45 I was living at Wehmen in a house in which some Cdns. were billeted. I recognise this soldier (pointing to the acc) I had not seen him prior to 5 May 45. On the night of 5/6 May 45 Frau Parcheu and I had gone to sleep. The acc. came into our bedroom. He came up to me in bed and offered to have intercourse with me. I permitted him to do so. It lasted approx 10 - 20 minutes. Then this soldier left the room. He did not molest me in anyway. No one opened the door when he was with me. There were 3 beds in the room in which we were sleeping. My two children and one of Mrs Parcheus children slept in my bed.

Cross-exam:

It was a couple of mins. after 11.00 PM when the acc. came into our room. There was a bright moon that night. I had not blacked out the room. It was light enough to recognise anyone in the room. I am quite sure it was this soldier (indicating the acc.) who was in the room with me. There were 7 people in the room not incl. this soldier. I have 3 soldiers. I do not know where my husband is - in East Prussia perhaps. He had been a soldier for only 5 mos. There was on room to stand up in the bedroom. Anyone coming in the room would have to sit on the bed which was right up against the door. This soldier left the room of his own accord. I saw an off'r there afterwards. He illuminated the room with his flashlight. The following day we were brought before the C.O. He questioned me. In the beginning we did not know that Allied soldiers were not to have anyt ing to do with German women. The CO told us so. I did not know it before. I did not deny having sexual intercourse with this soldier when the CO first asked me a bout it. It was several days later that I made a statement in writing before an offr.

No re-exam:

By the Court:

I admit having had sexual intercourse with the acc. on the night of 5 May 45. Frau Parcheue was in the room too. There was another soldier with her. I was wrong before. There were two soldiers in the room not one. The acc. had been out of the room a couple of mins before the offr. shone his torch around it. The acc. closed the door when he went out. The offr. opened the door when he came in. The other soldier was with Frau Parchiue then. There was was no soldier with me then. The acc. when he was with me had his clothes on.

By the JA:

I do not speak English. Acc did not speak in German but in English. I could tell the acc. desired to have intercourse by the feel of his body. He was starting to open his trousers.

R.P. 83(b) complied with.

Third Witness Pros:

L 54804 Sgt Wales T C S Sask R duly sworn is exam by Pros.

I recognise the acc. On the night of 5 May 45 at approx 2355 hrs on making a check of No 4 sec. gd. I found no one on the sentry post, which was at the rear entrance to a Civilian farm-house where the sec. was billeted. I went into the quarters and woke up Cpl Keller the sec. leader. As a result of what he told me I went looking for the sentry. I saw the acc. come from a room in the house and go back to his post. Lt St Pierre accompanied me when I was checking the rooms. It was Mr. St. Pierre not I who opened the door to the room our of which the acc. came. I saw the acc. pass through the door way but I did not see who was in the room.

Cross-exam:

Cpl Keller did ask at one time to have the sec moved from the house where they were. As far as I know no action was taken. When I went to the gd. I expected to find the gd. within the area of the rear entrance. There were two gds on duty. The points on the sketch I have marked A&B (witness marks sketch. Ex "G"1 are the places where the gds were supposed to be stationed. There were no obstacles between points A and B. The gd at point B was under the roof an open shed. The gd at point B where I found him was nestled down and was dozing. It was possible to see the gd at point A from point B. The gd at point A was missing from his post. I cannot say if he was at his post at 2315 hrs or not. I sent no one to check that post at that time. I did not receive any report concerning a sentry being absent from his post at 2315 hrs that night.

No re-exam:

By the Court:

The A cc was fully dressed when I saw hi coming out of that room. There was no definite spot laid down as a definite post. That was our custom. Had we not found the sentries in the house I would have searched the sec area. I did not search the area surrounding the house before entering the house. The area at the rear entrance was the most likely place for a gd to be posted. Cpl Keller did not tell me the exact location of the posts and I was not sure of their exact location. The acc. accommanied me to the post marked B on the sketch (Ex P) when the other sentry was found there. I do not know if this sentry saw me when I went into the house. I was not halted. There was artificial half-light from searchlights that night. One could see a fair distance.

R.P. 83(b) complied with.

Fourth Witness Pros:

S 878,6 Cpl Keller H g S Sask R duly sworn is exam by Pros.

I recognise the acc. On the night of 8 May 45 I was i/c the sec gd. The gds had a definite beat to patrol that night. They all knew it. I posted the gds the acc and another man at 2200 hrs myself. Their tour of duty was 2 hrs. I gave neither of them permission to leave his post. After posting the acc. I retired to bed. Mr St Pierre and Sgt McKee wakened me at 2340 hrs. By the ti e I got dressed and had my boots on the acc. was at his post. When they wakened me. Mr. St Pierre and Sgt McKee wanted to know where the gd were.

Cross-exam:

Two men were on gd that night. Acc's post was at the entrance to the house. The other man was posted in front of a barn at the right of the driveway leading to the house. The man on that post could not be able to see the acc on his post. The barn obstructed his view. The posts were some 35x to 40x apart. If the acc. had wished to leave the vicinity of the entrance of the house to investigate something suspicious, the other gd was too far away for it to be practicable for the acc. to go over to the other gd and tell that gd what he proposed doing. The door leading into the bedroom was only 5 or 6 steps from the acc's post. The acc was able to hear that bedroom door opening or closing when on his post. If the acc heard a noise inside the house it was quite in order for him to go in and investigate. That was one reason I had a gd posted rear the door to the house. Anyone entering the bedroom in question would have to close the door and sit on the bed. The bed was right up against the door. The door opened outwards into the scullery. I do not know if anyone checked the gd. at 2315 hrs. I did not report that any gd. was not doing his duty at 2315 hrs.

No re-exam:

By the court:

I went out with the acc. to his post at 2200 hrs. I did not lay down any hrs of duty then. But I told both gds their hours of duty when we were in the house just before posting them. I told the acc. he was to patrol from one corner of the house to the other ie the frontage of the house and to listen for any noises in the house. There were only 6 men and myself in the sec. at that time. It was for this reason that the acc. an NCO was doing gd duty. The night was dark and windy. I do not recall there being any searchlights, in the sky when I went to bed at 2215 hrs.

S.P. 83(c) complied with.

Pros did not call Capt A F W Watkinson. Def Offr did not require his presence for cross-exam.

D-6 First Witness Def:

R87396 Cpl Keller, H F S Sask R already sworn is exam by the Def Offr.

I have known the acc. for about 6 mos. We have been in the same sec for some 3 mos. I considered him a good soldier and very trustworthy. I was never afraid to leave the sec in his charge because I knew he would do the job as well as I could. I had a very high respect for him as a soldier.

No cross-exam:

By the court:

I was made a A/Cpl approx 25 Mar 45. The acc was made 2 i/c of the sec at the same time. I came to this sec from a different pl. than the acc. did.

R.P. 83(b) complied with.

Court adjourned at 1750 hrs. Court re-opened at 2010 hrs same members present. In the interests of the service it is necessary for the court to sit after 1800 hrs.

Prosecution Summary in the Case of:

H 8934 L/Cpl Clarence Sydney Hanson, South Sask Regt.

On the First Charge.

The prosecution has been attempting to prove that L/Cpl Hanson fraternized by having said intercourse with Mrs. Frieda Neumann at ofen, Germany on the night of May 5th 1945. We have the evidence of Lt J O H St Pierre his own pl commander and Sgt McKee I S his pl Sgt to prove that he was in the room with a German woman. We also have the evidence of Mrs Frieda Neumann that L/Cpl Hanson was in the room with her and that they had sexual intercourse on the night in question.

On the Second Charge.

What the prosecut on had to prove here was that L/Cpl Hanson, acting as a sentinel left his post before he was regularly relieved. We have the evidence of his own section leader Cpl Keller who was also a character witness for L/Cpl Hanson, that Hanson was posted by him at 2200 hrs for a tour of two hours. We also have the evidence of Lt St Pierre and Sgt McKee that Hanson was not at his post at 2359 hrs when he should have been.

Lt "C W Nicols"
Prosecuting

Defence Summary in the case of H 8934 L/Cpl Clarence Sydney Hanson.

On the first charge the prosecut on has not proven that sexual intercourse took place but rather that the satage was set for such an act and a German woman was asked the simple question and on her answer alone rests the whole of the proof. The evidence up to a point was based on eye witness testimony but from the time Cpl Hanson entered the door until he came out is assumed unless the German witness cares to say a few words that would deal his fate. The evidence the enemy witness gave was as mixed up as it was cocked up. As far as we know from what she says Cpl Hanson never left his sitting position on the bed. A Cdn officer opened the door shone his flashlight into the room and saw Hanson sitting on the bed yet she says he had left the room before the officer entered. Her husband is away somewhere in Prussia if she is the type of a woman who would go back on her word to her husband by having sexual intercourse with other men, her husband is supposed to be her best friend then would she hesitate to lie about a soldier who means nothing to her. On the second charge the time the charge is laid is 2315 hrs yet there has not been one witness who has said that there was a check made at this time. Is it possible to put any time down and then show time during the day. The prosecution has not proven the charge as pleaded to.

"H H Osborn" Capt

F A Summing Up:

(a) Court is the sole judge of the facts. Court should consider the evidence in arriving at its findings and only the evidence.
(b) The function of the JA is to advise the Court on the law.
(c) First charge analized "fraternisation".
(d) Second charge AA 6(2)(h) analized para 2 and 7 to AA 6 MML p 430.
(e) Special Findings HP 44(d) and 6 MML pp 648-9.
(f) Acc presumed to be innocent until proved guilty. Burden of proof on Pros.
(g) Acc entitled to the benefit of any reasonable doubt as to his guilt on either charge "Reasonable doubt" defined.

Plea in Mitigation of Punishement on behalf of H 8634 L/Cpl Henson, Clarence Sydney.

E-3 L/Cpl Henson is a young unmarried soldier of 21 years and he has been in the army 2 yrs and 8 mos. To find character witnesses for this man was easy. The whole coy wanted to come but I took the men who would know best and the men who could give the clearest picture to the Court. Henson is one of the men that we all owe a lot to the people in Canada declared a two-day holiday to celebrate his work. They are able only to read or hear of the result of all that he had done but you as Regt'l Officers know what it means to have good fighting men under you so that when a job was given to you to do you knew it could be done because your men, men like Henson, were willing to carry out your every order. Now the war has been brought too a close in this sector and now you are faced with passing a fair punishment on a man who deserves consideration. His crime sheet is one that must be considered "clean" because the seven days "CB" for having a dirty cup happened over a year ago. He is one of the few "originals" left in the unit. He landed with the Regt and was wounded at Falaise but returned to fight again at Hoogerheide, north of Putte and served at the front continuously through the clearing of the Scheldt and the Winter defense at Nook. He has fought during the whole of the Spring offensive right up to the last day of the war. Two men have lasted as long at the front as this man has and now he is to be punished for a crime that can only happen when the fighting stops. The irony of war spend ten months killing germans and then the day the war ends one German woman sends you to jail.

"B H Osborn" Capt
2 Can R

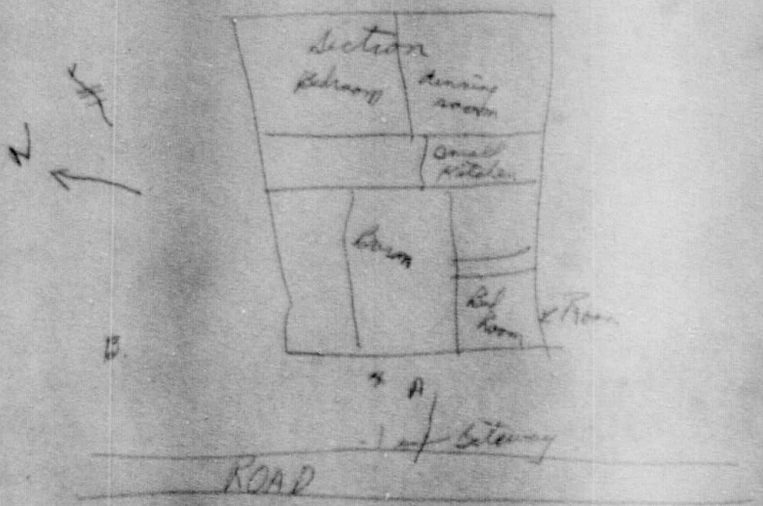


Exhibit "F" [illegible]
"A. J. DAVIS" [illegible]
Judge Advocate

X- POST

"J.G. Henri St. Pierre"

Exhibit "G" JDS
"by a Date" Maj
Judge Advocate

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be
N 39234	T/C	Henson C G F	S Sask R

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For .... times

For .... times

For .... times

For .... times

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* The [illegible] at the present time is under sentence for .....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for ..... days in civil custody, and for ..... days in military custody, making a total of ..... days of which ..... days were spent in hosp.

5. The present age of the accused is .....

6. The date of his attestation is 29 Mar 43.....

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of #

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date -

	Date of Promotion
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

* Strike out if not applicable

State the military decorations (if any) held by accused.

Exhibit "G" JPS
"Y & Date" Maj
Judge Advocate

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be
H 8934	L/C	Benson C.H.	R Sask R

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

* Strike out if not applicable

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For .... times

For .... times

For .... times

For .... times

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* The accused at the present time is under sentence for .....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for ..... days in military custody, making a total of ..... days of which ..... days were spent in hosp.

5. The present age of the accused is .....

6. The date of his attestation is .....

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of

State the military decorations (if any) held by accused.

9. (If the accused is a Warrant officer or NCO). The accused has served continuously, without reduction, to the present date -

	Date of Promotion
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Army Form B.296 (War)

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 29th day of May 45

"R.J. Watkinson" Capt

No. H 8934 Name HENSON G S | Sqn, Battery, or Company N/A | Corps CTC Infantry | Date of enlistment 29-3-43 | OC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFW 122) 40/7483/39 15412

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No one | Signature OC Company, etc WA Dawson Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 20-9-43 last entry Nil Cases of drunkenness Nil. (Sgd) (W.G Dawson) Major			Exhibit "H" "A B Bate" Maj Judge Advocate		
	12-4-44	Pte		AW. 12 mins AA Sec 15(1) Cond to prejudice of (Unshaven) K Y Murr AA Sec 40	1st	7 days CB	14-4-44	Lieut A B Bates	
				CERTIFIED TRUE COPY IN POSSESSION OF UNIT "A P V Watkinson) Capt A Adjt South Sask Regt					

(PTO)

47-94

Pte. Henson J. H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A108402 Pte John HENRY HENSON Hld'fC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 15(1)AA	GUILTY	GUILTY	
2nd 15(2)AA	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn b.)

~~At present under sentence for~~ ~~(Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)~~ (1) Nil

Time in confinement awaiting present trial—a total of 17 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a Period of 12 Months.

29 Jan 45 (Sgd) Eastwood Maj
Date awarded. President. (RP 45, 50.)

(Sgd) Judge-Advocate, if any.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed JMK.

I ~~direct that the accused be not committed to prison or detention barracks until further order.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) J M Rockingham

Date 20 Jan 45 (J M ROCKINGHAM) Brig
Commanding 9 Can Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A108402 Pte John Henry Henson	28 Jan 45	L A Cable capt The Highland Light Infantry of Canada

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 1002 27-4-44

RECEIVED 5 FEB 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFAAB (In lieu of AFA81) 40/J & S/1698 (6144) 4/38B

Convened by Order of J M Rockingham Brig Comd 9 Can Inf Bde dated 20 Jan 45

ACCUSED.

(Up to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A108402	Pte	John Henry	Henson	Hld'fC.

PROCEEDINGS REVIEWED
R A Cantley Capt
REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 24 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2½

A1. The President, Members, waiting Member, ~~AA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmh ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 756. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs as how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 86, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 (1) b. 2. AA 46, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1500 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ... as interpreter? Ans ...~~

~~The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans ...~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No, etc.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JAs, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	D. EASTWOOD	N.N.S. (H) CARS
Member	CAPT.	T. P. FARMER	S.D. & G. (H) CARS
Member	LT.	G. W. POLLARD	Hld'fC.
Judge-Advocate			
Prosecutor	LT.	R. B. MENZIES	Hld'fC.
Defending Offr	LIEUT.	D. A. PEARCE	Hld'fC.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused A108402 Pte John Henry HENSON before arraignment make(s) (no) ~~the~~ plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RaP cited. Insert in A8 rank and names of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is advised and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Evidence starts p 189

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(K) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~CHARGE~~ charge(s). The accused is (are) so informed, ~~and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 (ns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para B1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(K).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO, I WISH TO GIVE EVIDENCE MYSELF
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. THROUGH MY DEFENDING OFFICER.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RD 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No. A.108402 Private John Henry, HENSON, The Highland Light Infantry of Canada, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
SEC 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field absented himself without leave from 0830 hrs, 8 Nov 44 until apprehended by 2 Cdn L OF C Prov Coy, at Ghent, Belgium, at 1350 hrs, 19 Dec 44

(Absent 41 days, 5 hrs, 20 min.)

SECOND CHARGE
SEC 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the field, when under close arrest, absented himself without leave from 1205 hrs 28 Dec 44 until 1430 hrs 7 Jan 45. (Total absence 10 days, 2 hrs, ~~00~~ 25 min.)

P.W. Strickland Lt Col

In the Field
20 Jan 45

(P.W. Strickland) Lt-Col
C.O. The H L I of Canada

To be tried by Field General Court-Martial

J.M. Rockingham

In the Field
20 Jan 45

(J M Rockingham) Brig
Comd 9 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt. A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A.108402	Pte		John Henry	HENSON	HLI of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence set forth in the Charge Sheet attached and on (date) 20 Jan 45 endorsed by me, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial;

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj (Rank.)	D, Eastwood (Must be named. RP 106.)		Nth NS Highrs (Unit.)

MEMBERS.

Capt	J.F. Palmer		SD & G Highrs
Lt (Rank.)	G.W. Pollard (Named or detailed. RP 106.)		HLI of C (Unit.)

WAITING MEMBER.

Capt (Rank.)	J.E. Gillespie (Named or detailed, if any. RP 106.)		HQ 9 Cdn Inf Bde (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)		(Unit.)

On Active Service in the Fd

in Holland (Country.)

Dat 20 Jan 45

J M Rockingham (Signed personally. RP 105 fn 2.)

(J M Rockingham)

Brig (Rank.)

Commanding 9 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL CERTIFICATE

I certify that I have this day examined A.106402 Pte. Henson, J.H., The H.L.I. of C., and declare the above mentioned soldier to be fit ~~unfit~~ to stand trial by Field General Court Martial.

24 Jan 45
(Date)

J. Shaw Hair Capt
(Medical Officer)
RCAMC

O. E3

Plea of Mediqation D.

This boy, the accused, and I speak of him as a boy since he is only 20 yrs of age having shouldered the full responsibilities of a fighting soldier since early in July did not have a leave until the div went into rest at Ghent after the battle of the Scheldt.

And as you know anyone serving in the infantry during that period had a pretty rough time of it. He arrived in Ghent with the battalion and as most young chaps do, met a girl, and over stayed his time.

When he was picked up by the A.P.C. provost he offered no resistance and went with them willingly.

I have talked with the

accused and he says his greatest wish is to continue serving with his unit.

I feel that if this young chap is given a long term sentence it will be a very grave mistake in starting him on the wrong road in life. And I ask you to be as lenient as possible and give him a further chance to show his value on the battle field.

4108402 PTE. JOHN HENRY HENSON H.L.I.(C.

I

16.

E 1:

The accused sworn states, I am 20 yrs of age, single. I joined W.L.I. 9th July 44. I have never been in any serious trouble with the unit previous to this. I was a rifleman in my plt. I have never had leave since joining bn. I did not offer any resistance to Provost when arrested.

(R.A. 83B complied with)

SUMMARY OF EVIDENCE in the case of

Exhibit "A"

No. A.108402 Private John Henry, HENSON, The Highland Light Infantry of Canada:-

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness Lieut. R.B. Menzies, The Highland Light Infantry of Canada, sworn states:-

"I produce Certified Extract of Part II Orders No. I dated 7 Jan 45 relating to the accused (Admitted as Exhibit "A")

"I produce Certificate of Apprehension relating to the accused(Admitted as Exhibit "B")

"I produce Certificate of Apprehension relating to the accused (Admitted as Exhibit "C")

The accused declines to cross examine the witness.

.....
The Highland Light Infantry of Canada

Second Witness A.3315 Sgt. Sleeman, R. 2 Cdn L of C Provost Coy 21 Army Gp

"I certify that in my opinion the attendance of this witness is, owing to the absence of this NCO on duty, not readily procurable, and a written statement of his evidence signed by him has been read to the accused and is attached hereto as Exhibit "C"

.....
The Highland Light Infantry of Canada

"I do not require the attendance of Sgt. Sleeman, R. for the purpose of cross examination.

.....
The Highland Light Infantry of Canada

Third Witness A.37929 L/CPl MacFarlane, P.W., Regimental Police, The Highland Light Infantry of Canada, sworn states:-

"At 1205 hrs 28 Dec 44 I checked the guard room and immediate vicinity and Pte. Henson J.H. was not there.

The accused declines to cross examine the witness.

.....
The Highland Light Infantry of Canada

Fourth Witness F.35039 L/Cpl Bell,J.C. Regimental Police The Highland Light Infantry of Canada, sworn states:-

"I arrested Pte. Henson J.H. at 1430 hrs 7 Jan 45 at Ghent while on duty.

The accused declines to cross examine the witness

.....
The Highland Light Infantry of Canada

The accused was cautioned as follows:-

(Q) Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

(A) No.

"I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that RP 4(c)(d)(e)(f) and (g)(13) have been complied with.

.....
The Highland Light Infantry of Canada

Summary of Evidence in the case of
No. A. 108402 Private Henson L. H. the
Highland Light Infantry of Canada, a
soldier of the Canadian Army Overseas.
By direction of the Commanding Officer
the evidence is taken on oath.

First Witness Lt. J. W. Mayo, the
Highland Light Infantry of Canada sworn
states

I produce the Order No 7 Jan 45
relating to the accused (Admitted as Exhibit A)

I produce an Apprehension slip relating
to the accused (Admitted as Exhibit B)

I produce an Apprehension slip relating
to the accused (Admitted as Exhibit C)

The accused declines to cross examine
the witness.

J. W. Mayo
Lt. Highland Light Inf. of C.

Second Witness A 3315 Sgt. Sleman R.
2 C.O.R. L of C Provost Coy 21 A. Group.

I certify that in my opinion the attendance
of this witness is, owing to the absence
of the N.C.O. on duty, not readily procurable,
and a written statement of his evidence
signed by him has been read to the accused
and is attached hereto as Exhibit C.

J. W. Mayo

I do not require the attendance of Sgt
Sleman R for the purpose of cross
examination

L. H. Henson

Third Witness F37929 Pte. Lt Gp
MacFarland W.H. R.C.R. Highland
Light Infantry of Canada sworn
state

At 1205 hr. 28 Dec. 44 I checked
the guard room and immediate
vicinity and pte Benson J.P. was
not there.

The accused declined to cross
examine the witness.

Lt & Adj MacFarland W.H.

Fourth Witness F35039 L/Cpl.
BELL. J.C. R.C.R. The Highland Light Infantry
of Canada sworn state.

I arrested Pte Benson J.P.
at 1430 hr. 7 Jan 45 at Ghent while
on duty.

The accused declined to cross
examine the witness.

Lt & Adj Bell Regt Police

The accused was cautioned as
follows.

Q. Do you wish to make any statement
or to give evidence on oath. You are
not obliged to say anything or give evidence
unless you wish to do so but whatever
you say or any evidence you give will

be taken down in writing and may be given ~~again~~ in evidence. (8)

C. No.

I certify that the foregoing Summary of Evidence consisting of four pages was taken down by me in the presence of the accused and that R.P.4(C)(D)(E)(F) and (3)(4) have been complied with.

W. Wiggins 2

Lt. Sgt. Instructor, Light Infy

EXHIBIT "A"

THE HIGHLAND LIGHT INFANTRY OF CANADA
Part II Orders Issued by
CANADIAN SECTION GHQ 2nd ECHELON
21 ARMY GROUP

Order No 1

Dated
7 Jan 45

---

15 STRENGTH DECREASE

(p) SOS as a des wef 11 DEC 44 having been dec illegally absent by a CT of INQ from 0830 hrs 8 NOV 44 Def in kit in the amt of £2.11.3

A108402 Pte. HENSON J H

CERTIFIED TRUE EXTRACT
16 Jan 45 (A.A. Echlin) Capt. & Adjt.
Officer having custody of Original

CERTIFICATE UNDER ARMY ACT. SECTION 153 (1) (a) Exhibit "B"

Certified that No. A10P402 Rank. PTE. Name. HENSON J. N.

of the H.L. INF. of CAN. 3 CDN. DIV. Regt, [redacted] No. A33[illegible]

was apprehended by

Rank. SGT. Name. SLEEMAN. R. of the 2 CDN. L. of C. PROV. COY.

GHENT DETACH at. GHENT BELGIUM at. 1350 hrs, on the 19

day of DEC. 44 as an absentee without leave.

He was wearing Military Uniform at the time of his [redacted] Arrest.

~~Civilian Clothes.~~

Place. GHENT BELGIUM

Date. 19 DEC. 44.

GHENT DET. 2 CDN. L. of C. PROVOST COY 21 A. GRP.

[redacted] LIEUT

[redacted] GHENT DETACH

2 CDN. L. of C. PROV. COY. 21 A. GRP.

Exhibit "B"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A.108402	Private	John Henry HENSON	THE H.L.I. OF CANADA

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, permission being given by the field marshal, absence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct,~~

or

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, *or*

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, not in connection with trial under section 71 of the Army Act are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence of~~ ~~imprisonment for~~ ~~days~~

4. The accused has been in confinement, awaiting trial on the present charges, for ~~days~~ in civil custody, and 0 days in military custody, making a total of 0 days, of which ~~days~~ were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 20 years

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 4 Oct 43

7. ~~The service entitles the accused to reckon towards discharge or transfer to the reserve in~~

8. ~~The accused is entitled to deferred pay or gratuity in respect of~~

9. ~~The accused's service is reckon~~ service for the purpose of determining his position, etc.

10. The accused is ~~not entitled to, or entitled to no military decoration or military award~~ (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). The C.V.S.M. & Clasp

11. ~~The accused is a warrant officer~~ The accused before he was made a warrant officer (or left the ranks) was

~~The date of assumption~~ The accused holds no theory the rank of ~~dated~~

~~The date of his appointment to the rank of dated~~

(*16548) W1.39248/562 75,000 12/40 A.& E.W.Ltd. Gp.498

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. A108402 Rank Pte. Name Benson, J.H. of HLI of C Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispositions with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL.		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 24 day of JAN 45

A.A.Scobie Capt
(Officer having custody of Regimental Books

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraphs concerned amended accordingly.)

IF THE ACCUSED has served with the Commonwealth Military Forces, or the present Regular Forces, without reduction, to the present date,

Date of Promotion.

To Lieut. [illegible]

To Capt. [illegible]

To Major [illegible]

To Lieut.-Col. [illegible]

Exhibit C

No. A108402 Name Henson, J.H. Sqn., Battery, or Company — Corps C.I.C. — Date of enlistment 4 Oct 43 C.C. Badges — Service or Proficiency Pay — M.F.M. 5 A.F. W. 1918 (1919-20) H.Q. 177-35-1902

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				DUPLICATE SHEET ORIGINAL NOT AVAILABLE					
				CERTIFIED TRUE COPY R.A. Ecclin 15 Jan 45 (R.A. Ecclin) Capt. & Adjt. Officer having custody of Regimental Books					

P.T.O.

APPLICATION FOR DEFENDING OFFICER

Precedent:

To Officer commanding,
The Highland Light Infantry of Canada

With reference to my pending trial by Field General Court Marital.

(a) I desire that an officer be assigned to act as Defending Officer, Lieut. D.A. Pearce, if available.

R to J H Henson

.....
The Highland Light Infantry of Canada

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-108402 Pte John Henry Henson H.L.I. of C

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 15(1)AA	Guilty	Guilty	
2nd 15(1)AA	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ N/C (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for a period of 12 months

(Sgd) ..... Judge-Advocate, if any. 24 Jan 45 Date awarded. (Sgd) D.Eastwood, Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1) N/C

(1. AA 57A. Delete if not used.)

(Sgd) J.M. Rockingham, Brig

Date 26 Jan 45 Commanding 9 Cdn Inf Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A-108402 Pte John Henry Henson	28 Jan 45	R.A. Mchlin, Capt., The Highland Light Infantry of Canada.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFA86 (To lieu of AFA31) 40-P & R-1698 (40/10) 4/38B

Convened by Order of J.M. Rockingham, DSO Comd 9 Cdn Inf Bde dated 20 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-108402	Pte		John Henry	Henson	HLI of C

Certified true Copy
A D J A Capt
Cdn Sec G.H.Q. 2

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 24 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 21/2

A1. The President, Members, waiting Member, ~~Judge-Advocate, if any, and Offrs under instr, if any~~ assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1500 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ as interpreter? Ans ~~No~~

~~The Interpreter is sworn.(1) Do you object to~~ as shorthand writer? Ans ~~No~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~Judge-Advocate, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D.Eastwood	R.H.G. Highrs
Member	Capt	J.P.Palmer	S.D.& G. Highrs
Member	Lt	G.W. Pollard	H.L.I. of C
Judge-Advocate			
Prosecutor	Lt	R.E. Menzies	H.L.I. of C
Defending Offr	Lieut	D.A. Pierce	H.L.I. of C

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See (1) p 2.)

A8. The accused A-108402 Pte John Henry Henson before arraignment make(s) (no) ~~(a)~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RaP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AB6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is advised and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Europe III P 109

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (ii) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 37(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No Sir (5)

(1. *RP 37(6).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on either charge(s). The accused is (are) so informed, ~~and he (they) changes his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(a).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (c), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans I wish to give evidence myself

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Service(1), and certified true copy (copies) of Conduct Sheet (Sheets)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46. KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Through my Defending Officer.

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

D.E.

CHARGE SHEET

The accused No A-106402 Private John Henry, Henson, The Highland Light Infantry of Canada, a soldier of the Canadian Army Overseas, is charged with:-

WHEN ON ACTIVE SERVICE

FIRST CHARGE
Sec 15(1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field absented himself without leave from 0830 hrs, 8 Nov 44 until apprehended by 2 Cdn L of C Pro Coy, at Ghent, Belgium, at 1350 hrs, 19 Dec 44.
(Absent, 41 days, 5 hrs, 20 mins)

SECOND CHARGE
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, when under close arrest, absented himself without leave from 1205 hrs 26 Dec 44 until 1430 hrs 7 Jan 45. (Total absence 10 days, 2 hrs, 25 min.)

(sgd) P.W. Strickland, Lt-Col
O.C. The H L I of Canada

In the Field
20 Jan 45

To be tried by Field General Court-Martial.

(sgd) J.M. Rockingham, Brig
Comd 9 Cdn Inf Bde.

In the Field
20 Jan 45

D.S.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-108402	Pte		John Henry	Henson	HLI of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[s] named above as the accused[s] being subject to military law, has (~~have~~) committed the offence[s] set forth in the Charge Sheet[s] attached and on (date) 20 Jan 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court Martial".

2. And whereas I am of opinion that it is not practicable that such offence[s] should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person[s], and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as~~ Judge-Advocate thereat the Offr ~~mentioned hereunder~~.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D.Eastwood	NWS Highrs

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J.P. Palmer	SD&G Highrs
Lt	G.W. Pollard	HLI of C

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	J.E. Gillespie	HQ 9 Cdn Inf Bde

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland (Country.)

J.M. Rockingham (Signed personally. RP 105 fn 2.)

Brig (Rank.)

Date 20 Jan 45

Commanding 9 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAS6 (In lieu of AFA5) 40-P & S-1507 (4901)

(See overleaf for oaths and notes for use on trial.)

D.E.

MEDICAL CERTIFICATE

I certify that I have this morning examined A-108402 Pte. Henson, J.H., The W.L.I. of C., and declare the above mentioned soldier to be fit to stand trial by Field General Court Martial.

24 Jan 45

(sgd) ??????????????? Capt
Medical Officer

D.W.

A-108402 Pte John Henry Henson, HLI of C

E-1 The accused sworn states:-

I am 20 years of age, single. I joined the HLI 9th July 44. I have never been in any serious trouble with the xxxx Unit previous to this. I was a rifleman in my platoon. I have never had leave since joining the Bn. I did not offer any resistance to Provost when arrested.

R.P. 83 B Complied with.

E-3 Plea of Mitigation

This boy, the accused, and I speak of him as a boy since he is only 20 years of age having shouldered the full responsibilities of a fighting man since early in July did not have a leave until the Div went into a rest at Ghent after the battle of the Rhelde

And as you know anyone serving in the infantry during that period had a pretty rough time of it. He arrived in Ghent with the Battalion and as mostyoung chaps do, met a girl, and over stayed his time.

When he was picked up by the Provost he offered no resistance and went with them willingly.

I have talked with the accused and he says his greatest wish is to continue serving with his Unit.

I feel that if t is young xxxchap is given a long term sentence it will be a very grave mistake in starting him on the wrong road in life. And I ask you to be as lenient as possible and give him a further chance to show his value on the battlefield.

Exhibit "A" D.R.

SUMMARY OF EVIDENCE in the case of No A-108402 Private John Henry Wenson, The Highland Light Infantry of Canada:-

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness — Lieut. R.F. Menzies, The Highland Light Infantry of Canada, sworn states:-

" I produce Certified extract of Part II orders No 1 dated 7 Jan 45 relating to the accused(Admitted as Exhibit "A")

" I produce Certificate of apprehension relating to the accused (Admitted as Exhibit "B")

" I produce Certificate of apprehension relating to the accused (Admitted as Exhibit "C")

The accused declines to cross-examine the witness.

The Highland Light Infantry of Canada

Second Witness — A-3319 Sgt Sleeman, R. 2 Cdn I of C Provost Coy 21 Army Gp

" I certify that in my opinion the attendance of this witness is, owing to the absence of this WCC on duty, not readily procurable, and a written statement of his evidence signed by him has been read to the accused and is attached hereto as Exhibit "C"

The Highland Light Infantry of Canada

" I do not require the attendance of Sgt Sleeman, R. for the purpose of cross examination.

The Highland Light Infantry of Canada

Third witness — A-37027 L/Cpl McFarlane, P.T., Regimental Police, The Highland Light Infantry of Canada, sworn states:-

" At 1203 hrs 2nd Dec 44 I checked the guard room and immediate vicinity and Pte Wenson was not there.

The accused declines to cross examine the witness

The Highland Light Infantry of Canada

Fourth Witness — W-35039 L/Cpl Bell, J.C. Regimental Police The Highland Light Infantry of Canada, sworn states:-

" I arrested Pte Wenson J.W. at 1430 hrs 7 Jan 45 at Ghent while I was on Duty.

The accused declines to cross examine the witness.

The Highland Light Infantry of Canada

The accused was cautioned as follows:-

(Q) Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

(A) No.

" I certify that the foregoing Summary of Evidence consisting of 1 page was taken down by me in the presence of the accused and that RP 4 (c)(d)(e)(f) and (g)(13) have been complied with.

The Highland Light Infantry of Canada

D.E.

For the Prosecution

LIST OF WITNESSES

(1) Lieut R.F. Menzies, The Highland Light Infantry of Canada.

(2) A-3315 Sgt Sleeman, R. 2 Cdn L of C Pro Co 21 Army Group

(3) A-377029 L/Cpl McFarlane, P.W. Regimental police The Highland Light Infantry of Canada

(4) F-350039 L/Cpl Bell, J.C. Regimental Police The Highland Light Infantry of Canada

For the Defence

NIL

LIST OF EXHIBITS

Exhibit "A"	Certified extract Part II Orders
Exhibit "B"	Certificate of apprehension
Exhibit "C"	Certificate of apprehension.

Precedent:

D.E.

APPLICATION FOR DEFENDING OFFICER

To

Officer Commanding,
The Highland Light Infantry of Canada

(a)

With reference to my pending trial by Field General Court Martial.

I desire that an Officer be assigned to act as Defending Officer, Lieut D.A. Pearce, if available.

(sgd) Pte J.M. Benson
The Highland Light Infantry of Canada

Exhibit "A" D.E.

THE HIGHLAND LIGHT INFANTRY OF CANADA

Part II Orders Issued by CANADIAN SECTION GHQ 2nd ECHELON 21 ARMY GROUP

Order No 1

Dated

7 Jan 45

15 STRENGTH DECREASE

(p) SOS as a des wef 11 Dec 44 having been dec illegally absent by a CT of INQ from 0830 hrs 8 Nov 44 Def in kit in the amt of £2-11-3

A-108402 Pte Lenson, JH

CERTIFIED TRUE EXTRACT

16 Jan 45

(sgd) H.A. Zehlin, Capt. & Adjt.
Officer having custody of original

Exhibit "B" D.W.

CERTIFICATE UNDER ARMY ACT SECTION 163 (1) (3)

Certified that No A-108402 Rank Pte Name Wenson J.W.
of the N.L. Inf of Can 3 Cdn Div Rest was apprehended by No A-3315
Rank Set Name Eleeman, R. of the 2 Cdn L of C Pro Coy
Ghent Detachment at Ghent Belgium at 1350 hrs. on the 19th
day of Dec 1944 as an absentee without leave.
He was wearing military uniform at the time of his arrest.

Place Ghent Belgium.
Date 19 Dec 44.

(sgd) R.A. McDonald, Lieut
i/c Ghent Detach
2 Cdn L of C Prom Coy.

Exhibit C D.E.

No. A108402 Name Henson JW | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 4 Oct 43 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/7458/38/5412

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (injunction with title)	By whom awarded	Remarks
				DUPLICATE SHEET ORIGINAL NOT AVAILABLE					
				CERTIFIED TRUE COPY 16 Jan 45 (sgd) R.A. Echlin, Capt. & Adjt. Officer having custody of Regimental Books.					

(FTO)

Exhibit "B" D.E.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A-108402	Pte	John Henry Hanson	The N.I.I. of Canada

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recommended special acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For ..... times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused on the present occasion was sentenced to ~~[illegible]~~ beginning on the ~~[illegible]~~ day of ~~[illegible]~~

4. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for 17 days in military custody, *i.e.*, ... days in open arrest, ... days in close arrest; of which ..... days were spent in hospital.

5. The present age of the accused is 20 Years

6. The date of his attestation / calling up for military service is 4 Oct 43

7. ~~The accused was allowed to reckon [illegible]~~

8. The accused is in possession of† CVSM and Clasp

9. ~~If the accused was on active service [illegible] the date on which he served continuously in the present theatre of war.~~

~~Date of Promotion~~

~~In the substantive rank~~ .....

~~In the war substantive rank~~ .....

~~In the acting rank~~ .....

†State the military decorations (if any) held by accused.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(72072) W1-30721/3701 25,000 9-44 A.& E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 24th day of Jan 45

R.A. Echlin, Capt & Adjt
Officer having custody of Regimental Books

II-39

PTE HENWOOD J W

F-49802 Pte. HENWOOD, Joseph, Willard
North Nova Scotia Highlanders
7 Canadian Infantry Reinforcement Unit.

II-39

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this twenty-sixth day of June, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer;~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

Ewtl

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers ~~hereunder named~~ appointed or detailed hereunder.

* Omit if not applicable.

*~~of an unable to appear~~]:—

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.~~ Ewtl

*~~(3. Three Officers having more than one year's service.)~~

~~for the following reasons, namely:—~~]

President.

Rank.	Name.	Regiment.
Major	A. S. Pettapiece	H.Q. C.R.U.

Members.

Rank.	Name.	Regiment.
A Major	from	3 C.I.R.U.
A Captain	from	3 C.I.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed Ewtl Brigadier.

Commanding "D" Group, Cdn Rft Units.

Convening Officer.

Alex S. Pettapiece, Major

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
F-49802 Pte. HENWOOD, Joseph, Willard. Nth. N.S. Highrs. 7 C.I.R.U.	First Charge A.A. Sec.15(1) Second Charge A.A. Sec.40 See Charge Sheet Attached	Guilty Not Guilty	Guilty Guilty Detention for a period of sixty (60) days. 28th June 43 CHP	Confirmed 29 June 43 E.W. Haedenby Brig

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— No

(Signed) E.W. Haedenby Brigadier. (Signed) Arthur L. Pettigrew, Maj.
Commanding "D" Group, C.M.U. *President.*
Convening Officer (*c*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 28th day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this 28th day of June 1943.

Arthur L. Pettigrew Maj.
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (*b*) on page 76 of M.M.L. 1929

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 28 day of June 1943.

E.W. Haedenby
Confirming Officer.

Brig
Part II D.O. 123 d/30 June 43 @

Promulgated and extracts taken in the case of F37221 Pte Henwood [illegible]

(*a*) (Dated) 28 June 43 (Signed) L.E. Dorken Lt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, No. F49802 Private Joseph Willard HENWOOD, North Nova Scotia Highlanders, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, on Active Service, is charged with:

Absenting himself without leave,

in that he,

FIRST CHARGE
SEC 15 (1)
ARMY ACT

at Haig Lines, Crookham, Hants, absented himself without leave from 1300 hrs 10 Jun 43 until placed under arrest by Regimental Police at 1545 hrs 21 Jun 43 at Haig Lines, Crookham, Hants.

Total absence - 11 days, 2 hrs, 45 min.

Conduct to the prejudice of good order and military discipline,

in that he,

SECOND CHARGE
SEC 40
ARMY ACT

at Haig Lines, Crookham, Hants, when questioned by Regimental Police at 1545 hrs 21 Jun 43, made a false statement, i.e., stated his name to be "Brown", well knowing this to be false.

J.R. Calkin Col.
.....
(J.R. Calkin) Colonel
Commander
7 Cdn. Inf. Rft. Unit

In the Field,
23 Jun 43.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

E.W. Haldenby

(E.W. Haldenby) Brigadier.
Commander
"D" Group, Cdn Rft Units.

IN THE FIELD
26 June 43.

Arthur S. Pettapiece, Maj.
President

CHARGE SHEET

The accused, No. V49802 Private Joseph Willard HENWOOD,
North Nova Scotia Highlanders

28 June 18

MEDICAL OFFICER'S CERTIFICATE

- K.R. (Can) Para. 557 -

I certify that I have this morning examined No. F49402 Pte Henwood, J.W. Nth N.S. Highrs.

No. 7 Cdn. ~~Div.~~ Inf. Reinf. Unit, and in my opinion,

he is fit ~~unfit~~ to undergo trial by Court-Martial.

.....
(Medical Officer)

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Base Barracks, Aldershot, Hants.
ON THE DAY OF 1943

The accused F49822 Pte. Howard, J.W. ..Unit. 3 C.R.U. .....

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Maj. G.A.S. Draper ....Unit. H.Q. C.R.U.....

Members Maj. F.L. Bowden .....Unit. 3 C.R.U.....

Capt. W.R. Marshall .....Unit. 2 C.I.B.....

~~The officers under instruction are duly sworn:-~~

~~.....Unit.....~~

~~.....Unit.....~~

Prosecutor Lt. A.C. Hopkins .....Unit. 7 C.I.B.....

Defending Officer Lt. J.C. Baker ....Unit. 7 C.I.B.....

The charge sheet is signed by the President and the accused is arraigned.
~~The accused pleads guilty to the charge(s) and R.P. 35(B)~~ is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
(b) Calls witnesses as to character.
(c) Calls witnesses in mitigation of punishment.
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

~~SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER~~

The accused pleads "Guilty" to the First charge, and "Not Guilty" to the second charge.

R.P. 38(B) and 39(A) are complied with

The Prosecutor proceeds to call witness.

1st Witness for Prosecution

F 79381 A/Sgt. Stirk, T.R. of the Regt'l Police, 7 C.I.R.U., having been duly sworn, states.

At about 0545 on 21 Jun 43 I saw the accused leaving the Camp and I accosted him. He said that he was going to visit the padre and when I asked him if he was sure he said it was Sunday. I then asked him for his pay book and when I saw the words "Honeymoon" in it I took him to the guard room. I am positive he said Sunday when I asked him. When I first saw the accused I escorted him to the hutt and

No cross-examination by Accused. left him there.

By the Court - The engine of my motor cycle was not running when I was talking to him

The Prosecution is closed.

R.P. 40(A) & (B) is complied with

The Defence proceeds to call witnesses.

1st Witness for Defence.

The accused having been duly sworn, states.

Returned to Camp on 21 Jun 43 in order to surrender myself. I thought the Sgt. asked for my pay book the first time and I said in reply "Do you want to see it?" That is when I went to get it. The first I said "It's Sunday". He then took me to

the grand Jurors. I now go into the parties.

No cross examination.
No witness abroad.
No final address by Prosecutor

The presiding officer makes no closing address.
The Court is closed for consideration of finding.

The Court is opened and Prosecution R.O. 3262 is complied with

The Summary of Evidence is read as far as it relates to the charge to which the accused pleaded "Guilty"

The Prosecutor produces the MFR 355 and MFM 6 of the accused Prosecution R.O. 3262 is complied with.
The accused makes a statement in place of extenuation (attached hereto)
The Court is closed for consideration of sentence

Arthur L. Pettypiece,
Major

PLEA of MITIGATION

I, the undersigned, have recently rec'd letters from my wife who is in Canada, to the effect that her ~~living~~ dependent's allowance was not reaching her and that she was very much perturbed because of this fact.

About one month ago her latest letter arrived, informing me that if the

2/
allowance did not
reach her very soon
~~that~~ she would
sue for a divorce.
I spoke to
my Coy. Commander,
Capt. MacDonald (NNSH)
asking him about
a leave (long overdue)
and for permission
to go before the
Camp Commandant
to get advice and
as to what I should
do regarding the
financial difficulties

my wife was experiencing.

Capt. MacDonald refused to grant me a leave and also said that I could not be paraded before the Colonel. He was very brusque and entirely unsympathetic.

I left him feeling very downcast and went to see the padre, hoping he could help me.

4/.

could not find him, ~~and~~ as he was not in his office.

This took place several days before I absented myself. Due to worry, mental frustration and the feeling that I was totally alone with my troubles, I was driven to going

A.W.L.

5/.

May I add that I have a daughter at home, aged nine months.

J. W. Lamond

Li Palmer v
Defendant
Offd

SUMMARY OF EVIDENCE

In the case of No. F49802 Private Henwood, J.W., North Nova Scotia Highlanders, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

F59666 Cpl. Whalen, P.J., Nth N.S. Highrs., 7 Cdn. Inf. Rft. Unit, having been duly sworn, states:

I am F59666 Cpl. Whalen, P.J., Nth N.S. Highrs., 7 Cdn. Inf. Rft. Unit. On 10 Jun 43 I was Company Orderly Corporal of "A" Company of which the accused was a member. At 1300 hrs I went down to the lines to warn Pte. Henwood to report to the R.A.P. at 1315 hrs. I couldn't find him in the lines. I also looked for him again that evening and next morning. I marked him absent from 1300 hrs 10 Jun 43.

P.J. Whalen ....Cpl.

(The accused declines to cross examine this witness)

SECOND WITNESS FOR THE PROSECUTION

F79381 Sgt. Stiles, T.R., Regimental Police, 7 Cdn. Inf. Rft. Unit, having been duly sworn, states:

I am F79381 Sgt. Stiles, T.R., Regimental Police, 7 Cdn. Inf. Rft. Unit. On the afternoon of 21 Jun 43 while patroling the camp at approximately 1545 hrs, I saw the accused walking between the huts. I hollered at him. He kept on going. I caught up to him and asked him where he was going. He said "to the Padre." I then asked him his name. He said "Brown." I then asked for his paybook. I saw then that his name was Pte. Henwood, and knowing that he was an absentee I placed him under arrest and had him escorted to the guardroom.

T.R. Stiles ....Sgt.

(The accused declines to cross examine this witness)

The accused having been warned according to Rule of Procedure 4 (E), reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C), (D), (E), (F), and (G) have been complied with.

E Dakin ....Lt.
(Officer taking Summary)

In the Field,
23 Jun 43.

Arthur S. Bethune Major

No. F49802 Name Harewood J.W. Sqn., Battery, or Company Nth N.S. Highrs. Corps Date of enlistment 19-9-39 G.C. Badges Service or Proficiency Pay

MFM 6 (A.F.B. 1233)- 5000m - 8.39 (1763) H.Q. (77)-45-18

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Original destroyed 13-3-40					
Amherst N.S.	3 Nov 40	Pte		Awh - 8 day 18 hrs 41 AA 15(1)		18 days detn	12 Nov 40	Lt Col Murdock	9 days awy
Amherst N.S.	12 Feb 41	"		(1) AA 40 - disturbance on parade (2) AA 10 (1) - Breaking barracks		28 days detn	12 Feb 41	Lt Col Murdock	
Debert N.S.	2 Jun 41	"		(1) AA 15(1) Awh 7 days 16 hrs (2) AA 15(1) Awh 8 hrs.		14 days G.B.	10 Jun 41	Lt Col Murdock	9 days awy

Certified true copy Capt

(Officer having custody of original documents)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Fredericton	13 Mar 42	L/C		AA Sec 15(1) Awl 3 days 1 hrs 30 min		Reverted to Pte	24 Mar 42	Lt Col Mc Dougall	4 days pay
Fredericton	14 Nov 42	Pte		AA Sec 15 (1) Awl 2 days 30 min		7 days C.B. 3 days pay	18 Nov 42	Major Babcock	3 days pay
Fredericton	24 Dec 42	"		AA Sec 40 Disorderly manner profane & obscene language. AA Sec 9(a) Disobeyed lawful command		27 days F.P.	28 Dec 42	Lt Col Mc Gd. Colingwood	27 days pay
Fredericton	14 Oct 43	"		AA Sec 15(1) Awl 1 day 16 hrs 1 min		6 days F.P.	18 Feb 43	Lt Col Lt Col Morris	2 days pay 2 days pay
Fredericton	7 Mar 43	"		AA Sec 15 (2) Awl 13 hrs 15 min		3 days F.P.	9 Mar 43	Lt Col Mc Lt Col Mc	3 days pay 1 day pay

Certified true copy

(officer having custody of original document)

No. F40902 Name Henwood, J.W. Sqn., Battery, or Company — Mtd. N.S. Highrs. — Corps — Date of enlistment 13.9.39 — G.C. Badges — Service or Proficiency Pay — MFM 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Freed	21 Mar 43	Pte		AA Sec (SW) 7 days & 10 hrs 31 mins		27 days detn	29 Mar 43	Lt Col W.G. Lawson	8 days pay

Certified True Copy
Capt
(Officer having custody of original document)

Arthur S. Pettypiece, Major

P.T.O.

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F49802	Pte.	Henwood, J.W.	Nth NS Highrs 7 CIRU

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For AA Sec 15(1)	4	times	8	times
For AA Sec 40	1	times	2	times
For AA Sec 10(4)	-	times	1	times
For AA SEc 9(2)	-	times	1	times

~~Number of instances of gallantry or distinguished conduct~~

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for ~~Nil~~ days in ~~Air Force~~ civil custody, and ~~7~~ days in military custody, making a total of 7 days in custody, of which ~~Nil~~ days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 22 years.

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 13 Sep 39

7. The service which the accused is allowed to reckon towards discharge is 3 yrs 176 days.

8. The accused is entitled to reckon 3 yrs 176 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~(or is in possession of or entitled to). State any air force decoration or reward.~~

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of~~

11. ~~(In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force

.....dated....., and in his regiment (or corps), the rank of unit

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number F87221 Rank Pte. Name Henwood, J.W. of Nth N.S.Highrs 7 C.I.R.U. Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21st day of June 1943 [illegible]

F87221 Pte Henwood J.W. 7 C.I.R.U.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

[illegible]

(1) I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Leipzic Barracks, Ewshott, Hants, preliminary to my court-martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

Dated at Leipzic Bks
Ewshott, Hants.
this 23rd day of
June 1943.

Pte. Hammond
.....

(2) I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Lt. J.E. Palmer
if he is available.

Dated at Leipzic Bks
Ewshott, Hants.
this 23rd day of
June 1943.

Pte Hammond
.....

LIST OF WITNESSES - Case of Henwood

For the Prosecution

First Witness - F59666 Cpl. Whalen, P.J., Nth N.S. Highrs 7 CIRU

Second Witness - F79381 Sgt. Stiles, T.R., Regtl Police, 7 CIRU

JJ-20

PTE HERBERT A.J.

B V Mitchell Capt. JJ-20

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 6th day of July, 1943.

Whereas it appears to me, the undersigned, an officer in Command of Rear H.Q. 1 Cdn Div, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint :—

*(1. ~~Three Officers to form the Court.~~)

*(2. A Field Officer as President.)

for the following reasons, namely :—]

*Omit if not applicable.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Captain	V.D. Mitchell	Hast & P.E.R.

Members.

Rank.	Name.	Regiment.
Captain	C.C. Waywell	Sask L.I.
Lieut	K.A. Richardson	4 Cdn Recce Regt

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed F.S. Adams
(F.S. Adams) Lt.-Col.
Commanding Rear H.Q. 1 Cdn Div.
Convening Officer.

V.S.M.

V.S. Mitchell Capt

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
G.18006 Pte HERBERT, Aubrey, John. Carlt & York R.	FIRST CHARGE AA. Sec 40	Not Guilty	Not Guilty	Confirmed F.B. Adams Lt-Col 18 July 43

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) F.B. Adams (F.B. Adams) Lt.-col. (Signed) V.S. Hurtubise Capt. R.C.E.R.

Commanding Rear H.Q. 1 Cdn Div.
Convening Officer (c) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

V.S.H.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the day of , and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The Interpreter)~~
*~~(4. The officers under instruction)~~

*Omit if not applicable.

were duly sworn.

Signed this 15th day of July 1943

V.S. Hurtubise Capt.
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (*b*) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this day of 19 ,

President of the Court Martial.

D. Confirmation.

I have dealt with the findings ~~and sentences~~ in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings ~~and sentences~~.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 18th day of July 1943.

F.B. Adams Lt-Col
Confirming Officer.
C.C. 1 Cdn Armd Div Details

Promulgated and extracts taken in the case of

(*a*) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[27276] W:46179-800 50,000 2-43 A.S.E.W.Ltd. Gp.698

V.S.H.

CHARGE SHEET

The Accused, No. G-16006 Pte. HERBERT, Aubrey John, Carleton and York Regiment, a soldier in the Canadian Army (Overseas), is charged with:-

FIRST CHARGE
A.A.Sec. 40

WHILE ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he, in the field, on 12 JUN 43, improperly and without authority took and used Cdn Military vehicle No. C-4604362, thereby occasioning damage to the said vehicle to the extent of £20-5/2 and a loss to the public of /6d, the value of the petrol consumed.

for R.E. Patterson Lieut.
O.C. 3 Cdn Inf Bde
REAR PARTY

In the Field,
Date: 3 July 43

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(F.D.Adams) Lt-Colonel
O.C. Rear Party
1 Cdn Div

In the Field,
Date 6 July 43

B2 D.S. Middle Capt.

CHARGE SHEET

The Accused, No. C-15006 Pte. HERBERT, Aubrey John, Carleton and York Regiment, a soldier in the Canadian Army (Overseas), is charged with:-

FIRST CHARGE
A.A.Sec. 40

WHILE ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he, in the field, on 12 JUN 43, improperly and without authority took and used Cdn Military vehicle No. C-4604362, thereby occasioning damage to the said vehicle to the extent of £20-5/2 and a loss to the public of /6d, the value of the petrol consumed.

for R.E. Patterson Lieut..
O.C. 3 Cdn Inf Bde
REAR PARTY

In the Field,
Date: 5 July 43 ....

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(F.D.Adams) Lt-Colonel
O.C. Rear Party
1 Cdn Div

In the Field,
Date 6 July 43

B2 W.H. Stovell

A. Whitehead Capt.

MEDICAL CERTIFICATE OF FITNESS

This is to certify that I have to-day examined 2/18006 Pte. Herbert A. J. and that he is fit to undergo trial by Field General Court Martial.

Date: 15 Jul 43

C B Caswell Capt.

INSTRUCTIONS

1. Presidents and Members of Courts of Inquiry or Boards of Officers will familiarize themselves with the Overseas R.Os. dealing with the subject of Courts of Inquiry and Boards of Officers.
2. The rank, name, appointment and unit of the Convening Officer must be given.
3. The unit of all Members of the Court must be indicated.
4. The signature of each officer composing the Court or Board must be affixed at the end of these Proceedings, together with the date and place of the sitting of the Court.
5. Unless otherwise required by the Convening Order, only one copy of these Proceedings will be prepared.

PROCEEDINGS of a Field General Court Martial

assembled at Field

on the 14th day of July 1943

by order of Officer Commanding 1st Cdn. Inf. Bde. Sub Unit

for the purpose of trial of 2/18006 Pte Herbert, Aubrey John, Carleton & York Regiment

PRESIDENT

Capt. V. A. Mitchell Asst. A.P.M. 1 Cdn Inf Div

MEMBERS

Capt. C. F. Wagwell (Sask 2 I.B.)

Lieut K. E. Richardson 4th Cdn Res Regt (4th P.A.R.)

The Court having assembled pursuant to order, proceed to hear the evidence

V. Mitchell Capt.

M.F. R.303
(Overseas Revision)
40/P & S/267 (2743)

~~The court is sat~~
The accused is brought before the court
Prosecutor Lieut J.J. Weatherhead Carleton & York Regt
Defending officer Lieut L.P.J. Mongeon # 1 Supply Group (Base P.D)
The trial commences at 1030 hrs.
The accused has no objection to being tried by the President & Members of the Court, at his own statement.
The President & Members of the Court are sworn
The charge is read to the accused & it is ascertained that the accused is familiar with the charge in every detail.
The accused pleads Not Guilty.
~~The accused states that he does not wish an adjournment on any grounds~~
The President of the Court to the accused
Do you wish to apply for an adjournment on the grounds that any of the rules relating to procedure in particular have not been complied with, and that you have by reason thereof been prejudiced in your defence, or on the ground that you require further time to prepare your defence
The accused states that he does not wish to apply for adjournment
The Prosecutor opening address. In Prosecuting officer, it is my intention to prove that the accused did ~~without~~ authority take M/C 46043 62 without permission from his camp area & was involved in an accident & then causing damage to said m/c.
First Witness for Prosecution
Lieut E.J. Maxwell who is not available, because he has gone

D.D.M.

forward with his unit. The Prosecution
wishes to submit his sworn statement
in lieu of Court Martial in person.
Cross Examination by Defending Officer
Defending Officer objects to the documentary
evidence submitted, on the strength of Actual
100, Page 97. M.M.L.
Objection sustained by Court.
~~Second Witness for the Prosecution~~

Second Witness for the Prosecution £20002
Pte Leonard, R.E. having been duly sworn
states I am Pte Leonard R.E. £20002 Pte Herbert
and on 12th June, in the morning
the Accused, myself were doing maintenance work
m/c's. At approx. 1030 hrs. Pte Herbert finished
his tasks & said that he was going to get his
bike. At approx 1100 hrs. Cpl. Whitehead arrived
on where Herbert, the Accused was. Herbert told him
that he had finished his task & was trying
his bike out.
Questioned by Prosecutor
Q.11 Do you know the W.D. Number of Pte Herbert's
bike?
A. No, it was a new bike & I was not familiar
with it.
Q.12 Did Pte Herbert leave you at all on the
A. Yes, he did
3. Q Can you quite say it was between 1000 hrs &
1100 hrs?
A. Yes
Defending Officer declines to Cross Examine the Witness

V.Sec.

Questioned by Prosecutor

~~Cross Examined~~

Q (a) Did you know that on 12th June a m/c had been involved in an accident

A I found out that there had been an accident with a m/c at 2000 hrs on the 12th of June

The Prosecution does not wish to call any further witness

The Defending Officer refers Court to K.R. 40. Note (1) Page 644 of MML 2. and on this basis the Defending Officer has applied to the Court that the Accused 6800 Pte Herbert Aubrey John be acquitted.

The Court is declared closed to consider the plea.

The Court is re-opened at 1140 hrs.

The Court have considered the evidence as presented by the Prosecution and have reached the unanimous decision that the Prosecution have not established a case to support the charge as read

~~The findings~~ are read in Open Court and the Accused is released.

V.S. Tristall Capt.

The accused is brought before the court,

Prosicutor Lieut J.J. Weathernead, Carleton, York, Reg't.
Defending , officer Lieut L.P.J. Monpeon #1 Supp Group. (Sask.L.I.)

The Trial commences at 1030 hours.

The accused has no objection to being tried by the President and -
Members of the Court, at his own statement.
The President and Members of the Court, were sworn.
The charges, is read to accused and it is ascertained that the Accused
is familiar with the charge in every detail.
The Accused pleads NOT guilty.

The president of the Court, to the accused.
Do you wish to apply for an adjournment on the grounds, that any of the
rules relating to procidure before trial have ... been completed with,
and that you have been prejudiced thereby or on the ground that you
have NOT had sufficient oppertunity for preparing your defence.

The accused states that he does NOT wish to apply for adjournment.

The Prosecutors opening address his Prosecuting Officer
it is my intention to prove that the Accused did take M/C 4604362
without permission from his camp area. I was involved in an accident
thus causing damage to said M/C.

First Witness for Prosecution.
Lieut E.G. Maxwell who is NOT available, because
he has gone forward with his Unit. The prosicution wishes to submit
his sworn statement in lieu of Lieut Maxwell in person.

Cross-Examination by Defending Officers
Defending Officer objects to the documentary evidence submitted, on
the strength of Article 100, Page 97, M.M.L.
Objection sustained by Court.

Second Witness for the Prosicution G-20002 Pte. Leonard, R.E. having
been duly sworn, states I am Pte. Leonard, R.E. G-20002,
and on 12th JUNE 44 in the morning Pte. Herbert, the accused and
my self were doing maintenance on our M/C's at approximately, 1030 hrs.
Herbert finished his tasks and said that he was going to test his
bike. At approximately 1100 hours. Lieut. Maxwell asked me where
Herbert, the accused was. I told him that he had finished his task
and was trying his bike out.

Questioned by Prosecutor.

Q 1 Do you know the W.D. number of Pte. Herbert's bike?

A No, it was a new bike and I was not familiar with it.

Q 2 Did Pte. Herbert leave your sight on a m/c?

A Yes, he did.

Q 3 Are you quite sure it was between 1000 hrs and 1100 hrs?

A Yes.

Defending Officer declines to cross-examine the witness.

Questioned by Prosecutor

Q 1 Did you know that on 12 Jun a m/c had been involved in an accident?

A I found out that there had been an accident with a m/c at 2000 hrs
on the 12 th of Jun.

The Prosecutor does not wish to call any further witness.

The defending officer refers Court to R.P. 40 Note 1 Page 64a of
MML and on this basis the Defending Officer has applied to the Court
that the accused, G16006 Pte. Herbert, Aubrey John be acquitted.

The Court is declared closed to consider the plea.

V Trustwell Capt

The Court is reopened at 1140 hours.
The Court have considered the Evidence as presented by the Prosecution and have reached the unanimous decision that the Prosecution have NOT established a case to support the charge as read.

The Accused is released.

V O Mitchell Capt.

Summary of Evidence

June 18/43

Summary of evidence in the case of G 18006 Private Hebert A.S., Carleton Yeork Regiment

By order of the Commanding Officer, the evidence is taken on oath

Prisoner's witness for the Prosecution

Lieut E.G. Maxwell, Carleton Yeork Regt having been duly sworn, states

I am Lieut E.G. Maxwell 2 i/c of 84 Platoon Carleton Yeork Regiment. On 12 June 43 my platoon were doing maintenance on vehicles. At about 1000 hrs I noticed G 18006 Pte Hebert A.S. doing 1st maintenance along with G 20002 Pte Lemard R.E., Later at about 1100 hrs I made another check & found 1st C 4604362 missing from his group. I asked G 20002 Pte Lemard R.E. where Pte Hebert A.S. was, and he told me that he (Pte Hebert A.S.) had gone out on a road test. I had not signed Pte Hebert's work ticket for the road test nor had I given him verbal permission to leave camp area.

Signed) E.G. Maxwell Lieut.

The accused does not wish to cross examine the witness.

U.S.M.

Second Witness for the Prosecution

G 20002 Pte Leonard RE. Carleton York Regiment, having been duly sworn states:

I am G 20002 Pte Leonard RE. of No 4 Platoon of the Carleton York Regiment. On 12 June 42 G 18006 Pte Herbert N.S. and I were doing maintenance duties in our mess huts. At about 1100 hrs Pte Herbert N.S. finished his task and told me he was going out for a while as he had no machine. Shortly afterward Lieut Bridwell, a Offr of No 4 Platoon, asked me where Pte Herbert N.S. was. I told him he was out on a road test.

Signed: R E Leonard.

The accused does not wish to cross examine the witness.

V.O.M.

Certified that rules of procedure 4 (a) (c) (d) (e) (f) (g)
have been complied with.

Taken down by me in the field on this
21st day of June 1943 in the presence of
and in the hearing of the accused

J. B. Walker 2nd Lieut.
Officer taking summary of evidence

V. S. Mitchell

Summary of Evidence in the Case of G.18006 Private Aubrey John Herbert, a soldier of the Carleton and York Regiment, Canadian Army (Overseas)

BY ORDER OF THE COMMANDING OFFICER, THE EVIDENCE IS TAKEN ON OATH.

First Witness for the Prosecution

Lieut E.G. Maxwell, Carleton and York Regiment, having been duly sworn, states:
I am Lieut E.G. Maxwell, 2 i/c of # 4 Pl, Carlt & York R. On 12 Jun 43 my Pl was doing Maintenance on Vehs. At about 1000 hrs I noticed G.18006 Pte Herbert, A.J. doing M/C Maint. along with G.20002, Pte. Leonard, R.E. Later at about 1100 hrs, I made another check and found M/C C.4604362 missing from the garage. I asked Pte Leonard where Pte Herbert was and he told me that he (Pte Herbert, A.J.) had gone out on a road test. I had not signed Pte Herbert's work ticket for the road test, nor had I given him verbal permission to leave the camp area.

(Sgd) E.G. Maxwell, Lieut.

The accused does not wish to cross-examine the witness.

Second Witness for the Prosecution

G.20002 Pte Leonard, R.E. a soldier of the Carlt & York R. having been duly sworn states:

I am G.20002, Pte Leonard, R.E. of No. 4 Pl. Carlt & York R. On 12 Jun 43, G.18006 Pte Herbert, A.J. and I were doing Maint. tasks on our M/Cs. At about 1100 hrs Pte Herbert, A.J. finished his task and told me he was going out on a road run to test his machine. Shortly afterward, Lieut Maxwell, 2 i/c of No. 4 Pl. asked me where Pte Herbert, A.J. was. I told him that he was out on a road test.

(Sgd) R.E. Leonard.

The accused does not wish to Cross-Examine the witness.

Having been cautioned in accordance with Rules of Procedure 4(E) the accused reserves his defence.

Certified that Rules of Procedure 4 (B), (C), (D), (E), (F) and (G) have been complied with.

Taken down by me in the presence of and in the hearing of the accused on this twenty-first day of June 1943.

(Offr taking Summary of Evidence)

V Whitehall Capt

List of Exhibits - Nil.

List of Witnesses - Listed

For the Prosecution

Lieut R.C.Maxwell, Carlt & York R.
C-20002, Pte Leonard, R.E., Carlt & York R.

For the Defence
- Nil -

I require the services of an officer to defend me in my trial by Field-General Court Martial.

A.J. Herbert
C-15003 Pte Herbert A.J.

Certified that I have received, free of charge, a copy of the summary of evidence to be used in my trial by Court Martial.

A.J. Herbert
C-15003 Pte Herbert, A.J.

V.S. Mitchell Capt.

4E-89

Pte HERBERT E.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : M 66507 Pte. Herbert Elson James. 3 Cdn Corps Admin Tps Coy

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 40	Not guilty	Guilty	
2nd	AA Sec 40	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which ~~Nil~~ days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under EZ.)

Sentence Awarded by the Court :

To Suffer 45 days Field Punishment and to forfeit 45 days pay.

(Sgd) ~~Judge Advocate~~ Capt — 26 Oct 44 (Sgd) R. R. Trail Major.

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 26 Oct 44 (Sgd) [illegible] Brigadier

Commanding COMD. ARMY TROOPS AREA, FIRST CDN. ARMY Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused M-66507 Pte ~~HERBERT~~ Elson James Date. 28 Oct 44 Signature of Offr.

R. W. Trail Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160

CPA96 (In lieu of AFA3) 42/P.S.S.1608 (2564)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig J.R.R. Gough, Comd HQ AT pls dated 24 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
M 66507	Pte	Elson James.	Herbert	3 Cdn Corps Admin Tps Coy

PROCEEDINGS REVIEWED

c J. Rutherford Capt. 24 Nov 44

REVIEWING OFFICER AND DATE

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 26 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 12/86

A1. The President, Members, waiting Member, JA, if any, ~~and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do~~ you object to ~~an interpreter~~ ? Ans ~~No~~

~~An interpreter is sworn.(1)~~ Do you object to ~~an shorthand writer~~ ? Ans ~~No~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(2) The following are the ranks, names and units of the offrs comprising the Court, etc :

President Major R. R. Fulton C.L.C. 11 Bn CBRR

Member Capt F.W. Sundgren 9 Mob Bnd of Both Unit

Member Lt. A.N. Campbell 9 Mob Bnd of Both Unit

Judge-Advocate Capt. W.R. Dean HQ AT pls dtd

Prosecutor Capt W.A. Armston, 3 Cdn Corps AT Pls Coy

Defending Offr Lt. B. Woodworth " "

Questions by President : Is the Prosecutor a lawyer ? Ans Yes. Is the Defending Offr a lawyer ? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Q1 p 3.)

A8. The accused M 66507 Pte Herbert before arraignment make(s) (no) (~~no~~) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C, D, E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(E); and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is reopened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed by ..... (2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans .....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. MFB 355 or AFB 295. 2. MFM 6. 3. RP 46, KR Can 552. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should prompt accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence (1). The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 543-566, Overseas RO 309, 1323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), (d)(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

R.R.T.

CHARGE SHEET

The accused, M.66507 Pte EJ HERBERT, 3 Cdn Corps & Army Tps Ord Sub Park, a soldier of the Cdn Army Overseas is charged with:

FIRST CHARGE
AA Sec 40

WHILE ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, on 16 Oct 44, improperly and without authority was concerned in using a WD vehicle WD No. Z-550161.

SECOND CHARGE
AA Sec 40

WHILE ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field at about 0015 hrs 17 Oct 44 was away from his unit when his duty required him to be with his unit.

R.W. Mabee Jr Maj
Officer Commanding
3 Cdn Corps & Army Tps Ord Sub Park

In the field
23 Oct 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(JRR Gough) Brig
Comd A Tps Area, First Cdn Army

In the field
24 Oct 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M.66507	Pte	Pte	E J	HERBERT	3 Cdn Corps & Army Tps Ord Sub Park

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 24 Oct 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	RR. FULTZ CIC	11 Bn CBRG

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	F.W. SWINBURNE	9 Mob Lndy & Bath Unit
Lieutenant	G.N. CAMPBELL	8 Mob Lndy & Bath Unit

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Captain	D.G. DEAN, ADJA	HQ A Tps Area, First Cdn Army

On Active Service in the Fd

in Belgium (Country.)

Date 24 Oct 44

R.Gough

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(J.R.R. Gough)

Commanding A Tps Area, First Cdn Army

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA85 (To lists of AFA3) 40 P & S/1697 (4031)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

R.R.D.

I certify that No M-66507 Pte Herbert, E. U.

3 CDN CORPS & ARMY TPS ORD SUB PARK

is (x) fit to undergo trial by Court-Martial

Lieutenant Captain

Signature of Medical Officer

Date 26/Oct/44

(x) insert "fit" or "unfit"

RRD

Xexamined

I did not hear ~~Henry~~ say "Not much to-night". I did not tell Henry I would see him down the road. I had asked Pte Boyce for a vehicle.

By the Court.

I asked the guard at the vehicle park for a vehicle & he said they would be run without proper authority. I did not hear anybody else say "I will see you down the road". There were only Dr Fire & us in the vicinity.

By the J.A.

When Henry drove up with the vehicle I presumed he had taken it without authority and did not ask him any questions. I did not drive it at any time, but did take the opportunity of riding in the vehicle both leaving camp & coming back.

RD 83(B) is complied with.

Prosecutor sums up
The evidence proves the charge

Defending ~~[illegible]~~ declines to sum up

Pl sums up - 1) Describes offence
2) Onus of proof & reasonable doubt.
3) Circumstantial evidence

First Witness
for Prosecution -
~~C 19344 Sgt Armstrong R.C. duly sworn~~
C 15644 Sgt Ardagh, duly sworn.
On 18 Oct. 44 at about 0015 hrs Sgt Foreman
I stopped a vehicle ~~near~~ approaching the unit lines. I found that the driver was Pte Henry, the occupant Pte Herbert the accused. They started to drive away but I ordered them. Herbert denied he knew the vehicle was stolen & said he had been ~~ordered~~ up on the road. Accused was placed under open arrest.

Xexamined

~~asked~~ there was no authorization to have the vehicle out. Sgt Mc Kerr told me it was stolen. Herbert was a passenger only. RD 83(B) is complied with.

Second witness
L 90625 Sgt Foreman DB duly sworn
at about 0015 hrs 17 Oct 44 Sgt Ardagh & I stopped a vehicle on the Brunel Rd E.
I ~~[illegible]~~ was driver, Pte Herbert the accused a passenger. Herbert was placed under open arrest.

Xexamined

I was told that a vehicle had been stolen. Accused was taking no part in the driving.

By Court.
I would believe the U.S. No was Z 5500561.
It was a Military Vehicle, 1500 wt.
RP 83(B) is complied with

Third Witness.
34275 Pte Boyce J. duly sworn
On 6 Oct 44 I was on guard between 2200 hrs & 2400 hrs at the Vehicle Pk. Between 1700 & 1730 Pte Herbert, the accused approached me & asked if he could take a vehicle out of the park. I told him no unless he had authority. Then Pte Henry came up & said to Pte Herbert "no minutes to waste". There were other soldiers present whom Herbert & Henry approached & talked with. Henry returned & then Herbert. Herbert said to Henry "I will see you down the road". Both left then, Herbert with the two other soldiers.

X examined -
It was Herbert who spoke to Henry as they left. I am certain because they were quite close & I could see them & recognize Herberts voice. I did not see Pte Herbert get in the truck & don't know myself whether he did. Herbert went down the road when he left me, but Henry went to the vehicle park, the other way.

By the Court.
A vehicle was taken by someone from the park that night about 15 mins after talking to Henry. It passed me at about 30-35 miles an hour. It was the only vehicle I saw that night. I could not tell the driver to recognize him.

RP-83(B) is complied with.

First witness for defence.
Accused duly sworn -

On the night of the incident this soldier & I stopped to talk to the guard. He said there was no chance of getting a vehicle. Henry came up & talked with the guard for a while & then the other soldiers & I left. While going up the street an Empire 1500 wt passed us going away from camp. I went to the village & tried to thumb a ride. Pte Henry stopped with a vehicle & gave me a ride to the next village & said he would stop there later to pick me up. He came back about 12 o'clock picked me up & brought me to camp when we were stopped.

L.L.D.

Wel. Officer investigation.

~~The~~ He has been in army since O.S. 41 & his conduct has been excellent.

L.D.

No. M-66507 Name Herbert, E.J. | Sqn, Battery, or Company | Corps RCOC | Date of enlistment 18 Mar 41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/150 (5418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
New sheet in accordance with C.R.O. 2084.									
Awarded One Good Conduct Badge wef 17 Oct 43 (Auth DO #60 d/29 Oct 43)									
Field	30 Oct 43	Pte		Sec 40AA WOAS Neglect to the prejudice of good order and Military discipline i.e. he, on 30 Oct 43 was negligent in the performance of his duty in neglecting to fill radiator with water before leaving compound.	Cpl Watts, L.	3 days C.B.	30 Oct 43	(W.Beddard).	
Awarded the Cdn Volunteer Service Medal and Clasp wef 15 Jan 44									

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5 Feb 44	Pte		Sec 15 (2) AA WOAS failed to appear at a place of parade appointed by his C.O. i.e. he failed to appear at 0800 Hrs 5 Feb 44 for F611 cas as published in Part 1 Order #28	Sgt West herill R.H.	Forf 2 days pay FR&I 149 (2)	5 Feb 44	(H.W. Thomas) Major	

Certified True Copy ..... J.H. Barker Lt (Adjt) as of 20 Oct 44
(A.W.McBride) Major

Enclosure B

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M-66 507	Pte	Herbert, E.J.	3 Cdn Corps & Army Tps Ord Sub-Park

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 40 — 1 times.

For AA Sec 15 (2) AWL — 1 times.

For ____ — ____ times.

For ____ — ____ times.

Date of first entry in Field Conduct Sheet 30 Oct 43

Date of last entry in Field Conduct Sheet 5 Feb 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for NIL

beginning on the ____ day of ____

4. The accused has been awaiting trial on the present charges for ____ days in civil custody, and for ~~XXXXXXXXXXXX~~ days in military custody, *i.e.*, 2 days in open arrest, seven days in close arrest; of ~~which XXXXXXXXXXXXXXXX was spent in hospital.~~

5. The present age of the accused is 23 yrs 7 months

6. The date of his ~~attestation~~ calling up for military service is 17 Oct 41

7. The service which the accused is allowed to reckon is 3 years 3 days

[State the military decorations (if any) held by accused.

8. ~~The accused is in possession of~~

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of ____ ____

In the war substantive rank of ____ ____

In the acting rank of ____ ____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) Wt.3670/965 100,000 4/42 A.& E.W.Ltd. Gp.698
(71456) Wt.29258/1873 80,000 9/42 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 26th day of Oct 44

(R.W. McBride) Major

SUMMARY OF EVIDENCE IN THE CASE OF

M-66507 Pte HERBERT, E.J.
3 CDN CORPS & ARMY TROOPS ORD SUB PARK

CHARGED WITH, IMRPOPERLY & WITHOUT AUTHORITY, BEING CONCERNED IN THE TAKING AND USING OF A W.D. VEHICLE NO. Z-5501611. (Sec 40 A.A.)

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness C-15514 SQMS KERR, J.T. 3 CDN CORPS & ARMY TPS ORD SUB PARK, sworn, states:

On 16 Oct 44, I was Duty Officer. About 2230 hrs., the N.C.O. I/C Guard, L/Cpl Murphy, A.P. B-58014, reported to me a vehicle was missing. Being duty officer, I had not authorized any vehicle to leave area. So I immediately started an investigation. At approximately 0015 hrs, 17 Oct 44, S/Sgt. Ashby, L.T.H.(C-15699) and Sgt. Foreman, D.B. (L-9062) reported to me they had picked up Pte Henry, H.R.(B-65041) and Pte Herbert, E.J. (M-66507) in one of our reserve vehicles and had placed them under arrest. I reported the matter to the O.C.

Q. Did you instruct S/Sgt. Ashby and Sgt. Foreman to make investigation?

A. Yes Sir. I placed patrols of all senior N.C.O's around camp area.

Accused declines to cross-examine this witness.

J.T. KERR SQMS

Second Witness C-15699, S/Sgt, ASHBY, L.T.H., 3 CDN CORPS & ARMY TPS ORD SUB PARK, sworn, states:

On 16 Oct 44, at approximately 2230 hrs, I received an order from SQMS Kerr to block the main road leading into Lede at the railroad crossing between the village of Lede and the main Brussels-Ghent highway. I was accompanied by Sgt. Foreman. At approximately 0015 hrs, 17 Oct 44, a vehicle approached the crossing. Sgt. Foreman signalled him down and the vehicle stopped. Sgt. Foreman approached the vehicle from our right hand side and identified the driver and the passenger. I approached from the left side and recognized the passenger as Pte Herbert and the driver as Pte Henry. I told the driver to park his vehicle besides the railroad track. After parking the vehicle, the driver and passenger got out..I placed them under arrest.

Pte Herbert immediately wanted to know why he was being taken into custody as he said he was picked up along the road and had no knowledge of the vehicle being stolen. I asked Sgt. Foreman the time. It was 0015 hrs, 17 Oct. 44. Therefore, I placed Pte Herbert under open arrest for being A.W.L.

Page 2/

Summary of Evidence - M-66507, Pte Herbert, E.J. (Cont'd.)

Second Witness C-15699, S/Sgt. Ashby, L.T.H. (Cont'd.)

We proceeded to unit lines where I turned the driver over to the Guard Cpl, L/Cpl Murphy, A.P., under close arrest and ordered Pte Herbert to his quarters awaiting arrival of SQMS Kerr. Sgt. Foreman and I returned for the vehicle and put it back into unit lines.

Q. When you apprehended the vehicle, did you accuse the occupants of having a stolen vehicle?

A. I did of Pte Henry.

Q. Did you advise Pte Herbert he was in a stolen vehicle?

A. Yes Sir.

The accused declines to cross-examine this witness.

L.T.H. ASHBY S/Sgt.

Third Witness L-9062 Sgt. FOREMAN, D.B. 3 CDN CORPS & ARMY TROOPS ORD SUB PARK, sworn, states:

At approximately 2230 hrs, 16 Oct 44, I was called out of my quarters by Sgt.Major Kerr and detailed to stop all military vehicles going into Lede from main Brussels highway. At approximately 0015 hrs, 17 Oct 44, a military vehicle approached and we stopped it. On examination, it was found that Pte Henry was driver and Pte Herbert passenger. S/Sgt. Ashby who had been detailed with me, ordered Pte. Henry to drive the vehicle to the side of the road and get out. Ptes Henry and Herbert were placed under arrest and taken to unit guard room where they were turned over to Guard Cpl, L/Cpl Murphy. We then informed Sgt.Major Kerr of the whereabouts of Ptes Henry and Herbert. We returned to the vehicle and brought it back to unit lines.

Q. Did you advise Pte Herbert that hewas in a stolen vehicle?

A. Yes Sir.

Q. Did the accused resisted arrest?

A. No Sir.

Accused declines to cross-examine this witness.

D.B. FOREMAN Sgt.

Summary of Evidence - M-66507, Pte Herbert, E.J. (Cont'd.)

Fourth Witness B-58014 L/Cpl MURPHY, A.P. 3 CDN CORPS & ARMY TROOPS ORD SUB PARK, sworn, states:

On 16 Oct 44, I was guard Cpl. As I made my round, at approximately 1945 hrs, Pte Boyce, J. (B-9275) was on guard and he told me there was a vehicle missing. I turned the report in to Major R.W. McBride, O.C., as I could not find the Sgt.Major. At approximately 0030 hrs, 17 Oct 44, S/Sgt. Ashby and Sgt. Foreman brought Ptes Herbert and Henry back to camp in a jeep. Pte Herbert was put under open arrest. Then S/Sgt. Ashby and Sgt. Foreman went out and brought in the missing vehicle.

The accused declines to cross-examine this witness.

A.P. Murphy L/Cpl
A.P. MURPHY L/Cpl

Fifth Witness B-9275, Pte BOYCE J. 3 CDN CORPS & ARMY TPS ORD SUB PARK, sworn, states:

On night of 16 Oct 44, between the hours of 1900 and 1930 hrs, as I was on guard, Pte Herbert approached me regarding taking a vehicle out of the Park. He gave me the impression that this occurrence was going on every night. I told him this was one night there would be no vehicle going out, unless with proper authority. He seemed to be satisfied and was leaving when Pte Henry came up. Pte Henry enquired about "No trucks to-night?" then they moved over to two soldiers, unknown to me. When Pte Henry was leaving, Pte Herbert told him he would see him down the road.

Q. Did Pte Herbert ask you if he could take a vehicle?

A. Yes Sir.

Q. What did you tell him?

A. I told him there was no chance for him to take a vehicle out of the Park.

Cross-examined by accused:-

Q. Was it me that asked the question about taking a vehicle out?

A. Yes it was.

Q. Can you swear that it was my voice you heard telling Pte Henry that I would meet him down the road?

A. At the time you made the remark about meeting Pte Henry down the road, you were the distance of two yards from me. I definitely can make the statement that it was you that made this statement.

Q. How can you swear it was I that made that statement while there was four of us together and it was fairly dark?

Page 4/

Summary of Evidence - M-66507, Pte Herbert, E.J. (Cont'd.)

Fifth Witness B-9275 Pte Boyce, J. (Cont'd.)

A. You were standing on the sidewalk, about two yards distance from me, Pte Henry was on the road directly in front of me. The two soldiers unknown were a short distance from you. The statement was made to Pte Henry in my presence and I can definitely swear it was you.

J. BOYCE Pte

The accused was cautioned as follows:

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

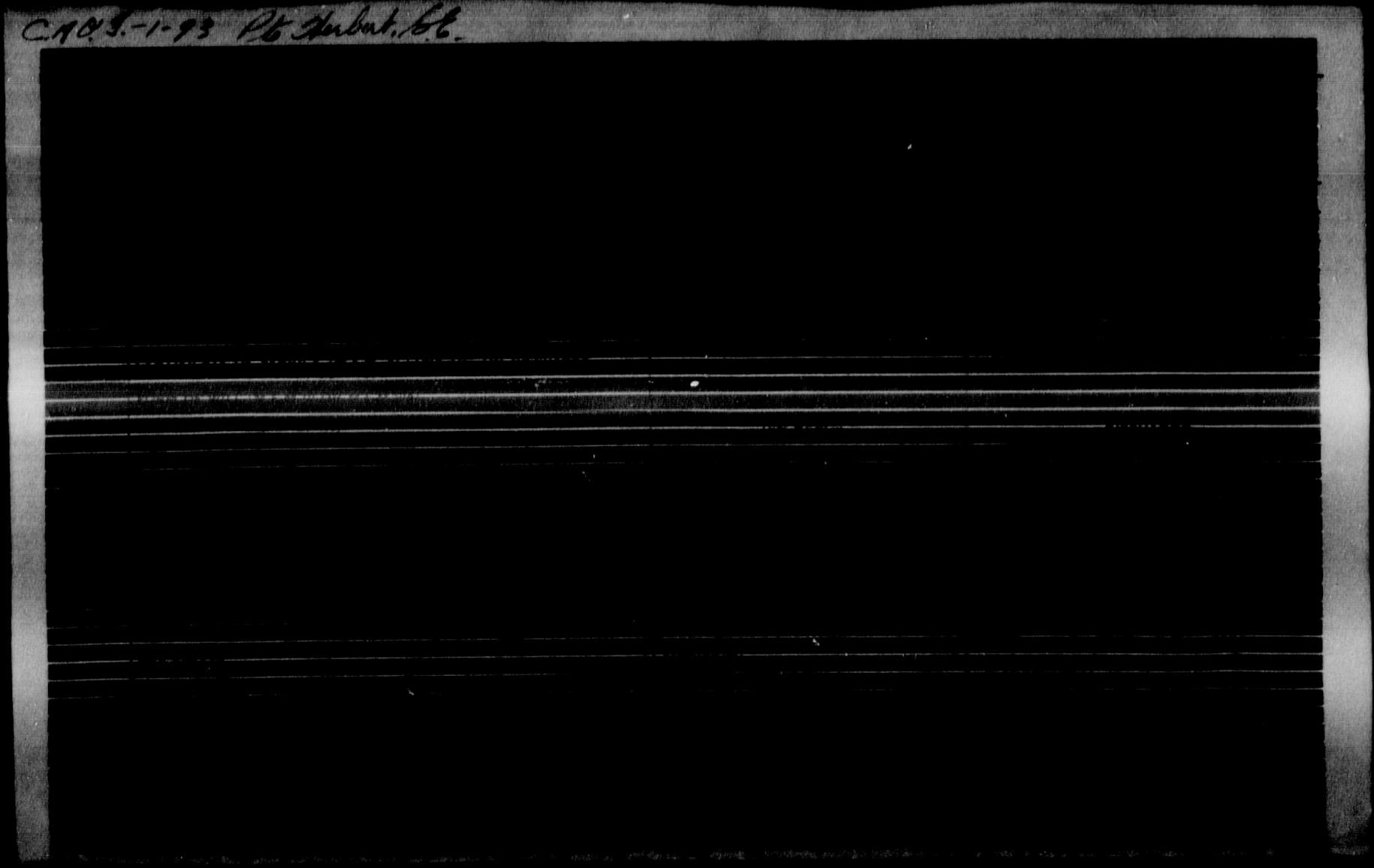
A. I do not wish to make a statement. E.J. Herbert

The accused does not call any witness.

I certify that the foregoing Summary of Evidence, consisting of four pages, was taken down by me in the presence of the accused and that RP 4 (C), (D), (E), and (F) have been complied with.

(H.L. BARKER) Lieut.
Adjutant
3 CDN CORPS & ARMY TROOPS ORD SUB PARK

The Field
19 Oct 44


C10.5.-1-93 Pt Herbert. B.C.

RECEIVED 11 JUL 1946 JAB BRANCH CMHQ

RECORDED AT CMHQ IN AB 168 * C.A.O.F. - 1 - 93

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA97) 40-P.R.N. 1696 (26647)

Convening Order of Lt Col W.H. Colling Comd 3 Div RCASC dated 17 Jan 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
B54062	Pte.	Herbert Edward	Gordon	2469 S.B. Coy RCASC

PROCEEDINGS REVIEWED Feb 46 A/Judge Advocate JAB BRANCH C.M.H.Q. REVIEWING OFFICER, JAB BRANCH C.M.H.Q.

S.F.U.O. Albertin Lt-Col D.J.A.G. HQ 21 Army Gp (CAOP)

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Germany on (date(s)) 18 Jan. 46.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see forms for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for accts and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 13, RP 56; 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(s).~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to an interpreter? Ans:~~

~~The interpreter is sworn.(1) Do you object to a shorthand writer? Ans:~~

~~The shorthand writer is sworn.(2)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans: Nil.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, viz:

President	Major	H.B. Catherwood	2/3 Cdn Inf Div Sigs Coy
Member	Capt	K. Kendell	2 Cdn M.A.C. RCASC.
Member	Capt	A.A.P. Simonell	2/7 Cdn Inf Bde Coy.
Judge-Advocate			
Prosecutor	Capt.	D.M. Zeiler	2/9 Cdn Inf Bde Coy.
Defending Offr	Capt	R Dimock M.C.	2/8 Cdn Inf Bde Coy.

Questions by President: Is the Prosecutor a lawyer? Ans: No Is the Defending Offr a lawyer? Ans: No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B54062 Pte Herbert G.E. before arraignment makes(s) (no) ~~a~~ plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B 4 6

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CAOF 1/93 p 94

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B5062 Pte. Herbert. Gordon. Edward.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Charge.	Guilty	Guilty	
2nd	Charge.	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

HLP

~~And (present) under sentence for ..... beginning on (date) .....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 49 days, of which 16 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To Be imprisoned Without Hard Labour. for 1 Year. and to be discharged with ignominy from His majesty's service

18 Jan. 46. (Sgd) H.B. Catherwood Major

Judge Advocate, if any — Date awarded — President, (RP 45, 50)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the findings and sentence for confirmation.

Date 22 JAN 46 (Sgd) W.H. Colling Lt Col Commanding HQ RCASC 3 Cdn Div CAOF

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the findings and Sentence of the court but remit Discharge with ignominy from H.M. service and commute sentence to Detention for one year. LVK

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) (C. VOKES) Maj-Gen

Date 1st February 1946 Commanding GOC 3 Cdn Inf Div CAOF Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B5062 Pte Herbert GE.	4 Feb 46	J.D. Mellon, Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B5062 Pte. Herbert, Gordon, Edward.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Charge	Guilty	Guilty	
2nd	Charge	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

All present service sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 49 days, of which 16 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To Be imprisoned Without hard labour for 1 Year, and to be discharged with ignominy from His Majesty's service.

..... 18 Jan. 46. (Sgd) H.E. Sutherland Major
Judge Advocate, if any. Date awarded. President. (RP 45, 50)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the findings and sentence for confirmation.

Date 22 JAN 46 (Sgd) W.H. Colling Lt Col Commanding HQ RCASC 3 Cdn Div CAOF

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the findings and Sentence of the court but remit "discharge with ignominy from H.M. service and commute sentence to detention for one year

I direct that the accused be not committed to prison or detention barracks until further orders. (1) (1. AA 57A. Delete if not used.)

Date 5th February 1946 (Sgd) (C. VOKES) Maj-Gen
Commanding GOC 3 Cdn Inf Div CAOF
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
B5062 Pte Herbert GE.	6 Feb 46	J.F. Holmes Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 11 JAN 1946 CMHQ JAG BRANCH

RECORDED AT CMHQ IN AB 169 C.A.O.F. - 1 - 93

FIELD GENERAL COURT-MARTIAL

CFAB6 (In lieu of AFA3) 40/P.A.S. 1608 (2804)

Convening Order of Lt Col W.H. Colling Comd 3 Div RCASC dated 17 Jan 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, frns, KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names	Surname	Unit.
B5062	Pte	Gordon Edward Herbert	[illegible]	3 H.G.R. Coy RCASC

PROCEEDINGS REVIEWED Feb 46 A.J. Brady Major REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

5 Feb 46 Martin Lt-Col D.J.A.G. HQ 1 Cdn Corps (CAOF)

PROCEEDINGS OF TRIAL.

Held in the Field in (country) Germany on (date(s)) 18 Jan. 46.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OF TA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant frns ROs. For guidance on procedure when a variation in this form arises, see Form for GCM to MML pp 741 to 759. A brief record of such variation CF A95, for suits and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At [illegible] hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~
~~The interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans Nil.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H.E. Sutherland	2/3 Cdn Inf Div Provost Coy
Member	Capt	K. Kimbell	2 Cdn M.A.C. RCASC.
Member	Capt	L.A.P. Gemmell	2/7 Cdn Inf Bde Coy
Judge-Advocate			
Prosecutor	Capt.	D.M. Fraser	2/9 Cdn Inf Bde Coy
Defending Offr	Capt	R. Durand M.C.	2/8 Cdn Inf Bde Coy

Questions by President: Is the Prosecutor a lawyer? Ans Nil Is the Defending Offr a lawyer? Ans Nil.(2)

(1. RP 2a, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 2.)

A8. The accused B5062 Pte Herbert GE. before arraignment make(s) (no) (~~a~~) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and Findings are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in AB rank and name of the accused who made the plea.)

A9. The accused is (are) arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B F 5.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CAOF Cbk p. 94.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 39, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans no. (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) etc ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B & E, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans no.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldiers having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex F and Ex G respectively.(3)
(*1. MFB 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove an oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 90. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RD 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HBH.

CHARGE SHEET

First Charge

The accused, B54062 Pte HERBERT, Gordon Edward, 2/9 Cdn Inf Bde Coy RCASC, a soldier of the Canadian Occupational Force, is charged with:

Army Act Sec 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he, in the field, absented himself without leave from 2200 hrs 24 Sep 45 until 2325 hrs 19 Nov 45. (Total time absent 56 days 1 hr 25 mins)

(J.F.H. Clare) Capt
A/Officer Commanding
2/9 Cdn Inf Bde Coy RCASC CAOF

In the Field
30 Nov 45.

To be tried by Field General Court Martial.

(W.H. Colling) Lt-Col
C, RASC
3 Cdn Inf Div CAOF

In the Field
17 Jan 46

HLH

CHARGE SHEET

Second Charge

The accused, B54062 Pte HERBERT, Gordon Edward, 2/9 Cdn Inf Bde Coy RCASC, a soldier of the Canadian Occupational Force, is charged with:

Army Act
Sec 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he, in the field, absented himself without leave from 1400 hrs 25 Dec 45 until 2100 hrs 30 Dec 45, whilst under close arrest. (Total time absent 5 days 7 hours.)

In the Field
9 Dec 46

(J.F.H. Clare MBE) Capt
A/Officer Commanding
2/9 Cdn Inf Bde Coy RCASC CAOF.

To be tried by Field General Court Martial.

In the Field
17 Jan 46

(W.H. Colling) Lt-Col
C, RASC
3 Cdn Inf Div CAOF

FIELD GENERAL COURT-MARTIAL

CFAAS (In lieu of AFAS)
40/P&N/1697 (2nd ed)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B54062	Pte		GORDON EDWARD	HEBERT	2/9 Cdn Inf Bde Coy RCASC(CACF)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (xxxx) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 JAN 46 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it would not be practicable to assemble a Field General Court-Martial for the trial of the said offence~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I appoint the officer mentioned in the margin hereof to be the Judge Advocate at the said trial.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I appoint the Judge Advocate thereat to act accordingly.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
MAJOR	H C PATTISON		2/3 Cdn Inf Div Tps Coy RCASC(CACF)

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
CAPT	E KENDALL		2 Cdn M/C RCASC(CACF)
CAPT	L A P GERMIL		2/7 Cdn Inf Bde Coy RCASC (CACF)

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
LT	M R WATSON		2/3 Cdn Inf Div Tps Coy RCASC(CACF)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in GERMANY
(Country.)

Date 17 JAN 46

W H Calling
(Signed personally. RP 105 fn 2.)
(W.H. Calling)
Commanding 3 CDN INF DIV RCASC
Convening Officer.

Lt-Col
(Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"I hereby certify that I have this day examined B.54062 PTE.
HERBERT, G.E. and in my opinion he is fit to undergo
trial by Court Martial.
Date 18 Jan 46. 1461

RMO., 3 Cdn Inf Div RCASC. Capt., RCAMC.

Herb E4H

PLEA OF MITIGATION IN THE CASE OF: B-54062 Pte Herbert, G.E.

Mr. President,
Members of the Court,

A very few words have to be added to the ~~14~~ evidence you already have in front of you, in the case of Pte Herbert. The answer to Herbert getting into trouble here and there is due to family trouble back home. In fact Pte Herbert is married and has been for a few years, and in addition to his wife he has a seven year old daughter to care for. While serving in the Army in Canada matrimonial troubles arose. Herbert was sent overseas in July 44 before he could settle the matter with his wife. The last letter received from his wife was in mid summer 1944 in which letter she claimed she was through with him. Herbert then decided to start investigations for preparation to a divorce. He went to see his Unit padre as well as his Unit Adj asking for help in the matter. He claims he had very little satisfaction out of his requests as nothing official came out of it. He at many times claims to have tried again and again during 1944 and 1945 but in vain. Gentlemen, matrimonial troubles are a very touchy matter and no doubt was the immediate influence for Herbert's crimes. It is now up to you do decide as to weather a small or heavy punishment will help Herbert in his rehabilitation to civy life. I ask you Gentlemen to consider these facts and to give this man the lightest possible sentence. That is all Gentlemen.

(R.Durand MC) Capt.
Defending Officer.

Oldenburg
18 Jan 46.

64D

Summary of Evidence in the case of B54062 Pte HERBERT, Gordon Edward, 2/9 Cdn Inf Bde Coy RCASC CAOF, a soldier of the Canadian Army Occupational Force.

The Commanding Officer directs that this evidence be taken on oath.

First Witness for the Prosecution

B92386 Pte Sanderson, H. of HQ Pl 2/9 Cdn Inf Bde Coy RCASC CAOF having been duly sworn states:

I am B92386 Pte Sanderson, H. of HQ Pl 2/9 Cdn Inf Bde Coy RCASC CAOF. On the 24th Sep 45 I was duty NCO of B Pl 2/9 Cdn Inf Bde Coy RCASC CAOF. At 2200 hrs 24 Sep 45 I took the TATTOO roll call and found B54062 Pte HERBERT, G.E. absent. I hereby produce B Pl Tattoo report dated 24 Sep 45. (Attached as Exhibit "A")

The accused declines to cross-examine this witness.

W. H. Sanderson
(B92386 Pte Sanderson, H.)
2/9 Cdn Inf Bde Coy RCASC CAOF

Second Witness for the Prosecution

Lieut E.N. Green of B Pl 2/9 Cdn Inf Bde Coy RCASC CAOF having been duly sworn, states:

I am Lieut E.N. Green, Pl Comd of B Pl 2/9 Cdn Inf Bde Coy RCASC CAOF and state that B54062 Pte HERBERT, G.E. was absent from all parades and roll calls from 2200 hrs 24 Sep 45 until he surrendered himself to 2 Cdn L of C Pro Coy, Ghent, 19 Nov 45. I hereby produce Certificate of surrender signed by Sgt H.A. Sangster of 2 Cdn L of C Pro Coy. (Attached as Exhibit "B")

The accused declines to cross-examine this witness.

(Lieut E.N. Green)
2/9 Cdn Inf Bde Coy RCASC CAOF

The accused having been duly cautioned in accordance with Rules of Procedure 4 (e) declines to make any statement at this time.

Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with. I certify that the foregoing Summary of Evidence consisting of 1 page was taken down by me in writing in the presence of the accused this 30 Nov 45.

(G.M. Fisher) Capt
2/9 Cdn Inf Bde Coy RCASC CAOF
Offr detailed to take the Summary

In the field
30 Nov 45

Exhibit E.

ADDITIONAL SUMMARY OF EVIDENCE in the case of B54062 Pte HERBERT, Gordon Edward, 2/9 Cdn Inf Bde Coy RCASC, a soldier of the Canadian Army Occupational Force.

The A/Officer Commanding directs that this evidence be taken on oath.

First Witness for the Prosecution

M1278 L/Cpl HILDEBRAND, H. of 2 M.A.C. Coy RCASC CAOF having been duly sworn states:

I am M1278 L/Cpl Hildebrand, H. of 2 M.A.C. Coy RCASC CAOF and was employed as an R.P. when the accused escaped at 1400 hrs 25 Dec 45. I marched the prisoners to dinner and just as we finished dinner I noticed that the accused had disappeared. I tried to find him but could find no trace of Pte Herbert in the camp. I then reported to the Cpl in charge of the R.P's that the accused had escaped. I hereby produce Certificate of Surrender signed by Major M.A. Frank, Officer Commanding 1 CBR Coy, 13 CBR Bn. (Attached as Exhibit "C")

The accused declines to cross-examine the witness.

H. Hildebrand
(M1278 L/Cpl Hildebrand, H.)
2 M.A.C. Coy RCASC CAOF

The accused having been duly cautioned in accordance with Rules of Procedure 4 (e) declines to make any statement at this time.

Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with. I certify that the foregoing Summary of Evidence consisting of One (1) page was taken down by me in writing in the presence of the accused this 10 Jan 46.

(C.M. Fisher) Capt
2/9 Cdn Inf Bde Coy RCASC CAOF
Offr detailed to take the Summary.

In the Field

10 Jan 46.

Exhibit "A"

TATTOO RETURN

2/8 Cdn. Inf Bde Coy RC[illegible] CAOF

Platoon B

Date 24 Sept 45 Time 2215 hrs

Pl Strength	97
On Leave	9
FF at HQ	1
On Command	
Attd OUTln	27
On Duty	19
AWL	1
In lines or Billets	40
TOTAL	97

ASSEMBLED

NO RANK Name

B64062 Pte Herbert C E
absent from 2200 hrs 24 Sept 45

[signature] Lt

i/c Guard

Exhibit B.

CERTIFICATE UNDER ARMY ACT. SECTION 162 (1) (1)

Certified that No. B-84062 Rank. PTE Name HERBERT G E

of the 2/8 Cdn. Inf. Bdge. R. Flt. Regt, surrendered to No. B-106822

Rank. L/Cpl Name GUY R A of the 8 Section Provost

2 Cdn. L. of C. Provost Coy at. Chent at 2125 hrs, on the 10th

day of November 45 as an absentee without leave.

He was wearing Military Uniform at the time of his Surrender

Civilian Clothes. arrest.

H B Lamont SGT. N C O. i/c.
9 SECTION.
2 CDN. L of C. PROVOST. COY.
Canadian Provost Corps.

Place. Chent, Belgium.

Date. 10/11/45

ENCL I C

APPENDIX "C"

CERTIFICATE UNDER ARMY ACT 163(1)(j)

Certified that No. B-54662 Rank Pte Name Herbert, G.F.

of the 2/9 CIB Coy RCASC (CAOF) Coy Regt Bn

XXXX ~~Surrendered~~ to No. D-143954 Rank Cpl Name White, D.J.

of the 13 CBR Bn R.E. at Alyerma at 2100 hrs on the 30 Dec 45

~~XXXXXXXXXXXXXXXXXX~~

wearing military uniform at the time of his ~~XXXXX~~ surrender.

As an absentee without leave he was

Place Field

Date 31 Dec 45

(W.A. Frank) Major

~~XXXXXXXXX~~

~~XXXXXXXXXXXXXXXX~~

Officer Commanding

1 CBR Coy, 11 CBR Bn

E.F. 1st Bde

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B54062	Pte	HERBERT, Gordon Edward	2/9 Cdn Inf Bde Coy RCASC CAOF

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers inserted should correspond with the totals or entries in the conduct sheets, punishments being given in the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For A.A. SEC 15(1)	3	times	12	times
For A.A. SEC 40	4	times	4	times
For		times		times
For		times		times
For		times		times

*Number of instances of gallantry or distinguished conduct, - Nil

or

There are no entries in the conduct sheets of the accused.

2. [redacted]

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for _____ days in civil custody, and 54 days in military custody, making a total 54 days, of which 16 days were spent in hospital.

5. The present age of the accused according to his record of service is 29

6. The date of his [redacted] attestation specified in his record of service is 10 Sep.41

7. ~~The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~

8. ~~The accused is entitled to deferred pay or gratuity in respect of~~ ~~service.~~

9. ~~The accused is entitled to reckon~~ ~~service for the purpose of determining his pension, etc.~~

10. ~~The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (state any military decoration or reward)).~~

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

12. (*In the case of an officer.*) ~~The accused holds in the army the rank of~~ dated ~~and in his regiment (or corps or department) the rank of~~ dated

(P27602) W1.20501/2492 25,000 5.41 A.& E.W.Ltd. Gp.698
(22206) W1.53306/3224 100,000 2.42 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B54062 Rank Pte Name HERBERT, G.E. 2/9 Cdn Inf Bde Coy RCASC CAOF Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
GCM	Cda 23/12/42	A.A. SEC 15(1)	90 days Detn	15 days

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22 day of Dec 45

Officer Commanding
2/9 Cdn Inf Bde Coy RCASC CAOF

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

In the rank of ..... Date of Promotion.

In the rank of ..... years, ... months.

In the rank of ..... years, ... months.

(Reservation.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraph construed accordingly.)

No. B54062 Name Herbert G.E. | Sqn., Battery, or Company | Corps RCASC | Date of enlistment 10-9-41 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 A.F.B. 122

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Candda	16-9-41	Pte		A.A. SEC 15 (1) AWL		3 days P&A	22-9-41		
Canada	31-10-41	Pte		A.A. SEC 15(1) AWL 2230 31 Oct till 0315 hrs 14 Nov 41		7 dpys CB 14 days pay	18-11-41		Total stoppage $12.85
Canada	15-12-41	Pte		A.A. SEC 15(1) AWL 1400 12 Dec till 2330 hrs 15 Dec 41		7 days CB Forf 1 days pay	20-12-41		Placed under stopp. pay $3.67
Canada	26-12-41	Pte		A.A. SEC 15(1) AWL 0700 hrs 26 Dec 2005 hrs 6 Jan 42		21 days detn Forf 33 days P&A	8-1-42		
Canada	31-1-42	Pte		A.A. SEC 15(1) AWL 2230 hrs 31 Jan till 2215 hrs 7 Feb 42		21 days detn 7 days pay	10-2-42		Ttl forf 31 days P&A Stopp $12.47
Canada	4-5-42	Pte		A.A. SEC 40		8 days detn	5-5-42		
Canada	21-8-42	Pte		A.A. SEC 15(1) AWL 0600 21-8-42 till hrs 11-11-42		CCM 90 days detn	23-12-42		Total Forf 123 days pay

(P.T.O.)

Place	Date of offence	Rank	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Canada	4 Jul 43	Pte	A.A. [illegible] hrs 5 [illegible] Detn 27 Feb 42		7 days CB	7-7-43		
Canada	9 Jul 43	Pte	A.A. SEC 1[illegible] sentance 15 days 0720 hrs 12[illegible] 2230 hrs to 2000		1 days pay 2 days CB	13-7-43		
Canada	29-10 43	Pte	A.A. SEC 15([illegible])[illegible]100 9 Jul to to 0345 hrs 31 O[illegible]		3 days P&A 7 days CB	4-11-43		
Canada	19-4-44	Pte	A.A. SEC 15(1) AWL[illegible]5 hrs 29 Oct to 1440 hrs 21 Apr [illegible]rs 19 Apr		3 days P&A Awd 21 days detn Forf 3 days P&A	25 Apr 44		Total Forf 15 days pay Total forf 28 days pay
Field	5 Oct 44	Pte	A.A. SEC 15(1) AWL 14 hrs [illegible] mins		14 days FP local 14 days P&A	15 Oct 44		
Field	9 Mar 44	Pte	AA SEC 40 AA SEC 40		28 days FP 28 days pay			
Field	27 Jul 45	Pte	A.A. SEC 15(1) AWL [illegible]700 hrs25 Jul to 2305 hrs 25 Jul 45 AA SEC 40		28 days FP 28 days P&A			Total forf 29 days pay

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Released from Detn 27 Feb 42 Remission of sentance 15 days					
Canada	4 Jul 43	Pte		A.A. SEC 15(1) AWL 2230 hrs to 2000 hrs 5 Jul 43		7 days CB 1 days pay	7-7-43		
Canada	9 Jul 43	Pte		A.A. SEC 15(1) AWL 1100 9 Jul to 0720 hrs 12 Jul		2 days CB 3 days P&A	13-7-43		
Canada	29-10 43	Pte		A.A. SEC 15(1) AWL 2215 hrs 29 Oct to 0345 hrs 31 Oct 43		7 days CB 3 days P&A	4-11-43		
Canada	19-4-44	Pte		A.A. SEC 15(1) AWL 0600 hrs 19 Apr to 1440 hrs 21 Apr 44		Awd 21 days detn Forf 3 days P&A	25 Apr 44		
Field	5 Oct 44	Pte		A.A. SEC 15(1) AWL 14 hrs 30 mins		14 days FP local 14 days P&A	15 Oct 44		Total Forf 15 days pay
Field	9 Mar 44	Pte		AA SEC 40 AA SEC 40		28 days FP 28 days pay			Total forf 28 days pay
Field	27 Jul 45	Pte		A.A. SEC 15(1) AWL 1700 hrs25 Jul to 2305 hrs 25 Jul 45 AA SEC 40		28 days FP 28 days P&A			Total forf 29 days pay

No. B54062 Name Herbert G.E. | Sqn., Battery, or Company | Corps RCASC | Date of enlistment 10-9-41 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Date	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field				Certified True Copy as per entries appearing of MFM 14 H.E. Patrick (H.E. Patrick) Major Officer Commanding 2/9 Cdn Inf Bde Coy RCASC CAOF					

(P.T.O.)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B-5062 Pte Herbert, Gordon, Edward.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Charge	Guilty	Guilty	
2nd	Charge	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 733, and in lieu of list see RP 44 fn 6.)

HCP As present under sentence for [illegible] beginning on (date) [illegible] (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 49 days, of which 16 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be imprisoned without hard labour for 1 year and to be discharged with ignominy from His Majesty's Service.

(Sgd) [illegible] 16 Jan 46 (Sgd) "H.C.Pattison" Major.
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the findings and sentence for confirmation.

Date 22 Jan 46 (Sgd) "W.H.Colling" Lt-col., Commanding HQ RCASC 3 Cdn Inf Div CAOF.

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : I confirm the findings and sentence of the court but remit "Discharge with ignominy from H.M.Service and commute sentence to detention for one year.

I direct that the accused be not committed to prison or detention barracks until further orders.(1) FCV"
(1. AA 57A. Delete if not used.)

(Sgd) "C.Vokes"
Date 1st February 1946. (C.VOKES) Maj-Gen
Commanding GOC 3 Cdn Inf Div CAOF
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B.5062 Pte Herbert G.E.	4 Feb 46	"J.F.H.Clair,"Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

CERTIFIED TRUE COPY. RECORDED AT CMHQ IN AB 160, CAOF 1-43
R Lemmon 5726 48

CFA86 (In lieu of AFA3) 40-P.A.S. 1608 (2064)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Col W.H.Colling Comd 3 Div RCASC dated 17 Jan 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-54062	Pte	Gordon Edward	HERBERT	2/9 Cdn Inf Bde Coy RCASC (CAOF)

PROCEEDINGS REVIEWED
5 Feb 46 (W.B.Bredin) Lt-col.,
DJAG HQ 3 Cdn Inf Div (CAOF)

"HCP"

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) GERMANY on (date(s)) 16 Jan 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RDs. For guidance on procedure when a variation in this form arises, see forms for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1)
"HCP" The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

HCP A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)
HCP The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

HCP A5. President to accused : Do you object to [illegible] as interpreter ? Ans [illegible]
The Interpreter is sworn (1) Do you object to [illegible] as shorthand writer ? Ans [illegible]
The shorthand writer is sworn(1) X
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No. (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	H.C.PATTISON	2/1 Cdn Inf Div Tps Coy.
Member	Capt	K.KENDALL	2 Cdn AC RCASC
Member	Capt	L.A.F.GEMMILL	2/7 Cdn Inf Bde Coy
Judge-Advocate			
Prosecutor	Capt	O.M.FISHER	2/9 Cdn Inf Bde Coy
Defending Offr	Capt	R.Durand, M.C.	2/8 Cdn Inf Bde Coy

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No. (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Comm Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

HCP A8. The accused B-54062 Pte Herbert, G.E. before arraignment make(s) (no) (X) plea (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references to fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

HCP A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CAOF Bk I P.94

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; securing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 85, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO.(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his HCP (their) plea(s) of Guilty to Not Guilty on ~~XXXXXXXXXX~~ charge(s). The accused is (are) so informed, and he (they) ~~changed~~ his (their) plea(s) on ~~XXXXXXXXXX~~ charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

HCP B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex D & E, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans .....Do you intend to call witnesses on your behalf?
Ans .....Are they witnesses as to character only? Ans .....
(1. RP 155. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans NO.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

HCP E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport HCP to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex F and Ex G respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 75(b). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2123, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

H"CP

CHARGE SHEET.

First Charge

The accused, B54062 Pte HERBERT, Gordon Edward, 2/9 Cdn Inf Bde Coy RCASC, a soldier of the Canadian Occupational Force, is charged with:

Army Act Sec 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he, in the field, absented himself without leave from 2200 hrs 24 Sep 45 until 2325 hrs 19 Nov 45. (Total time absent 56 days 1 hr 25 mins)

"JFH Clare"
(JFH Clare) Capt
A/Officer Commanding
2/9 Cdn Inf Bde Coy RCASC CAOF

In the Field,
30 Nov 45.

To be tried by Field General Court Martial.

"W.H.Colling"
(W.H.Colling) Lt-col
C, RASC
3 Cdn Inf Div CAOF

In the Field,
17 Jan 46.

HQ!

CHARGE SHEET.

Second Charge

The accused, B54062 Pte HERBERT, Gordon Edward, 2/9 Cdn Inf Bde Coy RCASC, a soldier of the Canadian Occupational Force, is charged with:

Army Act Sec 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he, in the field, absented himself without leave from 1400 hrs 25 Dec 45 until 2100 hrs 30 Dec 45, whilst under close arrest. (Total time absent 5 days 7 hours).

"J.H.Clare"
(J.H.Clare RAE) Capt
A/Officer Commanding
2/9 Cdn Inf Bde Coy RCASC CAOF

In the Field,
9 Dec 45

To be tried by Field General Court Martial.

"W.H.Colling"
(W.H.Colling) Lt-col
C, RASC
3 Cdn Inf Div CAOF

In the Field,
17 Jan 46

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.54062	Pte		Gordon Edward	HERBERT	2/9 Cdn Inf Bde Coy RCASC (CAOF).

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 Jan 46 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.) "NIL"
(Delete parts in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "NIL"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ "NIL"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	F.C.Pattison	2/3 Cdn Inf Div Tps Coy RCASC (CAOF)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	K. Kendall	2 Cdn MAC RCASC (CAOF).
Capt	LAP Gemmill	2/7 Cdn Inf Bde Coy RCASC (CAOF)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	MR Watson	2/3 Cdn Inf Div Tps Coy RCASC (CAOF)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in GERMANY (Country.)

"R.H.Colling" (Signed personally. RP 105 fn 2.) (R.H.COLLING)

Lt-col (Rank.)

Date 17 JAN 46

Commanding 2 CDN INF DIV RCASC

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"I hereby certify that I have this day examined B.54062 Pte HERBERT, C.E. and in my opinion he is fit to undergo trial by Court Martial.

Date: 18 Jan 46 HCP

"I.Harper" Capt RCAMC
RMO., 3 Cdn Inf Div RCASC

"B2" Echelon

PLEA OF MITIGATION IN THE CASE OF: H-54062 Pte Herbert, G.E.

Mr.President,
Members of the Court,

A very few words have to be added to the evidence you already have in front of you, in the case of Pte Herbert. The answer to Herbert getting into trouble here and there is due to family trouble back home. In fact Pte Herbert is married and has been for a few years, and in addition to his wife has a seven year old daughter to care for. While serving in the Army in Canada matrimonial troubles arose. Herbert was sent overseas in July 44 before he could settle the matter with his wife. The last letter received from his wife was in mid summer 1944 in which letter she claimed she was through with him. Herbert then decided to start investigations for preparation to a divorce. He went to see his Unit padre as well as his Unit Adj asking for help in the latter. He claims he had very little satisfaction out of his requests as nothing official came out of it. He at many times claims to have tried again and again during 1944 and 1945 but in vain. Gentlemen, matrimonial troubles are a very touchy matter and no doubt was the immediate influence for Herbert's crimes. It is now up to you to decide as to whether a small or heave punishment will help Herbert in his rehabilitation to civy life. I ask you Gentlemen to consider these facts and to give this man the lightest possible sentence. That is all Gentlemen.

Oldenburg
18 Jan 46.

"R.Durand" Capt.
(R.DURAND SC) Capt.
Defending Officer.

Ex "D"

Summary of Evidence in the case of B54062 Pte HERBERT, Gordon Edward, 2/9 Cdn Inf Bde Coy RCASC CAOF, a soldier of the Canadian Army Occupational Force.

The Commanding Officer directs that this evidence be taken on oath.

First Witness for the Prosecution

B92386 Pte Sanderson, H. of HQ Pl 2/9 Cdn Inf Bde Coy RCASC CAOF having been duly sworn states:

I am B92386 Pte Sanderson H. of HQ Pl 2/9 Cdn Inf Bde Coy RCASC CAOF. On the 24th Sep 45 I was duty NCO of B Pl 2/9 Cdn Inf Bde Coy RCASC CAOF. At 2200 hrs 24 Sep 45 I took the TATTOO roll call and found B54062 Pte HERBERT, G.E. absent. I hereby produce B Pl Tattoo report dated 24 Sep 45. (Attached as Exhibit "A")

" HCP"

The accused declines to cross-examine this witness.

"H.Sanderson"
(B92386 Pte Sanderson H.)
2/9 Cdn Inf Bde Coy RCASC CAOF

Second Witness for the Prosecution

Lieut E.N.Green of B Pl 2/9 Cdn Inf Bde Coy RCASC CAOF having been duly sworn, states:

I am Lieut E.N. Green, Pl Comd of B Pl 2/9 Cdn Inf Bde Coy RCASC CAOF and state that B54062 Pte HERBERT, G.E. was absent from all parades and roll calls from 2200 hrs 24 Sep 45 until he surrendered himself to 2 Cdn L of C Fro Coy, Ghent, 19 Nov 45. I hereby produce Certificate of surrender signed by Sgt H.A.Sanaster of 2 Cdn L of C Fro Coy. (Attached as Exhibit "B").

The accused declines to cross-examine this witness.

"E.N.Green" Lieut.
(Lieut E.N.Green)
2/9 Cdn Inf Bde Coy RCASC CAOF

The accused having been duly cautioned in accordance with Rules of Procedure 4 (e) declines to make any statement at this time.

Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with. I certify that the foregoing Summary of Evidence consisting of 1 page was taken down by me in writing in the presence of the accused this 30 Nov 45.

"C.M.Fisher"
(C.M.FISHER) Capt.
2/9 Cdn Inf Bde Coy RCASC CAOF
Offr detailed to take the Summary

In the Field,
30 Nov 45

Ex "G"

ADDITIONAL SUMMARY OF EVIDENCE in the case of B54062 Pte HERBERT Gordon Edward, 2/9 Cdn Inf Bde Coy RCASC, a soldier of the Canadian Army Occupational Force.

The A/Officer Commanding directs that this evidence be taken on oath.

First Witness for the Prosecution

M1278 L/Cpl HILDEBRAND, H. of 2 M.A.C. Coy RCASC CAOF having been duly sworn states:

I am M1278 L/Cpl Hildebrand, H. of 2 M.A.C. Coy RCASC CAOF and was employed as an R.P. when the accused escaped at 1400 hrs 25 Dec 45. I marched the prisoners to dinner and just as we finished dinner I noticed that the accused had disappeared. I tried to find him but could find no trace of Pte Herbert in the camp. I then reported to the Cpl in charge of the R.P.'s that the accused had escaped. I hereby produce Certificate of Surrender signed by Major H.A.Frank, Officer Commanding 3 CBR Coy, 13 CBR Bn. (Attached as Exhibit "C")

The accused declines to cross-examine this witness.

"H.Hildebrand"
(M1278 L/Cpl Hildebrand, H.)
2 M.A.C. Coy RCASC CAOF

The accused having been duly cautioned in accordance with Rules of Procedure 4 (e) declines to make any statement at this time.

Rules of Procedure 4 (c), (d), (e), (f), and (g) have been complied with. I certify that the foregoing Summary of Evidence consisting of one (1) page was taken down by me in writing in the presence of the accused this 10 Jan 46.

"C.M.Fisher"
(C.M.FISHER) Capt.
2/9 Cdn Inf Bde Coy RCASC CAOF
Offr detailed to take the Summary.

In the Field,
10 Jan 46.

Exhibit "A"

TATTOO REPORT.

2/C Cdn Inf Bde Coy RCASC CASF

Platoon H

Date 24 Sept 45 Time 2215 hrs

Pl Strength	97
On Leave	9
FP at HQ	1
On Command	
Attd OUT In	27
On Duty	19
AWL	1
In lines or Billets	40
TOTAL	97

"HELP"

ABSENTEES

NO	RANK	NAME
B-54062	Pte	Herbart G S

absent from 2200 hours 24 Sept 45

"L/Cpl Sanderson"H".
i/c Guard

EXHIBIT "B"

Certificate under army act section 16 3(1)(f)

Certified that No. B -54062 Rank: PTE Name: HERBERT G E

of the 2/9 Cdn Inf Bde B Plt Regt, surrendered to No. L-106822

Rank: L/Cpl Name: GUY H.A. of the 9 Section Ghent Det 2 Cdn

L of C Provost Coy at Ghent at 2325 hrs, on the 10th day of November 45.

as an absentee without leave.

He was wearing Military Uniform at the time of his surrender.

Place: Ghent-Belgium

Date 10/11/45

"H.A.Sangster" SGT PCO I/C.
9 Section
2 C dn L of C. Provost Coy.
Canadian Provost Corps.

"HGP"

EXHIBIT "C"

CETIFICATE UNDER ARMY ACT 163(1)(J)

Certified that No. B-52662 Rank: Pte Name HERBERT G.E.
of the 2/8 CIB Coy RCASC (CAOF) Coy / Regt / Bn

surrendered to No. D-143954 Rank: Cpl Name: WHITE D.J.
of the 13 CBR Bn R.P. at Alvarma at 2100 hrs on the 30 Dec 45
as an absentee without leave, he was wearing military uniform at the time of his surrender.

"HOP"

Place Field
Date 31 Dec 45

"M.A.Frank"
(M.A.Frank) Major
Officer Commanding
1 CBR Coy, 13 CBR Bn.

Re "F" "HCF"

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
854262	Pte	HERBERT, Gordon Edward	2/9 Cdn Inf Bde Coy RCASC CAOF

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a Court Martial:

		#Since Enlistment.
For	A.A. Sec 15(1) 3	12 times.
FOP	A.A. Sec 40 4	4 times.
For		times.

Date of first entry in Field Conduct Sheet .....Nil.....

Date of last entry in Field Conduct Sheet .....Nil.....

2. Previous convictions of the accused by a court martial or a civil court are set out in the schedule below.

3. The accused at the present time is under sentence for _____ beginning on the _____ day of _____.
(Strike out if not applicable.)

4. The accused has been awaiting trial or the prescribed charges for .....days ~~in connection herewith~~ and for ...54.....days in military custody, i.e., ...~~in connection herewith~~ ..... ~~in connection herewith~~ which ....16....days were spent in hospital.

5. The present age of the accused is .....29.....

6. The date of his attestation is 10 Sep 42.

7. The ~~conduct~~ and ~~character~~ of the accused ~~in connection herewith~~ .....

8. The accused is in possession of:
(State military decorations (if any))

9. (If the accused is a warrant officer or N.C.O.) The accused has served continuously, without reduction, to the present date ~~in connection herewith~~ .....
In the substantive rank of .....
In the acting rank of .....

PREVIOUS CONVICTIONS OF A COURT-MARTIAL OR CIVIL COURT

Description of Court	Date & Place of Trial	Charges	Sentence of the Court
CCM	Cdn 23/12/42	A.A.Sec 15(1)	90 days detn. 15 days remitted.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ....22.... day of ..Dec 45..... "H.Patrick" Major
Officer Commanding
2/9 Cdn Inf Bde Coy RCASC CAOF

M.F.M. 6
(A.F. B.122)
40/P & /B136 (2965)

No. B54062 Name Herbert, G.E. Sqn., Battery, or Company Corps RCASC Date of enlistment 10-9-41 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Canada	16-9-41	Pte		A.A.Sec 15(1) AWL		3 days P & A	22-9-41		
Canada	31-1-41	Pte		A.A.Sec 15(1) AWL 2230 31 Oct till 0315 hrs 14 Nov 41		7 days CB 14 days pay	18-11-41		Total stoppages $12.85
Canada	15-12-41	Pte		A.A. Sec 15(1) AWL 1400 12 Dec till 2330 hrs 15 Dec 41		7 days CB Forf 1 days pay	20-12-41		Placed under stop.pay $36.20
Canada	26-12-41	Pte		A.A.Sec 15(1) AWL 0700 hrs 26 Dec 2005 hrs 6 Jan 42		21 days detn Forf 33 days P&A	8-1-42		
Canada	31-1-42	Pte		A.A.Sec 15(1) AWL 2230 hrs 31 Jan till 2215 hrs 7 Feb 42		21 days detn 7 days pay	10-2-42		Ttl frof 31 days P&A Stopp $12.47
Canada	4-5-42	Pte		A.A.Sec 40		8 days detn	5-5-42		Total forf
Canada	21-8-42	Pte		A.A.Sec 15(1) AWL 0600 21-8-42 till hrs 11-11-42		CGM 90 days detn	23-12-42		123 days pay

(P.T.O.)

				OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Released from Detn 27 Feb 42					
				Remission of sentence 15 days					
Canada	4 Jul 43	Pte		A.A.Sec 15(1) AWL 2230 hrs to 2000 hrs 5 Jul 43		7 days CB	7-7-43		
Canada	9 Jul 43	Pte		A.A.Sec 15(1) AWL 1100 9 Jul to 0720 hrs 12 Jul		1 days pay 2 days CB	13-7-43		
Canada	29-10-43	Pte		A.A.Sec 15(1) AWL 2215 hrs 29 Oct to 0345 hrs 31 Oct 43		3 days P&A 7 days CB	4-11-43		
Canada	19-4-44	Pte		A.A.Sec 15(1) AWL 0600 hrs 19 Apr to 1440 hrs 21 Apr 44		3 days P&A Awd 21 days detn	25 Apr 44		
Field	5 Oct 44	Pte		A.A. Sec 15(1) AWL 14 hrs 30 mins		Forf 3 days P&A 14 days FP local	15 Oct 44		Total forf 15 days pay
Field	9 Mar 44	Pte		A.A.Sec 40		14 days P&A 28 days FP			Total forf
Field	27 Jul 45	Pte		A.A.Sec 15(1) AWL 1700 hrs 25 Jul to 2305 hrs 25 Jul 45 AA Sec 40.		28 days pay 28 days FP 28 days P&A			28 days pay Total ford 29 days pay

M.F.M. 6
(A.F. H.123)
40/P & /8130 (2968)

No. B54062 Name Herbert, G.E. | Sqn., Battery, or Company | Corps RCASC | Date of enlistment 10-9-41 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field				Certified true copy as per entries appearing of AFW 14.					
						Ex "G" "NCP"			
				"H.E.Patrick" (H.E.Patrick) Major Officer Commanding, 2/9 Cdn Inf Bde Coy RCASC CASF.					

(P.T.O.)

CCC-124

PTE HERBERT J.J

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 3 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

150 days detention

(Sgd) ..... 5 Feb. 44 (Sgd) Donald MacKenzie Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,4(A), 51-56, 120, MML pp 758-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed JEB

~~I direct that the accused be not committed to prison or detention barracks until further orders (1).~~ JEB

(1. AA 57A. Delete if not used.)

(Sgd) J E Sager BRIG

Date 5 Feb 44 Commanding J E Sager EO Brig 4 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.	
B67291 Pte Herbert J.J.	7/2/44	[illegible]	CAPT. & ADJ

ROYAL REGIMENT OF CANADA

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CPA96 (To Secs of AFA3) 40-P.N.S.-1608 (2804)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig JE SAGER ED Comd 4 Cdn Inf Bde dated 4 Feb 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B67291	Pte	John Joseph	HERBERT	R Regt C

PROCEEDINGS REVIEWED
J.R.C. Queale Capt
28 Feb 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED
Date 1 Mar 44
ATAG
CANADIAN ARMY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 4 Feb 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Clauses do NOT include all relevant fms RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for instrs and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1545 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to N/A as interpreter ? Ans N/A

The Interpreter is sworn.(1) Do you object to N/A as shorthand writer ? Ans N/A

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 187, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJOR	D MACKENZIE	ESSEX SCOT
Member	CAPT	A.R. JOHNSTON	ESSEX SCOT
Member	CAPT	E.L. FROGGETT	RHLI
Judge-Advocate	N/A	N/A	N/A
Prosecutor	LT	W.L. PATTERSON	R REGT C
Defending Offr	LT	T.R. WILSON	R REGT C

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans YES (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Confg Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 34.)

A8. The accused B67291 Pte Herbert J.J. before arraignment makes(s) (no) ~~no~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans N/O .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on N/A charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on N/A. charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para. If submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans .....
Do you intend to call witnesses on your behalf ? Ans .....
Are they witnesses as to character only ? Ans .....
(1. *RP 85 5 / 15.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF 895. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(7) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans He accused makes oath.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 8. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(2), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for cross-examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No. I rely on the defence counsel.....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 7/12
(1. *When several accused tried separately see RP 75(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 60, 118, 119(A), KR Can 308, 332, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. As to assembly and disposal of record after trial see instrs on back of Convening Order.*
2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B 67291 John Joseph HERBERT, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, on active service, is charged with:

ABSENTING HIMSELF WITHOUT LEAVE,

Sec 15(1) Army Act

in that he

in the field, on 10 Jan 44, absented himself without leave from 2245 hrs 10 Jan 44 until apprehended in Littlehampton by civilian police at 2245 hrs 31 Jan 44 (absent 21 days) costs of return £-.5.0

In the Field,
1 Feb. 44.

To be tried by Field General Court-Martial.

(J.E. Sager ED) Brig.,
Comd - 4 Cdn Inf Bde

4 Feb 44

FIELD GENERAL COURT-MARTIAL

CFA35 (In lieu of AFA3)
40/PAS/1007 (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50. RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B67291	Pte		John Joseph	HERBERT	R Regt C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 4 Feb 44 endorsed by me, [illegible] "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

[illegible]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

[illegible]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	D MacKenzie	Essex Scot
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	to be detailed by OC RHLI	
Capt	to be detailed by OC Essex Scot	
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Capt	to be detailed by OC R Regt C	
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
[illegible]		
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(J E SAUER ED) (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Date 4 Feb 44

Commanding 4 CDN INF BDE

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S REPORT

I HAVE THIS DAY EXAMINED

I certify that No. G61291 PTE HERBERT J

of 18th R REGT C is in a GOOD state of health,

and FIT to undergo Trial by Court martial.

J P Wainwright Capt

Medical Officer

Station IN THE FIELD

Date 4 FEB 44.

M. F. B. 246

BM—6-41 (792)
U.S. 1178-39 480

SUSSEX POLICE FORCE.

Littlehampton.

Certificate under Regulation 10A of the Defence (Armed Forces) Regulations.

I certify that John Joseph HERBERT of the Royal Regiment of Canada, Canadian Forces, Overseas.

Rank or rating Private.

No. B.67291.

xxxxxxxxxxxxxx (was apprehended by) a police officer at Littlehampton on 31st January, 1944 at 10.45pm. hours and on his xxxxxxxxx (Apprehension) was taken into custody at Littlehampton Police Station and that at the time of his xxxxxxxxx (Apprehension) he was (xxx) wearing the uniform of His Majesty's (xxxxxx) Forces.

(Signed) H. Smith Insp.
Police Officer in charge of Littlehampton Police Station.

1.2.44.

Offence.	Statute.	Penalty.
...ses"	West Sussex Bye-law	40/-

Expense Voucher Re-:

Refr R.R.&O. (CaN) 539

Reg. No. B.67291 Rank Pte Name HERBERT, J.I. Unit 1 R. REGT. C.

The following expenses incurred in apprehending and returning the u/m soldier to his unit from

Date	Particulars	Amount £	s	d
1 Feb 44	Escorts return fare from HORSHAM To LITTLEHAMPTON		3	8
1 Feb 44	Prisoners single fare to HORSHAM from LITTLEHAMPTON		1	10
	Prisoners fare from to		N/A	
	Escorts & Prisoners expenses for Bed, Meals, Bus Fares		N/A	
	Total £		5	6

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

R.H. Peterson

(R.H. Peterson) Capt.
Adjutant
1 R. REGT. C., CDN. ARMY.

Substitute for form
CMH. 1000:55

This is Exhibit "B" in the case of B 67271 Pte.
HERBERT. J.J.

Edith Clifford JP

Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (R.P. 14(b))

"I would like Lt. T.R. Wilcox, 1 A. Regt. C., to defend me at my trial by Field General Court Martial if available.

J. J. Hulon Pte.

In the Field,
1 Feb. 44.

Baker C.

SUMMARY OF EVIDENCE IN THE CASE OF B 67291 Pte. John Joseph HERBERT, 1 Bn the Royal Regiment of Canada, a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The C.O. directs that the evidence be taken on oath.

First WITNESS for the prosecution: Capt. R.H. Paterson, Adjutant, 1 Bn The Royal Regiment of Canada, sworn states:

I present:

Certificate of apprehension purporting to be signed by Inspector J.G. Miller, Police Officer in charge of Littlehampton Police Station, (attached as exhibit "A")

Certificate of posts of return, purporting so be signed by Capt. R.H. Paterson, adjutant, 1 R. Regt. C. (attached as exhibit "B")

both of which relate to the accused, whom I recognize.

The accused declines to cross-examine.

R H Paterson

R.H. Paterson, Capt.
Adjutant
1 R. Regt. C., Can. Army.

SECOND WITNESS for the prosecution: B 59799 L/Cpl. MC GREGOR, R.J., 1 Bn the Royal Regiment of Canada, sworn states:

On 10 Jan 44 I was acting Orderly Sgt for A Coy and I called the roll at 2245 hrs and found that the accused, whom I recognize, Pte. Herbert, was absent. I have not seen the accused since until 1 Feb. 44.

R J McGregor

B 59799 L/Cpl. MC GREGOR, R.J.

The accused, having been duly cautioned in accordance with RP 4(e), says:

"I do not want to make a statement."

J J Herbert

B 67291 Pte HERBERT, J.J.

"The accused does not wish to call witnesses in his defence at this point.

"CERTIFIED THAT RP 4 complied with
In the field,
1 Feb 44

Earl Clifford 71

E.A.H. Clifford, Lt.
Officer detailed to take the Summary.

Exhibit C

Notes re Case of
B 66923 Pte Herbert S.S. R. Regt C.

I witness The accused B66923 Pte Herbert S.S.
R. Regt C

Enlisted 9 Sept 39 when he was only just 18 years old. Came overseas with the 1st Bn. When the Bn moved to Littlehampton in July 1942 he met a married woman who had a child of 4 yrs of age. Her husband is on service in India.

On 30 Dec 1943 a baby was born by the woman and Pte Herbert is the father of the baby.

There was produced for the inspection of the court Certificate No DC 128664 Certified copy of birth Certificate dated 28 Jan 44 showing the birth of a son to Beatrice Pearcy of Littlehampton and Pte S.S. Herbert R. Regt C.

The baby arrived early and unexpectedly and the mother could not be taken to the hospital in time so the baby was born at home.

The mother, elder child and baby live alone. There are no relatives available to help her. Pte Herbert, Thompson, went down at night to see her. He was there quite getting back the first time by bus and the second time 10 hrs. He was remanded by the C.O. the second time. On Jan 10 he went to Littlehampton again and found the mother alone in bed and no one taking care of her and the family. Thompson decided he must stay and help them.

Note re case of

B 66923 Pte Hunter. J. S. R. Regt C

Plea by Defence Counsel.

This man tried to get leave through the regular channels and feels that the girl must be confined after. Has record shows that he has not previously had any leniency R.A.W.C. and there what he has had are mostly since he met the girl.

RECAP of Orig plus Supp sheets----This document created (sheets 1,2,3)by direction of O.C.2 Oct 43and other sheets destroyed.

No. 67291 Name HERBERT, J J | Sqn., Batty., or Company | Corps CIC | Date of enlistment 19 Sep 1939 | G.C. Badges | Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.

Army Form B. 122

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
ORIGINAL SHEET DESTRIYED AFTER SIX MONTHS SERVICE WEF 19 Mar 40. DRUNKENESS - Nil. LAST ENTRY 15 Dec 39.									
Toronto	1 May 40	Pte		AA 15(1) AWL from 0600 hrs 1 May 40 to 2145 hrs 5 May 40	Cpl Polden Cpl Christian	7 days C B	6 May 40		Forf 5 days pay
Camp Borden	5 Jun 40	Pte		AA 15(1)AWL from 2200 hrs 1 Jun 40 to 0520 hrs 4 Jun 40	Sjt Tisseman	7 days C B			Forf 3 days pay
Brudrland	17 Jul 40	Pte		AA 40 Conduct etc. dirty rifle	CSM McIvor Sjt Mossie	4 days C B	20 Jul 40		
Alafoss	16 Sep 40	Pte		AA 24(2) Losing flannelette 2 x 8	CSM McIver	2 days C B	17 Sep 40		
Field	11 Nov 40	Pte		AA 40 Late to P T parade	Cpl Bird	2 days C B	14 Nov 40		

W2365/[illegible] 1,050,000 2/18 MMCLd E3445

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6 Dec 40	Pte		AA 40 Conduct etc. improper kit layout	CSM McIver	2 days C B			
Field	16 Dec 40	Pte		AA 40 Conduct etc. using insubordinate language	Cpl Green	7 days C B	18 Dec 40		
Field	27 Jan 41	Pte		AA 40 Conduct etc. having a dirty rifle	Cpl Green	4 days C B	28 Jan 41		
Field	29 Jan 41	Pte		AA 40 Inattention on parade.		4 days C B	30 Jan 41		
Field	12 Mar 41	Pte		AA 40 Failure to arise at Reveille	Sjt Horn Cpl Bird	7 days C B	12 Mar 41		
Field	27 Mar 41	Pte		AA 40 Conduct etc. dirty rifle		2 days C B			

Army Form B. 122.

No. B 6729 Name HERBERT, J J Sqn., Batty., or Company Corps CIC Date of enlistment 19 Sep 1939 G.C. Badges Service or Proficiency Pay N/A Character

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 2 Signature O.C. Company, etc.

Place	Date of offence	Rank	Corps or Regiment	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2 Apr 41	Pte		AA 11 Neglecting to obey standing orders by opening and disposing of part of Iron rations.	Sjt Brown	10 days F P	4 Apr 41		Forf 10 d. pay. Placed under stopp cost of I.R.
Field	30 Apr 41	Pte		AA 24(2) Losing by neglect his rifle.	Cpl Green CQMS Ferguson	4 days C B	1 May 41		Rifle recovered.
Field	24 May 41	Pte		AA 15(1) AWL from 2400 hrs 24 May 41 until 0110 hrs 24 May 41	Documentary	5 days F P	27 May 41		Forf 5 d. pay for F.P.
Field	27 Oct 41	Pte		AA 24(2) Losing by neglect his greatcoat.	CQMS Ferguson	21 days pay. Stopp. cost of greatcoat.			Forf 4 d. pay while in close arrest

W29w/782 1,050,000 7/18 M&CLd 83445

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6 Mar 42	Pte		AA15 Late for parade	CSM Anthony	5 days C B	8 Mar 42		
Field	15 Apr 42	Pte		AA 15 AWL from 2400 hrs 15 Apr 42 to app. 2100 hrs 20 Apr 42	Cpl Frost	21 days Detn.	27 Apr 42	Lt-Col G H Basher	Forf 27 d. pay Forf 5 d. pay for AWL
Field	20 Apr 42	Pte		AA9(2) Wilfully disobeying a lawful command by superior officer.					
Field	10 Jul 42	Pte		AA 15 AWL for 2 days 16 hrs.	Sjt Preston	4 days C B	13 Jul 42		Forf 9 d. pay Stopp. cost of return to unit.
Field	6 Nov 42	Pte		AA 15 AWL from P T parade	L/Sjt Lonie	5 days C B	6 Nov 42		

Army Form B. 122

No. 67291 Name HERBERT? J J | Sqn., Batty., or Company | Corps CIC | Date of enlistment 19 Sep 1939 | G.C. Badges | Service or Proficiency Pay | N/A

Character

Date of last entry in Company Conduct Sheet: N/A | No. and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No. 3 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7 Jan 43	Pte		AA 8(2) Using abusive language to his superior officer.	Cpl Hepburn L/Sjt Reed	5 days C B	19 Jan 43		
Field	18 Jan 43	Pte		AA 15 AWL 18 Jan 43 to 19 Jan 43. Absent 21 hrs.	Cpl Mackenzie	7 days C B	19 Jan 43		Forf 1 days pay.
Field	3 Feb 43	Pte		AA 15(1) AWL from 0630 hrs to 0740 hrs 3 Feb 43.(1 hr, 10min)	Sjt Bird	7 days C B	3 Feb 43		
Field	22 Feb 43	Pte		AA 15(1) AWL from 2245 hrs 21 Feb 43 to 0930 hrs 24 Feb 43.	Cpl Pettigrew	Forf 10 d. pay FR&I 149(2)	25 Feb 43		Forf 3 days pay FR&I 149 (1)(a)
Field	10 May 43	Pte		AA 15(1) AWL from 0830 hrs 10 May 43 to 2250 hrs 24 May 43.	Cpl Johnson Sjt McPhee	Forf 14 d. pay	25 May 43		Forf 15d. pay AWL

W2866/1161 1,000,000 7/15 M&CLd 8346

Place	Date of offence	Rank	Casts of Punishments	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	10 Jun 43	Pte		AA 15(1) AWL from 1430 hrs 10 Jun 43 to 0915 hrs 29 Jun 43	Documentary	Forf 28 days pay			Forf 19 d. pay
Field	14 Aug 43	Pte		AA 15(1)AWL from 1830 hrs 14 Aug 43 to 2330 hrs 18 Aug 43	L/Sjt Lloyd	Forf 5 d. pay FR&I 149(2)	20 Aug 43	Major A A Duncanson	Forf 5 d. pay FR&I 149(1)(a)
Field	12 Sep 43	Pte		AA 15(1)AWL from 0930 hrs 12 Sep 43 to 0045 hrs 14 Sep 43	a/L/Cpl Whiting	Forf 28 days pay under FR&I 149(2)	25 Sep 43	Lt-Col F S Wilder	Forf 2 d. pay FR&I 149(1)(a)
Field	15 Sep 43			AA 15(1) AWL from 2230 hrs 15 Sep 43 to2359 hrs 23 Sep 43	a/L/Cpl Whiting			Lt-Col F S Wilder	Forf 9 d. pay FR&I 149(1)(a)

No. B 672[illegible] Name HERBERT, J.S. Sqn., Batty., or Company [illegible] Corps C.I.C. Date of enlistment 19 Sep 39 G.C. Badges [illegible] Service or Proficiency Pay [illegible]

Date of last entry in Company Conduct Sheet [illegible] No. and date of last drunk [illegible] Period not reckoning towards freedom from extra line [illegible] Sheet No. [illegible] Signature O.C. Company, etc. (Sgd) R.T.J. [illegible] Character [illegible]

Army Form B. 122

Place	Date of offence	Rank	Cause of Drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2Jan44	Pte		s.15(1) A/L from 2245 hrs 2 Jan 44 until 0800 hrs 3 Jan 44	a/L/Sgt. Hagaart J	Forf 7 days pay FRMI 149 (2)	3 Jan 44	Lt-Col W Young	Forf 1 d pay FRMI 149(1)(a)

CERTIFIED TRUE COPY
(R.H. Peterson) Capt.
Adjutant
1 R. REGT. G., CLN. ARMY.

Evidence

Substitute for AF B 296
or MF B 355

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

No. B 67291 Rank Pte. Name John Joseph HERBERT Unit 1 R. R.C.R. C.

Age 23 Married or Single S No of Dependents Nil

Date of Attestation 19 Jan 39

Number of days in close arrest awaiting trial 3 days

Civil ..... Military ..... Hospital ..... Total .....

Dates of appointments, promotions, etc (if any) N/A

In the field

21 Feb 44
(date)

Officer i/c Records.

1 R Regt C.

Note: Certified true copy of MF M 6 must accompany this form.

FLASH NUMBER THREE

FLASH NUMBER THREE

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FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

40 Verbert, P. (Thiaucourt) 6-1166 PO-H-225 40

10-H.-225

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a DISTRICT Court-Martial held at BORDON on the 9TH day of AUGUST 19 40 by order of BRIGADIER P.J. MONTAGUE, CMG, DSO, MC, VD. Commanding CANADIAN MILITARY HEADQUARTERS dated the 5TH day of AUGUST 1940

President.

LT.-COL. LOUIS KEENE, E.D.
NO. 1 INF. BASE DEPOT.

Members.

MAJOR J.C. HANSON,
NO. 1 GEN. INF. HOLDING UNIT.

CAPT. W. WORSICK,
NO. 3 GEN. INF. HOLDING UNIT.

, Judge Advocate.

Trial of* C-11668, PTE. HERBERT, A.,
NO. 1 GEN. HOLDING UNIT.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that is not available to serve owing to

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† LIEUT. A.H. PHINDGUT, R.C.A.S.C.

Counsel‡ or defending officer† MAJOR O. BARRETT

At o'clock the Trial commences.

The order convening the Court is read, and is marked A-1 signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* NO.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

[illegible] Form A 9.

Army Form A 47

COURTS-MARTIAL

Form of Order for the assembly of a ~~General~~ or District Court Martial.

C.M.H.Q. ORDERS BY Brigadier, P.J.Montague, C.M.G., D.S.O., M.C., V.D.

Commanding the Canadian Military Headquarters.

(Place and Date) London.

The detail of officers as mentioned below will assemble at Bordon on the 9th day of August, 1940 at 1030 hrs. for the purpose of trying by a District court-martial the accused person [persons] named in the margin [and such other person or persons as may be brought before them].*

C 11668 Pte. Herbert A. No.1.Gen. Holding Unit.

PRESIDENT.

Lt. Col. L. Keene, ED., No. 1. Inf. Base Depot is appointed president.†

MEMBERS.

A Major to be detailed from 1 Cdn. Inf. Holding Unit.

A Captain to be detailed from 3 Cdn. Inf. Holding Unit.

Note—The president must be named. The members and the waiting members may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named.

WAITING MEMBERS.

A,Captain to be detailed from 2 Cdn. Inf. Holding Unit.

JUDGE-ADVOCATE.

has been [*or where the convening officer has the appointment of a judge-advocate,* is hereby] appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to Canadian Military Headquarters.

Signed this 5th day of August 19 40

(W. G. KERR) Lieut-Colonel,
D.A.A.G. (Courts-Martial),
Canadian Military Headquarters.

* *Any opinion of the convening officer with respect to the* [illegible] *and Rules of Procedure 20 and 21) should be added here.* [illegible] *exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry, the following should be added :—*

"In the opinion of the convening officer, other officers are not, having due regard to the public service, available," (*or as the case may be*).

† *Add here, in the case of either a General or District Court-Martial where a captain is appointed president and the officer convening the court is not under the rank of field officer,* "In the opinion of the convening officer a field officer is not, having due regard to the public service, available." *Where it is necessary for an officer under the rank of captain to be appointed president of a District Court-Martial, add,* "In the opinion of the convening officer a field officer or captain is not, having due regard to the public service, available." (*See Army Act, s.* 46 (9).)

‡ *The "unit," in the case of Royal Artillery, is a Brigade, where such organisation exists.*

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(11,000) W1.44017/726 10,000 1/40 " " Forms/A47/33

List of Witnesses.

TRIAL OF C 11668 - PTE. HERBERT A. No. 1 General Holding Unit.C.A.S.F.

LIST OF WITNESSES FOR THE PROSECUTION.

L/Cpl. S.G.Oman - Canadian Military Police, London, Eng.

L/Cpl. W.Curtis - Canadian Military Police, London, Eng.

CANADA

Department of National Defence

IN REPLY PLEASE QUOTE
NO.

19

CHARGE SHEET

The accused, No. C 11668, Private Allan Herbert of No 1 General Holding Unit, C.A.S.F., a soldier of the Canadian Active Service Force, is charged with:-

First Charge
Sec. 22
Army Act.

When in lawful custody escaping-

in that he

at Waterloo Station, London, on the 30th June 1940, when proceeding under escort to the Canadian Military Police Office, London, broke away from his escort and escaped.

Second Charge
Sec. 8 (1)
Army Act.

Striking his superior Officer, being in the execution of his office-

in that he

at Waterloo Station, London, on the 30th June 1940, struck with his fist in the face, L/Cpl. S.C. OMAN, Canadian Military Police, who was escorting him to the Canadian Military Police Office, London.

Lieut.-Colonel
Commanding No. 1 General Holding Unit
C.A.S.F.

Camp Borden, Hants
26th July 1940.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. NO.

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution.

being duly sworn, is examined by the prosecutor.

1st Witness for Prosecution, L/Cpl. J.G. Oman, Canadian Military Police, being duly sworn, is examined by the prosecutor.

Q1 - Your full name and number?
A1 - H-16428, L/cpl. Oman, John George.
Q2 - You are a member of what unit?
A2 - A member of the Canadian Military Police, London.
Q3 - Do you know the accused, Pte. Herbert?
A3 - I have met him.
Q4 - That is the man there?
A4 - Yes, sir.
Q5 - Will you tell this court-martial about your meeting with Herbert?
A5 - Well, the first time I came in contact with the accused was about twelve-thirty on the night of 29th June. I was on duty at Waterloo Station and observed the accused lolling around improperly dressed, minus his cap and respirator and with his tunic wide open. I requested to see his pass and it was issued from after duty on the 29th. I asked him where his cap and respirator was and why he was going about with his tunic open. He said he had found it hot and had opened his tunic to cool off. He said he had left his respirator and cap in a restaurant on Waterloo Road. I told him to proceed there and get them and he said "Alright" and away he went. That was the last time I saw him on that particular night.
Q6 - Did you see him again?
A6 - On the Sunday.
Q7 - What hour?
A7 - At 2350 I was on duty at Waterloo and in the first place I got information from.....
Q8 - What did you do as a result of that information?
A8 - As a result of information received I went to investigate the complaint and I found this soldier, the accused, on the platform. I kept him under observation on the platform.....
Q9 - Where?
A9 - On Waterloo Station between number three and six platforms.
Q10 - You might tell the Court, was anyone with you?
A10 - L/Cpl. Curtis.
Q11 - On duty?
A11 - Yes. When I observed this soldier he was in conversation with a woman. I took particular notice that he was in the same condition as I saw him on Saturday night; minus his hat and respirator and with his tunic wide open. I accosted him and heard him say to the woman "Everything will be alright." I asked him then to produce his pass and he said "Fuck you, I don't need to show my pass." I asked him to accompany me to the police office and he refused to do so. I took hold of him and while I was proceeding to take him up to the office he struck me with his clenched fist on the side of the mouth.
Q12 - You took hold of him. In what way, by the arm?
A12 - By the arm.
Q13 - Did the other lance-corporal have hold of him?
A13 - Before I got hold of him I got struck in the mouth. My mouth started to bleed and I grappled pretty strongly with him and intended to take him to the office but about twenty sailors of the British Navy interfered and let him go and I couldn't hold against such odds and I had to let him go. The following morning I reported the matter and submitted a statement.
Q14 - Tell the Court whether or not there was evidence of the accused having been drinking.
A14 - He was under the influence of liquor.
Q15 - Would you indicate to what extent?
A15 - To me he seemed to be in a fighting mood.

Q16 - How were you dressed?
A16 - I had a blue band with Canadian Military Police in the centre on my right arm.
Q17 - Were you then a lance-corporal?
A17 - Yes, sir.
Q18 - Had you a stripe?
A18 - Yes, sir.

Cross-examination by Defence Counsel.

Q1 - One point I would like clear, When you went up to the accused on the first night, had he been drinking then?
A1 - Yes, sir, there was a strong smell.
Q2 - On the second night?
A2 - He was in practically the same condition as on the Saturday night.
Q3 - What I think we would like to know is what was his general condition with respect to the liquor he had taken. Had he had a few drinks or many drinks?
A3 - By the way he acted, two or three.
Q4 - No more?
A4 - I wouldn't say so.
Q5 - Was the platform on which you were standing light or dark?
A5 - Just dusk.
Q6 - You wouldn't say it was a bright platform?
A6 - No, sir.
Q7 - A dark gloomy place?
A7 - Yes, sir.
Q8 - Did you tell him you were a military policeman?
A8 - Not on the second night.

Prosecutor - The Court may want to know just what is the cause of your teeth being out. Do you attribute that to the blow?
Witness - When I got the blow on the mouth I had four on top and the big tooth on the side cut my lip. My teeth were extracted on the Monday morning.
Prosecutor - You wouldn't blame the accused?
Witness - No, sir.

2nd witness for Prosecution, L/Cpl. W. Curtis, Canadian Military Police, being duly sworn, is examined by the prosecutor.

Q1 - What is your full name and regimental number?
A1 - William Curtis, B-28145.
Q2 - What unit were you a member of on the date in question, 30 June?
A2 - The Canadian Military Police.
Q3 - Where?
A3 - London.
Q4 - Do you know the accused, Herbert?
A4 - Yes, sir.
Q5 - When did you see him first?
A5 - On the Sunday night.
Q6 - 30th June?
A6 - Yes, sir.
Q7 - Where?
A7 - Waterloo Station.
Q8 - Was anyone with you?
A8 - In the company of L/Cpl. Oman.
Q9 - Were you on duty?
A9 - Yes, sir.

Q10 - Will you tell us the circumstances under which you saw the accused?
A10 - On Sunday night on Waterloo Station I was on patrol on the platform and a gentleman came along.....
Q11 - Don't tell us what he said. What did you do?
A11 - Started to look around for the soldier and ran across the accused, and while approaching him L/Cpl. Oman asked him for his pass. Just don't know exactly what he said but L/Cpl. Oman said "You are under arrest, you had better come with us." But the sailors started coming around and we had to let him go ourselves. We paraded around the platform the rest of the night but couldn't find him. On the following morning the accused came in at about six-thirty for a warrant to go back to camp and the corporal in charge said it was quite alright to give him one to go on the train. That is about all I know.
Q12 - And how was Herbert dressed when you saw him?
A12 - He had no cap, respirator and his tunic was open. On Monday he had no respirator and I asked him where it was and he said he had lost it.
Q13 - On the night of the 30th June; was it in the evening or the afternoon?
A13 - At 2350 hours.
Q14 - Did you see Oman arrest him?
A14 - I was right there and he said "Youare under arrest" and Herbert brought his right fist around and hit the corporal on the mouth and all the sailors came around and they were ready to have a go and so we had to let him go.
Q15 - What do you mean let him go?
A15 - The sailors kind of carried him off with them.
Q16 - Would you indicate to the Court as best you can how Oman had a hold of the accused and just what he did?
A16 - It was right at the time he asked him for his pass and he told him he was under arrest and he reached him by the shoulder. (Indicates manner)
Q17 - Then what did he do? Did he withdraw?
A17 - They had a struggle but he had to let him go.

Cross-examination by Defence Counsel

Q1 - He reached into the crowd and said "You are under arrest" and Herbert refused?
A1 - He just reached in and told him and pulled him out.
Q2 - Would you say he was in a fighting mood?
A2 - I don't know exactly. He had had something to drink.
Q3 - Would it be your opinion that he was in a fighting mood?
A3 - Yes, at a time like that.
Q4 - To what would you attribute that mood? What did you think at the time?
A4 - I don't know.
Q5 - To what do you attribute the fighting mood? He had been drinking hadn't he?
A5 - Yes, sir.
Q6 - Would you say he had a substantial amount on the Saturday?
A6 - I didn't see him on the Saturday.
Q7 - On the Sunday?
A7 - He had had quite a bit.
Q8 - He had more than a couple of drinks?
A8 - Yes, sir.
Q9 - From what you say, his release was effected as much by the sailors as anything else. The sailors did take him out of custody but if it hadn't been for the sailors you could have taken him along?
A9 - Yes, sir.

Defence Counsel - The only point in the case, if I may possibly shorten the evidence, is I want Herbert to say something and I don't think the Court probably knows as yet this man's actual state at the time this happened and I think he should give evidence of that kind. The reason I say so is he is charged under Section 8(1) and shall, on conviction, be liable to suffer penal servitude. You will note the third paragraph of Page 433 of the Army Act. I would like to read it as it refers to superior officer.

"This expression in this section means not only a superior in rank as defined by s.190(7), but also a senior in the same grade where that seniority gives power of command according to the usages of the service, but one private soldier can never by the 'superior officer' of another. The court should be satisfied, before conviction, that the accused knew the person with respect to whom the offence was committed to be a superior officer. If the superior did not wear the insignia of his rank, and was not personally known to the accused, evidence would be necessary to show that the accused was otherwise aware of his being his superior officer. Where the accused is charged withan offence against a superior officer who is of the same grade, evidence must be adduced to show that the latter is senior to the accused.

A military policeman is not, as such, the superior officer of a private soldier. When a soldier, who is arrested for drunkenness, strikes a N.C.O. (being his superior officer) of the military police and is brought to trial, the convening officer will consider according to the particular circumstances, whether it is necessary or expedient to charge the soldier with the graver offence of striking his superior officer, or whether the case would be met by charging the accused with one of the less serious offences specified in s.10(2) or (3)."

There might be some doubt. The reason I would like the accused to adduce evidence in his own defence is because the prosecution witness said the accused had a fair load under his belt and I think the charge should be laid under Section 10 and not under 8(1). I would like to call Herbert in his own defence.

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. YES.

Question. Do you intend to call any other witness in your defence?

Answer. NO.

Question. Is he a witness as to character only? *Answer.*

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

Last witness for defence, C-11668, Pte. Herbert, A., No. 1 General Holding Unit, being duly sworn, is examined by Defence Counsel.

Q1 - Now, Herbert, you were a member of the 1st Corps Petrol Park at the time this happened?
A1 - Yes, sir.
Q22 - How did you come to be in London?
A2 - I left Quebec Barracks some time Saturday and went down to Farnham and bought two bottles of wine and then went to Aldershot to a pub and started drinking wine and beer.
Q3 - On Saturday?
A3 - Yes, sir. It was around noon, the pubs closed at two. I got on a train for London.
Q4 - You had a pass?
A4 - Yes, sir.
Q5 - What then?
A5 - I don't remember anything more until I woke up on a bench in Waterloo Station. I went for breakfast in the Union Jack Club.
Q6 - When?
A6 - On Sunday.
Q7 - Do you remember having a conversation with L/Cpl. Oman that morning?
A7 - No, sir, I don't remember seeing him.
Q8 - Nor on Saturday night?
A8 - No, sir.
Q9 - Go on.
A9 - I went over to the Union Jack Club and had breakfast and then over to the Beaver Club until eleven o'clock when the pubs opened and I went in and had beer and wine.
Q10 - You went in at eleven o'clock. When did you come out?
A10 - I don't remember coming out.
Q11 - What were you drinking?
A11 - We were drinking wine.
Q12 - What kind?
A12 - Ruby Red.
Q13 - How many did you buy?
A13 - I bought one bottle and a fellow, a civilian, bought one too.
Q14 - You had two?
A14 - Yes, sir.
Q15 - Is that what you drank in the pub?
A15 - I don't remember drinking it all.
Q16 - You don't remember leaving the pub?
A16 - The next thing, I woke up on the floor of the Union Jack Club on Monday morning. I got up at six o'clock and enquired what time the train left for Aldershot.
Q17 - Whom did you ask?
A17 - A civvie. I told him I had no money and he showed me a place to get my ticket.
Q18 - What place?
A18 - A Canadian place.
Q19 - What happened then?
A19 - I went up and asked for a ticket and produced my pass and pay book and they gave me a warrant to go back to barracks and I asked where I could get breakfast but I didn't bother.
Q20 - Did they say anything about being in trouble the night before?
A20 - No, sir.

Cross-examination by Prosecutor.

Q1 - Did you go anywhere with the Navy boys, the sailors, on the Sunday night?
A1 - I don't remember meeting them.
Q2 - What about the woman when you said "Everything will be alright?"
A2 - I don't remember a woman.
Q3 - Where did you leave your respirator and cap?
A3 - I don't know where I left them.

Q4 - Did you recover them?
A4 - Yes, sir.
Q5 - You lost both?
A5 - Yes, sir.
Q6 - How much money did you have when you came to London?
A6 - Two pounds.
Q7 - What did you spend it on?
A7 - All on booze.
Q8 - Did you recognize the lance-corporal who gave evidence here?
A8 - I saw him when I got my warrant.
Q9 - This place you went to to get your warrant, did you know where you were going to?
A9 - No, sir, I knew it was the Canadian Military Police.
Q10 - Who told you?
A10 - The civvie; he said they gave out warrants and took it off your pay book.
Q11 - Your story then is you don't remember a thing that happened at Waterloo on Saturday or Sunday?
A11 - No, sir.
Q12 - Has anything like that ever happened to you before?
A12 - Every time it happens.
Q13 - Are you a fighting man when drunk?
A13 - It has got me into a lot of trouble; it is my downfall -- drink.
Q14 - Do you fight when you have too much to drink?
A14 - Most of the time I do.
Q15 - You just don't remember anything after drinking?
A15 - Yes, sir.
Q16 - You are accustomed to drinking?
A16 - I have only been drunk twice since I was over here.
Q17 - Since the trip to London?
A17 - No, since I landed in England in February.

Defence Counsel - The principle thing I have to say to the Court is not that the evidence discloses the man is not guilty, I think from what the lance-corporals have said, on the face of it, the man is guilty, but at the same time there are two separate offences. Under Section 8(1) the first man must know the other lad he is dealing with is his superior officer. Oman admitted he didn't tell him that night. Herbert says he doesn't remember Waterloo, the sailors or anything. Curtis doesn't say the accused was told they were M.Ps. This man's condition was that he had had quite a few drinks; in a fighting mood. Oman, in caution, says two or three drinks and that he was in a fighting mood. He was fairly well half seas over when this happened, a combination of beer and wine isn't conducive to good sight and I think that under Section 8(1) the prosecution hasn't really satisfied the Court that he knew Oman was, or Curtis was his superior officer. Oman particularly as he was struck, and if the Court isn't satisfied then the charge should be dismissed. If he didn't know it, it was because it wasn't told him or because of his condition. It was not natural. Breaking away from escort; I submit the sailors had as much to do with that as Herbert. At the same time, I think he tried to get away although they actually effected his release rather than he used force to get away. It was that kind of evidence that caused me to offer a plea of not guilty. I thought he was entitled to have these facts put before the court. They are important considerations. Section 8(1) provides for penal servitude; the charge should be laid under 10(1). Section 10(1) provides for less serious cases. I believe the charge should be laid under Section 10(1) instead of 8(1). I think that is all I have to say except that Herbert hasn't tried to explain it and it isn't logical that he would go back to the very same police if he knew he had had contact with them the night before.

Summing up by Prosecutor

There is no doubt the accused was quite drunk. There is no doubt he knows his weakness and knows what happens when he gets drunk and he is not entitled to much consideration knowing he is violent and suffers loss of memory. The fact is quite clear that when he was arrested he struck the lance-corporal and got away from him. He made good his escape with the help of the sailors in the first instance, but by himself he would have been apprehended if no sailors had interfered in his behalf. The fight is proved amply and the only answer he has is that he was drunk and drunkenness is no excuse. On the other charge, the accused may have overlooked the fact he was dealing with a superior officer but I submit it is open to you to make a finding of a qualifying nature along the line suggested by Major Barrett. Section 10(1) is less serious and gives sufficient scope and if you should find him guilty you will be able to give ample and appropriate sentence.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

C-11668, Pte. Herbert, A.,
No. 1 Gen. Holding Unit, is GUILTY.

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

Proceedings on Conviction *before Sentence.*

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* YES.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked E-1 & E-2, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* YES.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* YES.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* YES.

(Instructions.—If by reason of the nature of the service of the accused on a detachmental party, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Cross-examined by the accused.

Question to the accused.

Do you wish to address the Court? *Answer.* NO.

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused *Sentence.*

C-11668, Pte. Herbert, A., No.1. Gen. Holding Unit, To undergo detention for one hundred and twenty (120) days.

Tullemont Barracks
Core. Hants England
18th day 1940

Finding and Sentence Confirmed but I remit Ninety Nine days of the detention awarded. I specially direct that promulgation of the above finding and sentence be effected & the above particulars being read out on parade.

P. J. Montague
(P. J. Montague) Major-General
Senior Officer
Canadian Military Headquarters.
3 SEP 1940

Promulgated and extracts taken at Quebec Barracks, Bordon, Hants. this twelfth day of September, 1940

W.B. Keith Lieut
Officer i/c Regt. Records
No. 1 General Holding Unit, C.A.S.F.

Aug. 8/40.

O.C. #1 Gen. Holding Unit

C 11668 Pte. Herbert, A

The above man is fit to stand trial.

Thos. Rutenberg, Lt.

M.O. #1 G.H.U.

WRITE ON BOTH SIDES

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED

No. C 11668 Private Allan Herbert of No. 1 General Holding Unit, C.A.S.F.

(1) The following is a fair and true summary of the entries in the regimental and squadron, battery , or company conduct sheets of the accused, exclusive of convictions by a court-martial of a civil court of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:-

	Within last 12 months.	Since Enlistment
For Absent Without Leave	3 times	3 times
For Breaking out of Barracks	2 times	2 times

Number of instances of gallantry or distinguished conduct, NIL.

(2) The accused has not previously been convicted.

(3) The accused is not under sentence at the present time.

(4) The accused has been in confinement, awaiting trial on the present charges for NIL days in civil custody, and 14 days in military custody, making a total of 14 days in custody, of which NIL days were spent in hospital.

(5) The present age of the accused according to his ~~(record of service)~~ (attestation paper) is 28.

(6) The date of his (attestation) specified in his (attestation paper) is 10th January 1940.

~~(7) The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~

~~(8) The accused is entitled to deferred pay gratuity in respect of service.~~

~~(9) The accused is entitled to reckon service for the purpose of determining his pension, &c.~~

(10) The accused is in possession of or entitled to no military decoration or military reward.

(11), (12) & (13) do not apply.

~~(14)~~

Lieut.-Colonel
Commanding No. 1 General Holding Unit
C.A.S.F.

Camp Bordon, Hants
25th July 1940.

40-139

Pte Herbert W. B.

O. H. M. S.

M. F. B. 270

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B31338 Pte William Barnes HERBERT - wIv - 3 wITR

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

At present under sentence for 28 days FP beginning on (date) 26 Dec 44 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ——— days, of which ——— days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo Detention for Two (2) Months.

(Sgd) [signature] Judge-Advocate, if any. 27 Jan 45 Date awarded. (Sgd) [signature] President. (RP 45, 50.) Major

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ——— (Sgd) ——— Commanding ———

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(7). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks for further confinement~~ (1)
(1. AA 57A. Delete if not used.)

Date 30 Jan 45 (Sgd) [signature] Brig Comd 18 Cdn Inf Trg Bde Commanding ———

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B-31338 Private HERBERT, W.H.	Promulgated 31 Jan 45 Extract D.O. 31 dated 3 Feb 45.	[signature] (W.J. Aslin) Lieut. Assistant Adjutant Cdn. Inf. Depot Bn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECORDED AT CMHQ IN AB 160 410-139

FIELD GENERAL COURT-MARTIAL

CFA86 (To Item of AFA1) 40/P & B/1698 (6/44) 4/388

Convened by Order of Brigadier K G Blackader DSO,Mc,ED. Comd 13 CITB dated 25 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B31338	Pte		William Barnes	HERBERT	wIv - 3 wITR

PROCEEDINGS REVISED IN THE OFFICE OF THE JAG BRANCH C.M.H.Q. 16 Jan 46 14 Feb 45

PROCEEDINGS OF TRIAL.

Held in the Fd (or country) England. on (date(s)) 27 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JAs, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Sample referred to throughout is on p 4. Citations do NOT include all relevant fine RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 49B, for name and duties on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (a/re) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (a/re) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused : ~~Do you object to~~ ~~as interpreter ?~~ Ans ———
~~The Interpreter is sworn.~~(1) ~~Do you object to~~ ~~as shorthand writer ?~~ Ans ———
~~The shorthand writer is sworn.~~(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JAs, if any~~, and Offrs under instr, ~~if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	E.M. Meese ED Kc	MD, CRA
Member	Capt	J.D. Cooper	3 C I2R
Member	Lieut	G.J. McCormick	5 C I2R
~~Judge-Advocate~~			
Prosecutor	Lieut	T.J. Talleyfer	3 C I2R
Defending Offr	Lieut	A.C. Ward	3 C I2R

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused before arraignment make(s) (no) ~~(a)~~ plea ———(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 154(A), 112), or as to bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AE rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF 49b to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA,~~ if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans ~~No~~.....[5]

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p. 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.[1]

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....[1]

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....Do you intend to call witnesses on your behalf? Ans.....Are they witnesses as to character only? Ans.....

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42. 103(B).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.[1]

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[1]

(*1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]

Ans Nothing to add my Brother Pleas

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 44 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.[3]

(*1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans Nothing other than I plead for me.[2]

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.[2]

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, RP 48. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B31338 Private William Barnes HERBERT, Canadian Infantry Corps, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHILE ON ACTIVE SERVICE, Absenting himself without leave,

Section 15 (1) Army Act

in that he,

In the Field, absented himself without leave whilst undergoing Field Punishment, from 1300 hours 4 November 1944 until apprehended in Kingston at 1015 hours 20 January 1945. Total absence 76 days, 21 hours, 15 minutes.

(S.W. Thomson) Colonel,
Commander,
No. 3 Cdn. Inf. Trg. Regt.

IN THE FIELD

23 January 1945

To be tried by Field General Court Martial.

(K.G. Blackader) Brig
Comd
13 Cdn Inf Trg Bde

In the Field
25 Jan 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50. RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 16, 109, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B31338	Pte		William Barnes	HERBERT	3 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (xxx) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 Jan 45 endorsed by me, [redacted], " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ([redacted])
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

MAJOR (Rank.)	E M MILLER, ED (Must be named. RP 106.)	HQ CRU (Unit.)

MEMBERS.

Captain	to be detailed by Commanding Officer	3 CITR
Lieutenant (Rank.)	to be detailed by Commanding Officer (Named or detailed. RP 106.)	5 CITR (Unit.)

WAITING MEMBER.

Captain (Rank.)	to be detailed by Commanding Officer (Named or detailed, if any. RP 106.)	3 CITR (Unit.)
[redacted] (Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 25 Jan 45

K G Blackader (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(K G Blackader)
Commanding 13 Cdn Inf Trg Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (See overleaf for oaths and notes for use on trial.)

Medical Officer's Certificate. 4C/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. R31338
Pte Herbert. W. B. of No. 3. C.I.T.R.
and in my opinion, he is. fit. to undergo trial by Court Martial.
station. Field
Date. 27 Jan 1945 (Sgd.) [illegible] Kalen Capt
(Medical Officer)

(Canadian Reinforcement units Routine Order No. 3, para 27, d/6 Jan 42)

Plea of Mitigation

Sir:

The accused B31338 Pte Herbert W.B. is twenty-five years of age, married in Canada, catagory A. He enlisted the 23 May 40, proceeding overseas on the 21 Nov. 41, with the Fifth Divisional Signals as a despatch rider. In civilian life he worked with the Merchant Navy for a period of five to six years. Pte Herbert is also a qualified army chiropodist and practised for approximately one year with Capt Allen, 1st Canadian Army H.Q.s

The accused wishes to state that his absence was due to family matters at home, having not heard from his wife or infant daughter for three years. This is Pte Herbert's first court martial. It is his wish that he be given the opportunity to serve as a Medical clerk. I would also recommend to the court that the accused due to his acutely and mental state be interviewed by a psychiatrist under these circumstances. I make as for lenency on behalf of Pte Herbert.

RCWard Lieut

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B31338 Private William Barnes HERBERT, Canadian Infantry Corps, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary is taken on oath.

FIRST WITNESS — For the Prosecution

Capt E.T. Stewart, General List, on the strength of No 3 Canadian Infantry Training Regiment, an officer of the Canadian Army Overseas, having been duly sworn, states:

I am Capt E.T. Stewart and am Adjutant of No 3 Cdn Inf Depot Bn. I hereby present, marked Exhibit "A", Certified true extract from 1 Bn Wpg Grens Daily Order Part II No 73 dated 27 Oct 44 which shows that the accused, B31338 Pte Herbert W.B., whom I now recognize, was awarded 28 days F.P. on 26 Oct 44. I present, marked Exhibit "B", Certified true copy of the Declaration of a Court of Inquiry held on 6 Dec 44 which shows that the accused absented himself without leave from 1300 hrs 4 Nov 44. I present, marked Exhibit "C", Certificate in Accordance with P.C.2787 of 10 Apr 42 dated 21 Jan 45 which shows that the accused was arrested in Kingston at 1015 hrs 20 Jan 45.

(E.T. Stewart) Capt

The accused declines to cross-examine this witness.

The accused was cautioned as follows: Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of ONE page was taken down by me in the presence and hearing of the accused and that rules of procedure 4 (c) (d) (e) and (f) have been complied with.

(G.L. Pallett) Lieut
Officer detailed to take Summary

IN THE FIELD
23 January 1945.

Ex "D" to AP

1 BN WINNIPEG GRENADIERS C A

(ALLIED WITH H.M. SCOTS GUARDS)

DAILY ORDER PART II

LAST ORDER	ISSUED BY	THIS ORDER
NO 72		NO 73
d/26 Oct 44	MAJOR W O GRAHAM A/OFFICER COMMANDING	d/27 Oct 44

7 PUNISHMENTS

(e) On 26 Oct 44 awarded 28 days F.P. and to pay Costs of App for an offence under Sec 15 (1)AA. AWL from 0830 hrs 9 Oct 44 to 1430 hrs 24 Oct 44. (Absent 15 days 6 hrs 30 mins) Under Close Arrest from 1430 hrs 24 Oct 44 to 0900 hrs 26 Oct 44 (Under Close Arrest 1 day 18 hrs 30 mins). Forf 16 days pay under FR&I 149(1)(a). Forf 28 days pay under FR&I 149 (1)(b). Forf 2 days pay under FR&I 149 (1)(c)(i). Total forf of 46 days pay and cost of appr of 22-6-10.

B31336 PTE HERBERT W B

"I McDonald" Capt & Adjt
(I McDonald)
1 Bn Winnipeg Grenadiers C A

Certified True Extract 23 JAN 45

Lt Stewart Capt & Adj
Officer having custody of Original Record.

Ex "B" DZP

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 6th day of December 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B31338 Pte Herbert, W.B.

DECLARATION

The Court declare that No. B31338 Pte Herbert, W.B. (CIC)

illegally absented himself without leave From 1 Bn Wng Gren C.A.

at 1300 hours on the 4th day of November 1944,

that he is still so absent, and that on the 6 Dec 44 he was deficient, and

that he is still deficient of the following articles :—

ARTICLES	Vocab £	s	d	Added Value £	s	d
Carriers A/B	1	8		1	8	
Frogs Bayonet		10			10	
Haversacks	8	0		8	0	
Helmets Steel	10	8½		10	8½	
Packs Web	8	3		8	3	
Pouches Basic	12	0		12	0	
Straps Shldr R & L	2	10		2	10	
" Web Suptrng	1	2		1	2	
Tins Mess	1	7		1	7	
Veils Face	1	11		1	11	
Covers Camf		7			7	
Sheet Ground	13	9		13	9	
Blankets G.S.	13	2		13	2	
Mugs Drinking	1	0		1	0	
Eyeshield A/G	2	0		2	0	
Respirators A/G	14	7		14	7	
Ointment A/G	1	4		1	4	
Capes A/G	12	4		12	4	

ARTICLES	Vocab £	s	d	Added Value £	s	d
Bayonets No. 4)						
Scabbards No. 4)	13	9		13	9	
Bottles Oil		3			3	
Pullthroughs		6			6	
Slings Rifle		1	4		1	4
Rifle No. 4	10	3	6	10	3	6
TOTALS	32	19	11	89	4	11½

Major Winfield, G.M. AASH — President

Signed at In the Field

Lieut. Gow, A.C. RNSH — Member

this 6th day of Dec 1944

Lieut. Hampden, G.A. RCR — Member

Signature of Commanding Officer (A.M. Young) Lt-Col

Certified true copy

Signature of Officer having custody of original record

Adj

3/608 MFB 375-AFB 115 40,P&S,392 (6610)

CERTIFICATE TO ACCOMPANY A.F.W. 3297 of 10 Apr 42.

I certify that No. B.31338 Rank Pte. Name Herbert.W.B.

Unit No.3.C.I.T.R. (CRU) was arrested at Kingston Place

1015 hrs. (Hour) 20.Jan.45 (Date) and that at the time of his arrest he was wearing (Military Uniform) XXXXXXXXXXXXXXXXXXXX Signature of Provost Marshal, Assistant Provost-Marshal, or other Officer or the Commanding Officer of the portion of His Majesty's Forces or the Officer, Warrant Officer, or Non-commissioned Officer in charge of the detachment of Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

London.
21,Jan.45.

By "A" A.P.M.

(R.E.Birch), Capt.
D.A.A.A.G.

M.F.B. 355
40/P & S/678

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B31338	Private	William Barnes HERBERT,	Canadian Infantry Corps (3 CITR)

1. The following is a fair and true summary of the entries in the ~~Regimental and Squadron, Battery or Company Conduct~~ Service and General sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	A.A. Sec 15 (1) 2 times	A.A. Sec 15 (1) 8 times
For	~~times~~	~~times~~
For	~~times~~	~~times~~
For	~~times~~	~~times~~

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

~~Note.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.~~

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act Section 47 of the Army Act and dispensations with trial under A.A. 73 A.F.A. 73 are set out in the Schedule annexed to this statement.~~

~~3. The accused is not under sentence at the present time.~~

or,

The accused at the present time is under sentence for 28 dys FP beginning on the 26 Oct 44 day of

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 7 days in military custody, making a total of 7 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 26 yrs ~~attestation paper is~~

6. The date of his ~~commission~~ attestation specified in his record of service is ~~attestation paper~~ 23 May 40

~~7. The service which the accused is allowed to reckon towards discharge is~~

~~8. The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

9. The accused is in possession of ~~or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward.~~ military military

C.V.S.M. & Clasp

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

11. (In the case of an officer.) ~~The accused holds in the Royal Canadian Air Force~~ the rank of ... Permanent Force unit dated ..., and in his regiment (or corps), the rank of ... dated ...

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

... Date of promotion.

In the rank of ... years.

In the rank of ... years.

In the rank of ... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ... Rank ... Name ... Regiment of ...

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~23rd~~ 27th day of January 1945

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ... signed by the president, and annexed to the proceedings.

No. B31388 Name HERBERT W.B. Sqn, Battery, or Company — Corps C.I.C. — Date of enlistment 21-6-40 — GC Badges — Service or Proficiency Pay N.A.

MFM 6 (AFB 122) 10/PAS/136 (3438)

Date of last entry in Company Conduct Sheet: N.A. — No and date of last drunk: N.A. — Period not reckoning towards freedom from extra fine: N.A. — Sheet No 1 — Signature OC Company, etc: AMERACK MAJOR — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Nil entries to 21-12-40 G.C. JONES CAPT					
Tweld	10-6-41	Sgmn		A.A. 15 Sec 1 A.W.L. 1 hr 15 mins.	4/Cpl W.P.E.	3 days C.B.	10-6-41	LT. D.H. GEORGE	
Tweld	7-7-41	"		A.A. 15 Sec 1 A.W.L. 11 hrs	L/Cpl Pulsen	7 days C.B.	9-7-41	CAPT BROWN	1 days pay
Tweld	31-1-43	"		A.A. 15 Sec 1 A.W.L. 13 hrs	Cpl Timbeck	1 days C.B.	2-2-43	LT.COL PEFFERS	1 days pay.
Tweld	24-4-43	"		A.A. 15 Sec 1 W.O.R.S. A.W.L from 2359 hrs 24 Apr to 2200 hrs 25 Apr 43 (about 22 hrs 1 min)	cpl Stone G.J.	10 days C.B.	27-4-43	MAJ. R. BURGESS	
Tweld	15-5-43	"		A.A. 15 Sec 1 W.O.R.S. A.W.L from 2200 hrs 15-5-43 to 0600 hrs 16-5-43 (about 8 hrs)	L/Cpl Weber W.C.	Admonished	17-5-43.	LT.COL W.O. PEFFERS	Forf 1 days pay F.R.1. 1147
Tweld	22-5-43	Sgmn		A.A. 15 (1) W.O.R.S A.W.L from 1400 hrs 22-5-43 till 2015 hrs 1-6-43 (about 10 days 6 hrs 15 mins) whilst a defaulter	SGT HUSTON J. CPL JORDON R.W.	21 days detn	2-6-43	R.C. BURGESS MAJ	forf of 11 days pay.
Tweld	1-5-44	L/Cpl		Sec 15 (1) A.A. A.W.L from 0600 hrs 1 Aug 44 to 2210 hrs 11 Aug 44 (about 10 days, 16 hrs, 10 mins)	Cpl Tervois J.A.L.	Reduced to perm. rank of Pte.	13 Aug 44	B.R. KER	forf 11 days pay FRT 1147 (1) (170)

(OVER)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Granted 7 days furlough leave with T.W.		P.W.A.			
Field	2 Oct 44	Pte		Sec 15 (1) A.A. A.W.L. from 0830 hrs 9 Oct 44 to 1430 hrs 24 Oct 44 (Time absent 15 days 6 hrs 30 mins)	Documentary	28 days fd Punish. 28 days forf pay	26 Oct 44	MAJOR W.O. GRAHAM	AWOL FORF 28 DAYS PAY - CLOSE ARREST - 2 DAYS PAY - COST OF APPR. 2-6-10
Field	9 Oct 44	Pte							

Certified true copy made from M.F.M.6 5 Dec 44 Smallfield Major

Certified True Copy 23 Jun 45

Officer Having Custody of Appeal Papers

LIST OF WITNESSES

In the case of B31338 Pte Herbert W.B., CIC, on the strength of No 3 Cdn Inf Trg Regt.

FOR THE PROSECUTION

1. Capt~~x~~ A.T. Stewart 3 Cdn Inf Trg Regt.

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

In the case of B31338 Pte Herbert W.B., CIC, on the strength of No 3 Cdn Inf Trg Regt

EXHIBIT "A" - Certified True Extract from 1 Bn Wpg Grens Daily Order Part II No 73 dated 27 Oct 44.

EXHIBIT "B" - Certified True copy of the Declaration of a Court of Inquiry held on 6 Dec 44.

EXHIBIT "C" - Certificate in accordance with P.C. 2797 of 10 Apr 42 dated 21 Jan 45.

23 January 1945

This is to acknowledge that I have received free of charge, the following papers in connection with my forthcoming trial by F.G.C.M.

1 Copy of Charge Sheet
1 Copy of Summary of Evidence
1 List of Witnesses
1 List of Exhibits

W.B. Herbert

B31338 Pte Herbert W.B.

3 CANADIAN INFANTRY TRAINING REGIMENT (C.A.O) 3D/11

I, No. B31338 (Rank) Pte Herbert W.G (Name) Wish to have an Officer defend me at my forthcoming trial by Court Martial.

I desire the services of An officer if he is available.

(Sgd.) W Herbert

NN·88
PTE HERGENHEIM L.C.

M-37018 Pte LeRoy Crawford HERGENHEIM
Int Coy 1 C.G.R.U.

MM-88

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 6th day of AUGUST, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "G" GROUP CANADIAN REINFORCEMENT UNITS, C.A.(C). , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~and that it is not practicable to delay the trial of the said persons for the purpose of convening a General Court Martial~~ ~~because it is impracticable to assemble a sufficient number of officers~~ ~~because of the special circumstances of the case~~.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* ~~Officers specially appointed~~

*Omit if not applicable.

*(1. ~~The Officers detailed in the Margin~~

*(2. ~~Any Field Officer detailed~~

~~by the following Regiments, namely:~~

President.

Rank.	Name.	Regiment.
LT-COL	D.L. REDMAN, V.D.	Calg Highrs

Members.

Rank.	Name.	Regiment.
A Captain to be detailed by C.C.		1 C.I.R.U.
A Lieutenant to be detailed by C.C.		1 C.I.R.U.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [illegible] Brigadier,
Commanding "G" Gp Cdn Rft Units,
Convening Officer. C.A.(C).

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
M-37018 Pte LeRoy Crawford HERGENHEIN Int Coy 1 C.G.R.U.	First Charge A.A. Sec. 11	not guilty	Guilty SEE CHARGE SHEET ATTACHED. Sentence To undergo detention for a period of ninety (90) days. 7th Aug 1943	Confirmed

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No
Answer (*to be recorded on separate sheet if necessary*).—

(Signed) J. R. Stewart Lough (Signed) [illegible]
Brigadier,
Commanding 1st Cdn Grd Bde Units,
Convening Officer (*e*) C.A.(O). *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 7th day of Aug 1943 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

*Omit if not applicable.

1. The members of the Court
2. The witnesses
~~(3. The Interpreter)~~
~~(4. The officers under instruction)~~

were duly sworn.

Signed this 7th day of Aug 1943

[illegible]
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (3) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 10th day of Aug 1943.

J. R. Stewart Lough Brigadier, 1st Cdn Grd Bde Units.
Confirming Officer.

Promulgated and extracts taken in the case of M-37018 Pte Hergenheim, L.C.

(*a*) (Dated) 11 Aug 43 (Signed) [illegible] Adjutant
No. 1 Cdn. Gen. Rein. Unit. C.A. (O.S.)

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23996) W1/3920/411 60,000 12/42 A.A.K.W.Ltd. Op.656

CHARGE SHEET:

The accused, M-37018 Pte. LeRoy Crawford HERGENHEIM, Intelligence Coy., No 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, when on active service is charged with:

FIRST CHARGE NEGLECTING TO OBEY OVERSEAS ROUTINE ORDERS
SEC. 11 RA

in that he

At the #6 Intelligence School, 59 Netherhall Gardens, Hampstead, during the period 27 Jun 43 to 4 Jul 43 did sell, to personnel not members of the Canadian Armed Forces, cigarettes received as a gift from Canada, contrary to Overseas Routine Order 3062 as amended by Overseas Routine Order 3473 which was published as notice board information.

Field

4 Aug 43.

(R.W. Frost) Lt. Col.
O.C. No 1 Cdn Gen Rft Unit
Canadian Army Overseas.

To be tried by Field General Court Martial.

(V.R. Stewart Lough) Brigadier,
Commanding,
1st Gp Cdn Rft Units,
C.A.(O).

Convening Officer.

5 Aug 43.

Medical Officers' Certificate
K.R.(Can) para. 557

I certify that I have this morning examined No.M-37018 Pte. Hergenheim L.G. and in my opinion he is fit ~~unfit~~ to undergo trial by Court Martial.

Station: #1 C.G.R.U.
Date: 7 Aug'43

W.W. Warren Capt
Medical Officer
No 1 Cdn Gen Rft Unit.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Corunna Bks Aldershot Hants
ON THE 7 DAY OF August 1943

The accused. M.3.791[illegible] Pte. Houghton ...Unit.....L.C. I.C.D.R.U. .....

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President.Lt. Col. P.L. Rodney ...Unit. N.B. ...C.R.U..

Members..Capt. A.T.P. Rogers.....Unit.....I.C. D.R.U.....

...Lt. F.S. Hayden...Unit....I.C. D.R.U.....

The officers under instruction are duly sworn:-

.....Unit.....

.....Unit.....

Prosecutor.Lt. R.R.J. Holman....Unit...I.C.D.R.U.....

Defending Officer.Lt. P.B. Barker...Unit.....I.C.D.R.U....

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces ~~MFB 355~~, AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
(b) Calls witnesses as to character.
(c) Calls witnesses in mitigation of punishment.
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Proceedings follow on Foolscap.

Trial of M 37018 Pte Hargenhein 2. C.
1 C. F. R. U.
Page 1

The accused when arraigned Plead Not Guilty
The question under R P 39(A) was asked
The answer "NO" was recorded
1st witness for Prosecution

2 67115 Pte Baerg W. A. 1 C. F. R. U. being duly sworn states

I attended the Intelligence school No 6 at Hampstead from June 10th to July 17th
75 cigarettes were taken from my pack there. The accused was on the course with me. I suspected the accused. He told him he had taken them. They were Sweet Caporal cigarettes. They were got cigarettes received duty free from Canadian Leg
M 66290 Pte Simmers H. who had given them to me. He was on this course with me.
The D Sjudy Officer declined to Cross-Examine.
2nd witness for Prosecution

M 66290 Pte Simmers H. 1 C. F. R. U. being duly sworn states
I attended 6th Intelligence course at Hampstead from 13 June to 17 July
The accused and Pte Baerg were with me on the course. I lost 250 cigarettes when I was there. The accused admitted to me that he had taken some of them
They were duty free Sweet Caporal cigarettes marked to me as a gift leg by Jusle Simpelett of Fraser Lake.

he signed it. D
The D-Sjudy Officer objected to the admission of the statement on the ground that when that summary was taken there were 3 charges (2 of stealing from Baerg and Simmons and 1 of selling to Enlisted soldiers the latter being named in the charge sheet.
The court was cleared to consider submission
The court reopened.
The court disallowed the submission
4th witness for Prosecution to take evidence.
This is the statement so signed by accused. That is his signature. I saw him sign it. End of case for Prosecution
The President advised the accused under Note 2 R P. 40.
The D-Sjudge accused made no defence
The Prosecution addressed the court
The D of J/A addressed the court
The court is cleared for the finding
The court reopens.
The Prosecution produced A & B 2 & 6 and copy of M 7 M 6 respectly the accused
The D-Sjudy Officer in mitigation said that the accused while knowing that sale to Enlisted soldiers was wrong and that sale forbidden might in his mind have thought that sale to any British soldier was not forbidden (Notes are attached)
C A O R O 3262 was complied with
The court adjourned to consider its sentence

MB

attention. They were taken from my large pack. I had no other brand of cigarettes in that pack.

2nd duties for Prosecution

D.5.6 C.S.M. Doak E.S. I.C.& R.R. being duly sworn states

I have been responsible for the posting of notices on the log notice board of the Intelligence Log at I.C.& R.R. since June 1942. The board is in the Hallway of the Living quarters of the company.

The Prosecutor tendered to the Court C.A.O.R.O. 3062 — Official Printed Copy in order dated 25th Jan 1943. also Marked Ex 1.

also C.A.O.R.O. 3473. a printed copy in order dated 22nd May 1943 Marked Ex 2.

Witness Proceeds

C.A.O.R.O. 3062 was posted on my log notice board in N.B.1 form. towards the end of January 1943.

C.A.O.R.O 3473 was posted on my log notice board in N.B.1 form a few days after it was published.

The accused was on foraging rations when 3062 was published but he was away on course when 3473 was published.

Cross Examined by Adjutant Officer

The accused was attached to an Infantry school at time 3473 was published and returned to attached unit 11 July 1943

The whole wording under in each case was to found in the relevant N.B.1. ~~C.A.O.R.O. 3062~~

The ~~accused~~ Adjutant Officer at this point took exception to the form of the charge. He said that the words "as amended by previous Routine order 3473" should not have been put in as 3473 had nothing to do with this case. He also said that it had not been proven that Routine order 3062 as amended by Routine Order 3473 had been published or notice given.

The Court adjourned to consider the point Raised. The Court resumed.

The President announced that the Court were of opinion that the charge was disallowed an Appeal under the Army Act The Accused was discharged and the Trial Proceeded

4th duties for Prosecution

2/Lt P.D.H. Cole Int. Corps. Edmonton being duly sworn states.

I was recently on strength of I.C.& R.R. I took the summary in this case, the accused made a statement at the summary. I first cautioned him saying "Do you wish to make any statement or give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence" There were no threats or promises. He made the statement voluntarily. I wrote it down

THE ACCUSED, M.37018 Pte Hergenheim, L.C., having been duly cautioned: "Do you wish to make any statement or give evidence on oath? You are not obliged to say anything, or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

Ex 3

The statement is taken on oath:

I made a statement to Capt. Strutt, Adj. No. 6 Intell. School, 69 Netherall Gardens, Hampstead, N.W.3. He told me the evidence against me was very convincing, and, to get a lighter sentence, he hinted that I would do well to plead guilty. But I think the following points should be made clear:—

(1) Pte Siemens has been a very close friend of mine for more than a year, and Pte. Baerg has also been a good friend since October 1942. All three of us worked together in Canada before coming to England, and we have been together as close friends ever since.

(2) Being good friends, we had an understanding that whenever any of us was short of anything, and knew one of the other three had it, to take it from his kitbag, so long as he was told afterward what had been taken. Ptes. Baerg and Siemens had occasionally taken things from my kitbag, and told me afterward.

(3) I took 3 packets of Sweet Caporals from Pte. Siemens' web pack on Mon. 28 June 43. I intended to tell him what I had done when next I saw him. This was at a lecture, where I had no opportunity, and forgot about telling him until Saturday, and was about to tell him, when I discovered he had left for the week end.

(4) On Sat. 3 July 43, I took 2 more packets of Sweet Caporals from Pte. Siemens' web pack, and 3 from Pte. Baerg's web pack. I planned to tell them what I had done on their return late Sunday night, but I did not see them until Monday morning, after they had already reported the incident to the Adj., who laid the charge.

(5) I asked Pte Siemens why he had not waited until I returned, before reporting the incident. He said he had been angry at the time and had reported it without thinking to ask me. He had asked and learned that the British soldiers to whom I sold the cigarettes would not be charged for buying them. These British soldiers asked me to sell them cigarettes whenever I had any, and I always gave my weekly ration to them, as I do not smoke. It was according to this arrangement that I sold them cigarettes (because I needed the money — in British Army Schools, Cdn. soldiers are not paid at their normal rates), on 28 June and 3 July 1943.

(6) Of the 5 packets taken on Sat. 3 July 43, 2 were sold and 3 given to a friend.

(7) On Mon 5 July 43 Ptes Siemens and Baerg shook my hand, said they were sorry they had reported the incident, and hoped it would not affect our friendship.

(Signed) LC Hergenheim

M. 37018 Pte. Hergenheim, L.C.,
Intell. Coy. 1 CGRU.
C.A. (O.S.)

#1 Cdn. Gen. Rein. Unit

Statement in mitigation of punnishment in the case of
M-37016 Hergenheim, L.C.

1. He did not make racket of his sales as total was only nine shillings.

2. Was not aware of the fact that sale was prohibated between members of H.M. Forces.

3. Did not intend going on with these sales but this was just in a case of emergency.

4. Has realized now that he did wrongand is ready to take his punishment.

5. Severe punishment in th's case would do no goode as there will be no further occurance, and severe punishmmnt will embitter the man and perhaps prevent him from being a good soldier.

6. He is not a criminal as is easily seen from his M.F.M. 6.

PBB/RD

(Paul B. Barber) Lieut
No.1 Cdn. Gen. Rft. Unit.

3062 - DUTY FREE AND DUTIABLE PARCELS - CIGARETTES AND TOBACCO - GIFTS - ILLEGAL SALE OR DISPOSAL - (S)

Genuine gifts from abroad for Cdn Army Personnel are free of duty. Sale, attempted sale or disposal by gift is forbidden and this includes cigarettes and tobacco. Os.C. will take prompt disciplinary action under A.A. Sec 11 for any breach of this order. The Order does not prohibit (free) sharing of cigarettes and tobacco with others in the Cdn Armed Forces nor distribution by C.Os. to the troops. Articles imported otherwise than as gifts will be subject to duty and tax. The whole of Overseas R.O. 3062 should be read.

3473 - DUTY FREE AND DUTIABLE PARCELS - CIGARETTES AND TOBACCO - GIFTS - ILLEGAL SALE OR DISPOSAL.

1. Para 3 (a) of Overseas R.O. 3062 is amended by inserting after the word "Forces" in the third line, the words " and the sale or attempted sale in the United Kingdom by personnel of the Canadian Army Overseas to members of the Canadian Armed Forces".

2. Para 3 (a) of the said Order is further amended by deleting the word "Civilian in the second line, and substituting the word "Civilians".

3. Para 4. of the said Order is amended by inserting the word "Free" immediately before the words "sharing of tobacco and cigarettes" in the first line thereof.

CERTIFIED TRUE COPY OF
OVERSEAS ROUTINE ORDER
3062 AS AMENDED BY OVERSEAS
ROUTINE ORDER 3473 PUBLISHED
AS NOTICE BOARD INFORMATION.

Mjr., No 1 Cdn Adm Bty Unit
for Canadian Army Overseas.

3062 - DUTY FREE AND DUTIABLE PARCELS - CIGARETTES AND TOBACCO - GIFTS - ILLEGAL SALE OR DISPOSAL - (S)

Genuine gifts

Annexed

CHARGE SHEET.

The accused, M-37018 Pte. LeRoy Crawford HERSENHEIM, Intelligence Coy., No 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, when on active service is charged with:

FIRST CHARGE
Sec. 18(4)A.D.A. STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

At the #6 Intelligence School, 59 Netherhall Gardens, Hampstead, during the period 27 Jun 43 to 4 Jul 43 stole three packets of Sweet Caporal Cigarettes the property of L-67115 Pte. Baerg, W.A., Intell. Coy. #1 C.G.R.U. a person subject to Military Law.

SECOND CHARGE
Sec. 18(4)A.D.A. STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

At the #6 Intelligence School, 59 Netherhall Gardens, Hampstead, during the period 27 Jun 43 to 4 Jul 43 stole ten packets of Sweet Caporal Cigarettes the property of M-66290 Pte. Siemens, M. Intell. Coy. #1 C.G.R.U., a person subject to Military Law.

THIRD CHARGE
Sec. 11 N.D.R. NEGLECTING TO OBEY OVERSEAS ROUTINE ORDER.

In that he

At the #6 Intelligence School, 59 Netherhall Gardens, Hampstead, during the period 27 Jun 43 to 4 Jul 43 did sell, to #14370538 Sigmn Davies, D.J. Royal Corps of Signals, #932757 Gnr. Richardson, A. Royal Artillery, #14404049 Pte. Ellis, J.E. Intell. Corps, #14404562 Pte. Hopkinson, J.N. Intell. Corps, cigarettes received as a gift from Canada, contrary to Overseas Routine Order 3062 which was published as notice board information.

(R.W. Frost) Lt. Col.
O.C. No 1 Cdn Gen Rft Unit
Canadian Army Overseas.

FIELD

14 Jul 43.

SUMMARY OF EVIDENCE IN THE CASE OF
No. M.37018 Pte Hergenheim,L.C.,Intell.Coy., No.1 C.C.R.U.

The Commanding Officer directs that the evidence be taken on oath.

First Witness for Prosecution. L.67115 Pte. Baerg,W.A.,No. 1 CCRU,having been duly sworn,states:

"From the 28 June 43 until 4 Jul 43,I noticed that some of my cigarettes were missing. On Sunday,4 Jul 43, when I counted over my cigarettes,I noticed that three packets were missing. That same afternoon,I saw pte Ellis, who is on the course with me,smoking Sweet Caporal cigarettes. This was the brand that was missing from my bag. I asked him where he had got them. He replied that he had promised not to divulge the name.' After further questioning,he told me that Pte Hergenheim had sold them to him. I then asked Pte Ellis to describe the package which Pte Hergenheim had sold to him,and he stated that the package was 'wrapped in celophane with a yellow band.' I suspected that they might be mine,as all my cigarettes came in the same wrapping. These were old cigarettes,and the ones received now are not wrapped in celophane.

On Monday morning,5 Jul 43,I approached Pte Hergenheim,whom I now recognise as the accused,and asked him how it was he was able to sell cigarettes. The accused replied:'For Christ's sake! I only took two!' I then walked away. The accused is on the same course as myself,and lives in the same room."

The statement has been read over to Pte Baerg and he wishes no changes to be made.

Cross-examined by the accused.

Q."After stating to the Adj of #6 Is that you had not been smoking these cigarettes (Sweet Caporals), why do you say you noticed them diminishing?"

A."Since I had only fourteen packets of Sweet Caporal cigarettes,and they being my favourite cigarettes, I was using them very sparingly,and was smoking other cigarettes. I had these cigarettes in the bottom of my big pack,standing upright. They almost conceal the bottom. I had some tins on top of these cigarettes. It was when I noticed the tins on one side that I saw that some of the cigarettes were missing."

Q."You stated to the Adj that you noticed these cigarettes were missing before Sunday. Why then, did you not count these cigarettes and report the loss before Sunday?"

A."I did not want to incriminate anyone until I was certain they were missing."

.....
(W.A.Baerg) Pte.

Second Witness for Prosecution

M.66290 Pte Siemens,M.,1 CDBU,having been duly sworn, states:

"I noticed for the first time on Sunday,29 June 43, that the pack in which my Sweet Caporal cigarettes are kept seemed a great deal less bulky. As I was not smoking my Sweet Caporal cigarettes at the time,I felt convinced someone was stealing them. On Sunday morning,4 Jul,43,I counted them and found ten packages missing. In the afternoon, I found Pte Ellis,who is on the same course,smoking Sweet Caporal cigarettes. I asked him how he had acquired them,and he answered that he had purchaded them from Pte Hergenheim. A few minutes later Sgmn Davies came up and said he also had purchased Sweet Caporal cigarettes from Pte Hergenheim. As all my cigarettes are wrapped in celophane,I asked Pte Ellis and Sgmn Davies if these cigarettes,the ones purchased from Pte Hergenheim,were also wrapped in celophane. The answer was 'Yes.' On Sunday evening,Gnr Richardson came to see me and said that he had purchased Sweet Caporal cigarettes from Pte Hergenheim. On Monday morning,5 Jul 43,Pte Hopkinson came to me and said that he had purchased a package of Sweet Caporal cigarettes from Pte Hergenheim. I asked him if the cigarettes were wrapped up in celophane,and the answer was 'Yes.' My cigarettes were of the old stock, and were therefore wrapped up in celophane,whilst the newer stock are in a cardboard box covered with white paper. Therefore,I felt sure that the cigarettes which Pte Ellis was smoking,and those purchased by Sgmn Davies, Gnr Richardson,and Pte Hopkinson,were mine. Pte Hergenheim does not smoke,and to the best of my knowledge,never received any cigarettes from Canada.

I approached Pte Hergenheim, hom I now recognise as the accused,on Monday morning,5 Jul 43,and told him that I had lost 250 cigarettes,and was sure he had taken them. He answered that he had 'only taken two packages.'"

The statement has been read over to Pte Siemens,and he wishes no changes to be made.

The accused declined to cross-examine the witness.

.....
(M.Siemens) Pte.

Third Witness for Prosecution

14370538 Sgmn Davies,D.J.,The RCS,having been duly sworn,states:

"On the afternoon of Sunday,27 June 43,Pte Hergenheim,whom I now recognise as the accused,brought some cigarettes into the bedroom. He offered to sell me some, and I bought two packets. The cigarettes were Sweet Caporals in packets of 25 with celophane wrapping. I am on the same course as the accused. Gnr Richardson was in the room at the time,and he also bought some cigarettes from the accused."

The statement has been read over to Sgmn Davies,and he wishes no changes to be made.

Cross-examined by the accused.

Q. "How do you know it was 27 June 43?"

A. "Because I sent the cigarettes to my father, and, checking the date, I received his reply, which was sent immediately he received my letter. The time taken both ways agrees with the 27 June 43, as I sent the cigarettes the day after I had purchased them."

.....
(D.J. Davies) Sgmn.

Fourth Witness for Prosecution

932757 Gnr Richardson, A., RA, having been duly sworn, states:

"On 27 June 43, I bought a packet of Sweet Caporal cigarettes from Pte Bergenheim, whom I now recognise as the accused. Sgmn Davies was in the room at the same time. I am on the same course as the accused."

The statement has been read over to Gnr Richardson, and he wishes no changes to be made.

Cross-examined by the accused.

Q. "At approximately what time of the day did I enter your room?"

A. "It was shortly after lunch. Lunch was at 1230 hrs."

.....
(A. Richardson) Gnr.

Fifth Witness for Prosecution

14404049 Pte Ellis, J.L., The Intell. Corps., having been duly sworn, states:

"On 3 Jul 43, Pte Bergenheim, whom I now recognise as the accused, offered to sell me a packet of cigarettes called Sweet Caporal. The packet was wrapped in celophane. The accused and I agreed on the price and I bought them."

The statement has been read over to ~~Gnr~~ Pte Ellis, and he he wishes no changes to be made.

The accused declined to question the witness.

.....
(J.L. Ellis) Pte.

Sixth Witness for Prosecution

14404562 Pte Hopkinson, J.N., The Intell. Corps., having been duly sworn, states:

"At about noon on Saturday 3 Jul 43, I happened to be passing Pte Herbenheim, whom I now recognise as the accused on the stairs at 47 Maresfield Gardens, Hampstead. He asked me if I would like to buy some cigarettes, and offered me two packets of Sweet Caporals. I bought one packet. The packet was wrapped in celophane. The accused is on the same course as myself."

The statement has been read over to Pte Hopkinson, and he wishes no changes to be made.

Cross-examined by the accused.

Q. "Where were we when you bought these cigarettes from me?"

A. "In my bedroom."

Q. "Did you have a witness to prove that I possessed two packets of cigarettes at the time when I approached you?"

A. "I did not have a witness."

.....
(J.M.Hopkinson) Pte.

The accused was cautioned as follows:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so,but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

After the above caution,the accused elected to give evidence as follows:

First Witness for Defence

The accused,M.37018 Pte Hergenhein,L.C.,Intell. Coy., 1 CORU,having been duly sworn,states:

"I made a statement to Capt Strutt,Adj # 6 IS,59 Netherall Gardens,Hampstead,N.W.3. He told me that the evidence was very convincing,and,to get a lighter sentence,he hinted that I would do well to plead guilty. But I think that the following points should be made clear

(1) Pte Siemens has been a very close friend of mine for more than a year,and Pte Baerg has also been a good friend of mine since Oct 1942. All three of us have worked together in Canada before coming to England,and we have been together as close friends ever since.

(2) Being good friends,we had an understanding that whenever any of us was short of anything,and knew one of the other three had it,to take it from his kitbag,so long as he was told afterward what had been taken. Ptes Baerg and Siemens had occasionally taken things from my kitbag, and told me afterwards.

(3) I took three packets of Sweet Caporals from Pte Siemens' web pack on Monday,28 June 43. I intended to tell him what I had done when next I saw him. This was at a lecture,where I had no opportunity,and I forgot about telling him until Saturday,and was about to tell him,when I discovered he had left for the weekend.

(4) On Saturday,3 Jul 43, I took two more packets of Sweet Caporals from Pte Siemens' web pack,and three from Pte Baerg's web pack. I planned to tell them what I had done on their return late Sunday night,but I did not see them until Monday morning,after they had already reported the incident to the Adj.,who laid the charge.

(5) I asked Pte S[illegible] why he had not waited until I returned before reporting the incident. He said he had been angry at the t[illegible],and had reported it without thinking to ~~xxxxxx~~ ask me. He had asked and learned that the British soldiers to whom I sold the cigarettes would not be charged for buying them. These British soldiers asked me to sell them cigarettes whenever I had any,and I always gave my weekly ration to them,as I do not smoke. It was according to this arrangement that I sold them cigarettes (because I needed the money---in British Army Schools,Cdn soldiers are not paid at their normal rates),on 28 June and 3 Jul 43.

(6) Of the five packets taken on Saturday,3 Jul 43,two were sold,and three given to a friend.

(7) On Monday,5 Jul 43,Ptes Siemens and Baerg shook my hand,said they were sorry they had reported the incident, and hoped it would not affect our friendship."

.....
(L.C. Hergenhein) Pte.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of five pages was taken down by me in the presence and hearing of the accused,and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

1 COFU
13 Jul 43.

Patrick Cole
.....
(Patrick Cole) Lieut.
Offr detailed to take
Summary of Evidence.

First Witness for Prosecution.

L.67115 Pte. Baerg,W.A.,No. 1 CGRU,having been duly sworn,states:

"From the 28 June 43 until 4 Jul 43,I noticed that some of my cigarettes were missing. On Sunday,4 Jul 43, when I counted over my cigarettes,I noticed that three packets were missing. That same afternoon,I saw Pte Ellis, who is on the course with me,smoking Sweet Caporal cigarettes. This was the brand that was missing from my bag. I asked him where he had got them. He replied that he had 'promised not to divulge the name.' After further questioning,he told me that Pte Hergenheim had sold them to him. I then asked Pte Ellis to describe the package which Pte Hergenehim had sold to him,and he stated that the package was 'wrapped in celophane with a yellow band.' I suspected that they might be mine,as all my cigarettes came in the same wrapping. These were old cigarettes,and the ones received now are not wrapped in celophane.

On Monday morning,5 Jul 43,I approached Pte Hergenheim,whom I now recognise as the accused,and asked him how it was he was able to sell cigarettes. The accused replied:'For Christ's sake! I only took two!' I then walked away. The accused is on the same course as myself,and lives in the same room."

The statement has been read over to Pte Baerg and he wishes no changes to be made.

Cross-examined by the accused.

Q."After stating to the Adj of #6 IS that you had not been smoking these cigarettes (Sweet Caporals), why do you say you noticed them diminishing?"

A."Since I had only fourteen packets of Sweet Caporal cigarettes,and they being my favourite cigarettes I was using them very sparingly,and was smoking other cigarettes. I had these cigarettes in the bottom of my big pack,standing upright. They almost conceal the bottom. I had some tins on top of these cigarettes. It was when I noticed the tins on one side that I saw that some of the cigarettes were missing."

Q."You stated to the Adj that you noticed these cigarettes were missing before Sunday. Why then, did you not count these cigarettes and report the loss before Sunday?"

A."I did not want to incriminate anyone until I was certain they were missing."

.....
(W.A.Baerg) Pte.

Second Witness for Prosecution

M.66290 Pte Siemens,H.,1 CGRU,having been duly sworn, states:

"I noticed for the first time on Sunday,29 June 43, that the pack in which my Sweet Caporal cigarettes are kept seemed a great deal less bulky. As I was not smoking my Sweet Caporal cigarettes at the time,I felt convinced someone was stealing them. On Sunday morning,4 Jul,43,I counted them and found ten packages missing. In the afternoon, I found Pte Ellis,who is on the same course,smoking Sweet Caporal cigarettes. I asked him how he had acquired them,and he answered that he had purchaded them from Pte Hergenheim. A few minutes later Sgmn Davies came up and said he also had purchased Sweet Caporal cigarettes from Pte Hergenehim. As all my cigarettes are wrapped in celophane,I asked Pte Ellis and Sgmn Davies if these cigarettes,the ones purchased from Pte Hergenehim,were also wrapped in celophane. The answer was 'Yes.' On Sunday evening,Gnr Richardson came to see me and said that he had purchased Sweet Caporal cigarettes from Pte Hergenheim. On Monday morning,5 Jul 43,Pte Hopkinson came to me and said that he had purchased a package of Sweet Caporal cigarettes from Pte Hergenehim. I asked him if the cigarettes were wrapped up in celophane,and the answer was 'Yes.' My cigarettes were of the old stock, and were therefore wrapped up in celophane,whilst the newer stock are in a cardboard box covered with white paper. Therefore,I felt sure that the cigarettes which Pte Ellis was smoking,and those purchased by Sgmn Davies, Gnr Richardson,and Pte Hopkinson,were mine. Pte Hergenheim does not smoke,and to the best of my knowledge,never received any cigarettes from Canada.

I approached Pte Hergenheim,whom I now recognise as the accused,on Monday morning,5 Jul 43,and told him that I had lost 250 cigarettes,and was sure he had taken them. He answered that he had 'only taken two packages.'"

The statement has been read over to Pte Siemens,and he wishes no changes to be made.

The accused declined to cross-examine the witness.

.....
(H.Siemens) Pte.

Third Witness for Prosecution

14370538 Sgmn Davies,D.J.,The RCS,having been duly sworn,states:

"On the afternoon of Sunday,27 June 43,Pte Hergenheim,whom I now recognise as the accused,brought some cigarettes into the bedroom. He offered to sell me some, and I bought two packets. The cigarettes were Sweet Caporals in packets of 25 with celophane wrapping. I am on the same course as the accused. Gnr Richardson was in the room at the time,and he also bought some cigarettes from the accused."

The statement has been read over to Sgmn Davies,and he wishes no changes to be made.

Cross-examined by the accused.

Q. "How do you know it was 27 June 43?"

A. "Because I sent the cigarettes to my father,and, checking the date,I received his reply,which was sent immediately he received my letter. The time taken both ways agrees with the 27 June 43,as I sent the cigarettes the day after I had purchased them."

.....
(D.J. Davies) Sgmn.

Fourth Witness for Prosecution

932757 Gnr Richardson,A.,RA,having been duly sworn,states:

"On 27 June 43,I bought a packet of Sweet Caporal cigarettes from Pte Hergenheim,whom I now recognise as the accused. Sgmn Davies was in the room at the same time. I am on the same course as the accused."

The statement has been read over to Gnr Richardson,and he wishes no changes to be made.

Cross-examined by the accused.

Q. "At approximately what time of the day did I enter your room?"

A. "It was shortly after lunch. Lunch was at 1230 hrs."

.....
(A. Richardson) Gnr.

Fifth Witness for Prosecution

14404049 Pte Ellis,J.L.,The Intell. Corps.,having been duly sworn,states:

"On 3 Jul 43,Pte Hergenheim,whom I now recognise as the accused,offered to sell me a packet of cigarettes called Sweet Caporal. The packet was wrapped in celophane. The accused and I agreed on the price and I bought them."

The statement has been read over to Pte Ellis,and he he wishes no changes to be made.

The accused declined to question the witness.

.....
(J.L.Ellis) Pte.

Sixth Witness for Prosecution

14404562 Pte Hopkinson,J.N.,The Intell. Corps.,having been duly sworn,states:

"At about noon on Saturday 3 Jul 43,I happened to be passing Pte Herhenheim,whom I now recognise as the accused, on the stairs at 47 Maresfield Gardens,Hampstead. He asked me if I would like to buy some cigarettes,and offered me two packets of Sweet Caporals. I bought one packet. The packet was wrapped in celophane. The accused is on the same course as myself."

The statement has been read over to Pte Hopkinson,and he wishes no changes to be made.

Cross-examined by the accused.

Q. "Where were we when you bought these cigarettes from me?"

A. "In my bedroom."

Q. "Did you have a witness to prove that I possessed two packets of cigarettes at the time when I approached you?"

A. "I did not have a witness."

SUMMARY OF EVIDENCE IN THE CASE OF
No. M.37018 Pte Hergenheim,L.C.,Intell.Coy., No.1 C.G.R.U.

The Commanding Officer directs that the evidence be taken on oath.

The accused was cautioned as follows:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so,but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

After the above caution,the accused elected to give evidence as follows:

First Witness for Defence

The accused,M.37018 Pte Hergenheim,L.C.,Intell. Coy., 1 CGRU,having been duly sworn,states:

"I made a statement to Capt Strutt,Adj # 6 IS,59 Netherall Gardens,Hampstead,N.W.3. He told me that the evidence was very convincing,and,to get a lighter sentence,he hinted that I would do well to plead guilty. But I think that the following points should be made clear:

(1) Pte Siemens has been a very close friend of mine for more than a year,and Pte Baerg has also been a good friend of mine since Oct 1942. All three of us have worked together in Canada before coming to England,and we have been together as close friends ever since.

(2) Being good friends,we had an understanding that whenever any of us was short of anything,and knew one of the other three had it,to take it from his kitbag,so long as he was told afterward what had been taken. Ptes Baerg and Siemens had occasionally taken things from my kitbag, and told me afterwards.

(3) I took three packets of Sweet Caporals from Pte Siemens' web pack on Monday,28 June 43. I intended to tell him what I had done when next I saw him. This was at a lecture,where I had no opportunity,and I forgot about telling him until Saturday,and was about to tell him,when I discovered he had left for the weekend.

(4) On Saturday,3 Jul 43, I took two more packets of Sweet Caporals from Pte Siemens' web pack,and three from Pte Baerg's web pack. I planned to tell them what I had done on their return late Sunday night,but I did not see them until Monday morning,after they had already reported the incident to the Adj.,who laid the charge.

(5) I asked Pte Siemens why he had not waited until I returned before reporting the incident. He said he had been angry at the time,and had reported it without thinking to ~~xxxxx~~ ask me. He had asked and learned that the British soldiers to whom I sold the cigarettes would not be charged for buying them. These British soldiers asked me to sell them cigarettes whenever I had any,and I always gave my weekly ration to them,as I do not smoke. It was according to this arrangement that I sold them cigarettes (because I needed the money---in British Army Schools,Cdn soldiers are not paid at their normal rates),on 28 June and 3 Jul 43.

(6) Of the five packets taken on Saturday,3 Jul 43,two were sold,and three given to a friend.

(7) On Monday,5 Jul 43,Ptes Siemens and Baerg shook my hand,said they were sorry they had reported the incident, and hoped it would not affect our friendship."

.....
(L.C. Hergenheim) Pte.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of five pages was taken down by me in the presence and hearing of the accused,and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

1 CGRU
13 Jul 43.

Patrick Cole.
.....
(Patrick Cole) Lieut.
Offr detailed to take
Summary of Evidence.

Summary of evidence in the case of No. M/3708 Private LeRoy Crawford HERGENHEIN, No. 1 Canadian Penal Reinforcement Unit.

The evidence is taken on Oath.

1st. Witness No. L.67113 Private W.A. Berry, No. 1 Canadian Penal Reinforcement Unit, having been duly sworn, states:-

From the 28th June 1943 until 4th July 1943. I noticed that some of my cigarettes were missing. On Sunday, July 4th 1943, when I counted over my cigarettes I noticed that three packets were missing.

That same afternoon I saw Private Ellis, who is on the course with me, was smoking Scout Capstrol Cigarettes, this was the brand that was missing from my bag.

I asked him where he had got them from - he replied "that he had promised not to divulge the name".

After further questioning he told me that Pte. Hergenhein had sold them to him - I then asked Pte. Ellis to describe the package which Pte. Hergenhein had sold to him, and he stated that the package was wrapped in cellophane with a yellow band

I suspected they may be mine, as all my cigarettes came in the same wrapping.

These were old cigarettes and the ones received now are not wrapped in cellophane.

On Monday morning, 5th July, 1943. I approached Pte. Hergenhein, whom I now recognise as the accused, and asked him how it was he was able to sell cigarettes, the accused replied "For Christ sake I only took two," I then walked away.

The accused is in the same camp as myself and lives in the same Room.

Cross Examined by the accused

Q1. After stating to the Adjutant of No. 51 that you had not been smoking the cigarettes (Scout Capitol), why do you say you noticed them diminishing

A1. Since I had my fourteen packets of ~~them~~ Scout Capitol cigarettes and they being my favourite cigarette, I was using them very sparingly and was smoking other cigarettes I had these cigarettes in the bottom of my kit pack, standing upright, they almost covered the bottom. I had some ties on top of the cigarettes it was when I noticed the ties on one side that I saw that some of the cigarettes were missing.

D.2. You stated to the adjutant that you noticed the cigarettes were missing before Sunday, why then, did you not count the cigarettes and report the loss before Sunday?

A.2. I did not want to incriminate anyone until I was certain they were missing.

A/Sgt W.A. Burg Pte

2nd Witness

No M.66390 Private H. Siemens, No 1. Canadian General Reinforcement Unit, having been duly sworn, states:—

I noticed for the first time on Sunday 29th June, 1943, that the tack in which my "Sweet Caporal" cigarettes are kept, seemed a great deal less bulky, as I was not smoking any Sweet Caporal cigarettes at the time, I felt convinced some one was stealing them.

On Sunday morning, 4th July 1943, I counted them and found ten packages missing. In the afternoon I found Pte. Ellis, who is in the same course, smoking Sweet Caporal cigarettes. I asked him how he had acquired them, and he answered that he had purchased them from Pte. Bergeskin.

A few minutes later Sgt. Davies came up and said he had also purchased Sweet Caporal cigarettes from Pte. Bergeskin.

As all my cigarettes are wrapped in

Cellophane, I asked R. Ellis and Lyn Davies if their cigarettes, the ones purchased from R. Hergenheim, were also wrapped in Cellophane, the answer was "yes."

On the Sunday evening Gus. Richardson came to me and said that he had purchased Swan Capral cigarettes from R. Hergenheim.

On Monday morning, 5th July, 1943. R. Hopkinson came to me and said that he had purchased one package of Swan Capral cigarettes from R. Hergenheim and he told him if the cigarettes were wrapped up

Yours

The accused declines to cross examine the witness.

3rd Witness No. 14370538 Sgm. D.J. Davies, Royal Corps of Signals, having been duly sworn, states:-

On the afternoon of Sunday, June 27th 1943, Lt. Hergenhein, whom I now recognise as the accused, brought some cigarettes into the Bedroom.

He offered to sell me some, I bought two packets. The cigarettes were smuggle type, in packets of 25 with oilcloth wrapping.

I am in the same unit as the accused. Sgm. Richardson was in the room at the time and he also bought some cigarettes from the accused.

Cross Examined by the Accused.

Q1. How do you know it was the 27th June 1943.

A1. Because I sent the cigarettes to my father, and checking the date I received his reply, which was sent immediately he received my letter, the times taken both ways agree with the 27th June, 1943, as I sent the cigarettes off the day after I had purchased them.

D. J. Davies Sigmn.

4th Witness No. 933737 Gunner A. Richardson, R.A., having been duly sworn, states:-

On 27th Jun 1943 I bought a packet of Sweet Caporal cigarettes from Lt. Hergenheim, whom I now recognise as the accused.

Egon Darin was in the room at the same time.

I am on the same course as the accused.

Cross Examined by the accused.

Q1 At approximately what time of the day, did I enter your room

A1. It was shortly after lunch- lunch was at 1330 hours.

A Richardson Gnr.

5th Witness No 14404059 Private J. Ellis, Intelligence Corps, having been duly sworn, states:-

On 3rd July 1943, Lt. Hergenheim, whom I now recognise as the accused, offered to sell me a packet of cigarettes called Sweet Caporal. The packet was wrapped in Cellophane.

The accused and I agreed on the price and I bought them.

J. Ellis PTE.

6th Witness. 14140 4562 Pte. J. N. Hopkinson, Intelligence Corps, having been duly sworn, states:

At about Noon on Saturday, July 3rd, 1943, I happened to be passing by Bergenheim, whom I now recognise as the accused, on the stairs at 47 Haverstock Gardens, Hampstead. He asked me if I would like to buy some cigarettes, and offered me 4 packets of Strad Exposé. I bought one packet.

The packet was wrapped in Cellophane.

The accused is on the same course as myself.

Cross Examined by the accused.

Q1. When were we when you bought the cigarettes from me.

A1. In my bedroom

Q2. Did you have a witness to prove that I possessed two Packets of Cigarettes at the time when I approached you.

A2. I did not have a witness.

J. N. Hopkinson. Private

Additional Summary of Evidence in the case of M-37018
Pte. LeRoy Crawford HERGENHEIM.

Seventh Witness for the Prosecution. D-56 C.S.M. Doak, E.S. Intelligence Coy. No 1 Canadian General Reinforcement Unit having been duly sworn states:

I am C.S.M. Intell. Coy. No 1 Canadian General Reinforcement Unit. The accused whom I now recognize is on the strength of my Company. I state that C.A.C.R.O. 3062 and the amending order 3473 were published within the Company by posting the same on the Company notice board, that at the time of this publication the accused was on the strength of the said company and in the Unit.

E S Doak
(D-56 C.S.M. Doak, E.S.)

The accused declines to cross examine.

The accused after having been duly warned does not elect to make any further statement or to give any further evidence under oath.

[illegible]
(M.37018 Pte. HERGENHAIM, L.C.)

I certify that the following additional summary of evidence was taken down by me in the presence of the accused and that Rules of Procedure 4 C,D.E, and F have been complied with.

Patrick Cole
(F.D. Cole, Lieut.)
Intll. Coy.
No 1 Can Gen Rft Unit

Additional Summary of Evidence in the case of M-37018
Pte. LeRoy Crawford HERGENHEIM.

Seventh Witness for the Prosecution. D-56 C.S.M. Doak, E.S. Intelligence Coy. No 1 Canadian General Reinforcement Unit having been duly sworn states:

I am C.S.M. Intell. Coy. No 1 Canadian General Reinforcement Unit. The accused whom I now recognize is on the strength of my Company. I state that C.A.O.R.O. 3062 and the amending order 3473 were published within the Company by posting the same on the Company notice board, that at the time of this publication the accused was on the strength of the said company and in the Unit.

E S Doak
(D-56 C.S.M. Doak, E.S.)

The accused declines to cross examine.

The accused after having been duly warned does not elect to make any further statement or to give any further evidence under oath.

(M.37018 Pte. HERGENHEIM, L.C.)

I certify that the following additional summary of evidence was taken down by me in the presence of the acfused and that Rules of Procedure 4 C,D,E, and F have been complied with.

(F.D. Cole, Lieut.)
Intll. Coy.
No 1 Cdn Gen Rft Unit

Additional Summary of Evidence in the case of :-
M.37081 Pte Leroy Crawford HERGENHEIM.

Eighth Witness for Prosecution

L.67115 Pte Baerg W.A., 1 C.G.R.U. having been duly sworn states:-

"The Cigarettes taken from my large pack while attending Course at #6 Intelligence School, Hampstead by Pte Hergenheim whom I now recognize as the accused, were Canadian Sweet Caporal duty free Cigarettes as a gift from Canada received by Pte Siemens H. and were the only Cigarettes in my big pack. I had one package of English Cigarettes in my tunic pocket(Woodbines).

W.A. Baerg Pte
L.67115 Pte Baerg W.A.

The accused declines to cross-examine the witness.

Ninth Witness for Prosecution

M.66290 Pte Siemens H., 1 C.G.R.U. having been duly sworn states:-

"The cigarettes taken from my large pack while attending Course at #6 Intelligence School Hampstead by Pte Hergenheim whom I now recognize as the accused were Canadian Duty Free Cigarettes, received as a gift from Jake Newfeld, Grassy Lake, Alberta, Canada and were the only cigarettes in my big pack."

H Siemens Pte
M.66290 Pte Siemens H.

The accused declines to cross-examine the witness.

The accused after being duly warned does not elect to make any further statement or to give any further evidence.

M.37018 Pte Hergenheim L.C.

I certify that the following additional summary of evidence was taken down by me in the presence of the accused on the 2 Aug 43 and that rules of procedure 4 C,D,E, and F have been complied with.

J.E. Sheff Capt.
No.1 Cdn Gen Rft Unit.

M.F.M. 6
(A.F. B.122)
40/P & /8136 (2965)

No. M.37018 Name Hergenheim L C | Sqn., Battery, or Company | Corps #13 District Depot | Date of enlistment 22 Dec 41 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, e.e.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				NO ENTRIES					

Certified true copy of
Original document in my
possession. ~~14 Jul 43~~
~~Lt~~ Capt
7 SEP 43
Hq Capt. Hqs Capt.

(P.T.O.)

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7th day of July A19 43.

Jos Capt
Records Officer
No. 1 Cdn. General Reinf. Unit, C.A.(O.)

Army Form B286.

Statement as to Character and Particulars of Service of Accused.

M.37018 Pte Hergenheim, the Intell. Gov., NO.1 C.G.R.U. L.C.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

	*Within last 12 months.	*Since Enlistment.
For ———	times	times
For ———	times	times
For ———	times	times
For ———	times	times

Number of instances of gallantry or distinguished conduct.

NIL

2. There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted.

Previous convictions of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out on the Schedule annexed to this statement.

3. The accused is not under sentence at the present time,

~~or,~~

~~The accused at the present time is under sentence for ——— beginning on the ——— day of ———~~

4. The accused has been in confinement, awaiting trial on the present charges for 0 days in Civil Custody,

and ~~[illegible]~~ days in Military Custody.

Total ~~[illegible]~~ days.

Of which ——— days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ is 20 years

6. The date of his ~~attestation~~ specified in his ~~[illegible]~~ is 22 Dec 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is ———

8. The accused is entitled to deferred pay or gratuity in respect of ——— years' service.

9. The accused is entitled to reckon ——— years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to

11. ~~*(If the accused is a warrant officer.)* The accused before he was made a warrant officer last held the regimental rank of ———~~

12. ~~*(In the case of an officer.)* The accused holds in the army the rank of ———, dated ———, and in his regiment (or department) the rank of ——— dated ———~~

13. ~~The accused has served as a non-commissioned officer continuously without reduction, to the present date,~~

		Date of Promotion.
In the rank of ———	years,	———
In the rank of ———	years,	———
In the rank of ———	years,	———

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ———, signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name M.37018 Pte Bergenheim L.C., of the No.1 Cdn Gen Rft Unit

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(*Continued overleaf.*

I hereby acknowledge that I have been served with a true copy of the summary of evidence taken at Maida Barracks, Aldershot, Hants., on the th day of Jul 43, preliminary to my Court Martial.

Dated at Corunna Barracks this
day of July 43.

J.P. Hergenheim.
(M-37018 Pte. Hergenheim, J.T.)

I hereby request that the convening officer appoint an officer to represent me at my trial.

I desire the services of _____
if he is available.

Dated at Corunna Barracks this
day of July 43.

J.P. Hergenheim.
(M-37018 Pte. Hergenheim, J.T.)

HH-102
TPR HERMAN M.

9

73

HH-102 'G'

Army Form A.3.

Correspondence to be PINNED here

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this 28th day of June, 19 43

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Div, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~*I am unable to appoint:—~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~for the following reason, namely:—~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

6th July 1943

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	H G Conn	HQ REME, RCOC

Members.

Rank.	Name.	Regiment.
Capt C W	C W MacLean	7 Recce Regt
Capt	B Fraser	7 Cdn Inf Bde Coy, RCASC
Waiting Member Lieut	G Donaldson	17 Recce Regt

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed K G Blackader Brig

Commanding 3 Cdn Div

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D/ 3721 Tpr Marcus HERMAN 7 Recce Regt	Army Act Sec 15(1)	Guilty	Guilty	I confirm the finding and Sentence of the Court.
	Army Act Sec 24(2)	Guilty	Guilty	
(See charge sheet att)			120 days detention and stoppage of pay of 0-7-8 plus 0-1-2 Total 1-2-10	

W H Gowan Maj
Pres.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (if required, on separate sheet if necessary):—

(Signed) R G Blackader (R G Blackader) Brig
Commanding 3 Cdn Div
Convening Officer (c)

(Signed) W H Gowan (H G Gowan) Major
HQ REME, RCCC
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 29th day of June 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~(3. The interpreter)~~
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 29 day of June 1943

W H Gowan Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 702 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 30th day of June 1943.

R. F. L. McLAGGAN, Maj.-Gen.,
G.O.C. 3rd Cdn. Div.

Promulgated and extracts taken in the case of

(a) (Dated) 1 July 43 (Signed) [illegible] Capt & Adjt
3 CANADIAN RECONNAISSANCE REGIMENT (17 DYRCH)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

BZ [illegible] Amended

CHARGE SHEET

The Accused D.3721 Trooper Marcus Herman of the 7th Canadian Reconnaissance Regiment (17 D.Y.R.C.H.) C.A.(O/S), a soldier of the Canadian Army Overseas, being a member of the Active Force, is charged with:-

First Charge — Absenting himself without leave

ARMY ACT SEC 15(1)

in that he, in the Field, absented himself without leave from 0830 Hours 19 Apr 43 until placed under arrest by Military Police at London at 0830 Hours 21 Jun 43, thereby incurring costs of apprehension and return to Unit amounting to £0-7-8.
(Total time absent 63 days)

Second Charge — Losing by neglect his equipments, clothing and Regimental necessaries.

ARMY ACT SEC 24(1)

in that he, in the Field on 22 Jun 43 was deficient of the following articles:

		Unexpired Wear Value
✓Shirt, Angola, Drab.	1	6-10
✓Badges Shoulder Canada	2 pairs	1- 4½
✓Brasses, Cleaning	1	1½
✓Brush, Button Brass	1	6
✓Brush, Hair	1	9½
✓Brush, Tooth	1	3½
✓Comb, Hair	1	1½
✓Dressing First Field	1	9½
✓Fork, N.S. Table	1	4
✓Knife, Table	1	7½
✓Patches, Shoulder 17H	1 pair	4½
✓Spoon, N.S. Dessert		3½
✓Towel, Hand	1	9
✓Divisional Patches	1 pair	3
✓Bag, Ration	1	1
✓Covers, Mess Tin, Regt.	1	3½
✓Strap, Web, Supporting Web	1	10
✓Outfit, Anti-Dim	1	2
✓Mug, Drinking	1	4
		£0-15- 2

In the Field
Jun 43.

(V.W.Hugman) Lt.-Col.
Officer Commanding
7 Cdn Recce Regt (17 DYRCH)

To be tried by Field General Court Martial.

In the field
22 Jun 43

(E.G.Blackader) Brig
a/Comd 5 Cdn Div

A

Army Form A.9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Ch Field
on the 29th day of June 1943 by order of
Brig. K. G. Blackader
Commanding 3 Cdn. Div.
dated the 28 day of June 1943
President.
Major H. G CONN HQ REME R.C.O.C.

Members.

Capt. C.W. McLean 7 Recce Regt.
Capt B. Fraser 7 Cdn Inf Bde Coy RCASC.
~~Warden Provost Sgt~~
~~J. Houston 7 Recce Regt~~
~~Judge Advocate~~

Trial of* D3721 Tpr Marcus HERMAN
7 Recce Regt.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that ... to not over ... to ... or reading the ... waiting room ... taken his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.*

The accused is brought before the Court.

Prosecutor,† Capt W.L. Hutton 7 Recce Regt.

Counsel‡ or defending officer‡ ~~Capt~~ W.L. W.R.O. Lt Blanc. 7 Recce Regt

At 1024 o'clock the Trial commences.

The order convening the Court is read, and is marked "G" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

(2136) W.O. Forms/A.9 (2) 40,000 pads. 3/43. K. & H. Ltd. (6627) Forms A.9 (2)

* I have authority myself to sit in lieu of the officer detailed as member of the Court from personal reasons upon any Court of inquiry regarding the matter forming the subject of the charge before this Court Martial.
H.G. Conn Major

B

The President, members and ~~judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Lt. B.E. ~~BENITEZ~~ BENITEZ 7 Rocca Regt.

Lt. G. Donaldson 7 Rocca Regt.

Charge-Sheet.

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty Sir. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty Sir. *Answer.*

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

The accused having pleaded Guilty to First + Second charges, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*~~The Court having been re-opened the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.~~

The accused D 3721 Tpr Marcus Herman 7 Recce Regt
is found guilty of First and Second Charges.

†The summary (or abstract) of evidence is read, marked "K" signed by the President, and attached to the proceedings.

Capt W.L. Hutton, Adjt 7 Recce Regt, was called by the Court, duly sworn & gave evidence re cost of apprehension as in attached "H", marked & signed by the President.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

No Sir my defending officer will.

Answer. The ~~Accused~~ defending officer in mitigation of punishment ~~says~~.—

[*or* hands in a written statement, which is read, marked "I", signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character ?

Question to the accused.

no Sir

Answer.

Evidence as to character.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

The ~~Court find that the accused~~ NIL

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

*~~The Court being reopened, the accused is again brought before it.~~

Evidence of character, &c.

Capt. W. L. Hutton 7th Royal Regt is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* "I have. See AFD 355 & Cert. Copy of MEMO"

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked "J. 4" signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes Sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes Sir.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes Sir.

Cross-examined by the accused. No.

(Observation.—If by reason of the nature of the service of the accused in a disciplinary corps, or otherwise, the Court of the Court considers that there is any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

F

Sentence.

Sentence.

The Court sentence the accused D 3721 Tpr. M. Hannan
to undergo detention for 120 days and to
be put under stoppage of pay until he
has made good the sum of
£0-7-8 in respect of cost of application
and £0-15-2 in respect of loss of equipment etc.

29 June 43
W Sloan Major
President

Appendix B

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. D47220 Rank Spr. Name Hermary R. Unit 7 Recr Regt.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount £	s	d
21 Jun 43	Escorts return fare from LONDON To ½ portion Fallowfield		3	10
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Fallowfield		3	10
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		7	8

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[illegible] Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-55

Appendix A

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr. 42

I CERTIFY that No. D-37220 Rank Pte. Name HERMARY R.

Unit 17th Hussars 7th Cdn Recce Regt arrested at London (place)

at 0830 (hour) on 21 June 43 (date) and that at the time of his arrest he was wearing (Military Uniform) or (Civilian clothes)

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

London.
21-June 43.

[illegible] Capt.
[illegible] Form) R.C.A.P.C.
London Area

Exhibit "C"

RECORD of the Declaration of a Court of Inquiry assembled ~~At~~ In the Field on the 10th day of May 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D.3721 Tpr. Herman,M.

DECLARATION

The Court declare that No. D.3721 Tpr. Herman,M.
7 CANADIAN RECONNAISSANCE REGIMENT (17 DYRCH) C.A.O.
illegally absented himself without leave 0830 hours
~~At~~ In the Field on the 19th day of April 1943,
that he is still so absent, and that on the 10th May 1943 he was deficient, and
that he is still deficient of the following articles:—

ARTICLES		VALUE	ARTICLES		VALUE
1 Blouse, Battle Dress	1/ 7/	1/0/ 9	1 towel hand	/11½	/ 11½
1 Boots, Ankle, prs.	1/ 1/6	16/ 1	1 pr. Divisional Patches	/ 4	/ 3
1 Shirt, Angola, Drab	9/2	6/ 10	1 Bag, ration	/ 1½	/ 1
1 Trousers, B. Dress	1/ 7/11	1/0/ 10	1 Cover, Mess tins Rect	/ 4½	/ 3½
1 Badge Cap	/5½	/ 4½	1 Strap, web, supporting, web.	1/ 1	/ 10
2 Badges, Shoulder "CANADA" prs. 11d ea.	1/10	1/ 4½	1 Outfit, Anti-Dim	/ 2½	/ 2
1 Brasses, cleaning	/ 2	/ 1½	1 Mug, drinking	/ 5	/ 4
1 Brush, Button, Brass	/ 8	/ 6			
1 Brush, hair	1/ 1	/ 9½			
1 Brush, tooth	/4½	/ 3½			
1 Comb, hair	/2	/ 1½			
1 Dressing, First Fd.	1/1	/ 9½			
1 Fork N.S. Table	/5	/ 4			
1 Knife, table	/9½	/ 7½			
1 Patches, Shoulder prs. 17th H	/5½	/ 4½			
1 Spoon N.S. Dessert	/4½	/ 3½			
				£	4/17/7½ 3/13/2½

Signed ~~At~~ In the Field — President
(D.G. MacKenzie) Major — Member
(H.M. Street) Lieut. — Member
(M.M. Telford) Lieut.

this 10th day of May 1943

Signature of Commanding Officer (W.W. Hugman) Lt.-Col.

Certified true copy (W.L. Hutton) Capt. & Adjt. Signature of Officer having custody of original record

M.F.D. 575
A.F.B. 115
20M—6-43 (750)
H.Q. 1775-19-827

Capt W.L. Hutton called as a witness for the prosecution, produces and states that CA/HQ 1000-33 Expense Voucher, and marked as Exhibit "B" relates to the first charge against the accused.

W.L. Hutton Capt

"H"

MEDICAL OFFICER'S CERTIFICATE

K.R.(Can.) Para. 557

I certify that I have this morning examined D.3721 Trooper HERMAN, Marcus and in my opinion he is fit to undergo trial by Court Martial.

Date: 20 Jun 43

(G.P. Tanton) Capt.
Medical Officer
7 Cdn Recce Regt (17 DYRCH)

Field,
TLP

June 29th, 1943

RE: F.G.C.M.
D 3721 Tpr. Marcus Herman
7th Recce Regt (1st D.Y.R.C.H.)

March 13th 1944 Tpr. Herman
when served in the Canadian Active
Army for 2 years he led an
exemplary life in the army his
conduct sheet was clear of any
crimes.

The Regt moved to South
Eastern Command and whilst the Regt
was stationed there Tpr. Herman
was employed continuously at
maintenance which on the same
became very boring to him. He was
doing a D.R.'s work but was not get-
ting trades pay.

The day this man went absent
he was supposed to go on sick
parade. He was also to go on leave
the same day which exceeded by was
April 19th 1943. He was afraid
the Medical Officer may would
cancel his leave. Being an
"Ex Bounced Off" sort of mind he
decided to leave on his own so
as not to miss his privilege
leave. He thought which was of
course wrong, that all he would be
punished for was leaving without
his pass. He had intended to return
on his seven days privilege leave was
up. He had wrong money,
twenty pounds, but when the time
came to go back to the Regt. he
became more worried and decided
to stay away as long as his money
held out. He knew by going to his

particular locker the provost would
pick him up on the 21st of June 43 he
did knowing he would be arrested by the provost.

He realizes his mistake and
knows he will be punished. In
view of his long and faithful
service I wish the Court would
consider that he only has made
one serious mistake and make his
sentence as light as possible under
the circumstances.

W. Du Blanc Lt.

Summary of Evidence in the case of No. D.3721 Trooper Marcus Herman of the 7 Cdn Recce Regt (17 DYRCH) CA (O/S).

By direction of the Commanding Officer, the summary of evidence is taken.

1st Witness for the Prosecution

D.7696 Cpl.Cockburn J.R. of the 7 Cdn Recce Regt (17 DYRCH) CA (O/S) having been duly sworn states:-
I met the accused, whom I now recognize, about 0800 hrs the morning of 19th April 43,. He should have reported on sick parade that morning and had not and I asked him why. He replied that he was a little late and was going over right away. He left and I did not see him again until this morning. I would have seen him had he returned in the interval as we are in the same troop and in the same billets.

Cpl. R. Cockburn
D.7696 Cpl.Cockburn J.R.

2nd Witness for the Prosecution

W.Fern, Captain, D.A.P.M., London Area.
Documentary Evidence.
Written statement of this witness's evidence purporting to be signed by him has been read to the accused and is attached as Exhibit "A".

Having regard to the exigencies of the service the attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

W.L. Hutton
(W.L.Hutton) Captain.

3rd Witness for the Prosecution

D.3305 Sqn.Q.M.S. McHugh J. of the 7 Cdn Recce Regt(17DYRCH) CA (O/S) having been duly sworn states:-
I recognize the accused and took an inventory of his Kit 22 Jun 43. I found deficiencies amounting to £1.0.0½. These deficiencies at unexpired wear value amount to 15.2d.

J. McHugh
(D.3305 Sqn.Q.M.S.McHugh J.)

The accused having been duly cautioned with Rule of Procedure 4 (E) "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence," reserves his defence.

Certified that Rule of Procedure 4 (C) (D) (E) and (F)(G) have been complied with.

Taken down by me in the presence and hearing of the accused this 23 day of June 1943, in the Field.

W.L. Hutton
(W.L.Hutton) Captain.

"K"

Summary of evidence in the case of D.3721 Trooper Marcus HERMAN of the 7th Canadian Reconnaissance Regiment (17DYRCH) C.A. (O/S).

Additional evidence:-

4th Witness for the Prosecution

Capt. W.L. Hutton of the 7th Cdn Recce Regt (17 DYRCH) CA (O/S) states:-

I produce herewith certified true copy of M.F.B. 375 Record of the Declaration of a Court of Inquiry assembled in the Field on the 10th day of May 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D.3721 Tpr. Herman, M.

W.L. Hutton Capt.

The accused having been duly cautioned with Rule of Procedure 4 (E) "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evicence," "reserves his defence."

Certified that Rule of Procedure 4 (C) (D) (E) and (F) (G) have been complied with.

Taken down by me in the presence and hearing of the accused this 28 day of June, 1943, in the Field.

W.L. Hutton Capt.

No. D. 3721 Name HERMAN Marcus | Sqn., Battery, or Company | H.Q. Corps (7th Recce) 17H A.F. | Date of enlistment | 13-Mar-41 | O.C. Badges | Service or Proficiency Pay |

M.F.M. 6
A.F.H. 1129
17554—7-41 (1319-39)
H.Q. 1772-59-1652

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | L. Levinson Lieut. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				No Entries on completion of six months service		M.L.N.			
Field	28 Mar 43	Tpr.		1st Charge A.A. Sec 15(3) 2nd Charge A.A. Sec 18(3) 3rd Charge A.A. Sec 40	Documentary	8 days F.P. 15 days Pay Placed under stopp. of Pay to the extent of 7s 8d for cost of Apprehension	30 Mar 43	Lt-Col Hugman	For. 8 days Pay-FR&I 149 (1) (a) For. 7 days Pay-FR&I 149(2) Tot Forf 15 days Placed under Stoppages of pay re Cost of Apprehension & Return to the Amount of 7s 8d FR&I 172 (8)

L. Levinson Offr

Certified True Copy

7 CANADIAN RECONNAISSANCE REGIMENT

(17 DYNOHS)

(P.T.O.)

"J"

M.F.B. 355
(2M—5-41 (372-3)
H.Q. 1772-99-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D.3721	Trooper	M.Herman	7 Cdn Recce Regt(17DYRCH)

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. Sec.15(3)	1 times	A.A. Sec.15(3)	1 times
For	A.A. Sec.18(3)	1 times	A.A. Sec.18(3)	1 times
For	A.A. Sec.40	1 times	A.A. Sec.40	1 times
For		times		times

[redacted]

or,

[redacted]

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

[redacted]

3. The accused is not under sentence at the present time.

or,

[redacted]

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 8 days in military custody, making a total of 8 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 23yrs 87 days

6. The date of his [redacted] specified in his [redacted] attestation attestation paper 13 Mar 41.

7. The service which the accused is allowed to reckon towards discharge is 2yrs 108 days

8. The accused is entitled to reckon Nil service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no [redacted] military decoration, or [redacted] military reward [redacted] military. (State any air force decoration or reward.)

10. [redacted]

11. [illegible] The accused holds in the Royal Canadian Armoured Corps [illegible] dated [illegible], [illegible] dated [illegible].

12. The accused has already undergone [illegible]

Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

ANNEXE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number D. 3721 Rank Tpr.

Name Marcus HERMAN of 7 Cdn Recce Regt(17DYRCH) Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	N11			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 29th day of June 1943 (W.W.Hugman)Lt.Co
Officer Commandin

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings. 7 Recce Regt(17DYRC

YY-95 (Case #2)

TPR HERMAN W.W

See FF-87 for last case

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H 62995 Tpr Wyatt William Herman

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd	Not Guilty	Guilty	
3rd	Guilty	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 25 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for Six (6) Months.

(Sgd) W.O.2 Trumper Wagor — Judge-Advocate, if any. 8 Dec 43 — Date awarded. (Sgd) E. W. Smith Lt-Col — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 56, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Findings and Sentence Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

Date 16 Dec 43 (Sgd) E. W. Smith Lt-Col Commanding 4 Cdn Armd Bde — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
H 62995 Tpr Walter William Herman	18th Dec 43	E. W. Smith Lt-Col 4 Cdn Armd Bde (RCR) CA

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

YY-95

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AEA3) 40/P & R/1668 (28664)

Convened by Order of Brig J. D. B. Smith Comd 4 Cdn Armd Bde dated 4 Dec 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H 62995	Tpr	Wyatt William	Herman	28 C.A.R.

PROCEEDINGS REVIEWED
Ellis col
14 Jan 44
REVIEWING OFFICER: JAG'S BRANCH G.M.H.Q.

4 Cdn Armd Bde Armed Regt (RCR) CA

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 8 Dec 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnin RQs. For guidance on procedure when a variation in this form arises, see Form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See Lack of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 0940 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to the Interpreter as interpreter? Ans~~ ~~The Interpreter is sworn.(1) Do you object to the shorthand writer as shorthand writer? Ans~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Wagor	E. W. Smith	4 Cdn Armd Bde
Member	Capt	R. D. MacKenzie	Lake Sup Regt (M)
Member	A/Capt	G. W. Alexander	21 Cdn Armd Regt
Judge-Advocate	Wagor	W.O.2 Trumper	4 Cdn Armd Div HQ
Prosecutor	Lieut	J. A. Bernier	28 CAR
Defending Offr	Lieut	H. R. Howitt	28 CAR

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans Yes (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused Tpr Wyatt William Herman before arraignment make(s) (no) ~~(a)~~ plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. *If pleas to all charges are GUILTY, use Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, use Record Form D on p 3.*

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)*

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 80, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans no (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement~~ (1) The Court decides (not) to advise accused to change his ~~pleas~~ plea(s) of Guilty to Not Guilty on the 3rd charge(s). The accused is (are) so informed. ~~and he (they) changes~~ ~~his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and marking on appropriate record thereof on a separate sheet.)

C3. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.~~

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans N/A (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (~~no~~) (no) opening address.(1) WDT
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4) WDT
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Yes I give evidence under oath. Do you intend to call witnesses on your behalf ? Ans Yes no Are they witnesses as to character only ? Ans WDT
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1st 2nd charge(s), being subject to confirmation, will be promulgated later.(1) WDT
Or The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~ WDT

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ? Ans no, but a statement (signed) as to character is handed in by Capt Jones
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3) WDT
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans yes
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2) WDT
(1. When several accused tried separately see RP 105. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 1323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, H-62995, Tpr Herman, W. W., "C" Sqn., 28 Cdn Armd Regt(BCR), a soldier in the Canadian Army Overseas, is charged with, when on active service:-

First charge
Sec. 6(2)(f)
ARMY ACT

LEAVING HIS POST WITHOUT ORDERS FROM HIS SUPERIOR OFFICER

in the field

in that he, at 2025 hours on 13 Nov 43 after undertaking his duties as a sentry at the Regt'l guard room, left his post.

Second charge
Sec. 40
ARMY ACT

AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in the field

in that he, at 2205 hours, on 13 Nov 43 attempted to bribe the Regimental Police. name? F 38531 L/Cpl Beam, I.A.

Third charge
Sec 19
ARMY ACT

DRUNKENNESS

in the field

in that he, at 0015 hours, 14 Nov 43, when on duty as a sentry was drunk.

.....
(D.G. Worthington) Lt-Col.,
OFFICER COMMANDING
28 Cdn Armd Regt(BCR)

In the
Field
18 Nov 43.

Remanded for F. G. C. M. 18 Nov 43

.....
(D.G. Worthington) Lt-Col.,
OFFICER COMMANDING
28 Cdn Armd Regt(BCR)

To be tried by Field General Court Martial.

(E.D. SMITH) Brig.,
Comd., 4 Cdn Armd Bde.

President

In the Field.
4 Dec 43.

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA3)
40/P&S/1697 (2662)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-62995	Trooper		Walter William	Herman	28 C.A.R.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~xxx~~) committed the offence(s) set forth in the Charge Sheet(~~x~~) attached and on (date) 4 Dec. 1943 endorsed by me; ~~xxxx

MEDICAL CERTIFICATE

I hereby certify that I have this day medically examined H-62995, Tpr Herman, W. W. and in my opinion found him fit to stand trial by Field General Court Martial.

8 Dec 43

H. L. Ramsower Capt. RIAMC

Examining Surg.
President

Prosecutor calls first witness- L/Cpl. Beam I.Z.

Witness Sworn in:-

I-K-38531, L/Cpl. Beam I.Z. of the 28 C.A.R.(B.C.R.)

Sir:- On the evening of charges laid, I was in charge of Regt'l. Police on guard duty, at 2000 hrs I told accused to take over beat. I then went to the N.A.A.F.I. On my return at 2030 hrs I found L/Cpl. Head in Guard room hunting for accused. We shouted several times and received no answer. I then told L/Cpl. Head to wake up Tpr. Burrows and take over the beat. At 2200 hrs the accused walked into Guard Room without Web or Pistol. I then placed him under open arrest and told him he would be up for orders. He tried to talk us out of it, by saying "I have been on the beat all the time". When he found out that that wouldn't work he tried to buy us off by offering us 10 shillings if we could let him go-meaning L/Cpl. Head and myself. I then told him Regt'l. Police didn't do things that way. He then went to bed. At 2330 hrs the accused got out of bed and urinated on the floor, after a lot of arguing we made him wipe it up. At 2400 hrs. we posted him for his next turn at guard. L/Cpl. Head took him out to take over the beat. I walked o t of the Guard house immediately he was posted and I saw the accused fall face first on the road. I immediately went for the M.O. and left L/Cpl. Head to watch him. The M.O. sent Cpl. Morrison and myself to bring the accused in on a stretcher.

~~Cross-examination by the prosecutor~~

1st Q. When accused returned to guard room at 2200 hrs did you notice anything wrong?

A. No, except he didn't want to do guard duty.

2nd Q. Did you post accused to duty?

A. No, we don't usually post them.

3rd Q. What is the procedure of posting?

A. Usually warned about 10 minutes before and told to go out and relieve the sentry.

4th Q. Did you see him at post?

A. No

5th Q. Did you relieve accused?

A. No

6th Q. You said he tried to buy you off. What did you mean?

A. He offered us money if we wouldn't put him on orders.

7th Q. From the time you warned accused to go out, and time of return from N.A.A.F.I. did you see him?

A. No.

8th Q. What effort did you make to locate him?

A. We shouted his name several times.

9th Q. Give exact words accused used when attempting to buy you off.

Defending Officer I object to that question, as accused had already been warned for orders.

J.A. I agree

Defending Officer Accused should have had a warning before giving evidence.

Prosecutor There is nothing to prevent a man from speaking out and offering a bribe at his own free will.

Defending Officer — I t ink he should have been warned.

J.A. — In this particular case the accused volunteered information

Defending Officer — Did you ask accused any questions?

L/Cpl.Beam — No.

10 Q. — What were the words used by accused.

A. — If you want to do things that way ok, I'll give you some money. I'll give you 10 shillings.

11Q. — What is the procedure to taking over or posting sentries.

A. — I heven't anything to do with it.

Cross-Examination by Defending Officer

1 Q. — What was the procedure for sending sentries to go on duty From times to guard house on the evening the charges were laid against the accused?

A. — They were handed down between 1600 & 1700 hrs

2 Q. — Did they all go into guardhouse?

A. — Yes and they were allowed to leave if they asked us first

3 Q. — What hrs. did they work? 2 hrs on & 4 hrs off.

A. — Yes, thats it.

4 Q. — Did you instruct men what beatthey had to do & what hrs?

A. — Yes when they came to guard house.

5 Q. — Did accused know in the afternoon?

A. — No, not until they arrived at approx 1700 hrs.

6 Q. — Was it after this time when accused was warned, if so when?

A. — Yes. but before 1800 hrs.

7 Q. — Did you keep accused in guard room?

A. — I believe he asked to go to his hut and he was told to go ahead.

8 Q. — Well he could have gone anywhere, couldn't he?

A. — Yes.

9 Q. — Even the wet canteen.

A. — Yes, but there was not time for much drinking.

Prosecutor — You posted Tpr. Herman at 2000 hrs?

L/Cpl.Beam — Yes.

10 Q. — The order for posting of sentries then was Tprs. Burrows, Herman, Bellings.

A. — Yes

11 Q. — Was that their normal order?

A. — No, that was their 1st shift together.

(3)

Re-examination by Prosecutor

12 Q. Where you clear in your own mind athat they knew when they were to go on duty.

A. Yes.

President Q. What is the length of the beat?

A. Not more than 20x to walk around.

President Q. When did you last see accused before going on guard?

A. About 20 minutes before.

J.A. Q. What was his condition?

A. Seemed about the same to me.

Defending Officer Q. Do you know what time accused left guardroom in afternoon?

A. Couldn't tell you sir.

J.A. Q. What was the approximate date when this all took place.

A. Couldn't tell you, about 3 weeks ago.

(Evidence read back to witness)

With Ruling procedure S 31(b) complied with.

Prosecutor calls 2nd witness. L36646 L/Cpl Head H.G. 28 C A R having been duly sworn states:-

Witness sworn in:-

Examination by Prosecutor

1st Q. Tell the court your name, number and rank.

A. L-36646, L/Cpl. Head, H.G. 28th C.A.R.(B.C.R.)

2nd Q. What are the duties of a sentry on guard duty.

A, To stop all vehicles and to stay on duty until relieved.

3rd Q. What is the beat?

A. Front end of Guard House to Sentry Box.

4th Q. Will you tell court circumstances on the night of Nov 13 which led to the charges being laid against the accused.

A. At 2000 hrs the guard was changed, Tpr. Burrows had been on sentry duty from 1800 hrs. At 2025 hrs Lieut. J.O.Stevens came in ~~to~~ about where sentry was. I couldn't find him, and came back to guard house to get Tpr. Burrows to go on guard again. At 2100 hrs Tpr. Herman came back to guard house. There was conversation between Tpr. Herman and L/Cpl. Beam. L/Cpl. Beam told him that he was under open arrest and he would have to take a 4 hour shift the same as Tpr.Burrows had to do. At 2400 hrs he was taken out to relieve the other sentry. I was standing outside and he fell out of sentry box.

5th Q. What was your responsibility at guard house that night.

A. I was 2 i/c to L/Cpl. Beam.

6th Q. L/Cpl. Beam was in charge you were second in command?

A. Yes.

7th Q. When was the guard changed?

A. At 2000 hrs, Tpr. Herman was sent out by himself to relieve Tpr. Burrows.

8th Q. What was the usual custom?

A. That was the custom then as there was no Cpl. of the Guard.

9th Q. Were you sure in your own mind that accused knew his duties, before going on guard.

A. Well he had been on guard before.

10th Q. When did the period of duty start for the accused?

A. We were changing guard at 1800 hrs on either a 48 hrs or 24 hrs tour of duty.

11th Q. What order were the guards posted or how many?

A. Three, 2 hrs on and 4 hrs off.

12th Q. What order were they posted from 1800 hrs?

A. Tpr. Billings, Burrows and Herman.

13th Q. Did you see accused leave guard room to take post.

A. Yes.

14th Q. Did you see accused at his post?

A. No.

15th Q. Who is Lieut. J.O. Stevens?

A. He is a Regt'l. Officer.

16th Q. What did you do after Lt. Stevens came into Guard Room?

A. I tried to find Tpr. Herman.

17th Q. From the time accused was posted did you relieve him from his duties?

A. No Sir.

18th Q. You say he returned to Guard House at 2200 hrs.

A. Yes
Did

19th Q./L/Cpl. Beam say anything further?

A. There was a slight conversation.

21st Q. You state that he said something to L/Cpl. Beam. You were in the room. What did he say?

A. After being told he was under open arrest he offered to buy him off if he would drop charges.

22nd Q. What specifically did he say?

A. What was it worth and he would buy drinks at a later date.

23rd Q. You overheard the conversation?

A. Yes Sir.

24th Q. What was the action of the accused when he came into the Guard room at 2200 hrs.

A. Normal as far as I could see.

25th Q. Was there anyone else at the Guard House besides yourself and L/Cpl. Beam who could have given permission to Tpr. Herman to leave post?

A. No.

Cross examination by Defending Officer

1st Q. What time was the guard changed on the 13th of Nov? 43 [illegible]

A. Guard changed on the 12th Nov at 1800 hrs.

2nd Q. You said the accused went on guard at 2000 hrs on what date?

A. The 13th of Nov.

3rd Q. The guard stayed there all night?

A. Yes.

4th Q. You say Tpr. Burrows was on from 1800 hrs to 2000 hrs.

A. Yes sir.

5th Q. And do you know accused fairly well?

A. Just since that time.

6th Q. Did you ever hear L/Cpl. Beam talking to him very much?

A. At what time, sir?

7th Q. On the 13th

A. We have a lot to do and had 7 prisoners to look after and not much time to talk.

8th Q. Where do you stay in Guard Room?

A. In a room in Guard House used for sleeping quarters.

9th Q. Who was next on duty after Tpr. Herman?

A. Tpr. Billings.

10th Q. When Tpr. Herman was absent from his post who did you send out to replace him?

A. Tpr. Burrows as Tpr. Billings was not around as he had gone to the N.A.A.F.I.

11th Q. Who gave Billings permission to go to N.A.A.F.I.?

A. I did sir.

12th Q. Did you think when he came in to offer a bribe that there was anything peculiar with Tpr. Herman

A. No. he seemed normal.

13th Q. Any joking?

A. No.

14th Q. Do you think he was serious?

A. Yes

15th Q. Did drinking have any effect on him?

A. I didn't know he had been drinking.

16th Q. You knew he had been drinking?

A. No, not until after the M.O. had inspected him.

17th Q. Therefore there must have been something wrong with him.

A. I don't know he seemed allright to me.

Re-Examination by Prosecutor

26th Q. When Tpr. Herman went out to his post how did you know he undertook his duties and relieved man on guard?

A. What time?

27th Q. At 2000 hrs.

A. Tpr. Burrows came in and told us Herman had relieved him.

(Evidence read back to witness)

Rule of Procedure 83(b) complied with. Copy

Third Witness called by the Prosecutor

Witness Sworn in:- Lieut J. O. Stevens 28 C A R being duly sworn states:-

Examination by Prosecutor

1st Q. Give your Rank, Name and Regiment.

A. Lieut. J.O.Stevens, 28th Cdn. Armd. Regt.(B.C.R.)

2nd Q. Will you tell court the circumstances on the night of Nov 13th which led to the charges being laid against the accused?

43

A. On the night of 13th Nov. I entered the camp at 2030 hrs. On passing Sentry Box I noticed that there was no sentry on duty. I went into the guard house to see what was wrong and was told that there was supposed to be someone there on duty. After calling for the sentry and receiving no answer I left.

3rd Q. Who was supposed to be on guard?

A. Tpr. Herman.

4th Q. Do you recognise Tpr. Herman in this court-room?

A. Yes over there.(identified)

5th Q. Did you do anything further?

A. No.

Cross-examined by Defense

1st Q. Did you ask L/Cpl. in guard house who was supposed to be on guard?

A. No, because I heard them calling for Tpr. Herman and presumed that he was supposed to be on guard.

2nd Q. You were present at the taking of the summary of evidence.

A. Yes.

3rd Q. Were all witnesses present in one room?

A. No.

4th Q. Do you remember seeing Tpr. Burrows at the taking of evidence?

A. No.

5th Q. Do you remember seeing Tpr. Billings at the taking of evidence?

A. No.

6th Q. Did you know that Tpr. Billings was a member of the guard that night and did you know that there were three men on guard duty 2 hrs on and 4 hrs off.

A. No.

7th Q. Was there any confusion as to when sentries are to go on duty?

A. No, they all seemed to know when they were to go on.

President Q. When you went out to see where the sentry was did they look around or just shout for Tpr. Herman?

A. No they looked around in the near vicinity.

(Evidence read back to witness)

R. P. 8364 complied with (WSY)

Accused wished to make a statement under Oath (WSY)

H-62995 Tpr Harmon W.W. having been duly sworn states:

Accused sworn in:-

Defense Q. Were you warned for duty on the 13th of Nov.?

A. Never warned at any time to go on duty.

Defense Q. Will you tell the court what happened the afternoon you were to go on duty?

Statement by Accused under Oath:

I finished my shift at 1600 hrs. I went back to my hut, we had supper at the usual time. I then went to the N.A.A.F.I. at approx. 1800 hrs. Some of the boys were going away and were celebrating, so we were drinking till approx. 2000 hrs. I returned back to the guard room and I did undertake my duties at 2000 hrs. what happened after that I simply don't know.

Defense Q. How did you feel when you went to guard room?

A. I figured I had quite a load on.

[redacted]: (WSY)

On the 12th of Nov we were detailed for duty. We arrived at guard room at approx 1830 hrs. There were no orders read to us. Tpr. Burrows took the 1st shift of approx. 1½ hrs. I took the 2nd shift and Billings the 3rd. There was no warning given to us at all.

Cross-examined by prosecutor

1st Q. You say you were never warned to go on duty?

A. Yes

2nd Q. You were at the guardroom?

A. Yes

3rd Q. What was the period of your duty?

A. 2 hrs on and 4 hrs off.

4th Q. Your tour of duty commenced at 1800 hrs 12th of Nov.

A. I don't understand.

5th Q. What time were you on duty 13th of Nov. 43 0800-1

A. 0800 hrs in the morning, 1400 hrs in the afternoon and at 2000 hrs at night.

6th Q. You came off duty at 1600 hrs that afternoon?

A. Yes.

7th Q. And you knew that you were to go on at 2000 hrs.?

A. Yes.

J.A. Q. Who did you relieve at 2000 hrs that night?

A. Tpr. Burrows

8th Q. You did relieve Tpr. Burrows at 2000 hrs that night?

A. Yes

9th Q. What were you supposed to do as sentry?

A. To check work tickets on outgoing and incoming vehicles.

10th Q. You could only do that by staying in front of guard house?

A. Yes.

11th Q. And the only place you could check vehs. was in front of the sentry Box.

A. Yes

12th Q. After you undertook duties at 2000 hrs what did you do?

A. I don't know.

13th Q. Why don't you know?

A. I don't know.

14th Q. You came up from the N.A.A.F.I. and relieved Tpr. Burrows and then you don't remember anything?

A. Yes.

15th Q. How much did you have to drink?

A. I don't know, we drank from about 1800 hrs to 2000 hrs.

16th Q. And knowing you were to go on guard duty you sat in the N.A.A.F.I You did know you were to go on duty at 2000 hrs.?

A. Yes.

17th Q. What were you drinking?

A. Beer.

18th Q. You are suggesting that you had so much to drink you don't remember anything?

A. Yes.

19th Q. When do you first remember anything?

A. Next morning.

20th Q. I would suggest that you remember what happened that evening.

A. I don't remember.

21st Q. You heard evidence of L/Cpl. Beam and L/Cpl. Head?

A. Yes.

22nd Q. They said that 2200 hrs you came back to guard house?

A. Yes.

23rd Q. Do you remember leaving your post?

A. No.

24th Q. You heard witnesses state that you attempted to bribe them?

A. Yes.

25th Q. Do you remember returning to guard house at 2200 hrs.

Accused questioned by member of the court(Capt. R.D.Mackenzie)

1st Q. Do you remember going on guard?

A. Yes.

2nd Q. You had web and pistol on you then?

A. Yes

3rd Q. Do you know where it is?

A. I have my web now.

4th Q. Do you know where your pistol is?

A. I think it was turned into Quarters Stores.

(Evidence read back to accused) R.P. 836, complied with

Closing Address of Prosecuting Officer

There appears to be no evidence of leaving post on instruction of superior officer.

The evidence of two witnesses state that accused did return at 2200 hrs.

Three witnesses gave evidence that Tpr. Herman was no where near his beat so he must have left his post.

Prosecution closes WDY

Closing address of Defending Officer

1st Point- Times laid on for guard duty- accused knew, but was somewhat vague. Laxity in guards by allowing sentries to visit NAAFI etc.Therefore any sentry could have left and got drunk. Accused admits being drunk.Theevidence proves that the accused was drunk as he fell on his face and was carried to the MO.'s. The accused under oath states that he does'nt remember anything which shows that he can't hold liquor,and had apperently had

enough to drink at the NAAFI to make himself incapable.
Defending Officer quoted-CHAP.7 SEC.9 M.M.L.

DEFENDING OFFICER'S APPEAL IN MITIGATION OF PUNISHMENT

The accused does not appear to be a very strong character and gets into many little difficulties as shown on his crime sheet,and Ifeel in most cases the blame rests with his superior officers who are morally at fault,and if he had been looked after properly a lot of the minor offences would not have been comitted.Evidence shows that he's a willing worker,has the right spirit and is a good soldier,and all that he needs is the proper guidance.I think that the evidence shows a certain amount of vagueness as to hours of duty on guard,and that very little control,had been enforced.

DEFENCE CLOSED.

President.

28 Cnd.Arm'd.Regt.
"C" Sqn.
14 Nov.43.

Ex B.

Medical Officer
28 Cnd. Armd. Regt.
Cdn. Army in Eng.

H-62995 Tpr. Herman W.W.
Character report.

Herein a character report on the m/n soldier. His latest troop officer having left the unit I have been asked to make this report.

2. Ability as a soldier: Tpr. Herman has normal ability in many things but has limita tions in mental and technical abilities.

3. Attitude towards work: Tpr. Herman is very industrious in fact is more inclined to be over industrious at times. He is a hard worker within his crew and always willing to underta ke a job tha t is less attractive to his fellow crew members.

4. My general opinion of the man: Tpr. Herman in my opinion is of a somewhat simple nature but cheerful. He gets alcng good with the rest of the crew members and I like him as a willing worker. He is a dependable worker and needs very little urging.

D.N. Cameron
K57674 Sgt Cameron D.N.
Troop Sgt.

President

SUMMARY OF EVIDENCE

in the case of

H-62995 Tpr. Herman, W.W., 28 Cdn Armd Regt(BCR) a soldier on Active Service is charged with:-

Ex A

(1) When a soldier acting as a sentry, leaving his post before he was regularly relieved in that he at 2025 hrs. on 13 Nov 43 after being posted as a sentry at the regimental guard room, left his post without being regularly relieved.

(2) An act to the predjudice of good order and military discipline in that he at 2205 hrs. on 13 Nov 43 attempted to bribe the regimental police.

(3) Drunkenness, in that he at 2330 hrs. 13 Nov 43 when on duty as a sentry was drunk.

(4) An act to the prejudice of good order and military discipline in that he at 0020 hrs. 14 Nov 43 offered violence to the Medical Officer who was attempting to examine him.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS

Lieut. J.O. Stevens, 28 Cdn Armd Regt(BCR), having been duly sworn states:-

At 2025 hrs. on 13 Nov 43 I was coming by the guard room on my way into camp. I noticed there was no sentry on guard and after looking about the sentry box I went into the guard room to find out why. L/Cpl Head was on duty and when I asked him he said there was a man on duty and he went out to find him. I heard him call several times and left.

The accused declines to cross-examine this witness.

J.O. Stevens
(Signature of Witness)

SECOND WITNESS

K-38531 L/Cpl. Beam, I.Z., 28 Cdn Armd Regt(BCR), having been duly sworn states:-

On Nov 13th 1943 I was in charge of the regimental police and of the guard on duty at the regimental guard room. At 2000 hrs. 13 Nov 43 the accused was sent from the guard room by me to relieve the sentry, Tpr. Burrows, who was on duty. This was the normal way of relieving the sentries. I never actually saw him at the sentry post. I went to the NAAFI and when I came back at 2030 hrs. L/Cpl. Head was in front of the guard house. The guard was not at his post and we had to find him by looking around and shouting for him. We did not find him and we posted another sentry, Tpr. Burrows. I did not have the accused relieved after 2000 hrs.

The accused came into the guard room at 2200 hrs. I placed him under open arrest and told him he would be on orders. He then asked me what I would take and drop the charge and I told him that the regimental police

SECOND WITNESS(Continued)

didn't do things that way. He then told us that he would buy us a good drink later. He then went to bed in the guard room.

At 2330 hrs. 13 Nov 43 the accused got out of bed and urinated in the corner of the guard room. We made him mop it up. I did not know the accused was drunk. At 2400 hrs. on 13 Nov 43 I told L/Cpl. Head to post the accused as a sentry. I went out immediately and just as I stepped out of the door I saw the accused fall face first out of the sentry box. He laid on his face and I went up to get the Medical Officer leaving L/Cpl. Head to watch him. I knew there was something wrong with the accused but wasn't sure whether he was sick or drunk or didn't want to go out on shift again. The Medical Officer sent L/Cpl. Morrison and myself to bring the accused in on a stretcher which we did. We set the stretcher on the floor of the R.A.P. and the Medical Officer tried to examine the accused. The accused was rather violent and L/Cpl. Morrison and myself held him down. It appeared to me that the accused made a pass at the Medical Officer with his hand on one occasion and then the Medical Officer called Tpr. Thompson and Tpr. Flower to help us hold him down. The Medical Officer went through the examination. I was told by the Medical Officer to take the accused back to the guard room which I did.

The accused declined to cross examine this witness.

J. J. Beam
Signature of Witness

THIRD WITNESS

L-36646 L/Cpl. Head, H.G., 28 Cdn Armd Regt(BCR), having been duly sworn states:-

I was second in command of the guard room and the guard. Either L/Cpl. Beam or myself was there at all times. On 13 Nov 43 at 2025 hrs. Lieut J.O. Stevens came into the guard room and told me there was no one on duty as a sentry. I went out but could not find the sentry about. I posted another sentry. Between 2000 hrs. and 2025 hrs. I was not outside of the guard room so cannot say whether a man was actually on duty. I did not at any time relieve or cause to be relieved the accused as a sentry.

The accused came into the guard room at approximately 2200 hrs. he talked to L/Cpl. Beam for a while about leaving his post. He admitted to L/Cpl. Beam that he had left his post, and that he was sorry. L/Cpl Beam told him he was under open arrest. After he was making his bed, he asked L/Cpl Beam and me what it was worth to us to drop the charges. L/Cpl Beam told him things were not run that way. He offered to buy us drinks at a later date.

When he came into the guard room he did not seem to me to be under the influence of liquor. He was walking alright. At 2400 hours when Cpl Beam had me repost him, I took him out to the sentry box and he walked into it and in a few minutes he fell out of it onto the road. L/Cpl Beam immediately went for the M.O. I remained with the accused. L/Cpl Beam and L/Cpl Morrison came back with a stretcher and took him away on it.

(THIRD WITNESS CONTINUED)

The accused was conscious while I was with him alone. I didn't know whether he was sick or drunk or what was wrong.

I stayed at the Guard room when they took him away on the stretcher.

The accused declines to cross-examine this witness.

.....
(Signature of witness)

FOURTH WITNESS

D-131084 Tpr Burrows, J. K. of the 28 Cdn Armd Regt(BCR) having been duly sworn, states:

On 13 Nov 43 I was on sentry duty at the Regimental Guard house from 1800 hours to 2000 hours. I was relieved by Tpr Herman, the accused. I then went into the Guard room and went to bed. At 2030 hours was disturbed by L/Cpl Read and told to go on sentry duty until 2200 hours which I did. I did not see Tpr Herman from the time he relieved me until about 2200 hours when he walked past the sentry box going to the Guard room from the direction of the main road past the camp.

The accused declines to cross-examine this witness.

.....
(Signature of witness)

FIFTH WITNESS

Capt Nathan Kaufman, R.C.A.M.C., having been duly sworn, states:

At approximately 0030 hours on 14 Nov 43 L/Cpl Beam came into the R.A.P. and informed me that the man on guard was lying by the Sentry Post. I sent him and Cpl Morrison, my orderly, out with a stretcher in order to bring him into the R.A.P. The accused was brought in by them on the stretcher. On examination I found him to be intoxicated or drunk.

His behavour alterna ted between periods of extreme quietness to disorderliness. During one of these disorderly periods I called in Tpr Thompson, my driver and Tpr Flower, my batman to help control the man. At no time did the accused offer violence to me during the examination which was carried out during a period when he was quiet. Whenever he showed signs of boisterousness I withdrew a few feet and allowed the others to carry on.

The accused declines to cross-examine this witness.

.....
(Signature of Witness.)

QUESTION TO THE ACCUSED

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but wha tever you say or any evidence you give will be taken down in writing, and may be given in evidence."

ANSWER

"No, Sir."

I Certify that Rules of Procedure 4(c) (d) (e) and (f) have been complied with.

Dated this 15th day of November, 1943.

R.N. Simpson Lieut

Lieut R.N. Simpson,
Special Increment to
28 Cdn Armd R_gt(BCR)

H-62995 No. HERMAN Walter William Name | Sqn., Battery, or Company | Corps CAC | Date of enlistment 28-11-41 | G.C. Badges | Service or Proficiency Pay N/A | M.F.M. 6 (A.F. B.122) 40/P & /8136 (2965)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. | Signature O.C. Company, etc. G.R. Dixon Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Mar Lodge Camp	8-9-42	Pte	Nil	(Sec 40 A.A.)	CSM L.E. Ellis L/Cpl Hauson	72 hrs detention	9-9-42	Mjr J.D. Russell	
Mar Lodge Camp	1-6-42	Pte		Sec 40 WOAS , Appearing on parade unshaven, Making a false statement to a superior officer	CSM L.E. Ellis Cpl Mokler W.T.	10 days CB	2-6-42	Mjr J.D. Russell	
Mar Lodge Camp	2-6-42	Pte		AA Sec 15 (2) Absent off duty	Cpl D.J. Riley Pte Hopkins	10 days JB	3-6-42	Mjr J.D. Russell	
Mar Lodge Camp	24-1-43	Pte		AA Sec 15 (2) AWL 15 hrs 15 mins	Sgt Hutchins L.H.J. Cpl. Riley D.J.	7 days CB	25-1-43	Mjr J.D. Russell	Forfeits 1 days pay
Field	17-4-43	Tpr		WOAS Conduct to the Prejudice-- improperly dressed Sec 40 A. A.	Documentary	7 days C.B.	28-4-43	Mjr J.A. Meindl	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16-5-43	Tpr		A.A. Sec 6 (2) Leaving his post while on guard without orders from his superior officer.	F.G.C.M.	30 days Detn.	29-5-43	Tried by F.G.C.M. Confirmed by comd. "E" Gp. C.R.U. 1-6-43
Field	27-5-43	Tpr	1	A.A. Sec 19, W.O.A.B. Drunkeness in that he at London England on 27th June 1943 was drunk.	Documentary L/Cpl Amer L/Cpl Goldstein	Admonished	2 Jul 43	C Allen Lieut.
Field	15-8-43	Tpr	2	Offence under AA 19(Drunkeness) (2nd offence)	Documentary	Fined $500 under FR&I 161(2)(b)	23-8-43	Capt J.R. Worthington

Certified true copy. AB 117 of 8 Dec 43.
[illegible] Lieut & Adjt
28 Bde Gnd Regt (BCR).

M.F.B. 355
7M—8-40 (6400-1)
H.Q. 1772-39-620
A.F.H. 226

Exc X

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H-62995	Tpr	HERMAN, W. W.	28 Cdn Armd Regt(BCR)

1. The following is a fair and true summary of the entries in the ~~Service and Casualty~~ ~~Regimental~~ quadron, ~~Infantry~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	AWL	1 times	Conduct to the P of GO&MD	3 times
For	C.P. G.O. & M. D.	1 times	AWL	2 times
For	Drunkeness	2 times	Drunkeness	2 times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~

or

~~There are no entries in the conduct sheets of the accused~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial ~~or a civil court of summary jurisdiction~~ ~~Air Force Act~~ ~~A.F.A. 76~~ ~~section 47 of the Army Act~~ ~~with dispensations with trial under A.A. 76~~ are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for ——— beginning on the ——— day of ———~~

4. The accused has been in confinement awaiting trial on the present charges, for ——— days in civil custody, and ~~Air Force~~ 25 days in military custody, making a total of 25 days in custody, of which ——— days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ is 24 years
attestation paper is Not available

~~6. The date of his commission specified in his record of service is~~
~~Attestation —~~ ~~Attestation paper~~

~~7. The service which the accused is allowed to reckon towards discharge is~~

~~8. The accused is entitled to reckon ——— service for the purpose of determining his pension, etc.~~

~~9. The accused is in possession of or entitled to no air force decoration, or air force reward (or a military military military in possession of or entitled to). State any air force decoration or reward~~

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer (not held~~ ~~Air Force~~ ~~the regimental rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

dated , and in his regiment (or corps), the rank of

dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit

Name H-62995 Tpr HERMAN, W.W. of 28 Cdn Armd Regt(BCR) Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	FIELD 29/5/43	Leaving his post while on guard without orders from his superior officer. (AA 6(2))	30 Days detention	Nil

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this [illegible] day of [illegible] 1943

R.E. Northington, Lt(Cdn)
O.C. 28 Cdn Armd Regt(BCR)

The above statement (with the schedule of convictions and dispensations with trial) is read, marked signed by the president, and annexed to the proceedings.

FF-87

TPR HERMAN W.W.

H 62995 Tpr HERMAN W.W.

FF87

RECEIVED
1 JUN 1943
H.Q. "E" GROUP
C.R.U.

Correspondence to be PINNED here.

Army Form A.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty-seventh day of May, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of "E" Gp, Cdn Rft Units, Cdn Army Overseas, , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior military officer.~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*~~I am unable to appoint~~
*~~Three Officers to form the Court~~:
*~~A Field Officer as President~~
*~~for the following reasons, namely~~

12 Jun 43

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	A.S. Pettapiece	HQ. CRU

Members.

Rank.	Name.		Regiment.
Major	J.P. Perrigard	CAC	2 CACRU
Lt	L.W. Davies	CAC	2 CACRU
Lt	L.S. Payne (Waiting member)	(LdSH)	1 CACRU

*Signed (T.J. Rutherford) Brigadier
Commanding "E" Group, C.R.U.
Convening Officer.

Alex S. Pettapiece Major

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
H 62995 Trooper HERMAN, Walter William 3 C.A.C.R.U.	1st Charge Army Act Sec 6 (2) para (f) WHEN A SOLDIER ACTING AS SENTINEL (ON ACTIVE SERVICE) LEAVING HIS POST WITHOUT ORDERS FROM HIS SUPERIOR OFFICER.	Not Guilty	Guilty Sentenced to undergo Detention for a period of Thirty (30) days. 29 May 43 Alton L Bettsgate Major	Confirmed JJR Confirmed JJR

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— No.

(Signed) [illegible] Brigadier
Commanding 2nd Group, C.A.C.R.U.

(Signed) Alton L Bettsgate, Major
Convening Officer (*c*) — *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than [illegible] to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the 29th day of May 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B.** Certificate of President as to proceedings.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The Interpreter)~~
4. The officers under instruction)

*Omit if not applicable.

were duly sworn.

Signed this 29th day of May 1943.

Alton L Bettsgate, Major
President of the Court Martial.

C. Certificate in case of death sentence.

*See footnote (b) on page 762 M.M.L. 1929. ~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this — day of — 19 —~~

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barracks until further order.~~)

Signed this 1 day of June 1943.

[illegible] Brig.
Confirming Officer.

Promulgated and extracts taken in the case of H62995 Tpr. Herman W.W.

(*a*) (Dated) 2 Jun 43 (Signed) [illegible] Maj. Capt & Adjt. 3 C.A.C.R.U.

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23572) W1.46179/800 50,000 7/42 A.& E.W.Ltd. Gp.698

CHARGE SHEET

The accused, H62995 Tpr Walter William HERMAN on the strength of No. 3 Canadian Armoured Corps Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

1st Charge
A.A. 6 (2) Para (f)

WHEN A SOLDIER ACTING AS SENTINEL (ON ACTIVE SERVICE) LEAVING HIS POST WITHOUT ORDERS FROM HIS SUPERIOR OFFICER,

in that he

at 3 C.A.C.R.U. on 16 May 1943, after being posted as a sentry on No. 4 Post, Unit Guard, left his post without orders from his superior officer.

"W.W.HALPENNY" Lieut.-Col.
Officer Commanding
No. 1 Training Wing
No. 3 C.A.C.R.U.

In the Field
18 May 43

To be Tried By F.G.C.M.

(H.Rutherford) Brigadier
Comd "F" Group, C.A.C.R.U.

In the Field
27 May 43

Arthur S. Pettypiece Major
President

MEDICAL OFFICER'S REPORT

I certify that No. H-62995 Tpr. Herman, W.W.
of #3 C.A.C.R.U. is in a Fit state of health,
and Fit. to undergo Trial by Court martial.

J. A. Patterson Capt RCAMC
Medical Officer
MO # 3 C A C R U.

Station FIELD

Date 29 May 1943

Arthur S. Nettzpain
Major

M. F. B. 246
[illegible]

MEDICAL OFFICER'S REPORT

I certify that No. H-62995 Tpr. Herman, W.W.
of #3 C.A.C.R.U. is in a Fit state of health,
and Fit. to undergo Trial by Court martial.

J. A. Patterson Capt RCAMC
Medical Officer
MO # 3 C A C R U.

Station FIELD

Date 29 May 1943

M. F. B. 246
[illegible]

Re ~~F.G.C.M.~~
H.62995 Tpr Herman, W.W.
3 CACRU.

1. The court was of the opinion that the offence committed by the m/n might have been adequately dealt with by his CO even if it meant stretching the intention of either A.A. Sec 40 or A.A. Sec 15(1).

2. In view of the fact that the CO of the accused did not choose to deal with the offence himself, the Court rendered the minimum sentence required to support the choice of the C.O.

3. In my estimation, this is an instance in which the power of the Confirming Officer to reduce sentences might be exercised.

Arthur S. Pettapiece
(A.S. Pettapiece) Major,
President of the Court.

H.Q.C.R.U.,
31 May 43.

To Confirming Officer
Please note that the initials of the
Lieut. on the Court are L.H. instead of L.M.
which appears on the first page of the Convening Order.
Arthur S. Pettapiece Major
President

Recd
Orderly Sergeant
29 May 43

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT 3 C C R 4 H.Q. Blackdown, Camt.
ON THE 29th DAY OF May 1943

The accused H.6.279.5. Tpr. Herman, W.W. ....Unit. 3 C A C R.H. .....

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Maj. A.J. Lethbridge ....Unit. H.Q. C.R.H. .....

Members Maj. J.F. Longford .....Unit. 2 C A C R.H. .....

A.F.S.M. Harris .....Unit. 2.C.A.C.R.H. ....

The officers under instruction are duly sworn:-

Lt. F.B. Allen .....Unit. 2 C A C R.H. .....

~~.....Units.....~~ HP

Prosecutor Lt. J.J. Pitt .....Unit. 3 C A C R.H. .....

Defending Officer Lt. B. Benoit ...Unit. 3 C A C R.H. .....

The charge sheet is signed by the President and the accused is arraigned.
~~The accused pleads guilty to the charge(s) and R.P. 35(B)~~ HP
is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFR 555 and MFM 6.
The Court complies with R.P. 46(B). AFB 296

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
(b) Calls witness as to character.
(c) Calls witnesses in mitigation of punishment.
(d) Addresses the Court by his Defending Officer.

The Court is closed to consider the sentence.

~~SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER~~ HP

The accused having pleaded "Not Guilty" to the charge,
R.P. 39(A) is complied with
The Prosecutor proceeds to call witnesses.

1st Witness for Prosecution — H 26244 A/Sgt. Wood, R. J. of 3 CH CR U

having been duly sworn states.

I was on duty Sgt. on 16 May 43. At about 2245 hrs on that day, accompanied by the orderly officer I went on a tour of the sentry posts. There was no sentry present at No 4 post and we waited for him to return until 2300 hrs. About 1302 I saw the accused in another part of the camp coming from his post. I placed him under arrest and reported the matter to the guard commander. He was about 250 x away from his post at 2302 hrs.

No Cross-examination

By the Court. I checked with the guard commander to see if the accused was the sentry at that post at that time, and from his words it was clear that he was the sentry.

2nd Witness for Prosecution — Lieut. R. A. Finlayson, No 3 CH CR U. having been duly sworn, states.

On 16 May 43 whilst orderly officer, I found

Sgt

(5)

occasion to visit No 4 during Post at about 9.45 hrs.
There was no sentry on duty. I found the matter was to the duty Sgt, A/Sgt. Wood, after I visited some huts for the sentry to show up. Later upon information received, the I ~~said~~ omitted that a charge against the accused. H.P. should be laid

No Cross examination.

Prosecution is closed.

R.P. 40(2) is complied with

The Defence proceeds to call witnesses

1st Witness for Defence — The accused having been duly sworn, states:

I left my post because I had to go to the latrine in a hurry. I tried to get someone else to replace me. There was other sentries other than No 4 Post. I did not go all to them because they had their own duties to do. I could not leave and a latrine close to my post because the only one that was close was locked. It was out to my own block of buildings. I stayed away from my post only for the time required to relieve myself, about 10 minutes.

I attended Church Parade with the guard commanded by the Q.M. Sgt. Parade should be released at 8.30 hrs. I was on my way back to my post when I met the orderly Sgt. He did not order me off my post. I offered him no explanation at the time but later when I had to explain to the Adjt. I told him. I then returned to my post until I was relieved.

Cross-examined

The first letter I read the time looked as if it may be my post. The letter I actually used was about 30 away I admit I might have used the letter in the N.C.O.'s Mess but I was in a hurry and I looked at my watch as I knew what time I had to be at 3rd R.C.H.Q. I have only been a guard duty 3 or 4 times. I never had a party to be supposed to have this post.

Adjourned to 2 p.m.

Prosecutor makes a final address (attached hereto).

Defending Officer replies. (attached hereto).

The Court is closed for consideration of finding.

The Court is re-opened and the Prosecutor produces the MFP 355 and MFP 76 of the accused

Adjd

(5)

The Defense makes no plea in mitigation and calls no character witnesses.

The Court is closed for consideration of sentence.

Asst. Adjt.
Major

Mailing address of the forgiveness
on the east of H 62995 Jno Herman
W. W.

I wanted this to print out to
the east to that the boundary runs
a considerable distance away from
what is to you. The ordinary 1/2 sq
here 250. I will let you
know when the

Case: H 62995 Tpr. Herman, WSD. in Strength of No. 3 CACRU.

Reply of defending officer.

Address ~~in extenuation of punishment~~

The Court has been given evidence of the absence of the accused from his post without having secured permission to do so or having been regularly relieved. By pleading not guilty the accused does not intend to deny these facts. But he wants to establish the total absence of formal intention to leave his post without attempting to do it in a manner that was not prejudicial to his duties.

To support this contention may I summarize the concluding factors as implied by the accused in his sworn statement.

Before leaving his post the accused looks for a place of relief in the immediate neighborhood of his beat — He does not call other sentries because he knows they can't help him — He is away during is quite only — He returns to his post by himself — Indecision prevents him from giving to the orderly sergeant — Explanations of ~~his absence~~ for being absent from his duties — for all practical purposes he thinks that due to circumstances ~~he~~ attempt to go back to his post in the shortest time possible is preferable to any prolongation of absence by this asking permission to be relieved from guard.

The ~~offence~~ charge ensues and it is made on solid grounds, but the offense is so unintentional that it might only reveal a slight tendency from the part of the soldier to underestimate the importance of sentry duties even in the absence of immediate danger from enemy action. — Signed: [illegible]

HEAD QUARTERS "B" GROUP
CANADIAN REINFORCEMENT UNITS

No. 3 ARMOURED CORPS.
FILE 5-8-1 REG. NO. 512
MAY 28 194[illegible]
REINFORCEMENT UNIT,
C. A. O.

B3/5-4-5
27 May 43

Major A.S. Pettapiece
H.Q., C.R.U.

DISCIPLINE - COURTS MARTIAL
R 62935 Tpr HARMAN W.W., 3 CACRU
D 76792 Tpr LEVESQUE A.J., 1 CACRU

1. A Field General Court Martial composed as under will assemble at 3 CACRU at 0930 hours Saturday, 29 May 43 for the trial of the a/m soldiers and any other that may be brought before the Court.

PRESIDENT

Maj A.S. Pettapiece — C.R.U.

MEMBERS

Maj J.G. Perrigard	CAC	2 CACRU
Lt L.M. Davies	CAC	2 CACRU
Lt L.S. Payne (Relief Member)	(IASC)	3 CACRU

2. A.F.A.3 and all supporting documents in such case will be handed over to the President of the Court by the Prosecuting Officers the morning of the trial.

3. The accused, prosecuting and defending officers will be given notice thereof and all witnesses will be warned to attend by Officers Commanding units concerned.

4. Officers Commanding CACRUs may delegate an officer under instruction.

5. 3 CACRU will arrange a Court Room and provide a Court Orderly and a Court Stenographer.

[illegible] Lieut.-Colonel.
Commander "B" Gp, C.R.U.

WW/JD

Copy to: 1 CACRU
2 CACRU
3 CACRU

A SUMMARY OF EVIDENCE IN THE CASE OF H62995 Tpr. Herman, W.W., on the strength of No. 3 CACRU.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION

H26244 A/Sgt. Wood, A.J., on the strength of No. 3 C.A.C.R.U., a soldier of the Canadian Army Overseas, having been duly sworn states:-

On the 16th May 1943 I was on duty as unit orderly sergeant and at 2245 hrs. of that date, in company with the unit orderly officer, I visited post #4 of the unit guard. This post is the vehicle park. We found no sentry present and after making a search of the immediate area and remaining at said post until 2300 hrs. I went in search of the guard commander. As I approached barrack block #2 I met the accused and questioned him. I asked him if he was on duty at the vehicle park and he replied that he was. I then asked him for an explanation of his leaving his post. He offered no excuse but admitted that he had been in barrack block #2. After duly warning him of the importance of sentry duties I placed him under open arrest, Sir.

The accused declines to cross-examine this witness.

A Wood A/Sgt.
A/Sgt. Wood, A.J.

SECOND WITNESS FOR THE PROSECUTION

Lieutenant R.A. Finlayson on the strength of No. 3 C.A.C.R.U., an officer of the Canadian Army Overseas, being duly sworn states:-

On the 16th May 1943 I was on duty as orderly officer. At about 2245 hrs. of this date I found no sentry on duty at unit guard post #4. The orderly sergeant and I searched the post area for about 10 minutes without finding the sentry. I then instructed the orderly sergeant to find the guard commander and to place the sentry under open arrest. On my return to the orderly room I ascertained that the orderly sergeant had carried out these orders and I reported the incident on my daily report form.

The accused declines to cross-examine this witness.

R A Finlayson Lieut
Lieut. R.A. Finlayson

The accused was cautioned as follows:-

Do you wish to make any statement or give evidence on oath? You are not obliged to say anyting or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declined to make any statement or to give evidence.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure 4(c), (d), (e), and (f) have been complied with.

Allan N. Tweddell Lieut.

A.N. Tweddell Lieut.
Officer detailed to take
Summary of Evidence

In the Field
18 May 43

CHARGE SHEET

The accused, H62995 Tpr Walter William HEIMAN on the strength of No. 3 Canadian Armoured Corps Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

1st Charge
A.A. 6 (2) Para (f)

WHEN A SOLDIER ACTING AS SENTINEL (ON ACTIVE SERVICE) LEAVING HIS POST WITHOUT ORDERS FROM HIS SUPERIOR OFFICER,

in that he

at 3 C.A.C.R.U. on 16 May 1943, after being posted as a sentry on No. 4 Post, Unit Guard, left his post without orders from his superior officer.

"W.W.HALPENNY" Lieut.-Col.
Officer Commanding
No. 1 Training Wing
No. 3 C.A.C.R.U.

In the Field
18 May 43

A SUMMARY OF EVIDENCE IN THE CASE OF H62995 Tpr. Herman, W.W., on the strength of No. 3 CACRU.

The Commanding Officer directs that the evidence be taken on oath.

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The accused declines to cross-examine this witness.

A Wood A/Sgt.
A/Sgt. Wood, A.J.

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Lieutenant R.A. Finlayson on the strength of No. 3 C.A.C.R.U., an officer of the Canadian Army Overseas, being duly sworn states:-

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The accused declines to cross-examine this witness.

R A Finlayson Lieut
Lieut. R.A. Finlayson

The accused was cautioned as follows:-

Do you wish to make any statement or give evidence on oath? You are not obliged to say anyting or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declined to make any statement or to give evidence.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure 4(c), (d), (e), and (f) have been complied with.

Allan N. Tweddell Lieut.

A.N. Tweddell Lieut.
Officer detailed to take
Summary of Evidence

In the Field
18 May 43

No. H062995 Name HERMAN, Walter William Sqn., Battery, or Company | Corps Cdn For. Corps. Date of enlistment 28/11/41 | C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.R. 127) 40/P & S/136 (2637)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Mar Lodge	8/4/42	Pte	Nil	Sec. 40 A.A.	C.S.M.Ellis L.E.	72 hrs Det.	9/4/42	Major J.D.Russell	
Mar Lodge	1/6/42	Pte		Sec. 40 W.O.A.S. Appearing on parade unshaven. Making a false statement to a superior officer.		Remanded WT			
					Cpl. Mockler, Cpl D.J.Riley Pte Hopkins.	10 days CB	2/6/42	Major J. D. Russell	
Mar Lodge	2/6/42	Pte		A.A. Sec. 15(2) Absent off duty.		10 days CB	3/6/42	Major J. D. Russell	
Mar Lodge	24/1/43	Pte		A.A. Sec. 15 A.W.L. 15 hrs 15 mins.	Sgt Hutchins L.H.J. Cpl Riley. D.J.Forf.	7 days CB 1 days pay.	25/1/43	Major J. D. Russell	
Field	17/4/43	Tpr.		W.O.A.S. Conduct to the prejudice improperly dressed. Sec. 40 A.A.		Documentary 7 days C.B.	28/4/43	Major J. A. Meindl.	

Certified a true copy
18 May 43
"H.A.Fowler" Lieut.
Adjt. 3 C.A.C.R.U.

(P.T.O.)

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H62995	Trooper	Walter William HERMAN	3 CACRU

1. The following is a fair and true summary of the entries in the Conduct sheets / Service and General [illegible] of the accused, exclusive of convictions by a Court-Martial or a Civil Court, [illegible] of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.W.L.	2 times	times
For Conduct to the prejudice	2 times	times
For Improperly dressed and making false statement	1 times	times
For to superior	times	times
[illegible]		times

[illegible]

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

[illegible]

or,

[illegible]

3. The accused is not under sentence at the present time.

[illegible]

4. The accused has been in confinement awaiting trial on the present charges, for N.A. days in civil custody, and N.A. days in Air Force military custody, making a total of N.A. days in custody, of which N.A. days were spent in hospital.

5. The present age of the accused according to his [illegible] attestation paper is 23 Aug 1919

6. The date of his [illegible] specified in his [illegible] attestation paper 28 Nov 1941

7. The service which the accused is allowed to reckon towards discharge is from 28 Nov 1941

8. The accused is entitled to reckon N.A. service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no [illegible] military decoration, or [illegible] military reward [illegible]

[illegible]

LIST OF WITNESSES IN THE CASE OF H62995 Tpr. Herman, W.W.

LIST OF WITNESSES FOR THE PROSECUTION

H26244 A/Sgt. Wood, A.J. — No. 3 CACRU

Lieutenant R.A. Finlayson — No. 3 CACRU

LIST OF WITNESSES FOR THE DEFENCE

NIL

Dated in the Field this 18th day of May, 1943.

(G.DODDS), Lieutenant
Adjutant
No. 1 Training Wing
No. 3 C.A.C.R.U.

APPENDIX E

I, H.62995, Trooper WALTER WILLIAM HERMAN, desire to have an Officer assigned to represent me at my trial by Court-Martial.

(I desire the services of LIEUTENANT B. BENIOT if he is available.)

(Signature)..... Herman W.W.

May 26th, 1945.

RRR 99
PTE HERNDON GC.

RECORDED AT CMHQ IN AB 160

RECEIVED 1 JUL 1944 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CF AB9 (In lieu of AFA 39) W.T. S.B./1698 (4950) 4/38B

Convened by Order of Brig GSN Gostling E D Comd "A" Gp CRU dated 22 Jun 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-77390	Pte		George Charles	HERNDON	2 CIRU CIC

PROCEEDINGS REVIEWED 10 Jul 44

Capt Evan Deacon Capt

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 27 June 44 HWS

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3) HWS

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1610 hours trial commences. HWS

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ HWS

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

~~A5. President to accused: Do you object to ..... as interpreter? Ans .....~~

The Interpreter is sworn.(1) ~~Do you object to ..... as shorthand writer? Ans .....~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	H W SMITH	1 CIRU
Member	Capt	C. H. Jardine	2 CIRU
Member	Lt	B.G. McGill	2 CIRU
Waiting member ~~Reserve~~	Capt	G.F. Reff	2 CIRU
Prosecutor	LIEUT.	W.L. LISCOMBE (ALGONQUIN REGT)	2 CIRU
Defending Offr	LIEUT.	J.J.M. BERTRAND (C.I.C.)	2 CIRU

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused H77390 Pte HERNDON, GC. before arraignment make(s) (no) (~~a~~) plea (s) Nil (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule. HWS

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn, for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or recalling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 2, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused H-77390 Pte George Charles HERNDON, C.I.C., on strength of 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
SECT 9 (1)
ARMY ACT

WHEN ON ACTIVE SERVICE DISOBEYING, IN SUCH A MANNER AS TO SHOW A WILFUL DEFIANCE OF AUTHORITY, A LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR OFFICER IN THE EXECUTION OF HIS OFFICE

in that he

in the Field, at approximately 0720 hrs on the 14th day of June 1944, when personally ordered by B-67558 Cpl. McDougall, E. of 2 Canadian Infantry Reinforcement Unit, his superior officer, to get a bucket and brush and start scrubbing the floor of the Detention Barracks, did not do so, saying : "Fuck it" and upon being duly warned, saying "I'm not scrubbing any floor," or words to that effect.

In the Field
21 June 1944

(M.K. GREENE) Colonel
Commanding 2 C.I.R.U.

To be tried by Field General Court Martial.

Field
22 Jun 44

(G S N Gostling) Brig
Comd
"A" Gp Cdn Rft Units
C A (O)

KJS.

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA8)
40/FMN/1097 (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, see RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court, RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-77390	Pte		George Charles	HERNDON	2 CIRU CIC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (XXX) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 Jun 44 endorsed by me, (XXXXXXXXXXXXXXXXX), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (XXXXXXXXXXXXXXXX

RECORD OF PROCEEDINGS OF A FIELD-GENERAL COURT-MARTIAL
In the case of,
H-77390 Pte. George Charles HERNDON, Canadian Infantry Corps, on strength of No. 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

FIRST WITNESS: for the PROSECUTION

B-67558 Cpl. E. McDougall, sworn, states:
I am from "A" Wing, 2 C.I.R.U., and a member of the regimental police of 2 C.I.R.U., and recognize the accused, Pte. Herndon, G.C.
At approximately 0720 hours, 14 June 44, I ordered S.U.S. Pte. Herndon, G.C. to get a bucket and a brush and start scrubbing the floor, and he answered; "Fuck it." I then warned him it was an order and that if he didn't do it, he would be charged. He answered, "I don't care, I am not scrubbing any floor or words to that effect." I then hesitated a few moments. He made no effort to start scrubbing the floor. I then placed him on charge.

Cross-examined by the Prosecutor:
Q.1 - Did you hesitate to give the accused an opportunity to obey the order?
A.1 - Yes.
Q.2 - How much opportunity did you give him?
A.2 - About 15 seconds.

Re-examined by the Defending Officer:
Q.1 - Did you give the accused a direct order?
A.1 - Yes.
Q.2 - Did you mention his name?
A.2 - Yes.
Q.3 - How many men were there at the time?
A.3 - About ten.
Q.4 - Was Cpl. Davis with you?
A.4 - He was behind me.
Q.5 - Where behind you?
A.5 - I was standing inside the cell door and Cpl. Davis was standing right behind me in the doorway.
Q.6 - Did you hesitate before placing the charge?
A.6 - Yes.
Witness states there was no possibility of mistake as people are always detailed for the jobs.
R.P.82(B) complied with.

SECOND WITNESS: for the PROSECUTION

E-103149 Pte. R.H. Davis, sworn, states:
I am a member of "B" Coy., 2 C.I.R.U. On 14 June 44 I was a member of the regimental police 2 C.I.R.U. I recognize the accused S.U.S. Pte. Herndon, G.C. On 14 June 44 at approximately 0720 hours, I was on duty in the Guard Room, when Cpl. McDougall ordered S.U.S. Herndon to wash the floor. He answered "Fuck it." Cpl. McDougall warned him that it was an order and that he would be placed on charge if it was not carried out. He said, "I don't care, I am not scrubbing any floor." Cpl. McDougall allowed him approximately 2 (two) moments to make up his mind. He still refused. He was then placed on charge by Cpl. McDougall.

Cross-examined by the Prosecutor:
Q.1 - Do you remember the words of the order given?
A.1 - No.
Q.2 - Do you remember whether he mentioned Herndon by name?
A.2 - I don't remember whether he mentioned his name or pointed him out.
Q.3 - How long was he given to carry out the order?
A.3 - Approximately 90 (Ninety) seconds.

Re-examined by the Defending Officer:
Q.1 - Were you in the room where this happened?
A.1 - No, I was just behind the Cpl. outside the door.

HWS

RECORD OF PROCEEDING OF A FIELD-GENERAL COURT-MARTIAL

in the case of,

H-77390 Pte. George Charles HERNDON, Canadian Infantry Corps, on strength of No. 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

SECOND WITNESS (Continued) for the PROSECUTION

Q.2 - Could you see the accused?
A.2 - No.
Q.3 - Are you sure you heard the words "Fuck it"?
A.3 - Yes.
Q.4 - How did you recognize Pte. Herndon's voice if you couldn't see him?
A.4 - I can't say, but I knew it was at the time.
Q.5 - Could you see anyone inside the room?
A.5 - Yes.
Q.6 - Could these people inside the room see you?
A.6 - Yes.

R.P.82(B) complied with.

FIRST WITNESS: for the DEFENCE B-58384 Pte. Dallas, G.F., sworn, states:

On 14 June 44 I was in the Guard Room. I was standing inside the door of the cell room and Cpl. McDougall came into the room. He proceeded toward the centre of the room and said: "Two men get buckets and brushes and scrub the outside office floor." I then heard him say, "This is an order." He turned around and went back into the office.

Cross-examined by the Prosecutor:

Q.1 - Did you hear him give a direct order to Pte. Herndon, mentioning his name.
A.1 - No.
Q.2 - Do you remember what Pte. Herndon said during that time?
A.2 - I heard the accused say to another man,"To hell with it, I won't scrub that floor," or words to that effect.
Q.3 - Could there be any chance of misinterpretation of that order?
A.3 - Yes.
Q.4 - Why?
A.4 - The room was fairly dark and the light was out and as a rule the N.C.O., who comes into the room asks for volunteers.
Q.5 - Did you see Cpl. Davis any where?
A.5 - No.
Q.6 - Where were you?
A.6 - I was standing about two feet inside the door looking toward the office.

Re-examined by the Defending Officer:

Q.1 - When Cpl. McDougall gave the order, who was he looking at?
A.1 - He could have been looking at anyone in the room.
Q.2 - Why do you say that he could have been looking at anybody?
A.2 - Usually men are willing about, when N.C.O. asks for volunteers and any two, step out.
Q.3 - Where was Pte. Herndon when Cpl. McDougall gave the order?
A.3 - At the far side of the cell, opposite the door.
Q.4 - There were two witnesses swore they never asked for volunteers, but that men were detailed. Would you say those witnesses were not telling the truth?
A.4 - In my own opinion, yes.
Q.5 - When you heard Pte. Herndon say he would not scrub the floor, was Cpl. McDougall present in the room?
A.5 - Yes.

W.H.S.

RECORD OF PROCEEDING OF A FIELD-GENERAL COURT-MARTIAL
in the case of,
H-77390 Pte. George Charles HERNDON, Canadian Infantry Corps, on strength of No. 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

FIRST WITNESS (Continued)
for the DEFENCE

Q.6 - Did you say that Cpl. Davis was not there?
A.6 - He was not within my sight.
Q.7 - Would you say that he was not telling the truth when he states that he was just outside the doorway.
A.7 - Yes.

R.P.83(B) complied with.

SECOND WITNESS: A.68232 Pte. Koobs, F.N., sworn, states:
for the DEFENCE

I was in detention room on 14 June 44.

Cross-examined by the Prosecutor:

Q.1 - Do you remember if Cpl. McDougall gave a direct order to Pte. Herndon.
A.1 - No.
Q.2 - Did Pte. Herndon answered the Cpl. "Fuck it."?
A.2 - I heard him say, "to hell with it" or words to that effect.
Q.3 - Did he say that to the Cpl.?
A.3 - No he said that to me.
Q.4 - How do they detail men for work in Guard Room?
A.4 - They usually ask for volunteers.
Q.5 - Was the order given to any particular person in the room.
A.5 - No.
Q.6 - What time of day did this happen?
A.6 - About 0730 hours.
Q.7 - Was Cpl. Davis within your sight?
A.7 - No. I was further back in the room.
Q.8 - Do you remember the wording of the command?
A.8 - No.

Re-examined by the Defending Officer:

Q.1 - Who did Cpl. McDougall give the order to?
A.1 - He didn't designate any special one.
Q.2 - Two other witnesses have said under oath that they don't ask for volunteers for jobs, they detail men. Would you say these two witnesses are not telling the truth?
A.2 - For these sort of jobs they don't designate people. They only designate them for outside jobs.
Q.3 - Do they always ask for volunteers for inside work?
A.3 - Yes.
Q.4 - From your position well back in the room, could you see through the doorway?
A.4 - No.
Q.5 - Could Cpl. Davis be there and you not see him?
A.5 - Yes.
Q.6 - When Pte. Herndon said he would not scrub the floor, was Cpl. McDougall in the room?
A.6 - He was standing in the doorway.

R.P.83(B) complied with.

THIRD WITNESS: A.23406 Pte. Jones, R.C., sworn, states:
for the DEFENCE

On 14 June 44, I was in detention barracks.

Cross-examined by the Prosecutor:

Q.1 - What happened on Morning of 14 June 44?
A.1 - After breakfast Cpl. McDougall came in and he asked for two volunteers to scrub the floor in the office. No one answered him. I heard Pte. Herndon, who was walking with one of the boys say, "To hell with it, I don't want to do it."

AJS.

RECORD OF PROCEEDING OF A FIELD-GENERAL COURT-MARTIAL
in the case of,
H-77390 Pte. George Charles HERNDON, Canadian Infantry Corps, on strength of No. 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

THIRD WITNESS (Continued)
for the
DEFENCE

Then Cpl. McDougall said this is a direct order and he walked out.
Q.2 - Where were you standing in the room?
A.2 - I was right near the doorway.
Q.3 - Did you see Cpl. Davis?
A.3 - NO.
Q.4 - What is the method used in the detention barracks for detailing work?
A.4 - They always come in and ask for volunteers. Pte. Herndon did not volunteer beacuse on that morning there was only one table and one bench to eat off that morning, and Pte. Herndon had to eat from the floor.
Q.5 - How much time elapsed before Cpl. McDougall left the room after saying this is an order?
A.5 - It was immediate. He turned and walked right out.
Q.6 - Was there a charge laid that morning?
A.6 - Pte. Herndon was charged this morning.
Q.7 - Was he charged at that moment?
A.7 - No.

Re-examined by the Defending Officer:
Q.1 - Did you say Cpl. McDougall asked for volunteers to do the work?
A.1 - He usually comes in the room and doesn't designate anyone. He says two volunteers to do whatever work is to be done.
Q.2 - Does he always ask for volunteers?
A.2 - He does for inside work.

Cross-examined by the Prosecutor:
Q.1 - If a man didn't volunteer for these jobs, he wouldn't have to do any work?
A.1 - Yes, that's right.
Q.2 - It would be quite easy then for any of the prisoners to sit back and not do any work?
A.2 - Yes, that's right.
Q.3 - Do you volunteer?
A.3 - I usually volunteer to sweep out the office but I am not told to do it.
Q.4 - Why do you volunteer to work if you don't have to?
A.4 - It is a chance to get a little bit of exercise and to get out into the other room and break the monotony.
Q.5 - Do you like scrubbing floors?
A.5 - No.
Q.6 - Yet you volunteer?
A.6 - I volunteer for sweeping.
Q.7 - When Herndon said, "To hell with it" was Cpl. McDougall in the room?
A.7 - He was in the doorway.
Q.8 - You heard Pte. Herndon say, "To hell with it." Who was he talking to?
A.8 - To the chap he was walking with.
Q.9 - Did he say it in a loud voice?
A.9 - No, very low. I could hardly hear it myself.
Q.10 -How far would he be from Cpl. McDougall at the time?
A.10 -Between five or six yards.
Q.11 -How far were you from from Cpl. McDougall?
A.11 -I was practically next to him.
Q.12 -You could hear the reply alright?
A.12 -Yes.

Wed.

RECORD OF PROCEEDING OF A FIELD-GENERAL COURT-MARTIAL
in the case of,
H-77390 Pte. George Charles HERNDON, Canadian Infantry Corps, on strength of No. 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

THIRD WITNESS (Continued)
of the
DEFENCE

Q.13 - And so could Cpl. McDougall?
A.13 - If his hearing was as good as mine, he could.
Q.14 - Then Cpl. McDougall immediately walked out?
A.14 - He said this is an order and then walked out.
Q.15 - Did Herndon scrub the floor?
A.15 - No.
Q.16 - Where was Cpl. Davis at this time?
A.16 - I don't know Cpl. Davis, and I didn't see anyone there. I could see right through to the entrance and there was none there.
Q.17 - Are you saying Cpl. Davis wasn't there or that you didn't see him?
A.17 - I didn't see him.

Re-examined by the Defending Officer:

Q.1 - Do you always volunteer, or are you detailed for work in Guard Room?
A.1 - I always volunteer.
Q.2 - Is it possible that anyone could have been in the doorway, that you couldn't see.
A.2 - No.
Q.3 - Is it possible that someone in the next room would have heard what was said in the cell-room?
A.3 - No. I don't think so.

R.P.83(B) complied with.

Closing Address by the Prosecution

The defence of the prisoner in this case seems to be that when ordered to scrub the floor he did not say, "Fuck it", he said, "To hell with it." The witnesses produced by the defence, all admit that an order was given although there is some talk of a volunteer system. However two of the witnesses admitted that they heard Cpl. McDougall say "This is an order." The best witness as to who was spoken to is Cpl. McDougall himself, who stated that he mentioned Herndon by name and I submit to the court, that it is highly unlikely that in a Guard Detention Room an N.C.O. in charge detailing fatigues would merely ask for volunteers and allow those who did not feel like working sit back and do nothing. The fatiques in the Guard Detention Room are not designed to be attractive to the inmates. As to the whereabouts of Cpl. Davis, who states that he was just outside the doorway, none of the defence witnesses said that he was not there but merely that they did not see him. Cpl. Davis or Cpl. McDougall would have little to gain by coming before a court-martial and making these statements on oath, if they were not in fact true. None of the defences said that Pte. Herndon was not given time to carry out the orders.
They further admit that he said he would not scrub any floors. It may be that he was walking beside someone when he said it, but Jones could hear it at the other side of the room. It was said with the deliberate intention that Cpl. McDougall should hear. If Pte. Herndon was not the one detailed to do the work, why should he alone announce that he had no intention of doing it when, no doubt it is very unpleasant task. Two relisble witnesses have said that they heard Herndon use the words, "Fuck it." The witnesses for the defence have said only that they did not hear it, and that after a series of very leading questions, which the defending officer saw fit to assist his witnesses in giving the answers he wanted.

HQS.

Defence closing address ①

Mr President,

Gentlemen Members of this Court,

The case for the prosecution has closed without bringing the conviction wanted of the accused's culpability. However, the evidences of the witnesses have confirmed the beliefs I had that Pte Herndon is not guilty of the charge as read.

On the morning of the alleged offence, the soldiers in detention had been ordered to eat in their living quarters. They were ten men. But due to a lack of care, there was only one table and one bench provided for the whole lot so that most of the men had to eat on the floor. The room is dark as light only flows in from the open door.. It is permissible to believe that when giving an order, Cpl McDougall might have addressed Pte Herndon but due to the almost complete obscurity, the accused and his companions did not know to whom that order was given.

As to the use of insulting words for an answer, I doubt it. I understand that the language of Shakespeare, when spoken in Detention Rooms, gains in color and energy

M.I.R. 2 C.I.R.U.

This is to certify that I have examined 477390 HERNDON, C.C. on 22 JUNE 1944 and I find him medically fit to stand Trial by Court Martial.

Medical Officer
2 C.I.R.U.

(3)

what it loses of its melody. There must be a ~~maximum~~ constant rivalry in this Academy for the best depicting adjective and the fiercest exclamations. And Cpl McDougall whose ears should be well trained after many months in the Guard House may have thought he heard such insulting phrases.

However, Justice calls for a fair treatment and we must have a definite proof to the charge.

L/Cpl Davies whose evidence is fitting too well with that of Cpl McDougall was not in the room. Then where was he to hear what was going on? We have heard that there was a lot af noise going on and that two of the witnesses were at the door where L/Cpl Davies claims he was. And they did not see him.

If he was not in the room how could he tell from what he has not seen who was ordered to clean the floor, who answered back, what were the exact words or words to this effect, and so forth. Are his ears better trained then those of Cpl McDougall to tell from a good distance and among all the noise that Pte Herndon, among ten men, was answering. L/Cpl Davies may have inquired to Cpl McDougall of what was going on. That would become earsay evidence and be of no value to the Court.

15

HDS

When L/Cpl Davies knew that Cpl McDougall was alone among all the soldiers under sentence, why did he not go in to assist his superior NCO ? and thence contribute to the veracity of his sayings ?

Pte Herndon was waiting to be tried when this incident happened. He probably was not in the best of moods. He had been eating on the floor. That could'nt help. But to go so far as to accuse him of #wilful defiance", there is a lot to go.

Cpl. McDougall did not give a direct order mentionning Pte. Herndon's name. Pte Herndon did not use obscene words to show his contempt of the N.C.O. L/Cpl Davies was not there. We cannot pay any special attentions to his sayings.

Therefore, how could we atain the record of this soldier on so meagre evidence.

The question is this : Should a man in detention, at the mercy of his guards, be challenged abusively by who, the guards/for want of protection, league in their statements.

The provisions of the laws governing the soldiers undergoing sentences or awaiting ~~xxx~~ trial are strick enough without adding anything of our own.

The accused is now undergoing sentence for a crime he has admitted. He has a long time to wait yet before he can be of any use to our Army and finish the job he has come over here voluntarily to do.

I know that the Court shall not add to this misfortune by a doubtful verdict. Facts have failed to appear before you in a clear perfect view. I remain certain that judging to the best of your abilities, the accused need not fear because he is not guilty.

Let him finish the job he has come over here voluntarily to do.

Van Bertrand
Lt.

HLS.

PLEA IN MITIGATION OF PUNISHMENT, in the case of, H-77390 Pte. George Charles HERNDON, Canadian Infantry Corps, on strength of No.2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

We have witnessed a very sad case. This soldier is now undergoing sentence and although he is fit for actual fighting he is by misconduct in the past held up in detention. I feel that he should be given a chance for although he may have been found guilty with no doubt in your mind, the whole thing if contributing only to extend period of detention would prove of no value by not bringing a better understanding of laws governing the army.

This soldier, a volunteer has come over here to do a job and although his character may not be of the highest recommendation, he may be found of greatest help while our country is at war.

WWS.

C. [illegal] 27

First witness

B67538 Capt. McDougall, K. sworn states I am officer A [illegible] 2 C.I.R.V and a member of the regimental police 2 C.I.R.V and recognize the accused Pte. Herndon, G.B.

At approx 0720 hrs 14th June 44 I ordered P.W.S. Pte Herndon G.B. to get a bucket and a brush and start scrubbing the floor and he answered "Fuck it" I then warned him it was an order and that if he didn't do it he would be charged. He answered "I don't care I am not scrubbing any floor or words to that effect." I then hesitated a few moments, he made no effort to start scrubbing the floor. I then placed him on charge.

Q. Did you hesitate & give the accused an opportunity to obey the order

A. Yes.

Q. How much opportunity did you give him

A. About 15 secs.

Cross-exam.

Q. Did you give accused a direct order

A. Yes

Q. Did you mention his name

A. Yes.

(2) Q. How many men were there at the time
A. About 6a
Q. Was Cpl. Davis with you
A. He was behind me.
Q. Where behind you.
A. I was standing outside the cell door and Cpl. Davis was standing right behind me in the doorway.
Q. Did you hesitate before placing the key
A. Yes.
Q. Witness state there was no possibility of mistake as people are always detailed for the jobs.

Second witness

E 103147 Pte Davis R.H. sworn states I am a member of B Coy 2 C.I.R.V. On 14 June 44 I was a member of the regimental police 2 C.I.R.V. I recognize the accused S.L.S. Pte: Herndon, E.C. On 14 Jun 44 at approx 0720 hrs I was on duty in the guard room when Cpl. McDougall ordered S.L.S. Herndon to wash the floor. He answered "Fuck it". Cpl McDougall warned him that it was an order and that he would be placed on charge if it was not carried out. He said, "I don't care I am not scrubbing any floors". Cpl McDougall allowed him approx. 2 (two) minutes to make up his mind. He still refused

(2) He was then placed in charge by Cpl. McDougall.
Q. Do you remember the words of the order given
A. No.
Q. Do you remember whether he mentioned Herndon by name
A. I don't remember whether he mentioned his name or pointed him out.
Q. How long was he given & carry out the order
A. Approx 30 secs.

Cross-exam
Q. Were you in the room where the shooting occurred.
A. No I was just behind the Cpl, outside the door.
Q. Could you see the accused
A. No.
Q. Are you sure you heard the words "Fuck it"
A. Yes
Q. How did you recognize Pte. Herndon's voice if you could not see him
A. I can't say but I knew it was at the time.
Q. Could you see anyone inside the room
A. Yes.
Q. Could these people inside the room see you.
A. Yes

(4) Defence
Witness
D52284 Pte Dallas G.A. sworn
states and 14 Inniskilling Fusiliers — On
Guard room. I was standing
outside the door of the cell-room
and Cpl. McDougall came into the
room. He proceeded towards centre
of the room and said. "Two men
get buckets and brushes and
scrub the outside office floor."
then heard him say "there is no
order." He turned round
and went back into the office
Q Did you hear him give a lawful
order to Pte Herndon mentioning
his name
A. No.
Q. Do you remember what Pte Herndon
said during that time to another man
A. I heard the accused say "Go tell
with it I won't scrub that floor"
or words to that effect
Q Could there be any chance of
misinterpretation of that order
A. Yes.
Q Why.
A. Room was fairly dark and the
light was out and as a rule
the N.C.O. who comes into the
room asks for volunteers

(5) Q. Did you see Cpl. Davis anywhere
A. No.
Q. Where were you
A I was standing about two feet inside the door looking toward the office.

Cross-exam

Q When Cpl. McDougall gave the order who was he looking at
A He could have been looking at anyone in the room.
Q ——— why do you say that he could have been looking at anybody
A. Usually men are milling about when N.C.O. asks for volunteers and any two step out.
Q. Where was Pte Herndon when Cpl McDougall gave the order
A. At the far side of the cell opposite the door.
Q. There were two witnesses sworn they stated asked for volunteers but that men were detailed. Would you say those witnesses were not telling the truth.
A In my own opinion Yes.
Q When you heard Pte Herndon say he would not serve the flogging Cpl McDougall present in the room
A. Yes.

Q. Did you say that Cpl. Deane was not there?
A. He was not within my sight.
Q. Would you say that he was not letting the truck where he states that he was just outside the doorway.
A. Yes.

~~Defence~~

~~Q. [illegible]~~

Second witness (Defence)

A 66232 Pte Kosba J. A. sworn duly
Lives in detention room and is [illegible]
H.H.
Q. Do you remember if Cpl McDougall gave a direct order to Pte Herndon
A. No.
Q. Did Pte. Herndon answer the Cpl. "Fuck it"
A. Heard him say "A Hell with it"
Q. Words to that effect.
A. No he said that to the Cpl.
Q. How do they detail men for work on guard room.
A. They usually ask for volunteers.
~~Q. When Cpl. Tebbutt gave the order was it possible~~
Q. Was the order given to any particular person in the room
A. No.
Q. At what time of day did this happen
A. ~~[illegible]~~ about 0730 hrs.

(47) Q. Was Cpl Davis within speaking distance
A. No. I was further back in the room
Q. Do you remember the wording of the command
A. No.

Cross examination

Q. Who did Cpl. McDougall give them under to
A. He did not designate any special one
Q. Two other witnesses have said under oath that they don't ask for volunteers for jobs they detail men. Have you say these two witnesses are not telling the truth
A. For those sort of jobs they don't designate people. They only designate them for outside jobs.
Q. So they always ask for volunteers for inside work
A. Yes.
Q. From your position well back in the room could you see through the doorway
A. No.
Q. Could Cpl. Davis be there and you not see him
A. Yes.

Q. When Pte Herndon said he would not scrub the floor was Cpl McDougall in the room.

A. He was standing in the doorway.

Q. What is customary this [illegible] to the Cpl [illegible] to the Cook.

A. Third witness:

A23406 Pte Jones R.C. sworn states:

On 14 June 44 I was in unit detention barracks.

Q. What happened on morning [illegible]

A. After breakfast Cpl McDougall came in and he asked for two volunteers to scrub the floor in the office. No one answered him. I heard Pte Herndon who was working with one of the boys say "To hell with it I don't want to do it" Then Cpl McDougall said then it is a direct order and he walked out.

Q. Where were you standing in the room.

A. I was right near the doorway.

Q. Did you see Cpl Dennis

A. No.

Q. What - the method used in the detention barracks for detailing work always

A. They always come in and ask for volunteers. Pte Herndon did.

(4) set volunteers because on that morning there was only one table and we turned to eat off table and Pte Henderson had to eat upon the floor.

Q. How much time elapsed before Cpl McDougall left the room after saying this is an order

A. It was immediate he turned and walked right out

Q. Was there a charge laid that morning?

A. Pte Henderson was charged this morning

Q. Was he charged at that moment

A. No.

Cross-exam

Q. Did you say Cpl McDougall asked for volunteers to do the work.

A. He usually comes in the room and doesn't designate anyone. He says two volunteers to do certain work in the room.

Q. Does he always ask for volunteers.

A. He does for inside work.

Q. So you did not volunteer for that job she would not have to do any work.

A. Yes that right.

Q. It would be quite easy then for any of the prisoners to sit back and not do any work.

A. Yes. that right.

Q. Do you volunteers to sweep out the office

A. Usually volunteers but I am not told to do it

(2) Q. Why do you volunteer to work if you don't have to
A. It is a chance to get a little bit of exercise and to get out into the other rooms and break the monotony.
Q. Do you like scrubbing floors
A. No.
Q. Yet you volunteer ~~for~~ for it.
A. ~~I~~. I volunteer for sweeping.
Q When Herndon said "To Hell with it" was Cpl. McDougall in the room.
A He was in the doorway.
Q. You heard the Herndon say "To hell with it" Who was he talking to
A. To the chaplain was walking with.
Q. Did he say it in a loud voice
A. Very low I could hardly hear it myself
Q. How far would he be from Cpl. McDougall at the time
A. ~~Two~~ Six or eight yards
Q. How far were you from Cpl McDougall
A. I was practically next to him
Q. You could hear the replay although
A. Yes.
Q. And so could Cpl. McDougall.
A. If his hearing was as good as mine he could.

(11) Q. Then Cpl Mc Dougal immediately walked out
A. He said this as an order and then walked out.
Q. Did Herndon remain the floor
A. No.
Q. Where was Cpl Davis at this time?
A. I don't know Cpl Davis and I didn't see anyone there. I could see right through to the entrance and there was no one there
Q. Are you saying Cpl Davis was not where you did not see him
A. I didn't see him.

Defense
Q. Do you always volunteer or are you detailed for work in guard room.
A. I always volunteer.
Q. Is it possible that anyone could have been in the doorway that you couldn't see
A. No.
Q. Is it possible that someone in the next room would have heard what was said in the cell room
A. I don't think so.

(7) Prosecution:
The defence of the prisoner in this case seems to be that when ordered to scrub the floors he did not say that he would not do it. The witnesses produced by the defence all admit that an order was given although there is some talk of a volunteer system. However two of the witnesses admitted that they heard Cpl McDougall say this was an order. The best witness was Pte Brown who spoke to Cpl McDougall himself who stated that he understood the order to be one and I submit to the court that it is highly unlikely that in a guard detention room an N.C.O. in charge of detailing fatigues would merely ask for volunteers and allow those who did not feel like working set back and do nothing. If fatigues in the guard detention rooms were not designed to be attractive to the prisoners. As to the character of Cpl Brown who states that he does not entitle the learned counsel of the defence witnesses said that he was not there but merely that they did not see him. Cpl Brown and Cpl McDougall would have little to gain by

(13)

... evidence before a Court-Martial
... and in saying these statements are
... truth if they were not of fact
... time. None of the witnesses
... for the defence said that Pte
... Herndon was not given time
... to carry out the ordered.
... They further admit that he said
... he would not scrub any floors.
... It may be that he was walking
... beside someone when he said it
... but Jones could hear it at the other
... side of the room. It was said with the
... deliberate intention that Cpl
... Bergall should hear it. Pte
... Herndon was not the one detailed
... to do the work why should he show
... reluctance that he had no
... intention of doing it when
... no doubt it is a very unpleasant
... task. Two reliable witnesses
... have said that they heard
... Herndon make the remark "I won't
... do it". The witnesses for the defence
... here said only that they had
... not heard it and that after a series
... of very leading questions which
... the defending officer saw fit to
... assist his witnesses in giving
... the answers he wanted.

Def. Mitigation of punishment

We have witnessed a very sad case. This soldier is now undergoing sentence and although he is fit for actual fighting he is by misconduct in the past held up in detention. I feel that he should be given a chance for although he may have been found guilty with no doubt in your mind the whole thing of contributing only to extend period of detention would prove of no value by not bringing a better understanding of laws governing the army.

This soldier, a volunteer has come over here to do a job and although his character may not be of the highest recommendation he may be found of greatest help while our country is at war.

Ex. A

M.F.B. 355

22M—5-41 (372-2)
H.Q. 1772-99-620
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H-77390	Pte	George Charles HERNDON	2 C.I.R.U.

1. The following is a fair and true summary of the entries in the ~~Regimental and Squadron (Battery)~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Militia Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For ~~Sec. 19 (1)~~	3 times	6 times
For ~~Sec. 40~~	times	1 times
For ~~Sec. 6 (3)~~	times	1 times
For	times	times

~~Number of instances of gallant and distinguished conduct~~

or,

~~There are no entries in the conduct sheets of the accused~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Militia Act~~ Army Act and dispensations with trial under ~~A.A. 73~~ A.A. 73 are set out in the Schedule annexed to this statement.

~~The accused is not under sentence at the present time~~

or,

The accused at the present time is under sentence for 90 days ~~Beth~~ beginning on the 16th day of June 1944

4. ~~The accused has been in confinement awaiting trial~~ on the present charges, for ..... days in civil custody, and ..... days in military custody, making a total of ..... days in custody, of which ..... days were spent in hospital.

5. The present age of the accused according to his ~~record of~~ attestation paper is 22 yrs 11 mos. 12 days.

6. The date of his ~~enrolment~~ attestation specified in his record of ~~service~~ attestation paper 21 June 41

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

9. The accused is in possession of ~~or entitled to~~ no air force decoration, or air force reward (or is in military possession of or entitled to). State any air force decoration or ~~reward~~ military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of .....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit
..... dated ....., and in his regiment (or corps), the rank of
..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

~~Nil~~ ..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused. Number M- 77376 Rank PTE Unit
Name G. C. HERNDON of 7 C I R U Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	FIELD 16 JUNE 44	(1) AWL FROM 0600 HRS 13 MAY 44 UNTIL 1200 HRS 5 JUNE 44 AA SEC 15-(1) (2) ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE AA SEC 40	90 DAYS DETEN.	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27th day of June 1944 [signature] Capt

The above statement (with the schedule of convictions and of cases in ~~which trial~~ has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

#15

EX. 15 M.F.M. 6 4/42

No. H [illegible] Name HERNDON George Charles | Sqn., Battery, or Company | C.I.C. Corps | Date of enlistment 21-6-41 | G.C. Badges | Service or Proficiency Pay | (A.F.B. 122) 40/P & S/136 (2037) Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. Two | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Old sheet destroyed 12/12/41					
Otter Point	23/1/42	Pte	Nil	When on Active Service intentionally discharging firearms when on duty at Muff Creek A.A. Sec 6 (2)	Lt. A.L. Havard CSM Frend W.	72 hrs Detn	24/1/42	Lt-col P.H.K. Coupland	
Otter Point	1/2/42	Pte	(1)	Neglect to the prej of good order and military discipline: mounting a D.M.D. Vehicle with loaded rifle	L/Cpl L.C. Dunn	Admonished	2/2/42	Lt. Col P.H.K. Coupland	
			(2)	Neglect to the prej etc. Firing a rifle.	L/Cpl. L.C. Dunn	Admonished	2/2/42		
WORK POINT	25/2/42			Special Leave and Furlough Transport Warrant No. A 84472 issued.					
Otter Point	4/4/42	Tpr		AWL from 2200 hrs 4/4/42 to 0935 hrs 6/4/42 Absent 1 day 11 hrs 15 mins (A.A. Sec 15 (1)	Cpl McLaughlin Documentary	7 days C.B.	7/4/42	Lieut J. Hassard	Forf 2 days pay under P.R.I

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if under discn. also with trial	By whom awarded	Remarks
Otter Point	18/4/42	Pte		AWL from 1730 18/4/42 to 1600 hrs 22/4/42 Absent 3 days 22 hrs 30 mins A.A. Sec 15(1)	Cpl Willis	7 days C.B.	23/4/42	Lieut J. Hassard	Forf 4 days pay under FRI
Otter Point	27/4/42	Pte		When on Active Service disobeying a lawful command given by his superior officer in that he did not double march when personally ordered to do so. Art 149 (1) (e)	Sgt. Wilson G.T.	7 days C.B.	29/4/42	P.H. Couplandforf 7 Lt. col	days pay under FRI.
Debert	8/7/42	Pte		Special Leave and Pulo. Trans Warrant #A157043 issued.					
Debert	16/7/42	Tpr		A.W.L. from 2200 hrs 16/7/42 to 2030 hrs 17/7/42 T.A. 22 hrs 30 mins A.A. Sec 15 (1)	Tpr Fisher D.M.	7 days C.B.	18/7/42	Lieut J. Hassard	Forf 1 days Pay under FRI
Field	30/7/43	Tpr		AWL from 2359 hrs 30 July 43 till 0600 hrs 1 Aug 43 Absent 1 day 5 hrs 1 mins A.A Sec 15 (1)	Cp. Armstrong M.	7 days C.B.	6 Aug 43	Lt-col R.W. Moncel	Forf 2 days pay P.R.I.

EX. 2 M.F.M. 6 4/45

No. 77390 Name HERNDON Corp. Sqn., Battery, or Company C.I.C. Corps Date of enlistment 21/6/41 G.C. Badges Service or Proficiency Pay

(A.F.B. 122) 40/F & S/130 (2637)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. TWO — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20 Nov 43	Tpr		A.A. Sec 15 (1) AWL from 2200 hrs 20 Nov 43 until 0100 hrs 21 Nov 43 Time Absent 3 hours	Tpr Hattie Tpr Adamson	2 days C.B.	22/11/43	M.L. Willis Capt.	
Field	2 Dec 43	Tpr		A.A. Sec 15 (1) A.WL. from 2200 hrs 2 Dec 43 to 2300 hrs 2 Dec 43 Time Absent 1 hr.	Cpl Heaven Documentary	14 days C.B.	3 Dec 43	D.B. Francis Major.	
Field	18 May 44			(1) A.A. Sec 15 (1) A.W.L. from 0600 hrs 18 May 44 until 1200 hrs 5 Jun 44 (Total Absence 18 days 6 hours)	Sgt Windeyer R.C.	90 days DETENTION	16 Jun44	F.G.C.M.	19 day Pay FRI 149(1)(a) 90 days pay FRI 149(1)(b) 11 days pay FRI 149(1)(c)
				(2) A.A. Sec 40 An act to the Prejudice of good order and military discipline. Cease Arres 1200 hrs 5 Jun 44 TIT 16 Jun 44 (10 days 22hrs)	Documentary				

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Certified True copy according to documents in my possession

Consisting of two (2) sheets.

C. Bowden Capt

O.C. "D" Company

SUMMARY OF EVIDENCE

In the case of H-77390 Pte George Charles HERNDON, C.I.C. on the strength of 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

B-67558 Cpl. E. McDougall, 'A' Wing, 2 C.I.R.U. having been duly sworn states as follows:-

I am B-67558 Cpl McDougall, E. of the Regimental Police of 2 C.I.R.U. At approx 0720 hrs 14 June 1944 I ordered Pte Herndon, whom I now recognize as the accused, to get a bucket and a brush and start scrubbing the floor of the Detention Barracks. He answered "Fuck it" . I warned him that it was an order, he answered "I don't care I'm not scrubbing any floors", or words to that effect. He did not scrub the floor. I hesitated a few moments to give him a chance to obey the order and then placed him under charge.

The accused declines to cross examine the witness.

E. McDougall
Cpl McDougall, E.

SECOND WITNESS FOR THE PROSECUTION

B-103149 L-Cpl Davis, R.H. 'F' Coy, 2 C.I.R.U. having been duly sworn states as follows:-

I am B-103149 L-Cpl Davis, R.H. of 2 C.I.R.U. On 14 June 1944 I was on the staff of the R.P. of 2 C.I.R.U. I was in the Guard Room at approx 0720 hrs on 14 June 1944 when Cpl McDougall ordered Pte Herndon, whom I now recognize, to start scrubbing the floor. To this he, the accused, replied "Fuck it". Cpl. McDougall warned Pte Herndon that it was an order and he said he did'nt care he was'nt scrubbing any floor . Pte Herndon was given a few moments to make up his mind and he still refused to obey the order. He was then placed on charge by Cpl McDougall.

Cross examined by the accused,

Q.1. How did you know that I said those exact words when the arguement took place in the living quarters of the Detention Barracks when you were in the office part of the Detention Barracks?

A.1. I was right at the door and could'nt help hearing what was going on.

R. H. Davis
L-Cpl Davis, R.H.

The accused was cautioned as follows:- 'Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.'

The accused declines to make a statement and reserves his defence,

I certify that the foregoing Summary of Evidence was taken down by me in the presence and hearing of the accused and that R,P. 4 (c)(d)(e) (f) have been complied with.

In the field
21 June 1944

W. L. Liscombe
W.L.Liscombe Lieut Officer detailed to take Summary of Evidence

LIST OF WITNESSES

In the case of H-77390 Pte George Charles Herndon, C.I.C.
on strength of 2 C.I.R.U.

(For the Prosecution)

1. B-67558 Cpl McDougall, E. 2 C.I.R.U.
2. B-103149 L-Cpl Davis, R.H. 2 C.I.R.U.

(For the Defence)

None

LIST OF EXHIBITS

In the case of H-77390 Pte George Charles Herndon, C.I.C.
on strength of 2 C.I.R.U.

(For the Prosecution)

None

(For the Defence)

None

APPLICATION FOR DEFENDING OFFICER

I, H-77390 Pte George Charles HERNDON desire to have an Officer appointed to represent me at my trial by Court Martial. I desire the services of 1st, Capt Fee, or should he not be available, then 2nd, Lieut S. Fidler

In the Field
21 June 1944

G.C. Herndon
Pte G,C.Herndon

RECEIPT FOR DOCUMENTS

I, H-77390 Pte George Charles HERNDON, hereby acknowledge receipt of a true copy of the Charge Sheet in connection with the charge pending against me. I also acknowledge receipt of one true copy of the Summary of Evidence.

In the Field Time. 1620 ...hrs
21 June 1944

G.C. Herndon
Pte G.C. Herndon

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

.. NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans No Do you intend to call witnesses on your behalf ?

Ans Yes Are they witnesses as to character only ? Ans No, they will be witnesses to evidence

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1) Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copies (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes (2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 320, 562-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H77390 Pte George Charles HERNDON, 2 CIRU CIC

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 9(1)	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and on loss of list see RP 44 fn 6.)

At present under sentence for 90 days Detention (I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.) beginning on (date) 16 June 44 (1)

Time in confinement awaiting present trial: a total of ..... days, of which ..... days were spent in hospital (1). (I. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

~~150 days detention to run concurrently with the present sentence~~ To undergo detention for a period of 150 days.

(Sgd) ..... 17 June 44 (Sgd) Alb Smith Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(LO) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (I. AA 57A. Delete if not used.)

Date 8 JUL 1944 (Sgd) .....

(G S N Gosling) Brig
Commanding "A" Gp Con Rft Units CA

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
H77390 Pte George Charles HERNDON	11 July 44	

PT II DO # D/

Adjutant 2 C I R U.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

PPR132

PTE HERNDON G.C.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H77390 Pte HERNDON, George Charles 2 CIRU CIC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd AA Sec 40	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

Remains in present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which — days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for NINETY DAYS.

(Sgd) ..... 16 JUN 44 (Sgd) McALPINE MAJOR
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date 17 Jun 44 (G S N Gostling) Brig
Commanding "A" Gp Cdn Rft Units C A (O)
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
H77390 PTE GEORGE CHARLES HERNDON	18 Jun 44.	Cathcart-Jones, Capt R.C.R.

PART II ORDER No 105

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 PPP-132

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of APA3) 40/P & B/1698 (40/50) 4/38B

RECEIVED 1 JUL 1944 PROCEEDINGS REVIEWED July 3rd/44 REVIEWING OFFICER, JAG BRANCH, CMHQ

Convened by Order of Brig G S N Gostling Comd "A" CP CRU dated 14 Jun 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, frs, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H77390	Pte	George Charles	HERNDON	2 CIRU CIC

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 16 JUN 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is duly amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 10 a o hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	M S McALPINE	2 CIRU
Member	Capt	H.A. ~~ROBB~~ EDWARDS	2 CIRU
Member	Lt	L.A. MITCHELL	2 CIRU
Waiting Member ~~Reserve~~	Capt	J.T. ROBB	2 CIRU
Prosecutor	Lieut.	W.L. LISCOMBE	2 CIRU
Defending Offr	Lieut.	S. FIDLER	2 CIRU

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Int p 3.)

A8. The accused H77390 Pte HERNDON, G C before arraignment make(s) (no) ~~pleas~~ ..... (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans.....Do you intend to call witnesses on your behalf?

Ans.....Are they witnesses as to character only? Ans.....

(1. RP 115. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. NO

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement[s] as to Character and Particulars of Service(1), and certified true copy [required] of Conduct Sheet[s](2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier[s] having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement[s] and Conduct Sheet[s] and in mitigation of punishment?(1) Ans. Nil YES NSNEA

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, AAML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 5 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ... No ... (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 27(E). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused H-77390 Pte George Charles HERNDON, C.I.C. on the strength of 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas is charged with

FIRST CHARGE
SEC. 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, at 0600 hrs. on the 18th day of May 1944, absented himself without leave until he was apprehended by the Canadian Military Police at Manchester, England, at 1200 hrs. on the 5th day of June 1944.
(Total absence 18 days 6 hours)

SECOND CHARGE
SEC. 40
ARMY ACT

WHEN ON ACTIVE SERVICE AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Manchester, England, at 1200 hrs. on the 5th day of June 1944, was in possession of a document purporting to be a genuine leave pass well knowing that it was not genuine.

In the Field
11 June 1944

.....
(W.E. Greene) Colonel
Commanding 2 C.I.R.U.

To be tried by Field General Court Martial.

Field
14 Jun 44

(G S N Gostling) Brig
Comd
"A" Gp Cdn Rft Units
C A (O)

Assistant Adjutant General
Records
16 JUN 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H77390	Pte		George Charles	HERNDON	2 CIRU CIC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 14 Jun 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	M S McALPINE	2 CIRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 2 CIRU	
Lt	to be detailed by OC 2 CIRU	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	to be detailed by OC 2 CIRU	

[redacted]

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 14 Jun 44

(Signed personally. RP 105 fn 2.)

(G S N Gostling)
Brigadier (Rank.)
Commanding "A" Gp Cdn Rft Units C A (O)
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAAS (1st rev of AFAS) 40-P-A-8/1697 (4001)

(See overleaf for oaths and notes for use on trial.)

Discipline Case

PLEA OF MITIGATION

In the case of Pte. Herndon

The accused has served 3 years in the Canadian Army and has had nine charges against him and was probably browned off when he went absent.

Since then his brother who was also serving with us has crossed to France and he asks that the court be as lenient as possible and to do their best to see that he can get on a draft and rejoin his brothers "over there".

I Fiddes Lieut

M.I.R. 2 C.I.R.U.

This is to certify that I have examined H.77390 Pte Herndon H.C.

on 16 June 1944 and I find him medically fit to stand

Trial by Court Martial.

J.A. Simon Capt.

Medical Officer
2 C.I.R.U.

C

SUMMARY OF EVIDENCE

In the case of H-77390 Pte George Charles MERRIDON, C.I.C., on the strength of 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

B-52360 Sgt. R.C. Windeyer, 'D' Coy. 2 C.I.R.U., having been duly sworn states as follows:
I am B-52360 Sgt. R.C. Windeyer, and am permanent orderly sgt. of 'D' Coy. 2 C.I.R.U. At 0600 hrs on 18 May 44 I made a bed check of the company. The accused was not in his hut. I searched the company lines but could not find him. He was not on coy parade at 0730 hrs. I then reported his absence. During the period from 0600 hrs 18 May 44 to 1200 hrs 5 June 44 the accused did not answer any roll calls nor did he appear on any parades. He was absent without leave. I now recognize the accused as Pte G.C. Merridon.

The accused declines to cross-examine this witness.

R.C. Windeyer Sgt.
Sgt. R.C. Windeyer

SECOND WITNESS FOR THE PROSECUTION

806362 L/Cpl. L. Tinson, C.M.P., Manchester, England.
A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence and marked Appendix 'A'. Having regard to the expense and loss of time involved the attendance of this witness cannot in my opinion be readily procured.

W.L. Liscombe
(W.L.Liscombe) Lieut. Officer detailed to take the Summary of Evidence

The accused does not demand the attendance of this witness for cross-examination.

THIRD WITNESS FOR THE PROSECUTION

3536071 L/Cpl. F. Fishwick, C.M.P., Manchester, England.
A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence and marked Appendix 'A'. Having regard to the expense and loss of time involved the attendance of this witness cannot in my opinion be readily procured.

W.L. Liscombe
(W.L.Liscombe) Lieut. Officer detailed to take the Summary of Evidence

The accused does not demand the attendance of this witness for cross-examination.

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

In the case of H-77390 Pte George Charles HERNDON, C.I.C., on the strength of 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

The accused declined to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c)(d)(e)(f)(g) have been complied with.

In the Field
11 June 1944

St. J. Lissamb
(S.J.Lissamb) Lieut. Officer detailed to take the Summary of Evidence

SUPPLEMENTARY SUMMARY OF EVIDENCE

In the case of H-77390 Pte George Charles HERNDON, C.I.C., on strength of 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Supplementary Summary of Evidence is taken on oath.

FOURTH WITNESS FOR THE PROSECUTION

Lieut. D.I. McWilliams, 'D' Coy. 2 C.I.R.U., having been duly sworn states as follows:
I am Lieut. D.I. McWilliams, 'D' Coy. 2 C.I.R.U. and I produce certificat of apprehension of the accused whom I now recognize in accordance with Sec. 163 (1)(a), dated 6 June 44, as Exhibit 'B' for the Prosecution.

The accused declines to cross-examine the witness.

.....
(D.I. McWilliams) Lieut.

The accused was cautioned as follows: "Do you wish to make any statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence".

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Supplementary Summary of Evidence was taken down by me in the presence and hearing of the accused and that Rule of Procedure 4(c) (d) (e) (f) have been complied with,

In the Field
14 June 1944

.....
(W.L. Liscombe) Lieut
Officer detailed to take Summary of Evidence

EXHIBIT "H"

CANADIAN ARMY OVERSEAS

LEAVE PASS

Pass No. 27 Date 5-6-44

No. H77390 Rank TPR Name HERNDON G.

has permission to be absent from his unit from 1700 hrs. 6-6-44

to 1700 hrs. 14-6-44 for the purpose of proceeding to

Manchester

ORDERLY ROOM
"P"
TRNG. WING

Huston (CPO)

Orderly Room Stamp (Unit Signature Stamp)

ENDORSEMENTS

	Sec. 186(d)	R.T.O.—Station Master—Local Police

INSTRUCTIONS

1. If you are travelling with free warrant have this pass stamped or endorsed in the space provided above by the R.T.O. station-master or local police at the place where you spend your leave. If you are unable to return to your unit due to interruption of transportation facilities have it endorsed to that effect by one of these officials.

2. Arms and equipment will not be checked at railway stations except during a wait-over between trains.

3. Carry this pass and your pay book (M.H.M.) at all times while on leave.

4. **Illness on leave.**
(a) Apply to the nearest unit of the Canadian Army, or
(b) If none in the area, apply to the nearest unit of the British Army, request necessary treatment and that the O.C. communicate the facts to your unit. If unable to rejoin your unit before the end of your leave obtain a written report from the M.O. and hand to your C.O. on rejoining, or
(c) If no military unit in the area, apply to a civilian doctor or the nearest Emergency Medical Service Hospital. Obtain a letter verifying the facts and send to your C.O. at once. If unable to rejoin your unit before the end of your leave obtain a certificate and hand to your C.O. on rejoining.

5. Turn this pass in on rejoining your unit.

CFA 24
40/P & S/1509
(In pads of 100x2421)

EXHIBIT 'B'

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT SECTION 153.(1) (b).

I certify that No. 7739[illegible] Rank. Pte. Name. [illegible] W.R.,
of. No 2.C.L.R.U. Unit, was arrested at. Midland Street Manchester
at. 12.00 hours, on the 5th day of June 1944.

Signature of Provost Marshal, A.P.M. or other Officer into whose custody the above named person was taken on arrest.

[signature]
Staff Lt.
Corps of Military Police
184 M.U. Provost Company
Lancashire and Border District.

Date. 5th June 1944.

APPENDIX 'A'

CHARGE

Army Form B 252
(See King's Regulations)

CANADIAN FORCES — Regiment

No 2 C.I.R.H. — Battery / Squadron / Troop or Company

CHARGE against No. H 77390 Rank Pte

Name HERNDON. G.E.

Place ..... Date of Offence .....

OFFENCE WOAS.

(1) absent from ..... until apprehended by the MILITARY POLICE in MIDLAND ST. MANCHESTER on 5th JUNE 44 about 1200 hrs (2) Being in possession of a document purporting to be a genuine leave pass + knowing it not to be. (2) Stating a falsehood to a N.C.O. of the MILITARY POLICE

Names of Witnesses :—

806262 L/Cpl H TINSON C.M.POLICE

3536011 L/Cpl F HIGHWICK C.M.Police

Signature of O.C. Battery, Squadron, Troop or Company

154 R.Q. PROVOST COY.

Punishment Awarded .....

By whom Awarded .....

Adjutant.

P.T.O.

30267. Wt.W4949/464. 1,272,000. 2/44. K. & H., Ltd. G6574/1

Statement of **EVIDENCE** In the case of

H.77340 Pte HERNDON G.R.
"D" COY No 2 C.I.R.U.
CANADIAN FORCES
CARTHORNE NR BARNSLEY

Sir,

At MANCHESTER on the 5th JUNE 44 about 1200 hrs I was on duty in MIDLAND ST. accompanied by L/Sgt FISHWICK C.M.POLICE Where I saw the above named soldier. I asked him if he was on leave & which he replied "Yes." and produced the attached Pass. not being satisfied with this document, I cautioned him & explained to him that he would have to accompany me & C.M.P. H.Q. DALE HALL ARDWICK GREEN & verify it's statement & pass was correct. on arrival there he admitted that he was an absentee & arrested & handed him over & the NCO i/c GUARD & he detained. He was taken & wearing military uniform

MANCHESTER
5th JUNE 44

REMARKS

L/Sgt Simson 4/1994
C.M.POLICE

Sir,

I have read over & corroborate the above statement

MANCHESTER
5th JUNE 44

L/Sgt Fishwick 4/1994
C.M.POLICE

LIST OF WITNESSES

In the case of H-77390 Pte George Charles HERNDON

(For the Prosecution)

1. B-52360 Sgt R.C. Windeyer D Coy. 2 C.I.R.U.
2. 806362 L-Cpl L. Tinson, C.M.P. Manchester, England
3. 3536071 L-Cpl F. Fishwick, C.M.P. Manchester, England
4. Lieut. D.I. McWilliams, D Coy. 2 C.I.R.U.

(For the Defence)

None

LIST OF EXHIBITS

In the case of H-77390 Pte George Charles HERNDON

(For the Prosecution)

A. Leave Pass CFA 24 dated 5-6-44 in the name of the accused and valid from 1700 hrs 5-6-44 to 1700 hrs 14-6-44 and purporting to be signed by HUSTON (Maj.)

B. A certificate of apprehension of the accused dated 6 June 1944 pursuant to Sect 163 (i (jj)) of the Army Act,

(For the Defence)

None

APPLICATION FOR DEFENDING OFFICER

In the case of H-77390 Pte George Charles HERNDON.

I, H-77390 Pte George Charles Herndon, desire to have an officer assigned to represent me at my trial by Court Martial.

Pte G.C. Herndon

Pte G.C. Herndon

In the Field
11 June 44

RECEIPT OF SUMMARY OF EVIDENCE

In the case of H-77390 Pte George Charles HERNDON.

I, H-77390 Pte George Charles Herndon, hereby acknowledge receipt of a true copy of the Charge Sheet in connection with the charges pending against me. I also acknowledge receipt of a true copy of the Summary of Evidence.

Pte G.C. Herndon

Pte G.C. Herndon

In the Field
11 June 44

M.F.B. 355

22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H-77390	Pte	G.G. Herndon	2 C.I.B.H.

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets / Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For SECT. 15 (1)	3 times	6 times
For SECT. 6 (2)	times	1 times
For SECT. 40	times	1 times
For SECT. 9 (2)	times	1 times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial / a civil court, of summary awards under Air Force Act A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for X beginning on the X day of

4. The accused has been in confinement awaiting trial on the present charges, for — days in civil custody, and 10 days in Air Force military custody, making a total of 10 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is / attestation paper is 22 yrs. 11 mos.

6. The date of his commission specified in his record of service is / attestation paper is 21 June 1941

7. The service which the accused is allowed to reckon towards discharge is

8. The service which the accused is entitled to reckon for the purpose of determining his pension, etc. X

9. The accused is in possession of or entitled to no air force / military decoration, or air force / military reward (or is in possession of or entitled to). State any air force / military decoration or reward.

G.V.S.M. with Clasp

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of

1

No. H77390 Name HERNDON G.C. Sqn., Battery, or Company Cdn Inf Corps. Corps Date of enlistment 21 Jun 41 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 121) 40/P & S/136 (2651)

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. TWO Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Otter Point	23/1/42	Pte	Nil	WOAS Intentionally discharging firearms when on duty at Muir Creek A.A. Sec 6(2) (1)	Lt. A.J. Havard CSM Frend W.	72 hrs Detention	24/1/42	Lt. Col P.H.K. Coupland	
Otter Point	1/2/42	Pte	Nil	Neglect to the prej of good order and military discipline mounting a D.N.D. Vehicle with loaded rifle	L/Cpl L.G. Dunn	Admonished	2/2/42	Lt. Col. P.H.K. Coupland	
				(2) Neglect to the prej etc. firing a rifle. A.A. Sec 40	L/Cpl L.G. Dunn	Admonished	2/2/42		
Otter Point	4/4/42	Tpr		AWL from 2200 hrs 4/4/42 to 0915 hrs 6/4/42 Absent 1 day 11 hrs 15 mins A.A. Sec 15 (1)	Cpl McLaughlin Documentary	7 days C.B.	7/4/42	Lieut J. Hessard	Forf 2 days pay Under FRI

(P.T.O.)

D Revised

M.F.B. 355
22M.—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H-27290	Pte	G.G. Herndon	2 C.I.B.H.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

Conduct sheets X Air Force Act Service and General

	Within last 12 months	Since enlistment or appointment
For SECT. 15(1)	3 times	6 times
For SECT. 6(2)	times	1 times
For SECT. 40	times	1 times
For SECT. 9(2)	times	1 times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions~~ of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act Air Force Act and dispensations with respect thereto under A.A. 73 A.F.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for~~ X beginning on the X day of

4. The accused has been in confinement awaiting trial on the present charges, for — days in civil custody, and 10 days in military Air Force custody, making a total of 10 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is 22 yrs. 11 mos.

6. The date of his commission specified in his record of service is attestation paper 21 June 1941

7. ~~The service which the accused is allowed to reckon towards discharge is~~

~~8. The accused is entitled to reckon~~ service for the purpose of determining his position, etc. X

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military possession of or entitled to). State any air force decoration or reward. military

C.V.S.M. with Clasp

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated, and in his regiment (or corps), the rank of dated.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number Rank

Unit

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 16 day of June 1944 Capt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
OtterPoint	18/4/42	Trp		AWL from 1730 hrs 18/4/42 to 1600 hrs 22/4/42 Absent 3 days 22 hrs 30 mins A.A. Sec 15 (1)	Cpl Willis	7 days C.B.	23/4/42	Lieut J. Hassard	Forf 4 days pay under FRI
Otter Point	27/4/42	Tpr		When on Active Service disobeying a lawful command given by his superior officer in that he did not double march when personnally ordered to do so. Art 149 (1) (e)	Sgt Wilson G.T.	7 days C.B.	29/4/42	P.H. Coupland Lt. Col.	Forf 7 days pay under F.R.I.
Debert	16/7/42	Tpr		AWL from 2200 hrs 16/7/42 to 2030 hrs 17/7/42 T.A. 22 hrs 30mmins A.A. Sec 15 (1)	Tpr Fisher D.M.	7 days C.B.	18/7/42	Lieut J. Hassard	Forf 1 days Pay under F.R.I
Field	30 Jul 43	Tpr		A.W.L. from 2359 hrs 30 Jul 43 till 0500 hrs 1 Aug 43 Absent 1 day 5 hrs 1 min A.A. Sec 15 (1)	Cpl Armstrong M L/Cpl Grogan W.	7 days C.B.	6 Aug 43	Lt-col R. Moncel	Forf 2 days pay F.R.I.

No. H77390 Name HERNDON G.C. Sqn., Battery, or Company Cdn Inf Corps. Corps

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk

Period not reckoning towards freedom from extra fine

Date of enlistment 21 Jun 41 Sheet No. TWO

G.C. Badges

Signature O.C. Company, etc.

Service or Proficiency Pay

M.F.M. 6 (A.F.B. 171) 40/P & S/136 (2637)

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Otter Point	23/1/42	Pte	Nil	WOAS Intentionally discharging firearms when on duty at Muir Creek A.A. Sec 6(2) (1)	Lt. A.J. Havard CSM Frend W.	72 hrs Detention	24/1/42	Lt. Col P.H.K. Coupland	
Otter Point	1/2/42	Pte	Nil	Neglect to the prej of good order and military discipline mounting a D.N.D. Vehicle with loaded rifle (2) Neglect to the prej etc. firing a rifle. A.A. Sec 40	L/Cpl L.G. Dunn	Admonished	2/2/42	Lt. Col. P.H.K. Coupland	
Otter Point	4/4/42	Tpr		AWL from 2200 hrs 4/4/42 to 0915 hrs 6/4/42 Absent 1 day 11 hrs 15 mins A.A. Sec 15 (1)	L/Cpl L.G. Dunn Cpl McLaughlin Documentary	Admonished 7 days C.B.	2/2/42 7/4/42	Lieut J. Hassard	Forf 2 days pay Under PRI

(P.T.O.)

CDN INF CORPS.

No. H 77390 Name HERNDON G.C. Sqn., Battery, or Company | Corps | Date of enlistment 21 Jun 41 | Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 127) 40/P & S/136 (2627)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk | Period not reckoning towards freedom from extra fine | N/A Sheet No. TWO. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20 Nov 43	Tpr		A.A. Sec 15 (1) AWL from 2200 hrs 20 Nov 43 until 0100 hrs 21 Nov 43 Time Absent 3 hrs.	Tpr Hattie Tpr Adamson	2 days C.B.	22/11/43	H.L. Willis Capt.	
Field	2 Dec 43	Tpr		A.A. Sec 15 (1) AWL from 2200 hrs 2 Dec 43 till 2300 hrs 2 Dec 43 Time Absent 1 hr.	Cpl Heaven Documentary.	14 days C.B.	3 Dec 43	D.B. Francis Major.	

CERTIFIED TRUE COPY, ACCORDING TO DOCUMENTS IN MY POSSESSION

[illegible] Officer i/c Regimental Records

(P.T.O.)

4-R-107

Pte. Herndon D. L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H. 77535 Pte VICTOR LESLIE HERNDON

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.W.L. (18 Days)	Guilty	Guilty	
2nd	D.H. Sec 40	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) .....(1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 37 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

1st Charge 14 Days Detention } Concurrent
2nd " 28 "

10 JAN 45 (Sgd) (Illegible) Lt-Col
Date awarded. President. (RP 45, 50.)

(Sgd) ..... Judge-Advocate, if any.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.(1)~~ 9 2 7
(1. AA 57A. Delete if not used.)

(Sgd) A.F.B. Knight Col
(A F B Knight) Col

Date 15 Jan 45 Commanding 1 Cdn L of C Terminal Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

H. 77535 Pte V. L. HERNDON 19 JAN 45 (Sgd) W. Bonwell Lieut
for Hon Lt-Col Regtl Cdr Army Rlwds.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN ...
19 FEB 1945
CPA86 (In lieu of AFK21) 40/P.M.S.B./1898 140(10)

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Col AFB Knight OBE Comd Terminal dated 7 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H77535	Pte	VICTOR LESLIE	HERNDON	1 Cdn Ord Maint Coy NCC

PROCEEDINGS REVIEWED
[illegible]
FEB 23 1945
[illegible] JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 10 JAN 45 20|132.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr,~~ if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(6) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 12.03 hours trial commences.(1)

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)(2)~~
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~
~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 23, 71, 19, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr,~~ if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	R. T. BRUCE	1 Cdn Pro Training Regt
Member	CAPT.	S. H. FOYER	HQ 1 Cdn L of C Terminal
Member	Lieut.	G. H. HARLAND	HQ 1 Cdn L of C Terminal
~~Judge-Advocate~~			
Prosecutor	CAPT.	R. D. WINTER	1 Cdn Ord Maint Coy
Defending Offr	CAPT.	G. F. AVERY	1 Cdn Ord Maint Coy

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
Q. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See DI p 31)

A8. The accused H. 77535 Pte Victor Leslie Herndon before arraignment make(s) (no) ~~(a)~~ plea(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (OR), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 144 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 50, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans N/A (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 24 para 47. 4. See para B3 of Record Form E. 5. Statement, if any, recorded per Notes.)

~~B3. The Court considers the accused's statement(s). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

~~B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)~~
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Argument on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 71 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(1. RP 115. 2. RP 40(A), see 50(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. Typ procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if on his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 43, 103(6).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(G).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charge, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character 1(1)
Ans N/A
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If store documents not produced, see RP 46 fn 1 para 7.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment 3(1) Ans Yes. (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-564, Overseas RO X19, 1323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, H-77535 Pte. Victor Leslie HERNDON 1 Cdn Ord Maintenance Coy, RCOC a soldier of the Cdn Army Overseas is charged with:-

First Charge
Sec 15 (1)
Army Act

"WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the field, while under open arrest did absent himself without leave from his unit from 1000 hrs 17 Oct 44 until apprehended by Military Police in ROUEN at 2000 hrs 9 Dec 44. (Total absence 53 days 12 hours).

Second Charge
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,

at about 2000 hours 16 Oct 44, left Cdn military vehicle CA 4256503 unattended on a public street in MERCHTEM, BELGIUM.

In the field,
26 Dec 44.

(W.C. Denney) Lt. Col.
Comdr, RCOC,
Cdn Army Roadhead

TO BE TRIED BY FGCM.

(A F B Knight) Col
Comd
1 Cdn L of C Terminal

In the Field
7 Jan 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H77535	Pte		VICTOR LESLIE	HARNDON	1 Cdn Ord Maint Coy RCOC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 7 Jan 45 endorsed by me, ~~the undersigned~~ "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and whereas it is not practicable that the trial of the accused should be postponed until the assembly of a force for which a Court of competent jurisdiction may be convened~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~(a) as the Court (b) a Court as Provost for the purposes stated here.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~The following Offrs are detailed as Reserves~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	R J BRUCE	1 Cdn PW Transit Camp

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	S H FOYER	HQ 1 Cdn L of C Terminal
Lieutenant	E H HARLAND	HQ 1 Cdn L of C Terminal

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Dat 7 Jan 45

A F Knight (Signed personally. RP 105 fn 2.)

(A F B Knight)

Colonel (Rank.)

Commanding 1 Cdn L of C Terminal

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 85 (In lieu of AFA 3) 60/F & E/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

MEDICAL CERTIFICATE

I hereby certify that I have this day examined NO H-77535

RANK Pte NAME HARRINGTON, V L

and in my opinion he is fit to undergo trial by Court Martial.

DATE 10 Jan 45

SIGNATURE

Plaintiff's Witness Sworn

Q. - Where did you enlist?
A. - Regina
Q. What age did you give on enlistment
A 19
Q. What was your correct age -
A 17
Q. What regt did you enlist with
A. - 18th Canadian Rocky Regt
Q. Why did you enlist in that regt
A. To be with my brother in that regt.
Q. Are you fond of your brother
A. Yes Sir - very fond of him
Q. Was your father living
A. Yes Sir - He died when I was five
Q. Did your mother remarry.
A. - No.
Q - How was your mother employed
A. - Housekeeper for Mr. Pritchard
Q. - Was Mr. Pritchard married
A. - He was but is now divorced.
Q. Did you like your mother working for Mr. P.
A. - Yes - It was a means of providing for us when we were too young to work.
Q. Did you get along - Mr. P.
A. - Yes Sir
Q. - Have you ever had sexual intercourse - any girl
A. Yes Sir
Q - What were the effects of such intercourse
A. - When I was 18th Canadian Rocky Regt - I had intercourse with one girl in Wpg. - Three months she wrote to me in Mont. N.S. and told me that she was pregnant and that she thought it would be better if we got married before the baby was born. She kept writing letters - continued coming and finally took the matter up - my Spanish Comdr. No more or less advice from that.

Decided to get married and that's what put the girl well enough

Q. Are you still pestered o letters from this girl

A. Yes sir.

Q. Have you had other intercourse with women.

A. - Yes sir

Q. - What were the results

A - contracted V.D.

Q - What type

A. at first VDG then had VDS

Q - Did you come across o your battle

A - Yes sir

Q - Why not

A - During ~~battle~~ ~~warning~~ ~~warned~~ and

A - I am off duty

Q. You eventually did come to U.K.

A - yes.

Q - When did you land in N.W. Europe

A - ~~Landed~~ on D day.

Q - With what unit

A - Regt Rifles

Q - How long did you spend o Regt R

A - 6 days on Orders

Q - During that time were you under enemy fire

A - yes sir - most of the time

Q - Why were you sent back to base

A - Battle exhaustion, Sir.

- The prosecution declines to question the accused.

Defence of No H 77635 Pte. V. L. Alderdice

Mr President and Members of the Court.

The accused, whilst only 17½ years of age, enlisted as a volunteer in the Can. Army on 4 July 41. In order to do so he put 6 months on his age. He enlisted in the 18 (Manitoba) Depot Regt in order to serve with his older brother of whom he was very fond. Since then, against his own wishes, the Can Army have separated him from his brother. His home life, prior to enlistment, was very unhappy and most unsatisfactory. His father died when the accused was only a few years old and when his mother went to work as a domestic his relations with his mother's employer were far from happy. Owing to these conditions he has not had the guidance and up bringing that most of us get to make us good citizens or soldiers. The forced separation from his older brother, whom he idolized, did nothing to improve his outlook on life. Owing to the lack of a good home life and also due to the fact that he associated with older men whilst he was still a youth he was most unfortunate and misguided in his relations with the opposite sex. Consequently whilst still only 21 years of age he has had VDS and VDG as well as being an unmarried father. This has given him a twisted outlook on life and as a result he has had to fight against himself. He has made home for. He went with the Regina Rifles and took part in the initial assault on France on D day. For 66 days he was in the front line and was eventually evacuated and classed as a "Battle Exhaustion" case. All these factors have undermined his stability and in attempt to break away from all his worries and troubles he has gone absent Without Leave. He has been examined by a very competent Psychiatrist who reports that his "ultimate prognosis is poor and he is unlikely to profit by punishment - unlikely to become an efficient soldier" The accused has now been rated M1B3. In view of all these factors, gentlemen, I do not feel that justice will be served if this man is confined for a long period. It would be more in the interest of humanity and justice if this man could be given the proper medical guidance to fit him for rehabilitation as a useful citizen for the Canada he has voluntary offered his life for.

Exhibit

SUMMARY OF EVIDENCE

in the case of

Number H-77535 Pte. HERNDON V.L., of No. 1 Cdn Ord Maint Coy.,R.C.O.C., a soldier of the Canadian Army on Active Service.

CHARGE: (1) W.O.A.S. Leaving a W.D. vehicle unattended. (A.A. Sec 40)
(2) W.O.A.S. When in lawful custody did escape. (A.A. Sec 22)

(3) W.O.A.S. Being A.W.L. (A.A. Sec 15(1))
(4) W.O.A.S. Improperly in possession of a W.D. Veh. (A.A. Sec 40)

The Commanding Officer does not direct nor does the accused demand that the evidence be taken on oath.

FIRST WITNESS: L-9080 S/Sgt Slater, F.C. 1 Cdn Ord Maint Coy RCOC CAO states:-

"At approx 2000 hrs Oct 16, 1944, I noticed a 15 Cwt veh CL 4256303 parked in front of a cafe on the main street in Merchtem, Belgium. I checked the vehicle and it was neither immobilized nor guarded. I went into the cafe and recognizing Pte. Herndon asked him if he was the driver. He replied "Yes". I then placed him under open arrest and told him to report to QMS Thomas immediately at Transport Office.

The accused declines to cross-examine the witness

(L-9080 S/Sgt. Slater, F.C.)

SECOND WITNESS: L-9041 QMS Thomas, T.L., 1 Cdn Ord Maint Coy RCOC CAO States:

"On the night of October 16th 1944, S/Sgt. Slater brought Pte. Herndon to me along with a truck 15 cwt. He had found the truck outside a cafe in Merchtem, unattended, and found Pte. Herndon was the driver. I then deprived Pte. Herndon of his vehicle and told him to report to his quarters and warned him to be at H.Q. Orderly Room for Orderly Room at 0845 the following morning. The next time I saw Pte. Herndon was on a bath parade at approximately 1400 hrs 22 Dec 44. He was under escort.

The accused declines to cross-examine the witness.

(L-9041 QMS Thomas, T.L.)

THIRD WITNESS: B-49373 S/Cdr Clark, T.C.,(W.O.1), Senior Warrant Officer 1 Cdn Ord Maint Coy CAO states:

" On the morning of October 17th 1944, it was reported to me by Sgt. Cole that Pte. Herndon was absent. I investigated at approx. 1000 hours, 17 Oct 44, and could not find Pte. Herndon in the Camp area. I then notified H.Q. Orderly Room. I have not seen Pte. Herndon since that time until he was returned to this unit on December 20th, under Provost escort. I produce certificate of surrender under Army Act 615 to the accused at ROUEN at 2000 hrs 9 Dec 44.

The accused declines to cross-examine the witness.

(B-49373 S/Cdr Clark, T.C.)

FOURTH WITNESS: 1580285 L/Cpl Robertson, 243 Military Police, Rouen.
I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, not readily procurable and a written statement of his evidence signed by him has been read to the accused and is attached hereto as Appendix "A".

I do not require the attendance of 1580285 L/Cpl Robertson for the purpose of cross-examination.

(H-77535 Pte Herndon, V.L.)

The accused was cautioned as follows:

Question: Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer: I do not wish to make a statement.

The accused does not call any witnesses.

(H-77535 Pte Herndon, V.L.)

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that R.P. 4 (c) (d) (e) (f) and (g)(13) have been complied with.

(Capt. R.D. Winter)

Signed at the Field
this 26th December 1944.

A/Bmne

Summary of Evidence
in the case of

Number H-77556, Private Hamilton V.L., 1 Nº 1 Edm Ord Maint Coy, R.C.O.C., a soldier of the Edm Army on Active Service.

Charge - W.O.A.S. Larceny A.W.O.L. (A.A. Sec 16) (1) (2).
W.O.A.S. Unlawfully in possession of a W.D. vehicle (A.A. Sec 40)
W.O.A.S. Leaving a W.D. vehicle unattended (A.A. Sec 40)
W.O.A.S. When in lawful custody, did escape (A.A. Sec 22)

The Commanding Officer does not direct, nor does the accused demand that the evidence be taken on oath.

Witness - L-9041 A.M.S. Thomas T.L., 1 Edm Ord Maint Coy R.C.O.C. states:-

"On the night of October 16th 1944. d/Sgt Stalk brought Gte Hamilton to me, along with a truck. I then had found the truck outside A Haze at Mpechleu unattended and found Gte Hamilton was the driver. I then questioned Gte Hamilton as to his actions. He stated in regard to his quarters and waved them to be at H.Q. Orderly Room for Orderly Room at 0645 hrs the following morning. The next time I saw Gte Hamilton was on a battle parade at approximately 1400 hrs October 2 2nd 1944. He was under arrest.

The accused declines to cross-examine the witness.

O.M.A. Thomas. Lt.
L 9041

Witness - B-49373 A/Bombr (W.O.) Clark T.C. Senior Warrant Officer 1 Edm Ord Maint Coy R.C.O.C. C.A.S. states:-

On the morning of October 17th 1944. it was reported to me by Sgt Ede that Gte Hamilton was absent & investigations at approximately 1000 hrs and could not find Gte Hamilton in the camp area. I have not seen Gte Hamilton since that time until he was returned to this unit on December 22th 1944. under escort. A routine report of absence under A.A. 613 to the accused
The accused declines to cross examine the witness. [illegible]

T.C. Clark A/Bdr.

Fourth Witness - 1580285 S/Sgt Robertson 243 Military Police Coy.

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service not reasonably procurable. A written statement of his evidence, signed by whom has been read to the accused and is attached hereto as Exhibit 'A'.

R.D. Winter Capt
Officer taking Summary

I do not require the attendance of 1580285 S/Sgt Robertson, for the purpose of cross-examination.

V.L. Hendon.

Q. The accused was cautioned as follows:-
Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I do not wish to make a statement.

The accused does not call any witnesses.

V.L. Hendon

I certify that the foregoing Summary of evidence, consisting of two pages, was taken down by me in the presence of the accused and that R.P. 4 (C) (D) (E) (F) and (G) (13) have been complied with.

R.D. Winter Capt
1 Can Ord Mait Coy R.C.O.C.

First Witness - L-9080 S/Sgt Clark S.C. 1 Can Ord Mait Coy R.C.O.C. S.W.O. states:-

At approximately 2000 hrs. October 16th 1944, I noticed a 15 cwt vehicle No 226303 parked in front of a Cafe on the main street in Maeshin - Belgium. I checked the vehicle and it was neither immobilized nor guarded. I went into the Cafe, and recognizing Pte Hemdon, ask him if he was the driver. He replied yes. I then placed him under open arrest, and told him to report to Q.M.S. Thomas immediately at the transport office.

The accused declines to cross examine the witness.

L 9040 S/Sgt Clark S.C.

Summary of Evidence
in the case of

Number H. 77535, Private Hamilton V.L. 7 N° 1 Edm Dist Maint. Coy. R.C.O.C., a soldier of the Edm Army on Active Service.

Charge - W.O.A.S. being A.W.O.L. (A.A. Sec 15) (1) (2).
W.O.A.S. improperly in possession of a W.D. vehicle (A.A. Sec 40)
W.O.A.S. leaving a W.D. vehicle unattended (A.A. Sec 40)
W.O.A.S. when in lawful custody, did escape (A.A. Sec 22)

The Commanding Officer does not direct, nor does the accused demand that the evidence be taken on oath.

Second Witness - L. 9041 Q.M.S. Thomas T.L. 1 Edm Dist Maint. Coy R.C.O.C. 6.4.0. states: -

"On the night of October 16th 1944. S/Sgt Black brought Pte. Hamilton to me, along with a truck. He had found the truck outside a bar at Mirchlin unattended and found Pte. Hamilton was the driver. I then charged Pte. Hamilton of theft of the vehicle, and told him to report to his quarters and warned him to be at H.Q. Orderly Room for Orderly Room at 0845 hrs the following morning. The next time I saw Pte. Hamilton was on a battle parade at approximately 1400 hrs October 2nd 1944. He was under arrest.

The accused declines to cross-examine the witness.

Qmr. Thomas. T.L.
L. 9041

Third Witness - B. 49373 S/Sgt Goode (W.O.) Black T.C. Corps Warrant Officer 1 Edm Dist Maint. Coy R.C.O.C. C.A.O. states: -

On the morning of October 17th 1944, it was reported to me by Sgt Goode that Pte Hamilton was absent. I investigated at approximately 1000 hrs and could not find Pte Hamilton in the camp area. I have not seen Pte Hamilton since that time until he was returned to this unit on December 20th 1944. He was returned to this unit by Provost escort. I produce certificate of surrender under A.O. 613 to the accused. The accused declines to cross examine the witness. at Record at 2.00 hrs 7 Dec 44

T.C. Black S/Sgt.

Statement of **EVIDENCE** in the case of

No. H 77535 Pte Herndon, V.L.
No.1 Canadian Ordnance Maintenance Company,
R.C.O.C.

Sir,

At ROUEN on the 9th December 1944 at about 2000hrs I was on duty at the Salvation Army Canteen where I saw the a/n soldier.

I approached him and asked him where he was stationed to which he replied "I am passing through ROUEN with a truck and am staying in a hotel tonight".

Not being satisfied with his statement I checked the list of Absentees and found that the a/n was an absentee from his Unit.

He was questioned as to the whereabouts of the vehicle which he stated he was driving and on proceeding there I found vehicle No. Z 5345921.

I arrested the a/n soldier and conducted him to Rouen Guardroom where I handed him over to the NCO i/c Guard to be detained and the vehicle was retained at this Headquarters for disposal. The a/n soldier refused to give any statement regarding the vehicle.

Handing over slip and certificate of arrest attached.

REMARKS

Field.
10 Dec 44

W.H. Robertson L/Cpl
C.M.Police

EXHIBIT F

K/658

CHARGE

Army Form B 252
(See King's Regulations)

Royal Canadian Ordnance Corps — Regiment

No.1 Canadian Ordnance Maintenance — Company

CHARGE against No. H 77535 Rank Pte

Name HENDON, V.L.

Place Field Date of Offence ?

OFFENCE S.O.A.S. Absent from ? until being apprehended by the Military Police at [redacted] at 2000hrs on the 9th December 1944.

2, Improper possession of MD Vehicle No. Z 5345921

Names of Witnesses :—

1580285 L/Cpl. Robertson, C.M.Police

Signature of O.C. Battery, Squadron, Troop or Company — Capt. Commanding 243 H.Q. Provost Coy. C.M.P.

Punishment Awarded

By whom Awarded

Adjutant.

20M8 Wt.W21374-1961 2,000,000 10/42 K. & H., Ltd. Gp/7/42 P.T.O.

MILITARY POLICE REPORTS.

No. H.77535 Rank PTE

Name HERNDON V.L.

Unit 1st CHD ORD MAINT Coy

Station FIELD

Sir,

I was Commander of the GUARD ROOM

on duty on the 9.12.44.

at about 22 HRS, the above named soldier was handed over to me by the Military Police.

He was

Place KOHEN.

Witness H/c ROBERTS 1580255 C.M.Police

Date 9.12.44.

Signature N. Mawdsley Cpl
601 Ord Police Pl.

R Provost

CERTIFICATE OF ARREST IN ACCORDANCE WITH
ARMY ACT, SECTION 105 (1) (a)

I certify that No. H 77535 Rank Pte. Name HAMNDON, V.J.

of (Unit) No.1 Canadian Ordnance Maintenance Coy, R.C.O.C.

was arrested at Rouen (place) at 2000 hrs on the

9th December 1944. He was dressed in uniform.

Date 10 December 1944

Signature of Provost Marshal APM or other officer into whose custody the above named person was taken on arrest.

Capt.
(H.Vernon) Commanding.
245 H.A. Provost Coy.C.M.P.

NOTES.

1. This certificate MUST be signed personally by the officer concerned.

2. In no circumstances may it be signed by one officer "for" another, or by anyone who does not hold commissioned rank.

3. In no circumstances should the place of apprehension be described as "in the field". The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

N.B. When this charge has been dealt with the AFB 252 should be forwarded to the next higher formation. Where a Regimental Entry is incurred a copy of the AFB 252 will be attached to the AFW 3011A or W 3012 A reporting the casualty. Authy: 21 A Gp. Standing Orders Sec 12 para 6.

Exhibit B.

(substitute for A.F.B. 296 Apx
or M.F.B. 355)

STATEMENT OF CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED

NO. H-77535 NAME Herndon V.L. UNIT 1 Cdn Ord Maint Coy

AGE 43 MARRIED OR SINGLE S NO. OF DEPENDENTS Nil

DATE OF ATTESTATION 4 July 41

NO. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL Nil MILITARY 37 HOSPITAL Nil TOTAL 37

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY

very unreliable

A CERTIFIED TRUE COPY OF M.F.M. 6 MUST ACCOMPANY THIS FORM

(Officer i/c Records)

[redacted], UNIT

DATED AT - In the field

THIS 10 DAY OF Jan. 1945.

(To be dated and signed as date of trial)

Ex Lieut D.

R/Branch

No.

DEPARTMENT OF Neuropsychiatry - 1 N P W ing

No. 11 77335 Rank Rfmn Name Herndon Victor Unit Regina Rifles

REPORT:— DATE 8-1-40

age 21 - enl Jul 41 U.K. Dec 43 BLD 9 days action 6 days

Problem

Referred for psychiatric report prior to F & E in following 6 3 days awl

I saw this man on Aug 44 and summary of case is I saw this man on B.N.P.S. 11 Sep in Mar 44. at that time he was comp. fully investigated. There was a great deal of doubt as to his ~~probably~~ stability but since his record had been fair it was decided to give him another chance at field service. He served in action as a stretcher bearer & B.H.Q runner. he became progressively more nervous & apprehensive & was finally evacuated in a severely demoralized state. He is present state is tremulous & tearful and since he had U.D.S. in Canada he has always had the fear that the disease is still active. Advise recat my 53 & reallocate as a driver."

According to his own story he was sent to a allocation centre but before he was boarded he was sent out as a driver & has been driving ever since. His category still presumably B

There is no great change in the mans condition except that his acute apprehension has subsided. He appears now as a weak dependent and introverted individual with very poor judgement & defect in reasoning. He is fit to stand trial & punishment is able to understand the nature & quality of his acts

Diagnosis - Psychopathic Personality Inadequate

Recat III 53 (1) VIII

Pay book not available to enter change but unit medical officer has been informed of procedure of mailing entry and notifying ~~the~~ his ultimate progress as per card. It is unlikely to profit by punishment - unlikely to become an efficient soldier

Specialist, RCAMC

AMD 19
(5-8-43)-1918 (4404)

Pte

No H72585 Name HERNDON, V.L. Sqn, Battery or Company — Corps CIC — Date of enlistment 4 Jul 42 — GC Badges — Service or Proficiency Pay — MFM 6 (AFB 122) 40/PAE/136 (3438)

Company Conduct Sheet Date of last entry in — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5 Oct44	Pte		AA(15)(1)AWL from 0600 hrs 5 Oct 44 to 1300 hrs 7 Oct 44(absent 2 days 7 hrs).		14 days Pay			Forf 3days pay FR&I 149(1)(a) Forf14 days pay FR&I 149 (2) Total Forf 17 days pay.

H. Vaughan Lt

OPTO

List of Witnesses

B-49373	S/Cdr (W.O. 1) Clark, T.C.
L-9041	Q.M.S. Thomas, T.L.
L-9080	S/Sgt. Slater, F.C.
1580285	L/Cpl. Robertson,

LIST OF EXHIBITS

Exhibit "A" Certificate in accordance with P.C. 2797 of 10 Apr. 42, AFB 252 (Attached as an appdx to summary of Evidence)

PPR131

PTE HERON WH

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-6337 Pte William Hallett HERON, 1 C Scot R, 11 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Q.Mo. L. 15(b)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) .....
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

1 Day forfeiture of pay.

(Sgd) ..... 21 Jun 44 (Sgd) .....
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) Nil
(1. AA 57A. Delete if not used.)

Date 22 Jun '44 (Sgd) .....
(G. Francoeur) Brig
Commanding Corps 2 Con Base RE Gp
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C 6337 - Pte William Hallett Heron	23 June 44	Jno Sadler Capt. ADJT 11 CBR Bn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Vol 1/3 cases [illegible] HQ IN AB 1691

CPA86 (To face of AFA81) 40 P & S 1868 (8/50)

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Brig G Francoeur Comd 2 CBRG dated 19 JUN 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent rank, and (b) apptnt, A/rank or A/apptnt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptnt, A/R or A/Apptnt.	Full Christian Names.	Surname.	Unit.
C-6337	Pte	William Hallett	HERON	1 C Scot R, 11 CBR Bn

PROCEEDINGS REVIEWED June 30th '44
RCon 10.

RECEIVED 30 JUN 1944 JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED Date 3 JUL 44 Capt. G.H.Q. 2 Echelon Army Gp

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 21 JUN 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variations will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs as how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Con 557. 2. AA 46(E), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~
~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~
The shorthand writer is sworn.(2)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H A McBRIDE	CAC,	12 CBR Bn
Member	CAPT	R I SWAIN	"	" "
Member	"	W. J. CLARK	RCASC	13 " "
Judge-Advocate				
Prosecutor	Lieut	G. E. FLEURY	RHLI	11 " "
Defending Offr	"	E.T. HARSHMAN	"	11 " "

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused C 6337 Pte HERON W. H before arraignment make(s) (no) (a) plea(s) A (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to Ref cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. ~~The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2.~~ The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No Sir.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(B).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (d), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. Yes Sir. Written statement ... See note to
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
C-6337	Pte		William Hallett	HERON	1 C Scot R, 11 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 19 JUN 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

Major (*Rank.*)	H A McBRIDE (*Must be named. RP 106.*)	CAC,	12 CBR Bn (*Unit.*)

MEMBERS.

Capt	R J SWAIN	CAC,	12 CBR Bn
Capt (*Rank.*)	W J CLARK (*Named or detailed. RP 106.*)		13 CBR Bn (*Unit.*)

WAITING MEMBER.

Lieut (*Rank.*)	JA Campbell (*Named or detailed, if any. RP 106.*)	13 CBR Bn (*Unit.*)

~~JUDGE ADVOCATE~~

(*Rank.*)	(*Must be named, if any. RP 106.*)	(*Unit.*)

On Active Service in the Fd

in ENGLAND (*Country.*)

(*Signed personally. RP 105 fn 2.*) Brigadier (*Rank.*)

(G Francoeur)
Commanding 2 Cdn Base Rft Gp
Convening Officer.

Date 19 JUN 44

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICERS CERTIFICATE

(ER(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined C6337 (No.)

PTE (Rank) HERON W.H (Name) and in my opinion he is

fit ~~unfit~~ to undergo trial by Court-Martial.

Station Field

Date. 21 Jun 44

(Sgd) Medical Officer
(unit) 11 CBR Bn.

CHARGE SHEET.

The accused C-6337, Pte. HERON, William Hallett, 1st Cdn. Scott. R. attached to 53 Coy 11 CBR Bn., C.A. (O). a soldier of the Canadian Army Overseas, placed on Active Service, is charged with:

CHARGE: A.A. Sec 15(1) WHEN ON ACTIVE SERVICE - ABSENTING HIMSELF WITHOUT LEAVE.

in that he

In the field, absented himself without leave from 1800 hrs 19 May 44, until he surrendered himself to the C.M. Police at 0745 hrs 31 May 44.
(Total Absence: 11 days 12 hours 45 minutes)

In the field.

15th June 1944.

.....
(C.H. LOGIE) A/Lt-Col.,
Commanding Officer 11 CBR Bn.,
C.A.O.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
19 JUN 44

Comd 2 Cdn Base Rft Gp

EX "A"

SUMMARY OF EVIDENCE
IN THE CASE OF

C-6337, Pte., LERON William Mallett, "1st Cdn Scot R." attached to 53 Coy., 11 CBR Bn., a soldier of the Canadian army overseas.

CHARGE: WHEN ON ACTIVE SERVICE - ABSENTING HIMSELF WITHOUT LEAVE
Army Act Sec 15 (1)

THE COMMANDING OFFICER HAS DIRECTED THAT THE EVIDENCE BE TAKEN ON OATH.

FIRST WITNESS: Capt., R.E. FULLERTON, Cdn. Sec., G.H.Q. 2nd Echelon 21st Army Group:

Part II Order No. 23 d/4 June 44 purporting to be signed by the above witness showing the following entry "ABSENT WITHOUT LEAVE"
A.W.L. from 1800 hrs 19 May 1944 still absent 1800 hrs 27 May 1944 (8th Day)
C-6337 Pte. LERON, W.M. is attached to this Summary of Evidence and marked Ex. "A"
I CERTIFY that owing to the exigencies of the service and the loss of time involved the attendance of this witness could not in my opinion have been readily procured at this time.

.....
(R.L. Goodenough, Lieut) Ess. Scot
att'd 51 Coy 11 CBR Bn., C.A.(O)
Officer detailed to take Summary.

THE ACCUSED DOES NOT AT THIS TIME DEMAND THE PRESENCE OF THE WITNESS, THE STATEMENT BEING READ OVER TO HIM.

SECOND WITNESS: Capt. A.E. STINSON, "D.A.P.M., C.M.H.Q."

Certificate of Apprehension purporting to be signed by the above witness is attached to this Summary of Evidence and marked Exhibit "B".
I CERTIFY that owing to the exigencies of the service and the loss of time involved the attendance of this witness could not in my opinion have been readily procured at this time".

.....
(R.L. Goodenough, Lieut) Ess. Scot.
att'd 51 Coy 11 CBR Bn., C.A. (O).
Officer detailed to take Summary.

THE ACCUSED DOES NOT A T THIS TIME DEMAND THE PRESENCE OF THE WITNESS, THE STATEMENT BEING READ OVER TO HIM.

QUESTION TO THE ACCUSED.

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say any evidence you give will be taken down in writing and may be given in evidance".

ANSWER OF THE ACCUSED:
"No, Sir".

.....
(William Mallett LERON, Pte)
1st Bn. Cdn. Scott R.
attached to 53 Coy 11 CBR Bn.

"I CERTIFY THAT RULES OF PROCEDURE 4 (c),(d),(e),(f),&(g) have been complied with.
This Summary of Evidence of one pages has been taken down by me in long-hand in the presence and hearing of the Accused in the field at 11 CBR Bn., this 15th Day of June 1944.

Dated in the field.
15th June 1944.

.....
(R.L. Goodenough, Lieut) Ess. Scott
11 CBR Bn. C.A.O.
Officer detailed to take Sum.

Ex E 1 (a)

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

From [illegible] 21st June 42.

I have known C6337, Pte Hyman W.H. since the first of Sept 41 when he came overseas [illegible] my Battn. He joined my Coy in Sept 42 as a rifle [illegible] being Coy Sergt Major. He is a first class soldier, well behaved, and I would have no hesitation in taking him in battle at any time. He is wanting to get to this unit in the worst way.

Yours Yours [illegible]
52 Coy.
11 Bde

CFA 170 PLEASE WRITE ON BOTH SIDES

F.G.C.M. Pte Heron C633.7

Plea of Mitigation

Pte Heron is a well trained soldier, old in service but very young in years. Having just attained his 21st birthday, he has already contributed 4 yrs active service dating from voluntary enlistment on 12 July 1940 at the age of 17. The accused's clean NFM6 now in the hands of the court - is strong testimony to his good conduct and outstanding record, during the most stagnant period in the history of the Canadian Army, when crime was prevalent among all ranks and proved the rule rather than the exception.

Prior to his being attached to 11 Bn. 2 CBRB. in June 1944, Heron has served with the Cdn. Scottish Regt continuously since its arrival in the U.K. 1 Sept 41. Whilst in the field, he was happy at his work, fully realizing that the training there was most essential, personally and collectively, to the success of his job of fighting and helping to win the war. During this time, Heron proved the above statement by working hard and cheerfully, and did not go A.W.L. a single occasion in nearly 3 years, until the 19 May 1944. In the following paragraphs, the defense will attempt to set forth, on the accused behalf, the strong compassionate grounds for this soldier's A.W.L. at this time.

Heron took an English wife 1 yr ago and is very happily married. A child, healthy and normal, was born to them recently, but

Pte Heron W.H.

Plea of Mitigation (Cont'd)

unfortunately, Divine Providence, willed otherwise and the baby lost both health and normality one month after birth. A tumour on the brain developed, calling for an immediate and at first successful operation. The child's progress was short lived and Heron was frantically summoned as the radium treatment in the a/m operation had proved to intense, and serious complications had latently developed.

The accused showed the letters to his C.O., - stressed the urgency of the situation and explained he had not seen his wife or child at or since the original operation. He was refused permission and an opportunity to see them for even a few hours.

Heron had not been warned for draft of any kind and was at once bewildered, dismayed and somewhat angry at his C.O.'s refusal to grant what seemed to him a most reasonable request.

The defense strongly submits to the court that Herons next decision was most human, and in complete harmony with the eternal Law of Charity. He decided to commit a military offence - that ~~of A.W.L.~~ to avoid committing what appeared in his turbent mind a far greater crime - that of being away from the side of his wife and baby boy in their great hour of trial and suffering.

Plea of Mitigation (Contd)

Heron stayed with his wife and baby, offering his assistance and encouragement as a loving husband during those days when her mental condition needed his sympathy and understanding. He gave himself up voluntarily to the C.M. Police when he felt his wife could carry on alone.

Surely this is one which demands the special attention and consideration of the court and it is the opinion of the defence that had this soldier's case been properly investigated, the charge, and the appearance of this lad before an F.G.C.M. could have been easily avoided.

The defense pleads for the utmost clemency of the court and asks them to duly consider the compassionate circumstances surrounding this unfortunate affair.

E.T. Hardman Lt
11 Bde 2 CBRG.
Officer appointed as Defence for the accused.

21 June 1944

Exhibit "A"



Last Order
No 22
31 MAY 44

1st BN CDN SCOTTISH REGIMENT
Part II Orders Issued by
CANADIAN SECTION GHQ 2nd ECHELON
21 ARMY GROUP

No 23
4 JUN 44

"A" OFFICERS

1 NEXT OF KIN

(a) The name and address of N-of-K is now verified as shown
Lt J J ANDREWS — MARY JANE ANDREWS (wife)
1010 BALMORAL ROAD VICTORIA
BRITISH COLUMBIA CANADA

Capt J T BRYDEN — ELLEN BRYDEN (mother)
BOX 189 CUMBERLAND BRITISH
COLUMBIA CANADA

"B" OTHER RANKS

2 STRENGTH INCREASE

(a) TOS from X-4 List 1 C SCOT R wef 29 MAY 44 Auth - Demand No
EAR 9/15 d/27 MAY 44
M106780 Pte BROWN T J A
M105499 Pte CRAWFORD R
M103013 Pte DEAN F
K66330 Pte DUNCAN T
M11305 Pte KELLAR E L
M53161 Pte RACKHAM J
K69135 Pte STRUNGE R L Dvr Mech "C"
K67594 Pte TRAINER F
H101068 Pte WILSON W H

3 ATTACHMENTS

(a) Ceases att from 6 CDN FD EDUC SEC wef 29 MAY 44 Auth - EA7/4625 d/25 MAY 44
K57871 A/Cpl LAMONT D M

4 ABSENT WITHOUT LEAVE

(a) AWL from 1800 hrs 19 MAY 44 Still absent 1800 hrs 27 MAY 44 (8th day)
C6337 Pte HERON W H

5 APPOINTMENTS & PROMOTIONS

(a) To be A/L cpls wef date shown
K48490 Pte KAIP P M — 26 MAY 44
K57502 Pte NICHOLAS G H — 26 MAY 44
M66554 Pte THIEME J P — 26 MAY 44

6 TRADESMEN'S RATES OF PAY

(a) Granted tradesmen's rates of pay Bricklayer "C" wef 26 MAR 44
M12162 Pte TODD R

7 PUNISHMENTS

(a) On 26 MAY 44 awarded a forf of 14 days pay for an off under AA 15(1) AWL from 1200 hrs 25 MAY 44 to 1630 hrs 25 MAY 44 (Absent 4 hrs 30 mins) Forfs 14 days pay FR&I 149(2)
K69350 Pte ANGE E K69470 Pte SMOLKOWSKI W J C
M12622 Pte NICOLL J

(b) On 26 MAY 44 Severely Reprimanded for an off under AA 15(1) AWL from 1200 hrs 25 MAY 44 to 1630 hrs 25 MAY 44 (Absent 4 hrs 30 mins)
K98162 Cpl BARNETT M

(c) On 29 MAY 44 awarded 6 days CB and placed under stop of pay in the amt of £1-13-6 for an off under AA 24(2) Cost of DND equip lost by neglect amounting to £1-13-6 Stop of pay £1-13-6 under FR&I 153(2)
K45606 Pte BLANEY G G

(d) On 29 MAY 44 awarded 6 days CB and placed under stop of pay in the amt of £1-10-0 for an off under AA 24(2) Cost of DND equip lost by neglect amounting to £1-10-0 Stop of pay £1-10-0 under FR&I 153(2)
K42606 Pte GREENLEES H

(e) On 27 MAY 44 awarded a forf of 28 days pay for an off under AA 15(1) AWL from 1630 hrs 19 MAY 44 to 1645 hrs 26 MAY 44 (Absent 7 days 15 mins) Forfs 6 days pay FR&I 149(1)(a) Forfs 28 days pay FR&I 149(2) Total forf 36 days pay
K75051 Pte McGIVERN E

(f) On 27 MAY 44 awarded a forf of 5 days pay for an off under AA 15(1) AWL from 1630 hrs 25 MAY 44 to 2045 hrs 25 MAY 44 (Absent 6 hrs 15 mins) Forfs 1 days pay FR&I 149(1)(a) Forfs 5 days pay FR&I 149(2) Total forf 6 days pay
K57649 Pte MALCOLM W

(g) On 27 MAY 44 Severely Reprimanded for an off under AA 15(1) AWL from 1630 hrs 25 MAY 44 to 2245 hrs 25 MAY 44 (Absent 6 hrs 15 mins) Forfs 1 days pay FR&I 149(1)(a)
K57745 Cpl MILLAR R W

(h) On 27 MAY 44 awarded a forf of 10 days pay for (1) an off under AA 15(1) AWL from 1230 hrs 25 MAY 44 to 1130 hrs 26 MAY 44 (Absent 23 hrs) and (2) an off under AA 10(4) Forfs 1 days pay FR&I 149(1)(a) Forfs 10 days pay FR&I 149(2) Total forf 11 days pay
K111568 Pte SWIZINSKI M

8 MARRIAGES BIRTHS & DEATHS

(a) On 15 MAR 44 granted permission to marry Miss SYLVIA AGNES McCLOSKY on or after 15 MAY 44
K62008 Cpl BOYD D F

8 MARRIAGES BIRTHS & DEATHS - Cont'd

(b) On 4 APR 44 granted permission to marry Miss IRIS APPLETON on or after 4 JUN 44
K69634 L cpl MITCHELL D L

9 NEXT OF KIN

(a) The name and address of N-of-K is now verified as shown
M101303 Pte BRANDT E — GERTA MAE BRANDT (wife)
2611 MAPLE STREET VANCOUVER
BRITISH COLUMBIA CANADA

L105775 Pte PARRY A — NORMAN LIFESO (friend)
FORT PITTS SASKATCHEWAN CANADA

10 HONOURS AND AWARDS

(a) Awarded the CDN VOL SER MEDAL and CLASP wef date shown Auth - Overseas NO 4167

K69442	Pte ANGLIN J A E	30 APR 44
K57737	Pte ATKINSON L	7 JAN 44
K69350	Pte ANGE E	1 MAY 44
M104759	Pte BAIN N	11 MAY 44
K48427	Pte BELOUSOBSKI V	27 MAY 44
K69011	Pte BRATKO T	22 MAY 44
K48231	Pte CAMERON A V	17 MAY 44
K69631	Pte COONEY H A	2 MAY 44
H103170	Pte CORNWELL C W	14 MAY 44
M101006	Pte CRAIG W F	25 MAY 44
M104580	Pte CROCKS W	4 MAY 44
K48212	Pte DOMKE D A	16 MAY 44
M101000	Pte DUVUIS E L	23 MAY 44
K48180	Pte FEDORICK F	30 MAY 44
K48348	Pte FUNGASON A W	20 MAY 44
K48426	Pte GILCHRIST D A	26 MAY 44
K48314	Pte HEDRICK C R	21 MAY 44
K69635	Pte HOLOWATY R	4 MAY 44
K69563	Pte HUNT W L H	5 MAY 44
M104592	Pte KAMIUK G	4 MAY 44
H103143	Pte LENTON E A	17 MAY 44
K48359	Pte LORRE A J	26 MAY 44
K69036	Pte MacPHERSON H J	13 MAY 44
M104559	Pte McCLOSKY J F	15 MAY 44
M104637	Pte McCORMACK A	8 MAY 44
K69704	Pte McINTOSH J	8 MAY 44
K69036	Pte McKEE C W	9 MAY 44
M105048	Pte MAKOWICHUK F	20 MAY 44
M104690	Pte MAWER E	5 MAY 44
M104691	Pte MOORE D I	11 MAY 44
L102680	Pte MULLEN G A	5 MAY 44
M104979	Pte NEWMAN C S	17 MAY 44
M101106	Pte PAULENOU F	23 MAY 44
M104405	Pte RENWICK E A	2 MAY 44
M100302	Pte ROLLINGSON G A	18 MAY 44

10 HONOURS AND AWARDS - Cont'd

(b) Awarded the CDN VOL SER MEDAL and CLASP wef date shown Auth -

Overseas RO 4167		
M104031 Pte	SINCLAIR J H	12 MAY 44
K66468 Pte	STEWART G W	3d FEB 44
H103393 Pte	WINCH W W	22 MAY 44
K69879 Pte	WRIGHT A J N	11 MAY 44

11 STRENGTH DECREASE

(a) SOS to X-3 List 1 C SCOT R wef 27 MAY 44
H103878 Pte GEORGE T J

(R E FULLERTON) Captain
for Officer IC
CANADIAN SECTION GHQ 2nd ECHELON
21 ARMY GROUP

/JEM.

Exhibit "B"

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1) (j)

I, . . ~~Capt.~~ Lt. R.J. Stinson . D.A.P.M. C.M.H.Q. certify that

Regt. No. C-6337 . . . Rank. Pte . . . . Name. Heron W.H. . . . . .

Regiment. . 1st Btn Cdn Scottish 3rd.Div . . . . . .

Unit. . . Support Coy . . . . . .

Stationed at. . . . Field . . . . . .

Surrendered himself to No. B-132236 . Rank. L/Cpl. Name. Rilley R.A. . .

of the. . Cdn Provost Corps . . . . . .

on the 31 . . day of. May . . . . 1944., at. 0745 . . . . hours. . . . .

. . . . . AS AN ABSENTEE WITH OUT LEAVE. . . . . .

At the time of his surrender he was wearing (Military uniform) or ~~(Civilian clothes)~~.

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer, or the non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on surrendering.

(Strike out part inapplicable).

London
31 May 44

R.J. Stinson

(R.J. Stinson), Capt.,
D.A.P.M. C.M.H.Q.

SUPPLEMENTARY COPY

No 6337 Name Heron W.H. Sqn, Battery, or Company | Corps C.E.C. | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/135 (3458)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing with trial	By whom awarded	Remarks
				Certified true copy of the Original Document.					
				Jno Pardoe Capt Adjt 11 C.B.R. Bde.					

(PTO)

Exc
Adjts

Ex B
24-3

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-99-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number C-6337 Rank Pte. Name HERON, W.H. Regiment (or unit)
1st Bn. Cdn. Scottish Regt. attched to 53 Coy, 11 CBR Bn., C.A.(O)

1. The following is a fair and true summary of the entries in the Field Service and General / Regimental and Squadron, Battery Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Nil	times	Nil	times
For	Nil	times	Nil	times
For	Nil	times	Nil	times
For	Nil	times	Nil	times
For		times		times

Number of instances of gallantry or distinguished conduct

~~or~~

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act A.F.A. 78 Section 47 of the Army Act and dispensations with trial under A.A. 78 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and ~~OA. 21~~ days in military custody, making a total of ~~21 0~~ days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 21 year 1mons

6. The date of his ~~commission~~ specified in his ~~record of service~~ attestation paper is 12 Jul 1940

7. The service which the accused is allowed to reckon towards discharge is 3 years 11 mons.

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of ~~or entitled to no air force decoration, or air force reward (or is in possession of or entitled to)~~. State any ~~air force~~ military decoration or reward. C.V.S.M. & Cl.

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of~~

11. (In the case of an officer.) The accused holds in the ~~Royal Canadian Air Force~~ the rank of ~~Permanent Force~~ unit ~~dated~~, and in his ~~regiment~~ (or corps), the rank of ~~dated~~.

12. The accused ~~has served as a non-commissioned officer~~ continuously, without reduction, to the present date:—

~~Date of promotion~~

~~In the rank of years.~~

~~In the rank of years.~~

~~In the rank of years.~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~Air Force.~~

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Army~~ Act, and of cases in which trial has been dispensed with of accused. Number ~~Rank~~

Name ~~Unit~~ ~~of~~ ~~Regiment~~

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NIL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this day of June 1944.

* The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

F.M. Pardee Capt.

(F.M. Pardee, Capt. & Adjt.

HM-136.
Plē. Hen. E.M.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C 122786 Pte E.M. HERR R REGT OF CAN

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st CHARGE	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be inprisoned with hard labour for two (2) years and to be discharged with ignominy from His Majesties' Service.

(Sgd) ..... Judge-Advocate, if any. 7 Dec 44 Date awarded. (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 762.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

~~I direct that the accused be not committed to prison or detention barracks until further orders.(1)~~

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date 9Dec 44

Commanding .....

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C 122781 Pte HERR E.M.	11 Dec 44	Lt. 1 Bn R REGT C., C.A. (O's).

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFB) 40/P At O 1666 (1950)

4/388

Convened by Order of Lt-Col JEC Pangman A/ Comd 4CdnInf Bde dated 5 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/eppmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 122781	Pte	Earl Michael	HERR	R REGT C

Certified True Copy
[illegible]
Capt
4 D.J.A.
Cdn Sec G.H.Q. 2 Echelon 21 Army Gp

PROCEEDINGS RETURNED
Date 10 Dec 44
4 Cdn Inf Bde
Cdn Sec G.H.Q. 2 Echelon 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 7 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 1st Pg

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for books and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 13, RP 36, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter? Ans~~ .....

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	H.W.P. THOMSON	ESSEX SCOT
Member	CAPT	R.E. BOLT	RHLI
Member	LIEUT	D.P. MELVILLE	11 CDN FD AMB
Judge-Advocate			
Prosecutor	LIEUT	A.H. KRIEGER	R REGT CAN
Defending Offr	CAPT	.T. R. WILCOX	R REGT CAN

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused C 122781 Pte E. M. HERR before arraignment make(s) (no) (a) plea

..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Vol 5 Page 185

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para*: 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "C", initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *for procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(7) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(7), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "D" and Ex "E" respectively.(3)
(1. *MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. YES.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 123(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*B*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No C-122781 Pte HERR, Earl Michael, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE WHEN ON A CTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

Sec 15(1) Army Act

- in that he-

In the Field, absented himself without leave from 0815 hrs, 26 Oct44, and remained absent until apprehended at 1345 hrs, 18Nov44, by the Canadian Military Police in the city of Antwerp. (Total Time Absent: 23Days, 5 hrs, 30 mins.)

(R.M.Lendrum) Lt-Col),
Officer Commanding,
1 Bn The Royal Regt of Canada.

IN THE FIELD
28 Nov 44

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

(JEC Pangman) Lt-Col
A/Comd -4Cdn Inf Bde

In the field
5 Dec 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(6).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 122781	Pte		Earl Michael	HERR	R REGT C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5Dec 44 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	HWP Thomson	Essex Scot

MEMBERS.

A Capt to be detailed by OC RHLI

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt	to be detailed by OC 11 Cdn Fd Amb	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
A Capt	to be detailed by OC Regt C	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.) (JEC Pangman) (Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

Date 5 Dec 44 A/ Commanding 4 CDN INF BDE
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA95 (In lieu of AFA3) 40/P & S/1697 (49311)

(See overleaf for oaths and notes for use on trial.)

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No c-122781 Pte HERR, Earl Michael, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas:-

The Accused is infm of his rights.

By Direction of the Commanding Officer the Summary of Evidence is taken on oath.

FIRST WITNESS — For the Prosecution

B-16994 A/Cpl Boulanger, M., 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am B-16994 A/CPL Boulanger, M., section leader of 15 pl, "C" Coy, 1 Bn The Royal Regiment of Canada, and the accused, C-122781 Pte Herr, E.M., whom I now recognize, is a member of my pl. At about 1800hrs, 22 Oct44, Pte Herr, E.M., was included amonst the personnel of "C"Coy who were sent on LOB to "A" Echelon, 1 Bn The Royal Regiment of Canada. At about 1900hrs, 26 Oct44, when the personnel of "C" Coy returned from "A" Echelon, 1 Bn The Royal Regiment of Canada, to "C" Coy of that regiment Pte Herr, E.M. was not present.
He has not appeared with the pl since that time.

The accused declines to cross-examine this witness.

(M. Boulanger) A/Cpl.

SECOND WITNESS — For the Prosecution

B-67217 A/CSM McCartney, J.R., 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am B 67217 A/CSM McCartney, J.R. CSM of HQ coy, 1 Bn The Royal Regiment of Canada. At 0815 hrs, 26 Oct 44, I called the roll of LOB personnel resting at "A" Echelon, 1 Bn The Royal Regiment of Canada, and the accused, C-122781 Pte Herr, E.M. whom I now recognize, did not answer his name. I searched the area for him but was unable to locate him, and marked him duly absent.

The accused declines to cross-examine this witness.

(J.R. McCartney) A/CSM

THIRD WITNESS — For the Prosecution

Lt. G.H. James, 1 Bn The Royal Regiment of Canada, an officer of the Canadian Army Overseas, having been duly sworn, states:

I am Lt. G.H. James, Asst-Adjt, and in charge of all regimental documents for 1 Bn The Royal Regiment of Canada. I present herewith Army Form B 252and Certificate of Apprehension in accordance with Sec 163 (1) (jj) AA, which show that the accused, C-122781 Pte Herr, E.M. whom I now recognize, was apprehended by the Canadian Military Police in the city of Antwerp, and are annexed hereto and marked Exhibits "A " and "B" respectively.

The accused declines to cross-examine this witness.

(G.H. James) Lt.

The Accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or to give evidence on oath or to call witnesses in his defence at this point.

I certify that the foregoing Summary of Evidence, consisting of Two pages, was taken down by me in the pressence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f), and(g), have been complied with.

IN THE FIELD
28Nov 44

(A.H. Krieger) Lt,
Officer Detailed to Take Summary.

MEDICAL OFFICER'S CERTIFICATE

I certify that No---------- C122781 Pte Herr E.M. 1 R REGT C-- is---- fit------- to undergo trial by Court -Martial today.

IN THE FIELD
7Dec 44

Medical Officer.

EXHIBIT "B"

CERTIFICATE UNDER SECTION 163(1) (11) OF THE ARMY ACT.

I certify that No. C 122781 Rank Pte Name Kerr E.M. of "C" Coy RR of Can Regiment was arrested in the field at Antwerp 1345hrs on (date) 18 Nov 44 and at the time of his arrest he was wearing Military uniform (plain clothes).

Military uniform (plain clothes).

Signature of Provost Marshal, D.P.M. A.P.M. D.A.P.M. or other offier into whose custody the above named person was taken on arrest.

---------- SGT 1/C.
7Cdn L of C Pro Sec.
2Cdn L of C Pro Coy.

Note This Certificate must be signed by the Officer whose custody the person was taken and not by someone "for" him.

EXHIBIT "A"
Army Form B 252
(SeeKing Regulations)

..B..... of Canada .....Regiment
"C" Coy .....Battery / Squadron / Troop or / Company

CHARGE against No. C 122781 Rank Pte.

NAME KERR E.M. Date of Offence 18Nov44.

PLACE Antwerp.

OFFENCE--- W.O.A.S. Absent without leave from ? until apprehended by the Cdn. Pro. Corps in Keyser Lei Antwerp at about 1345 hrs on the 18Nov 44.

.....

.....

Names of Witnesses:-
LEGAULT---------7Cdn L of C Pro Sec.-----
RUSSELL---------2Cdn L of C Pro Coy.-----

Signature of O.C. Battery, Squadron Troop or Company.....

Punishment Awarded .....

By whom Awarded.....

.....Adjutant

No. C-122781 Name HERR, E.M. Sqn, Battery, or Company No. 3"A" District Depot Corps CAC RECCE N.T.

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Date of enlistment 27-10-43 | CC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 8m/B&F/2(3413)

Sheet No One | Signature OC Company, etc W.Gray Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Dundurn Sask	5/Jan 1944	Tpr		A.W.L. from 2359 hrs 5 Jan)44 until 0100hrs 9Jan/44. Total ~~absence~~ absence 3 Days, 1hr, 1 min. Section 15 (1) A .A.	Documentary	4Days C.B. 4Days Pay See 46(2) (d) A.A.	10/Jan 1944	Lt-Col J.A. Macdonald, M.C.	4Days Pay 149 (1) (a) P.R.& I.
Dundurn Sask	29/Apr 1944	Tpr		A.W.L. from 0100 hrs 28/A pr/44 until 0055 hrs 29/Apr/ 44. Total absence 23hrs, 55min. Section 15(1) A.A.	Documentary	4Days C.B.	29/Apr/44	M.L. Newroth Major	1Days pay 149 (1) (a) F.R.&I.

CERTIFIED TRU AND CORRECT COPY OF ORIGINAL DOCUMENT IN MY POSSESSION:

Officer (G.H.James)Lt. IC Records 1R REGT C.

(PTO)

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C 122781	Pte	Herr, E.M.	1 R REGT C

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For Sec 15 (1) AA	times	
For	times	2 times
For	times	times
[redacted]	times	times
[redacted]		times

or,

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. [redacted]

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

[redacted]

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 10 days in military Air Force custody, making a total of 10 days in custody, of which N 11 days were spent in hospital.

5. The present age of the accused according to his record of service is [redacted] 21 yrs

6. The date of his [redacted] specified in his record of service is [redacted] 27Oct 43

7. The service which the accused is allowed to reckon towards discharge is 1 yr 1 month

8. The accused is entitled to reckon 1 yr1mon service for the purpose of determining his pension, etc.

9. [redacted]

10. [redacted]

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated , and in his regiment (or corps), the rank of dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of NA years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank Air Force Unit Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	-NIL-			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 28 th day of N ov 44

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

///

(G.H. James) Lt.
Officer IC Records, 1 R REGT C.

Statement in Mitigation of Sentence of Pte Herr, E.M.

Age 21 - enlisted Oct 43 - came to England June 44- came to Bn 3 Sep 44. With Bn for 7 weeks in campaign from Antwerp to South Beveland. Went A.W.L. while L.O.B. at "A" Echelon.

Was in Recce but reallocated to inf against his wish.

One 3-day A.W.L. in Canada and one 1-day A.W.L. in Canada. No charges since coming to England.

Says he had a lot of money and stayed in Antwerp until it was spent.

Does not wish to call character evidence.

Single; no Dependents

Accused does not with to call witnesses as to character.

(T.R. Wilcox) Capt,
Defending Officer.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : C 122786 Pte E.M. HERR R REGT OF CAN

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st CHARGE	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under 62.)

Sentence Awarded by the Court : To be inprisoned with hard labour for two(2) years and to be discharged with ignominy from His Majesties Service

(Sgd) ..... Judge-Advocate, if any. 7 Dec 44 Date awarded. (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(C) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

~~I direct that the accused be not committed to prison or detention barracks until further orders.(1)~~

(1. AA 57A. Delete if not used.)

Date 9Dec 44 (Sgd) ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C 122781 Pte HERR E.M.	11Dec 44	Lt. 1 Bn R REGT C., C.A.(O's).

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4/7136

CFA68 (To face of AFA32) 40/P 26-B/1868 6000/-

4/388

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Col JEC Pangman A/ Comd 4CdnInf Bde dated 5 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 162, 163. (Frs, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 122781	Pte		Earl Michael	HERR	R REGT C

Certified true Copy
Bill Thompson
A/Capt

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) HOLLAND on (*date(s)*) 7 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereon. See back of Convening Order, CF 895, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused : ~~Do you object to ..... as interpreter ? Ans~~ ~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans~~ ~~The shorthand writer is sworn.(1).~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJOR	H.W.P. THOMSON	ESSEX SCOT
Member	CAPT	R.E. BOLT	RHLI
Member	LIEUT	D.P. MELVILLE	11 CDN FD AMB
Judge-Advocate			
Prosecutor	LIEUT	A.H. KRIEGER	R REGT CAN
Defending Offr	CAPT	.T. R. WILCOX	R REGT CAN

Questions by President : Is the Prosecutor a lawyer ? Ans YES Is the Defending Offr a lawyer ? Ans YES (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused C 122781 Pte E. M. HERR before arraignment makes(s) (no) (a) plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF 896 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "C", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "D" and Ex "E" respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2223, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 136. When accused already under sentence of imprisonment or detention see AA 64(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No C-122781 Pte HERR, Earl Michael, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE WHEN ON A CTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

Sec 15(1) Army Act

- in that he-

In the Field, absented himself without leave from 0815 hrs, 26 Oct44, and remained absent until apprehended at 1345 hrs, 18Nov44, by the Canadian Military Police in the city of Antwerp. (Total Time Absent: 23Days, 5 hrs, 30 mins.)

(R.M.Lendrum) Lt-Col),
Officer Commanding,
1 Bn The Royal Regt of Canada.

IN THE FIELD
28 Nov 44

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

(JEC Pangman) Lt-Col
A/Comd -4Cdn Inf Bde

In the field
5 Dec 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fnt, KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 122781	Pte		Earl Michael	HERR	R REGT C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5Dec 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj (Rank.) HWP Thomson (Must be named. RP 106.) Essex Scot (Unit.)

MEMBERS.

A Capt to be detailed by OC RHLI

A Capt to be detailed by OC 11 Cdn Fd Amb
(Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

A Capt to be detailed by OC Regt C
(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

Date 5 Dec 44

(JEC Pangman) (Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

A/ Commanding 4 CDN INF BDE
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

I certify that No---------- C122781 Pte Herr E.M. 1 R REGT C--
is---- fit------- to undergo trial by Court -Martial today.

IN THE FIELD
7Dec 44

---------- Medical Officer.

The Accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or to give evidence on oath or to call witnesses in his defence at this point.

I certify that the foregoing Summary of Evidence, consisting of Two pages, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f), and (g), have been complied with.

IN THE FIELD
28Nov 44

(A.H. Krieger) Lt,
Officer Detailed to Take Summary.

CERTIFICATE UNDER SECTION 163(1) (11) OF THE ARMY ACT. EXHIBIT "B"

I certify that No. C 122781 Rank Pte Name Kerr E.M. of "C" Coy RR of Can Regiment was arrested in the field at Antwerp 1345hrs on (date) 18 Nov 44 and at the time of his arrest he was wearing Military uniform (plain clothes).

Military uniform (plain clothes).

Signature of Provost Marshal, D.P.M. A.P.M. D.A.P.M. or other offier into whose custody the above named person was taken on arrest. ---------- 30T 1/t.
7Cdn L of C Pro Sec.
2Cdn L of C Pro Coy.

Note This Certificate must be signed by the Officer whose custody the person was taken and not by someone "for" him.

EXHIBIT "A"
Army Form B 252
(See King Regulations)

R.R. of Canada .....Regiment
"C" Coy .....Battery / Squadron / Troop or / Company

CHARGE against No. C 122781 Rank Pte.
NAME Kerr E.M. Date of Offence 18Nov44.
PLACE Antwerp.

OFFENCE--- W.O.A.S. Absent without leave from ? until apprehended by the Cdn. Pro. Corps in Keyser Lei Antwerp at about 1345 hrs on the 18Nov 44.

.....

.....

Names of Witnesses:-
LEGAULT---------7Cdn L of C Pro Sec.-----
RUSSELL---------2Cdn L of C Pro Coy.-----

Signature of O.C. Battery, Squadron Troop or Company .....

Punishment Awarded .....

By whom Awarded.....

.....Adjutant

[illegible], E.M. — No. 3"A" District Depot

Date of last entry in Company Conduct Sheet | Sqn, Battery, or Company | Corps: CAC. REGGE M.T. | Date of enlistment: 27-10-43 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122)

No. and date of last drunk | Period of good conduct to freedom from extra fine | Sheet No: One | Signature OC Company, etc: W.Gray Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Dundurn Sask	5/Jan 1944	Tpr		A.W.L. from 2359 hrs 5 Jan)44 until 0100hrs 9Jan/44. Total [illegible] absence 3 Days, 1hr. 1 min. Section 15 (1) A .A.	Documentary	4Days C.B. 4Days Pay Sec 46(2) (d) A.A.	10/Jan 1944	Lt-Col J.A. Macdonald, M.C.	4Days Pay 149 (1) (a) F.R.& I.
Dundurn Sask	29/Apr 1944	Tpr		A.W.L. from 0100 hrs 26/Apr/44 until 0055 hrs 29/Apr/ 44. Total absence 23hrs. 55min. Section 15(1) A.A.	Documentary	4Days C.B.	29/Apr/44	M.L. Newroth Major	1Days pay 149 (1) (a) F.R.&I.

CERTIFIED TRUE AND CORRECT COPY OF ORIGINAL DOCUMENT IN MY POSSESSION:

(G.H.James) Lt.
Officer IC Records, 1R REGT C.

M.F.B. 358
22M—5-41 (372-3)
H.Q. 1772-39-633
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C 122781	Pte	Herr, E.M.	1 R REGT C

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery / Conduct sheets / or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, / Air Force Act / of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For Sec 15 (1) AA	times	2 times
For	times	times
For	times	times
For	times	times

[redacted]

or,

[redacted]

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. [redacted]

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under / Air Force Act / Section 47 of the Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

[redacted]

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in / Air Force / civil custody, and 10 days in military custody, making a total of 10 days in custody, of which N 11 days were spent in hospital.

5. The present age of the accused according to his record of service is [redacted] 21 yrs

6. The date of his [redacted] specified in his record of service is [redacted] 27Oct 43

7. The service which the accused is allowed to reckon towards discharge is 1 yr 1 month

8. The accused is entitled to reckon 1 yr1mon service for the purpose of determining his pension, etc.

9. [redacted]

10. [redacted]

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force
..... dated ....., and in his regiment (or corps), the rank of unit
..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of N/A years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank ..... Unit
Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	-NIL-			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 28th day of Nov 44

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

(G.J. James) Lt.
Officer IC Records, 1 Regt C.

Statement in Mitigation of Sentence of Pte Kerr, E.M.

Age 21 - enlisted Oct 43 - came to England June 44- came to En 3 Sep 44. With En for 7 weeks in campaign from Antwerp to South Beveland. Went A.W.L. while L.O.B. at "A" Echelon. Was in Recce but reallocated to inf against his wish. One 3-day A.W.L. in Canada and one 1-day A.W.L. in Canada. No charges since coming to England. Says he had a lot of money and stayed in Antwerp until it was spent.

Does not wish to call character evidence.

Single; no Dependents

Accused does not with to call witnesses as to character.

(F.R. Wilcox) Capt,
Defending Officer.

Statement in Mitigation of Sentence of Pte Herr, E.M.

Age 21 - enlisted Oct 43 - came to England June 44- came to Bn 3 Sep 44. With Bn for 7 weeks in campaign from Antwerp to South Beveland. Went A.W.L. while L.O.B. at "A" Echelon.

Was in Recce but reallocated to inf against his wish.

One 3-day A.W.L. in Canada and one 1-day A.W.L. in Canada. No charges since coming to England.

Says he had a lot of money and stayed in Antwerp until it was spent.

Does not wish to call character evidence.

Single; nc Dependents

Accused does not with to call witnesses as to character.

(T.R. Wilcox) Capt,
Defending Officer.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused. C122786 Pte E.M. HERR R Regt C

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p. 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Charge	Guilty	Guilty.	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) .....
(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which 2 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under C2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for two (2) years and to be discharged with ignominy from His Majesty's Service.

(Sgd) ..... Judge-Advocate, if any. 7 Dec 44 Date awarded. (Sgd) A. H. Thomson Major President. (RP 45, 90.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

6. I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

Date 9 Dec 44 (Sgd) (F.N. Sobeld.) Brig Commanding 4 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C122781 PTE HERR, E.M.	11 Dec 44.	[illegible] Lt. 1 Bn R REGT C., C.A.(O's).

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 24M-1136
RECEIVED 24 JAN 1945 JAG's BRANCH CMHQ
CFAR 6 (To lieu of AFA21) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Col JEC Fangman V Comd 4 Cdn Inf Bde dated 7 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent & confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
C122781	Pte		Earl Michael	HERR	R Regt C

PROCEEDINGS REVIEWED
Hqrs Princess Louise Fus
24 Jan 45
[illegible] OFFICER, JAG Branch

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date) 7 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (as attached thereto.)(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 1. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (2).
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans Nil
The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans Nil
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans Nil (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	H.W.P. THOMSON	ESSEX Scot.
Member	CAPT	R.E. BOLT	R.H.L.I.
Member	Lieut	D.P. MELVILLE	11 Cdn Fd Amb
Judge-Advocate			
Prosecutor	LIEUT	A.H. KRIEGER	R Regt C
Defending Offr	CAPT	T.R. WILCOX	R Regt C

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI 5.)

A8. The accused C122781 Pte E.M. HERR before arraignment make(s) (no) (a) objection(s). (3)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and Finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 5

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E1 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) (do) change(s) his (their) plea(s) to _____ charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be cleared to consider the statement, if it is whole or part unsworn.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) now changed the President records findings of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans _____ (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the _____ charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the _____ charge(s), and allowed on the _____ charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans _____. Do you intend to call witnesses on your behalf ? Ans _____. Are they witnesses as to character only ? Ans _____.
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of Guilty on the _____ charge(s), being subject to confirmation, will be promulgated later.(1) (2) The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(3)
(*1. AA 54(2) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces (no document) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)
(*1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. No (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 136, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AMENDED CONVENING ORDER

With further reference to the trial by FGCM of C-122781, Pte Herr, E M, R Regt C, **in which a Convening Order was issued by me and dated 5 Dec 44, I hereby amend the said Convening Order as follows.**

For "A Captain to be detailed by 11 Cdn Fd Amb" substitute "A Lieut to be detailed by OC 11 Cdn Fd Amb".

On Active Service in the Fd
In HOLLAND
6 Dec 44.

(J E C PANGMAN) Lt-Col
A/Comd
4 Cdn Inf Bde

CHARGE SHEET

The accused, No C-122781 Pte HERR, Earl Michael, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

Sec 15 (1) Army Act

- in that he -

In the Field, absented himself without leave from 0615 hrs, 26 Oct 44, and remained absent until apprehended at 1345 hrs, 18 Nov 44, by the Canadian Military Police in the city of Antwerp. (Total Time Absent: 23 days, 5 hrs, 30 mins.)

(R.M. Lendrum) Lt-Col,
Officer Commanding,
1 Bn The Royal Regt of Canada.

IN THE FIELD
26 Nov 44.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL.

(JEC Ferguson) Lt-Col
A/Comd - 4 Cdn Inf Bde

In the field
5 Dec 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C122761	Pte		Earl Michael	HERR	R Regt O

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Dec 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	HWP Thomson	Essex Scot

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt to be detailed by CC RHLI		
A Capt to be detailed by CC 11 Cdn Fd Amb		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
A Capt to be detailed by CO R Regt O		

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

Dat 5 Dec 44

(JEC Pangman) (Signed personally. RP 105 fn 2.)

Lt-Col (Rank.)

A/ Commanding 4 CDN INF BDE

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS.

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

I certify that No. C-132781 Pte. Herr, E. M. 1 R. Regt. C
is fit to undergo trial by Court-Martial today.

IN THE FIELD
7 Dec 44

Medical Officer.

Statement in Mitigation of Sentence of Pte Herr, E.M.

Age 21 - enlisted Oct 43 - came to England June 44 - came to Bn 3 Sep 44. With Bn for 7 weeks in campaign from Antwerp to South Beveland. Went A.W.L. while L.O.B. at "A" Echelon.

Was in Recce but reallocated to inf against his wish.

One 3-day A.W.L. in Canada and one 1-day A.W.L. in Canada. No charges since coming to England.

Says he had a lot of money and stayed in Antwerp until it was spent.

Does not wish to call character evidence.

SINGLE; NO DEPENDENTS
Accused does not wish to call witnesses as to character.

(T.R. Wilcox) Capt,
Defending Officer.

Ex "C"

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No C-122781 Pte HERR, Earl Michael, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas:-

The accused is info of his rights.

By Direction of the Commanding Officer the Summary of Evidence is taken on oath.

FIRST WITNESS

For the Prosecution

B-16994 A/Cpl Boulanger, M., 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am B-16994 A/Cpl Boulanger, M., section leader of 15 pl, "C" Coy, 1 Bn The Royal Regiment of Canada, and the accused, C-122781 Pte Herr, E.M., whom I now recognize, is a member of my pl. At about 1600 hrs, 22 Oct 44, Pte Herr, E.M., was included amongst the personnel of "C" Coy who were sent on LOB to "A" Echelon, 1 Bn The Royal Regiment of Canada. At about 1900 hrs, 26 Oct 44, when the personnel of "C" Coy returned from "A" Echelon, 1 Bn The Royal Regiment of Canada, to "C" Coy of that regiment Pte Herr, E.M., was not present. He has not appeared with the pl since that time.

The accused declines to cross-examine this witness.

(M. Boulanger) A/Cpl

SECOND WITNESS

For the Prosecution

B-67217 A/CSM McCartney, J.R., 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am B-67217 A/CSM McCartney, J.R., CSM of HQ Coy, 1 Bn The Royal Regiment of Canada. At 0815 hrs, 26 Oct 44, I called the roll of LOB personnel resting at "A" Echelon, 1 Bn The Royal Regiment of Canada, and the accused, C-122781 Pte Herr, E.M., whom I now recognize, did not answer his name. I searched the area for him but was unable to locate him, and marked him duly absent.

The accused declines to cross-examine this witness.

(J.R. McCartney) A/CSM

THIRD WITNESS

For the Prosecution

Lt G.H. James, 1 Bn The Royal Regiment of Canada, an officer of the Canadian Army Overseas, having been duly sworn, states:

I am Lt G.H. James, Asst-Adjt, and in charge of all regimental documents for 1 Bn The Royal Regiment of Canada. I present herewith Army Form B 252 and Certificate of Apprehension in accordance with Sec 163 (1)(jj) AA, which show that the accused, C-122781 Pte Herr, E.M., whom I now recognize, was apprehended by the Canadian Military Police in the city of Antwerp, and are annexed hereto and marked Exhibits "A" and "B" respectively.

The accused declines to cross-examine this witness.

(G.H. James) Lt.

The accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or to give evidence on oath or to call witnesses in his defence at this point.

I certify that the foregoing Summary of Evidence, consisting of TWO pages, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

IN THE FIELD
28 Nov 44.

(A.H. Krieger) Lt.
Officer Detailed to Take Summary.

EXHIBIT "A"

Army Form B 252
(See King's Regulations)

CHARGE

R. R. of CANADA — Regiment
"C" Coy — Battery / Squadron / Troop or Company

CHARGE against No. C 122781 Rank Pte.

Name KERR, E. M.

Place ANTWERP. Date of Offence 15 Nov 44

OFFENCE W.O.H.S. Absent without leave from ? until apprehended by the Corn. Pro. Corps. in Keyser Rei Antwerp at about 1345 hrs. on the 15 Nov 44

Names of Witnesses :—

LEFAULT } 7 CDN. L of C. PRO. SEC.
ROSSEAU } 2 Can. L of C. PRO. COY

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

SGT
7 CDN. L. OF C. PRO. SEC.
2 CDN. L. OF C. PRO. COY.
Adjutant.

20188. Wt.W31074 [illegible] 10/42. K. & H., Ltd. (A657/42).

Statement of **EVIDENCE** in the case of

C-122781 Pte. KERR, E.M.
"C" Coy. R.R. of Canada.

Sir,

At about 1345 hrs. on the 17 Nov 44 I was on patrol duty on Keyserlei Antwerp & in company with Pte. Russell when I saw the afsd soldier. I asked him for his pass. He could not produce one. He was A.W.L. I placed him under arrest & escorted him to the guard room.

Antwerp
17 Nov. 44

Lt & Camera a
LEEHULT, H. H/C.

Sir,

I have read over & corroborate the above statement.

Antwerp
17 Nov. 44

H.W. Russell
RUSSELL, H.W. H/C.

REMARKS

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ *Rank* _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		-NIL-		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 28th day of Nov 44.

(S.H. James) Lt,
Officer IC Records, 1 R REGT C.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of	years.	
In the rank of	W/A years.	
In the rank of	years.	

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such papers as are available and the paragraph inserted accordingly.*)

EXHIBIT "A"

CHARGE

Army Form B 252
(See King's Regulations)

R.R. of CANADA — Regiment
"C" Coy — Battery / Squadron / Troop or Company

CHARGE against No. C-122781 Rank Pte

Name KERR, E.M.

Place ANTWERP. Date of Offence 16 Nov 44

OFFENCE W.O.A.S. Absent without leave from ? until apprehended by the Com. Pro. Capt. in Keyser Lei Antwerp at about 1345 hrs. on the 16 Nov 44

Names of Witnesses :—

LEBAULT } 7 CDN. L. of C. PRO. SEC.
ROSSEAU } 2 " " " C. PRO. " COY

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

SGT
7 CDN. L. OF C. PRO SEC.
2 CDN. L. OF C. PRO C. Y.

Adjutant.

30165. Wt.W3132/4 ... 12/42. K. & H., Ltd. G667/47.

P.T.O.

Statement of **EVIDENCE** in the case of

C-122781 Pte. KERR, E.M.,
"C" Coy. R.R. of Canada.

Sir, At about 1345 hrs. on the 17 Nov 44 I was on patol duty on Keyser Str Antwerp & in company with Pte. Russell when I saw the afsd soldier. I asked him for his pass. He could not produce one. He was A.W.L. I placed him under arrest & escorted him to the guard room.

Antwerp.
17 Nov 44

Signed
LESAULT, H. H/C.

Sir, I have read over & corroborate the above statement.

Antwerp
17 Nov 44

H.W. Russell
RUSSELL, H.W. H/C.

REMARKS

Ex "D"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
C-122781	Pte	Herr, E.M.	1 R Regt C

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For Sec 15 (1) AA	2 times	2 times
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct:

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, or.

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 78 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for [illegible] beginning on the day of [illegible]

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 10 days in military custody, making a total of 10 days of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service attestation paper is 21 yrs

6. The date of his ~~attestation~~ specified in his record of service attestation paper is 27 Oct 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr 1 mo

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr 1 mo service

9. The accused is entitled to reckon 1 yr 1 mo service for the purpose of determining his pension, etc.

10. ~~The accused is in possession of, is entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or award*)).~~

11. ~~(*If the accused is a warrant officer.*) The accused before he was under a warrant officer last held the regimental rank of [illegible]~~

12. ~~(*In the case of an officer.*) The accused holds in the army the rank of [illegible] dated [illegible] and in his regiment (*or corps or department*) the rank of [illegible] dated [illegible]~~

W.L.5767/1519 20M. 1/44. P. Ltd. TH-3.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ *Rank* _____ Name _____ of _____ Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
		-NIL-		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 28th day of Nov 44.

(J.H. James) Lt,
Officer IC Records, 1 A REGT C.

15. The accused has served as a non-commissioned officer continuously, without reduction, to the present date

	Date of Promotion.
In the rank of	years.
In the rank of N/A	years.
In the rank of	years.

(INSTRUCTION—If any name in any of the above paragraph cannot be stated from the regimental books the paragraph may be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph corrected amended accordingly.)

EX "E"

No C-122783 Name HERR, E.M. | Sqn, Battery, or Company | No. 3 "A" District Depot Corps CAC REGT N.T. | Date of enlistment 27-10-43 | QC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/196 (3428)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One. | Signature OC Company, etc W. Gray, Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Dundurn, Sask	5/Jan 1944	Tpr		A.W.L. from 2359 hrs 5/Jan/44 until 0100 hrs 9/Jan/44. Total absence 3 days, 1 hr, 2 min. Section 15 (1) A.A.	Documentary	4 days C.B. 4 days pay Sec 16(2)(a) A.A.	10/Jan 1944	Lt-Col J.A. MacDonald, M.C.	4 days pay 149 (1)(a) F.R. & I.
Dundurn Sask	29 Apr 1944	Tpr		A.W.L. from 0100 hrs 28/Apr/44 until 0055 hrs 29/Apr/44. Total absence 23 hrs, 55 min. Section 15 (1) A.A.	Documentary	4 days C.B.	29/Apr/44	M.L. Newroth Major	1 days pay 149 (1)(a) F.R. & I.

CERTIFIED TRUE AND CORRECT COPY OF ORIGINAL DOCUMENT IN MY POSSESSION:

(G.H. Jones) Lt,
Officer IC Records, 1 R REGT C.

(PTO)

CERTIFICATE UNDER SECTION 153 (4)(4A) OF THE ARMY ACT. EXHIBIT "B"

I do certify that No. C-122781 Rank Pte. Name KERR E. M. of "C" Coy. R.R. of Canada was arrested in the Field at 1345 hrs. on (date) 12 Nov 44 and at the time of his arrest he was wearing Military uniform (plain clothes).

Signature of Provost Marshal, D.P.M., A.P.M., D.A.P.M., or other officer into whose custody the above named person was taken on arrest.

SGT 1/C.
7 CDN. L. OF C. PRO SEC.
2 CDN. L. OF C. PRO COY.

NOTE. This certificate must be signed by the officer into whose custody the person was taken and not by someone 'For' him.

CERTIFICATE UNDER SECTION 153 (1)(11) OF THE ARMY ACT. EXHIBIT "B"

I certify that No. C-132751 Rank Pte. Name KERR E.M.
"C" Coy. P.R. of Canada Regiment was arrested in the Field at 13 Hosp
hours on (date) 16 Nov 44 and at the time of his arrest he was wearing
military uniform (plain clothes).

Signature of Provost Marshal, D.A.P.M., A.P.M., D.A.P.M., or other officer into whose custody the above named person was taken on arrest.

SGT 1/C.
7 CDN. L. OF C. PRO SEC.
2 CDN. L. OF C. PRO COY.

NOTE. This certificate must be signed by the officer into whose custody the person was taken and not by persons 'For' him.

BB-2.

L/CPL HERR P.L.

C-78018 L/Cpl HERR, Patrick Leo,
Hastings & Prince Edward Regiment,
5 Cdn Infantry Reinforcement Unit.

BB-2

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this sixteenth day of March, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[omit that it is not practicable to delay the trial for reference to superior qualified officer.]~~ 4B

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable. * ~~[Those unable to appear —~~ ~~(a) Three Officers to form the Court.~~ ~~(b) A Field Officer as President.]~~ ~~for the following reasons, namely:—~~ 4B

Proceedings Received CMHQ 19 APR 43

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	P.A. Woods, E.D.	1 C.G.F.C.

Members.

Rank.	Name.	Regiment.
A Captain	from	5 C.G.F.C.
A Lieutenant	from	7 C.I.R.D.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

Exhibit "A" March 17/43 Staff Major

*Signed J. Walter Basher Colonel

Commanding "D" Group, Cdn Rft Units

Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C-78018 Lance Corporal HERR, Patrick Leo. Hast & P.E.R. 5 C.I.R.U.	First Charge A.A. Sec 9 (2) Second Charge A.A. Sec 20 (2)	Guilty Not Guilty	Guilty Guilty	Confirm the finding and Sentence of the Court. G. Mathey Dashwood Commander "D" Group (Cdn. Reinforcement Units) C.A.
	See Charge Sheet attached.		Returned March 17/43 Woods Major	

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" Answer recorded (on separate sheet if necessary) :—

(Signed) G. Mathey Dashwood, Colonel (Signed) Woods Major
Commanding "D" Group, C.R.U. / Cdn. Sen. Pioneer Bn. President.
Convening Officer (d)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (If necessary) to be PINNED here.

B. Certificate of President as to proceedings

I certify that the above Court assembled on the 17th day of March, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~) Court Stenographer
*(4. The officers under instruction)

*Omit if not applicable.

were duly sworn.

Signed this 17 day of March 1943

Woods Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*I direct that the sentence named in the margin be not carried into execution, but that the prisoner be kept in safe custody in prison or detention barrack until further orders.

Signed this 17 th day of March 1943.

G. Mathey Dashwood Lt. Col.
Commander
Confirming Officer "D" Group
(Cdn. Reinforcement Units) C.A.

Promulgated and extracts taken in the case of C-78018 L/C. HERR, Patrick, Leo

(a) (Dated) 18 Mar. 43 D.O. #30 d/19 Mar. 43 (Signed) R. Mason Colonel, O.C. 5 C.I.R.U.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23175) W1.46178-850 50,000 2-43 A.B.C.W.Ltd. Gp.349

CHARGE SHEET

The accused, Lance Corporal Patrick Leo Hoar, C-78018 of the Hastings and Prince Edward Regt, on strength of 5 Canadian Infantry Reinforcement Unit as a reinforcement, a soldier of the Canadian Army (Overseas) is charged with:

FIRST CHARGE
A.A. SEC 9(2)

When on active service, disobeying a lawful command given by his superior officer.

in that he

at Journey Barracks, at 1600 hrs, 11 Mar 43, when taking over command of the Regt'l Detention Rooms, did not count the number of prisoners confined therein and did not sign receipt of said prisoners, as ordered to do so by the Provost Sgt A Patterson.

SECOND CHARGE
A.A. SEC. 20(2)

When on active service, without reasonable excuse, allowing a prisoner committed to his charge to escape

in that he

at Journey Barracks, on 11 Mar 43, when in charge of Regt'l Detention Rooms, did permit Pte Cormier, D a prisoner confined therein to escape.

Patrick L.C. Hoar

IN THE FIELD
15 MAR 43

A.B. Noble,
(A.B. NOBLE) LT COL
A/COMMANDING OFFICER
5 C.I.R.U.

To be tried by Field General Court Martial.

(G. Hedley Basher) Colonel
Commander
"D" Group, Cdn Rft Units

In the Field
16 Mar 43

Medical Certificate (A.F. Can. 567)

I certify that I have this morning examined No. C.18098 Hdq. HERR F.R.
of ...R.C.A.F.... and in my opinion he is fit to undergo trial by
Court Martial.

Station ...R.C.A.F. ....

Date ...17 Mar 43.... Medical Officer ...[illegible]...

Enclosed B.

Medical Certificate (K.R. Can. 557)

I certify that I have this morning examined No. S.78698 L/Cpl HERR K. P.L.
of ...D.C.I.R.... and in my opinion he is fit to undergo trial by
Court Martial.

Station ...D.C.I.R.... Medical Officer ...A. Pte Con Tfd w/ Lieut R.C.A.M.C.

Date ...17 Mar 43....

Recalled B.
Hosp

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD

AT Lille Barracks, THE 17 DAY OF March 1943

Aldershot Hants.

TRIAL OF:- No. C-78018 L/Cpl. Herr, F.L. Unit Hast. & P.E.R. 5 C.I.R.U

The Order Convening the Court, Charge Sheet, Summary of Evidence and Medical Certificate are laid before the Court.

The Court satisfy themselves as provided by R.P.40 & 45.

The accused is brought before the Court.

Prosecutor. (Name) Lt.D.A.McAlpine (Unit) 5 C.I.R.U.

Defending Officer is (Name) None. (Unit)

The following constitute the Court:-

President Major. D.A.Woods. Unit 1 C.G.F.C.

Members Capt.D.G.White. (Unit)5 C.G.F.C.

Lieut.J.A.Cheriault (Unit)North Shore Regt. (7 C.I.R.U.)

The officers under instruction are duly sworn.

Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1. No.

Q2. Do you object to R.6802? Pte. Herry, H.A. acting as shorthand writer? A2. No.

The shorthand writer is duly sworn.

The accused, pleading Guilty to the charges in the above mentioned Charge Sheet, R.P.30 (1) is duly complied with.

The Summary of Evidence is read, signed by the President, and attached to the proceedings.

Court is closed to consider its finding. Court is re-opened.

Name Lt.D.A.McAlpine Unit 5 CIRU sworn produces AFB 196 and MFM 6 and upon being questioned by Court states that the accused is the person named in these documents which have been compared by him with Regimental Records and are true extracts of the same. No cross-examination. Above documents read, signed by President, and attached to the proceedings.

Q3. (To accused) - Do you wish to make any statement in mitigation of punishment? A3. Yes.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4. Yes.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR CONSIDERATION OF SENTENCE

From the evidence submitted in this case of L/Cpl. Herr it appears that with another prisoner escaping just previous to the change of guards that much excitement and movement was evident, and with the new guard being thrown into the search at once the Court realizes just how this would happen. From the statement made by the prosecuting officer that it was now known that the prisoner escaped previous to L/Cpl. Herr taking over, the second charge was incorrect.

L/Cpl. Herr's M.F.M. 6 has no entries.

From the evidence given by the Provost Sergeant it is plain that his staff is far too small and for one L/Cpl and three men as police to look after two barrach areas, as well as twenty prisoners is expecting far to much and this situation should be rectified at once before more prisoners escape.

Woods
Major.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER IS GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

Q.5. Do you wish to tell the Court your story?

A.5. Sir, when we change shifts the man going on duty is supposed to count and check the prisoners and make sure that everyone is still there. That evening when I took over at 1600 hours, a prisoner had just escaped custody some few minutes before. When I came on duty my men and men on the other shift were out looking for the prisoner, and owing to the confusion and excitement going on, it completely slipped my mind. There is nothing more that I can say

WITNESS WITNESS FOR THE DEFENCE

B-36811 Sgt. Patterson A., R.H.L.I. on the strength of 5 C.I.R.U. as Provost Sergeant.

Q.6. What do you know about the second charges in this case?

A.6. Upon investigation since the charge has been submitted among the prisoners confine in the detention room, it appears that Pte. Cornell escaped from custody previous to L/Cpl. Herr's taking over of the Guard Room at 1600 hrs.

Q.7. You are the Provost Sergeant at 5 C.I.R.U.

A.7. Yes Sir.

Q.8. How long have you been the Provost Sergeant?

A.8. I have been a Provost Sergeant since 3rd of September, 1939 in different Units.

Q.9. How long have you known L/Cpl. Herr

A.9. I have known L/Cpl. Herr approximately one month. Maybe a little more

Q.10. How have you found his work to be.

A.10. I have found him to be a very conscientious worker and I have every confidence in him, and still have, Sir.

Q.11. Do you feel that it was the result of the confusion of the escape of the first prisoner that was really the reason for this case and not on account of his habit of neglecting his work?

A.11. I am pretty confident that it is the reason why he slipped up. There was a lot of confusion, a prisoner had just escaped and we were pretty busy. At the time of the escape of this prisoner I had 20 prisoners in the Detention Rooms. I had to guard Tournay Barracks also Lille Barracks, and the most men I could put on duty on a shift was one L/Cpl. and 3 men. We have been in this camp for five weeks and I have not been able to leave the lines myself.

Q.12. You have Two Barrack Areas?

A.12. Yes Sir.

Q.13. You have got to handle two Barrack Areas with yourself , one L/Cpl. and 3 men?

A.14. Yes Sir.

CLOSING ADDRESS BY
OFFICER FOR THE PROSECUTION

Due to the appearance yesterday, of one of the escaped prisoners, changes the position of L/Cpl Herr as far as R.C.A.F.R.J. is concerned. The Prisoners say, that the escape happened before the accused came on duty.

ADDRESS BY PRESIDENT
OF THE COURT

It is unfortunate that this happened. I realize that owing to the shortness of your staff, and the job that you have to do, that you are overworked and that you can not watch everything at the same time. In future when you have been given a very important job like yours, with a lot of responsibility you must try and carry-out everything as laid down that you are supposed to do. As you say it is very important and I realize there was a lot of excitement and confusion. I can see, and the Court can see the reason why this happened, but in the furture you must be very careful.

SUMMARY OF EVIDENCE

The accused, L/Cpl Patrick Leo Herr, C-78018, of the Hastings and Prince Edward Regt, on strength of 5 Canadian Infantry Reinforcement Unit as a reinforcement, a soldier of the Canadian Army (Overseas)

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

Lieut J. Bassett, of the Black Watch (R.H.R.) of Canada, on strength of 5 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am Lieut J. Bassett, of the Black Watch (R.H.R.) of Canada. I produce herewith statement purporting to be signed by Sgt A. Patterson, Provost Sgt of 5 Canadian Infantry Reinforcement Unit, relating to the accused, whom I now recognize.

The accused declines to cross examine this witness.

The accused having been duly cautioned, elects to make a statement:

The accused, No C-78018, L/Cpl Patrick Leo Herr, of the Hastings and Prince Edward Regt, on strength of 5 Canadian Infantry Reinforcement Unit, a Soldier of the Canadian Army (Overseas) having been duly sworn, states:-

Re my first charge, due to excitement and confusion when Pte Brinkley escaped, and because of my attempts to locate him when I came on duty, the orders given to me by the Provost Sgt. slipped my mind. Re my second charge, I have nothing to say.

P L Herr

I certify that the foregoing summary of evidence consisting of one page was taken down by me in the presence and hearing of the accused and that the Rules of Procedure 4 (c)(d)(e)(f)(g) have been complied with.

Lieut "D" Coy

IN THE FIELD
15 MAR /43

Duncan D McAlpine
OFFICER TAKING SUMMARY

March - 12 - 1918

Lt. McAlpine
Asst. Adjt.
3rd C.I.R.U.

Sir

I beg to submit the following statement of evidence.

At 1600 hrs. on March 11th 1918. C/8015 Pte HEBB, P.L. took over as Guard commander, of the Regt. Detention rooms, Tournay Bks. My orders to all N.C.O's when taking over these duties, are that they make a close check on and as to the number of prisoners confined, and that they will sign a receipt for the number of bodies received into their charge.

Guard mounted on 11th March I was in the Guard room when the prisoners were all ordered for the night, and lights were extinguished off. Pte Hebb then reported all correct.

I retired to my quarters adjoining the detention rooms.

At about 2015 hrs. Pte Hebb came to my quarters and reported to me that he had re-checked his prisoners, and that the barrack one of the prisoners, could not be accounted for, also that he could not recall having seen Cornell since he had been on duty.

I asked him if he checked the prisoners at 1600 hrs and he admitted that he had omitted to do so.

I reported the matter to the R.O.R.

At 2230 hrs. I received Pte Hebb of his duties, warned him into open arrest, and preferred charges under A.A. Sect 9 (2) and A.A. Sect 20 (2). Barrack p. Sergt

LIST OF EXHIBITS

In the case of L/CPL. Herr P.L. C-78018, Hastings & PE REGT. of S.C.I.R.U.

EXH. A) - STATEMENT OF SGT. PATTERSON A. PROVOST SGT. S.C.I.R.U.

LIST OF WITNESSES

In the case of L/CPL HERR P.L. C 78018, Hastings and Prince Edward Regt. on strength of s Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas

FOR THE PROSECUTION

1.) LT. J. BASSETT BLACK WATCH (R.H.R.) OF CANADA
ON STRENGTH OF S.C.I.R.U.

FOR THE DEFENCE

1.) L/CPL HERR P.L. H.&P.E. ON STRENGTH OF S.C.I.R.U.

(1) I hereby acknowledge that I have been served with a true copy of the charge sheet on which I am to be tried by Court-Martial at CLIVE BARRACKS FARNBOROUGH HANTS on the 11th day of MARCH 1943

P S Kerr

(2) I hereby acknowledge that I have been served with a true copy of the charge sheet on which I am to be tried by Court-Martial at FARNBOROUGH HANTS on the 11th day of MARCH 1943

P S Kerr

(3) I hereby recommend that the Convening Officer appoint an Officer to be present at my trial.

I desire the services of [illegible] if he is available.

P S Kerr

Dated at FARNBOROUGH HANTS
This 11th day of
MARCH 1943

No. C.78015 Name HERR F.L. Sqn., Battery, or Company Corps S C.I.R.U. Date of enlistment 13 March, 1942 Service or Proficiency Pay

M.F.M. 6
A.F.B. 122
(1954—7—H (1214-70)
H.Q. 1771-50-1959

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				NIL					

Certified true copy. FROM W.F.M 6

Lieut
A.A.G.
SCIRU

Exhibit "E"

(P.T.O.)

STATEMENT as to CHARACTER & PARTICULARS of SERVICE of ACCUSED. A.F.B.296

C78018 Pte Hem PL.

1. The following is a fair and true summary of the entries in the regimental conduct sheet of the accused, exclusive of convictions by a court-martial or a civil court, and of cases in which trial has been dispensed with:

Within last 12 months	Since Enlistment
Nil.	Nil.

2. Number of instances of gallantry or distinguished conduct.
3. The accused is not under sentence at the present time.
4. The accused has not been previously convicted by a Court-Martial or a civil Court.
5. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 3 days in military custody, making a total of 3 days in custody, of which NIL days were spent in hospital.
6. The present age of the accused according to his attestation paper is 35 years. 105 DAYS
7. The date of his attestation specified in his attestation paper is 13 Mar 42.
8. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr 3 DAYS
9. The accused is entitled to deferred pay or gratuity in respect of 1 yr 3 DAYS service.
10. The accused is entitled to reckon 1 yr 3 DAYS service for the purpose of determining his pension, etc.
11. The accused is in possession of or entitled to no military decoration or military reward.

SCHEDULE

of convictions by a court-martial or a civil court and cases in which trial has been dispensed with of the accused.

Nil.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

J Ffrenstong Lt
RECORDS OFFICER,
C.I.H.U.
15 Mar 43

COUNTER NUMBER 16 9 195

HOUR 9.40

OPERATOR'S INITIALS RMB

RELIEVING OPERATOR ZM

L. C. M. 138

Lieut. Herringer, J. L.

Gen-138 1

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for ~~General and District~~ Courts-Martial

22 DFC 44

Proceedings of a GENERAL Court-Martial held at 46 Cdn Gen Tpt Coy RCASC on the 4th day of SEPTEMBER 19 43 by order of Lieut-Gen E. W. SANSOM, CB, DSO Commanding 2 CDN CORPS dated the 2nd day of SEPTEMBER 19 43.

President.

BRIGADIER G. S. N. GOSTLING, E. D.,
COMD. 10 CDN INF BDE

Members.

LIEUT-COL. C. S. BOLSBY, DFC
2 CDN CORPS RFT CAMP, TOR SCOT R

MAJOR V.E.C. OKUM,
29 FD COY RCE

MAJOR U. F. PATERSON,
3 CCS, RCAMC

CAPT. D. H. ECKOLD,
HQ, 2 CDN CORPS TPT COLN, RCASC

MAJOR N. C. FRASER, D.J.A., 2 CDN CORPS , Judge Advocate.

Trial of* LIEUT. JAMES GEORGE HERRINGER, 46 CDN GEN TPT COY RCASC

The order convening the Court, the charge-sheet and the summary ~~or abstract~~ of evidence are laid before the Court., & medical certificate

~~The Court satisfy themselves that~~ ~~is not available~~ NCF
~~to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~ NCF

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Capt. E. D. Bell, 19 SP Regt, R.C.A.

~~Prisoner~~ defending officer†Capt. W.H.Heffernan, HQ 2 Cdn Corps Tps RCASC

At 1000o'clock the Trial commences.

The order convening the Court is read, and is marked "A" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. NO, SIR

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

---

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
†Here state Rank and Name, and Regiment (if any).
‡Qualification to be stated.

Mil. Form B. 271
16M—8-41 (3319)
H.Q. 1772-39-234

2

B

The President, members and judge-advocate are duly sworn.
Q. Do you object to B.26026 S/Sgt F J Nethercut RCE, HQ 2 Cdn Corps acting as shorthand writer? A. No, sir
The shorthand writer is duly sworn
The following officers under instruction are duly sworn.
Capt. R. Church, 6 LAA Pl, RCASC Capt. J. Tilley, 2 CCS, RCAMC
Lieut. J.A.C.Cade, HQ, 2 Cdn Corps

Charge-Sheet

Instruction. *If the accused has elected to be tried under Army Act, sec. 40 (8) the fact should be here recorded.*

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

NOT GUILTY, SIR *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ *Question.* NG

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.* NG

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.* NG

Answer.

~~The accused having pleaded Guilty to ..... charge, the provisions of Rule of Procedure 35 (B) are here complied with.~~ NG

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

B2 3

CHARGE SHEET

The accused Lieutenant JAMES GEORGE HERRINGER 46 Cdn General Transport Company RCASC an officer of the Canadian Army Overseas, is charged with,

WHEN ON ACTIVE SERVICE, Drunkenness

in that he

First Charge
Army Act Sec 19

In the Field in or about the period between 2200 hrs 8 Aug 43 and 0300 hrs 9 Aug 43 was drunk.

In the Field
30 Aug 43

(K.E.Morris) Major
Commanding 46 Cdn Gen Tpt Coy RCASC

TO BE TRIED BY GENERAL COURT MARTIAL.

In the Field
2 Sep 43

(E. W. Sansom) Lieut-Gen
G O C 2 Cdn Corps

C

Proceedings on Plea of Not Guilty

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. NO, SIR

The prosecutor makes an opening address [~~hands in a written address~~, ~~which is read, marked~~ , ~~signed by the President, and attached to the proceedings~~].

~~The prosecutor proceeds to call witnesses.~~

First witness for prosecution. } being duly sworn, is examined by the prosecutor.

THE PROSECUTOR MAKES THE FOLLOWING OPENING ADDRESS:

Theevidence that I am going to adduce in support of this charge I am going to introduce in chronological order and I might point out to the Court that the charge as laid does not charge that the accused was on duty at the time. It is a simple case of drunkenness at some time between two definite hours and that is the extent of the proof which we intend to adduce.

1st Witness for the Prosecution, Special Constable C.35 Edward Albert Kent, Brighton Police, having been duly sworn is examined by the Prosecutor.

Q. 1 - Constable, your name is Edward Albert Kent?
A. 1 - Yes, sir
Q. 2 - And you are a member of the Brighton Police Force?
A. 2 - Yes, sir
Q. 3 - Were you on duty on the night of Aug 8th last?
A. 3 - Yes, sir
Q. 4 - Will you relate to the Court just what happened that evening?
A. 4 - At 2210 hours on Aug 8th I was on Kings Road and standing on the pavement just east of Maxim's. I saw three officers come out of Maxim's and cross the road. One was in the centre and he was being assisted by the officer on either side of him. They took him across the road and placed him on a seat on the seafront. There they left him. When I saw him his legs were apart and his elbows were on his knees and his face was in his hands. That is the first time I saw him
Q. 5 - Did you recognize the officer that time?
A. 5 - I did not see the Regiment he belonged to, sir. The next time I saw him, sir, was at 2340. On patrol I saw him at the bottom of the Maxim's Shelter steps leading into the shelter. I carried him into the shelter and saw that he was drunk and smelled strongly of liquor. I carried him inside the shelter and placed him on a seat
Q. 6 - The officer that you carried inside the air raid shelter, have you identified him?
A. 6 - I did, sir
Q. 7 - And who was the officer?
A. 7 - I identified him on the Thursday - 26 Aug at Police Headquarters
Q. 8 - And who was the officer?
A. 8 - He was a Lieut. Herringer
Q. 9 - Do you recognize the accused?
A. 9 - Yes, sir
Q.10 - Is the accused the officer that you have been referring to?
A.10 - Quite, sir
Q.11 - Well, will you carry on with your story from where you carried the officer into the air raid shelter?
A.11 - I left him on the seat in the shelter and went to Box 3 and telephoned our Headquarters who immediately got into contact - -
Q.12 - You said that you informed Police Headquarters?
A.12 - Yes, sir. They got in contact with the Military Police and they told me that - -

Judge-Advocate - Well, now - -

Q.13 - You can't say to the court what they did. As a result of your telephone call what happened after that?
A.13 - The Military Police met me at Box 3 and I took them along to the shelter and showed the Police where the man was
Q.14 - Did you enter the shelter the second time?
A.14 - Yes, sir
Q.15 - And what did you findthere?
A.15 - I found the officer still where I had placed him lolling back against the seat there
Q.16 - And you recognized the officer as the accused?
A.16 - Yes, sir
Q.17 - And what was his condition at that time?
A.17 - Well, I should say he was drunk, sir
Q.18 - And what reasons have you for saying that he was drunk?
A.18 - Well, he smelled slightly of liquor and the front of his tunic was soiled with vomit, sir

Q.19 - Is that your only reasons for saying he was drunk?
A.19 - He was absolutely incapable of movement or looking after himself
Q.20 - He was incapable of movement?
A.20 - Right, sir
Q.21 - Did you have any conversation with him?
A.21 - Didn't speak a word, sir
Q.22 - Did he attempt to speak?
A.22 - No, sir
Q.23 - You say that his clothes were soiled?
A.23 - Yes, sir
Q.24 - He had been ill?
A.24 - Yes, sir
Q.25 - How long have you been a constable?
A.25 - Three years, sir
Q.26 - Is this the first case you have had in which you judged a person drunk in the course of your duty?
A.26 - Yes, sir
Q.27 - It is?
A.27 - Yes, sir
Q.28 - Have you seen drunkenness before?
A.28 - Oh yes, sir
Q.29 - On one occasion or many occasions or several?
A.29 - Not many occasions but once or twice, sir
Q.30 - You think you are quite capable of judging when a man is drunk?

Defending Officer - That is a matter for the court to decide

CROSS-EXAMINATION BY THE DEFENDING OFFICER

Q.31 - Constable Kent, you have been in Brighton for the last three years?
A.31 - Lived there all my life, sir
Q.32 - And what did you do before the War?
A.32 - In what capacity, sir?
Q.33 - Did you work in Brighton?
A.33 - I am working there now, sir
Q.34 - Before the War?
A.34 - Yes, sir
Q.35 - And in the last three years you have been doing this job?
A.35 - Part-time Special Constable
Q.36 - You have a regular job and do this other duty as well?
A.36 - Yes, sir
Q.37 - You have lived in Brighton all your life?
A.37 - Yes, sir
Q.38 - Brighton is quite a big place?
A.38 - Yes, sir
Q.39 - And it is quite a well-known sea resort in England?
A.39 - Yes, sir
Q.40 - And there are a lot of pubs in Brighton?
A.40 - Yes, sir
Q.41 - A lot of hotels?
A.41 - Yes, sir
Q.42 - And a lot of places I suppose in Brighton which are not just respectable in the way of pubs etc?
A.42 - Well, if they were not respectable they would be closed down
Q.43 - Then all places in Brighton are absolutely all right, are they?
A.43 - Yes, sir, as far as I know
Q.44 - Now, have you ever in your three years as Special Constable and also the fact that you have lived in Brighton all your life ever heard that some of the pubs sell hooch or bad liquor?
A.44 - I have never heard that, sir
Q.45 - This is the first time you have ever heard it before?
A.45 - Yes, sir
Q.46 - Do you drink yourself?
A.46 - No, sir
Q.47 - Oh, you are not a drinking man?
A.47 - No, sir
Q.48 - Then you would not be in pubs?
A.48 - Not inside, sir
Q.49 - Now, the accused officer sitting here, you first saw him on a bench sitting in front of the seafront?

A.49 - Yes, sir. I first saw him between two officers, sir
Q.50 - And then they placed him on a seat?
A.50 - They took him across the road and placed him on a seat, sir
Q.51 - Was it dark?
A.51 - No, sir
Q.52 - You didn't go over and speak to him?
A.52 - No, sir
Q.53 - He had his knees apart

Witness demonstrates by sitting on chair, spreading his knees apart, placing his elbows on his knees and holding his face in his hands

Q.54 - It was about 2210 hours when you first saw him in that position?
A.54 - That's right, sir
Q.55 - And how far away were you?
A.55 - Well, on Kings Road - rough ly, I should say about 20 yards
Q.56 - Did he look to you as if he was not well?
A.56 - Well, he had that appearance, sir
Q.57 - And you didn't go over and speak to him?
A.57 - No, sir
Q.58 - And then we carry the story a little further and you found him sitting on a step in an air raid shelter?
A.58 - At the bottom of the steps
Q.59 - And you carried him down?
A.59 - I carried him into the shelter, sir
Q.60 - And you say he smelled of liquor?
A.60 - Smelled of liquor, sir
Q.61 - His tunic was soiled?
A.61 - Yes, sir
Q.62 - And he was incapable of moving?
A.62 - Yes, sir
Q.63 - He could have been ill, Constable Kent?
A.63 - Could have been, yes sir

IN THE OPINION OF THE COURT AND THE JUDGE-ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

2nd Witness for the Prosecution, 768483 Sgt. Pettman, H.J., C.M.P. Brighton Detachment, having been duly sworn is examined by the Prosecutor.

Q.64 - You are Sgt. Pettman?
A.64 - Yes, sir
Q.65 - And to what Unit are you attached?
A.65 - I am attached to the C.M.P. at Brighton, sir
Q.66 - Do you recognize the accused?
A.66 - Yes, sir
Q.67 - When did you see him before?
A.67 - I saw him on the night of the 9th of August, sir and on the 26th of August, sir
Q.68 - And will you tell the court what you remember about the 9 Aug?
A.68 - Yes, sir. On the 9 Aug, sir, at Brighton at 0015 hours acting on information received from the Civil Police I proceeded to Maxim's air raid shelter where I saw Lieut. Herringer of the 62 Tpt Coy. He was lying across a bench and drunk and incapable of any movement. I escorted him to Police Headquarters where he was detained pending the arrival of an escort
Q.69 - What was the condition of the clothes of the accused at that time?
A.69 - The front part of his tunic was soiled with sickness, sir, including his necktie
Q.70 - Did you have any conversation with the accused?
A.70 - None at all, sir
Q.71 - Why not?
A.71 - He was incapable of making any speech, sir
Q.72 - And what did you do when you found him?
A.72 - In the air raid shelter?
Q.73 - Yes
A.73 - We escorted him up the steps and to the C.M.P. billets, sir, where he remained until 3 o'clock and was taken away by the escort, sir

Q.74 - In taking him out of the air raid shelter did the accused walk by himself?
A.74 - No, sir, he was escorted by myself and my corporal, sir
Q.75 - You say "escorted". What do you mean by that?
A.75 - We had one arm each around the back of the officer, sir
Q.76 - So all the time you saw the accused at that time you had no conversation with him?
A.76 - None whatsoever, sir
Q.77 - And just as confirmation, who is the constable who took you to the accused?
A.77 - Police Constable Kent, sir, No. 35
Q.78 - Now, you have made a statement that the accused was drunk?
A.78 - Yes, sir
Q.79 - Now, what led you to that belief?
A.79 - Well, the symptoms of drunkenness were there, sir, that sickness and he was lying out on this bench and incapable of any movement sir
Q.80 - I just didn't get the last
A.80 - He was drunk. He was lying on this bench and incapable of any movement, sir
Q.81 - You are trying to tell me he was helpless?
A.81 - Quite, sir
Q.82 - How long have you been attached to the C.M.P.?
A.82 - Four years, sir
Q.83 - Have you had any experience with drunkenness?
A.83 - Quite a bit, sir in Brighton, sir, particularly the Dominion troops, sir

Judge-Advocate - Now, you are not qualifying him as an expert. He has stated his belief that he was drunk and gave the observations on which he based it
Prosecutor - Well, I wanted to develop the point that this man was quite familiar with drunkenness cases and as such was particularly able to recognize it. However, I will deal with that in argument
Judge-Advocate - Well, you have dealt with his experience. What further do you want?
Prosecutor - I don't think I need to go any further. I won't labour that point

Q.84 - When the accused was brought back to your Headquarters what did you do with him there?
A.84 - We laid him on a bed, sir and he remained there until 3 o'clock in the morning until the escort arrived for him. During the time he was there there was no speech made, sir

CROSS-EXAMINATION BY DEFENDING OFFICER

Q.85 - Sergeant, have you been in Brighton long?
A.85 - About nine months, sir
Q.86 - Pretty big place, isn't it?
A.86 - Yes, quite a size, sir
Q.87 - Quite a lot of pubs in Brighton?
A.87 - Yes, quite a lot
Q.88 - Do you take a drink yourself - off duty?
A.88 - Occasionally - yes, sir
Q.89 - I suppose you have been in some of the pubs around Brighton - off duty?
A.89 - I use our own mess; we have a Mess
Q.90 - Have you ever heard or seen cases in Brighton where bad hooch has been sold or bad liquor?
A.90 - Not in my experience, no sir
Q.91 - Never heard that at all?
A.91 - No, sir
Q.92 - Brighton pubs must be pretty good?
A.92 - Yes, sir
Q.93 - I was not really referring to beer. How about liquor? Never heard that about it?
A.93 - No, sir

Q.94 - Of course, in the experience of your life you have heard that bad liquor has been sold in this Country
A.94 - Well, you hear cases of it being diluted to increase the profit, sir
Q.95 - You have never heard of any cases in Brighton of that type?
A.95 - No, sir
Q.96 - Are there any places in Brighton which are out of bounds to the troops?
A.96 - There is a place just outside, sir
Q.97 - Are there any places not up to standard that would be sort of undesirable?
A.97 - This particular one we put out of bounds was that type, sir
Q.98 - And every now and then there are places put out of bounds?
A.98 - That is the first case in Brighton, sir
Q.99 - Now, you gave evidence in chief sergeant that Lieut. Herringer was lying across a bench. I will just quote your exact words - "lying across a bench and drunk and incapable of movement". He could have been ill, couldn't he?
A.99 - He could have been, yes sir

QUESTIONS BY THE COURT

Q.100- Why was the public house which you referred to put out of bounds? For what reason was it placed out of bounds?
A.100- Well, I think there were quite a number of undesirable women used to go in there
Q.101- To the best of your knowledge that is the reason it was placed out of bounds?
A.101- Yes, sir and we have been called to that public house quite often for rowdyism and so on and getting trouble there
Q.102- There were certain indications you mentioned of the man being drunk. Were there any other indications?
A.102- No, sir. I couldn't smell any liquor myself but he was sick all over the front of his tunic and incapable of walking by himself, sir. Personally, I couldn't smell any liquor, sir
Q.103- Could you normally smell liquor on any person who has been drinking? Is it your experience in the past that you have been able to smell liquor?
A.103- Yes, sir, some we have brought in we have been able to smell it quite strongly, sir

QUESTIONS BY JUDGE ADVOCATE

Q.104- How would the fact that he had been sick on his tunic affect that? Could you normally smell it better or worse if he had vomited over himself?
A.104- The sickness is generally a sign of drunkenness, sir
Q.105- Yes, but how would the sickness affect the smell?
A.105- I don't quite get your question, sir
Q.106- Would you be less or more likely to smell liquor on a man if he has vomited?
A.106- Well, not necessarily, no sir

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

3rd Witness for the Prosecution, A.63210 Cpl Faulkins, D.W., 4 C.A.B. Coy., RCASC, having been duly sworn is examined by the Prosecutor.

Q.107- Cpl. Faulkins do you recognize the accused?
A.107- Yes, sir
Q.108- When did you last see him?
A.108- I can't just say the date I saw him, sir, but it was at Worthing
Q.109- You saw him at Worthing?
A.109- Yes, sir
Q.110- Was that about a week ago?
A.110- Yes, sir

Q.111 - Did you see him before that time?
A.111 - Yes, sir
Q.112 - Just tell us the occasion?
A.112 - On Aug 9, sir, at approximately 0300 hours I got a call from the Orderly Officer that I was to go down - -

Judge-Advocate - Now, not what he told you

Q.113 - You got a call from the Orderly Officer and as a result of that call what did you do?
A.113 - I went down to the Provost Headquarters at Brighton and found Lieut. Herringer there?
Q.114 - You found him there. What was his condition when you found him?
A.114 - When I got there, sir, he was lying down on a cot
Q.115 - And what was the condition of his clothes?
A.115 - Apparently on one side of his tunic he had been sick
Q.116 - Did you have any conversation with him at Brighton?
A.116 - I had no conversation with him until I got him back to the Mess
Q.117 - And why didn't you have any conversation with him at Brighton?
A.117 - At Brighton there was no attempt to wake him up that I could see and when I took him over from the Provost I just took him up and took him out to the jeep without any attempt to wake him up
Q.118 - Now what did you think about his condition at that time?

Judge-Advocate - Not what he thought

Q.119 - What did you find?
A.119 - I found that he apparently had been drinking
Q.120 - Now, we had better get that straightened out. Why did you say that he had been drinking. What evidence was there of that?
A.120 - Well, I more or less took the condition of his tunic for one thing - where he had been sick on his tunic
Q.121 - Did it ever occur to you that he might have been seriously ill?
A.121 - No, sir
Q.122 - Now, you say you picked him up, carried him out to the car?
A.122 - Right, sir
Q.123 - Then what did you do?
A.123 - Put him in the jeep and drove him to the Mess where he got out of the jeep himself, went to the Mess, took off his tunic. I asked him if he thought everything would be O.K. and he said yes. I gave him back his personal belongings and left him there
Q.124 - And how far did you travel in the vehicle?
A.124 - Approximately three miles, sir
Q.125 - What was the condition of the accused when he left you?
A.125 - Well, I presumed that he was quite normal because when I gave him back his personal belongings he did miss his necktie which had been cut off at the Provost Office
Q.126 - And in the vehicle - was it an open vehicle?
A.126 - Yes, sir
Q.127 - An open vehicle?
A.127 - Yes, sir
Q.128 - So that the accused was exposed to a good fresh breeze during the three miles that he was travelling?
A.128 - Yes, sir
Q.129 - Now, when the accused reached his destination you have just stated that he appeared quite normal?
A.129 - Yes, sir
Q.130 - Did he make any attempt to explain - -

Judge-Advocate - Now, just a minute. Don't lead the witness please, Capt. Bell. We got from him that he observed certain things and what he did but don't ask him leading questions, please

Q.131 - All right. I will put the question this way. Was there any conversation between the accused and yourself relating to his condition?
A.131 - No, sir

CROSS-EXAMINATION BY DEFENDING OFFICER

Q.132 - Corporal just one or two little questions. When you went into the Provost you brought Lieut. Herringer and carried him and put him in the jeep?
A.132 - That is right, sir
Q.133 - When you had gone three miles to the Mess he got out on his own initiative?
A.133 - Yes, he did, sir
Q.134 - Walked into the mess?
A.134 - Yes, sir
Q.135 - How was his movement into the Mess?
A.135 - Well I never - -
Q.136 - Did he stagger - did he fall?
A.136 - He never fell and if he staggered it was very little
Q.137 - Then what did you see him do in the mess as far as his equipment was concerned?
A.137 - In the Mess he took off his Sam Browne belt and his tunic and laid it on the table
Q.138 - I ask you this question and I want you to think it over very carefully before you give the answer. Were you surprised in your own mind within such a short space of time to find a man whom you had carried out and put into a jeep and then at the end of three miles he gets out of the car, walks in and takes his tunic off in that manner? Were you surprised?
A.138 - Yes, I was, sir

QUESTION BY THE COURT

Q.139 - Corporal, on the occasion in question did you smell liquor on the accused?
A.139 - That is something that I can't just remember

QUESTIONS BY JUDGE-ADVOCATE

Q.140 - Corporal, do you remember giving evidence on the Summary of Evidence?
A.140 - Yes, sir
Q.141 - Do you remember saying anything about smelling liquor at that time? You were sworn and were on oath when you gave your account?
A.141 - Yes, sir
Q.142 - You remember that, do you?
A.142 - Yes, sir
Q.143 - Do you remember signing it afterwards?
A.143 - Yes, sir
Q.144 - Did you read what it said?
A.144 - I read it over before signing it, yes, sir
Q.145 - And do you remember anything about smelling liquor in it?
A.145 - I can't remember it word for word now, sir
Q.146 - Well, I direct your attention to a statement in which you said "I carried him out to the car and put him in the front seat. I could smell liquor on him and he had been sick on the front of his tunic". Now, do you remember that? If you can't recollect whether or not you smelled liquor on him why did you make that statement in the Summary of Evidence? You appreciate that you are giving evidence on a Summary at which an officer was charged with a serious charge?
A.146 - Yes, sir
Q.147 - Well, now, which is correct? Which is correct, corporal?
A.147 - Well, when he had been sick on his tunic I presumed he had been drinking because - -
Q.148 - I am not asking you what you presume. Did you smell liquor on him or is it true that you can't remember whether you did or you didn't?
A.148 - Yes, I could smell a faint odour that he had been drinking
Q.149 - Then why did you make the answer that you gave a moment ago? Well, now, corporal you are on oath now, you appreciate that, and that this is a serious matter. You say now that you could get a faint smell of liquor. Is that correct?
A.149 - If I remember, yes
Q.150 - Well, do you remember or don't you? First you have said you do

remember, then you have said you don't know, now you say you did smell it faintly. Are you going to give the court a fourth version?

A.150 - I could smell it faintly

Defending Officer - As a result of the examination by the court I would like to ask the witness a question?

Judge-Advocate - Yes, through the court

QUESTION BY DEFENDING OFFICER THROUGH THE COURT

Q.151 - When you smelled liquor on my client and the fact that there was sickness on his tunic did the liquor smell come from the sickness on his tunic?

A.151 - Well, I am afraid to say it was from the sickness on his tunic or his breath. All his tunic on one side was covered where he had been sick

QUESTIONS BY THE COURT

Q.152 - How did you carry Lieut. Herringer out?

A.152 - At the start there were three of us started to carry him out and we had not gone half way out when I took him with one arm under his legs and the other under his shoulders, carried him out and sat him in the jeep

Q.153 - By yourself?

A.153 - Yes, sir

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

THE PROSECUTION DOES NOT WISH TO CALL ANY FURTHER EVIDENCE

THE PROSECUTION IS CLOSED

THE DEFENDING OFFICER MAKES THE FOLLOWING MOTION THAT THE PROSECUTION HAS NOT MADE OUT A PRIMA FACIE CASE AGAINST THE ACCUSED:

I make this motion and I won't labour the point. I am submitting that there is not a prima facie case of drunkenness against the accused. If the court so find that there is and would like to get on with the case as quickly as possible that is perfectly agreeable to me. If you take the two police witnesses and the corporal I contend there is not a strong case, not any case of a kind that would ever go to a jury if it were being tried before a judge and jury

THE PROSECUTOR REPLIES TO THE MOTION AS FOLLOWS:

I would merely point out that we have had two witnesses here who have sworn that this man was drunk. I think that is sufficient to put the man on his Defence to either rebut it by evidence that this condition did not obtain or volunteer whatever defence he may have

COURT IS CLOSED TO CONSIDER THE MOTION

COURT IS RE-OPENED

COURT - The court have considered the motion and disallowed it. He will proceed.

R.P.40 IS COMPLIED WITH AS FOLLOWS BY THE JUDGE-ADVOCATE:-

Mr. Herringer, in a moment you are going to be asked certain questions as to your Defence but before these questions are put to you it is my duty on behalf of the Court to make a brief explanation as to your rights with regard to your Defence.

In a trial like this the onus of proving its case is on the Prosecution and you are accordingly not under any compulsion to make any statement or to give any evidence whatsoever. You have, however, the right, if you wish to exercise it, of being sworn and giving evidence as a witness here on your own behalf. If you do that you will be subject to questioning and to cross-examination like any other witness. You have voluntarily chosen to go in and be a witness to give evidence on oath and you are treated for practical purposes like any other witness in regard to the way in which you can be questioned. If you don't want to give evidence on oath as a witness you may instead make an unsworn statement which may be made by word of mouth or in writing. Such a statement is not subject to any questioning. Now, I hope you understand you can be sworn and give evidence on oath as a witness and be fully cross-examined and questioned, you may give an unsworn statement which is not subject to questioning or you may say nothing whatsoever. I should, however, also tell you that evidence on oath is likely to carry more weight with the Court than an unsworn statement. That is true for two reasons. One reason is that as it is given on oath if it can be shown that you had made a false statement you would be subject to a heavy punishment. The other reason is if it is given on oath your evidence is subject to the usual test of cross-examination to determine what weight should be given it. However, what you do is a matter for you to decide and what weight would be given to any evidence or any unsworn statement is entirely a matter for the Court.

No matter what you decide to do yourself personally in your Defence you may call witnesses as to the facts or as to your character or as to both. There again you don't need to unless you wish to but it is your right to do so or it is your right not to do so whatever you think is in your own best interests

D

~~The prosecution is closed.~~

Defence

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes, sir

Question. Do you intend to call any other witness in your defence?

Answer. Yes, sir

Question. Is he a witness as to character only? *Answer.* As to both, sir

Witnesses

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

~~*(Where the accused does not give evidence upon oath.)*~~

Question to the accused. ~~Have you anything to say in your defence?~~

Answer. ~~The accused in his defence says:~~†

~~[Hands in a written address which is read, marked signed by the President and attached to the proceedings.]~~

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† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

1st Witness for the Defence, the accused, Lieut. J. G. Herringer, 46 Cdn Gen Tpt Coy RCASC having been duly sworn is examined by the Defending Officer.

Q.154 - Mr. Herringer, just relax and give your answers to the Court so that they and the court stenographer can hear them. What is your age?
A.154 - 24
Q.155 - And you were born where?
A.155 - In Maple Creek, Sask.
Q.156 - And what scholastic achievement have you?
A.156 - I graduated from the University of Alberta
Q.157 - In what?
A.157 - In commerce
Q.158 - What year did you graduate?
A.158 - 1939
Q.159 - And you joined the Canadian Army when?
A.159 - In 1941
Q.160 - Where did you join it?
A.160 - Calgary, Alta
Q.161 - Do you remember when that was?
A.161 - That was on May 10th
Q.162 - And when did you qualify as a Lieutenant?
A.162 - I qualified as a Lieutenant on 25 Oct 41
Q.163 - And you came overseas when?
A.163 - At the end of Mar 42
Q.164 - And were you posted to a Unit?
A.164 - I was a reinforcement officer. I was posted to the 62 Cdn Gen Tpt Coy about a week after I arrived
Q.165 - That is the company you are still with?
A.165 - Yes, sir
Q.166 - Now what are your duties?
A.166 - Platoon officer
Q.167 - You are still a platoon officer?
A.167 - Yes, sir
Q.168 - Father and mother living?
A.168 - Right
Q.169 - Any brothers or sisters in the Canadian Armed Forces?
A.169 - I have a brother in the Air Force and a sister in Nursing
Q.170 - Where is she?
A.170 - No. 8 General
Q.171 - Over here?
A.171 - Yes, sir
Q.172 - Now, what have you been doing primarily from 15 May until the 14 Aug this year?
A.172 - I was training and taking part in track and field events
Q.173 - How many track and field events did you participate in?
A.173 - I would say roughly five or six
Q.174 - And did you win anything?
A.174 - I won the Army Service Corps high jump
Q.175 - When was that?
A.175 - That was on Aug 7th
Q.176 - What about other jumps? Did you win any other jumps?
A.176 - In the formation events I was entered in the hop and step, broad jump and mile relay
Q.177 - I show you a magazine - Canada's Weekly Jul 9th on p 428. Can you identify anybody there?
A.177 - Yes, sir
Q.178 - Who do you identify?
A.178 - Myself

Canada's Weekly, issue of Jul 9th with particular reference to p 428 is entered as Exhibit "G", signed by the President and attached to the proceedings.

Q.179 - I show you a picture. Who is that?
A.179 - That is myself
Q.180 - Taken where?
A.180 - I think that is one taken the same day

Photograph including the accused is entered as Exhibit "H", signed by the President and attached to the proceedings.

Q.181 - Now, between 15 May and Aug 7 you were in training and participating in sports events for five or six formations?
A.181 - Yes
Q.182 - And where were you training?
A.182 - We trained from Jul 7 down in Brighton
Q.183 - Who was in charge of the training team down there?
A.183 - Capt. Adams
Q.184 - And who was in charge of your Unit team?
A.184 - Capt. Hungerford
Q.185 - Now, on Aug 7th just tell us what you did that day?
A.185 - On Aug 7 the track and field meet was held in Aldershot with the 1st and 2nd Corps RCASC competing
Q.186 - Army Troops there?
A.186 - Army Troops and Reinforcement Units
Q.187 - And what did you participate in? What event?
A.187 - I participated in the high jump
Q.188 - And that took all day?
A.188 - They ran off the eliminations in the morning and the finals in the afternoon
Q.189 - And where did you place in this event?
A.189 - I placed first in the running high jump
Q.190 - How high did you jump?
A.190 - 5'5"
Q.191 - And in the other events - you say you participated in five or six formation events - did you do anything else besides the high jump?
A.191 - On Aug 7 no
Q.192 - And prior to that?
A.192 - I had been taking part in the running broad and hop step and mile relay
Q.193 - And how did you do on those?
A.193 - I took third in the running broad and my team won the mile relay
Q.194 - And for winning these different events did you receive anything?
A.194 - Received medals and a cup for the Service Corps championship
Q.195 - And you were presented with these on Aug 7?
A.195 - With the cup
Q.196 - Who presented it to you, do you remember?
A.196 - General Sansom
Q.197 - Now, this offence that you are charged with is that at 2200 hrs on 8 Aug 43 you are charged with being drunk, between 2200 hrs 8 Aug and 0300 hrs 9 Aug. Now, Herringer, what time did you get back to your camp?
A.197 - I arrived back in Brighton about 7 o'clock Sunday evening
Q.198 - That would be the 8 Aug?
A.198 - Yes, sir
Q.199 - You arrived back at 7 o'clock. What did you do then?
A.199 - I washed up, changed my clothes and had a bite to eat
Q.200 - Then what did you do?
A.200 - I proceeded down to Brighton
Q.201 - Who with?
A.201 - Myself
Q.202 - Tell us what you did?
A.202 - I intended going to the Hippodrome in Brighton. When I got there there was quite a line-up so I walked on down the street and came to a pub. I ordered a rum
Q.203 - How much did you pay for it?
A.203 - They charged me 11d. I thought it was very reasonable. Then I had one more of those rums
Q.204 - Then what did you do?
A.204 - They didn't taste very good. I left this pub and proceeded down the street and called in at another one and met a couple of Canadian officers and we had a couple of beers - light ales
Q.205 - Is that all you had to drink?
A.205 - Yes, sir
Q.206 - Then what happened?

A.206 - I felt sick at my stomach at this time and they took me over onto the seafront and I sat down on a bench there and got very sick. The two chaps I was with left and I remained there for some time and I did not seem to be getting any better so I walked across the street to the air raid shelter
Q.207 - Did you vomit?
A.207 - I threw up, yes
Q.208 - Then what did you do?
A.208 - I then crossed the street to Maxim's air raid shelter
Q.209 - Why did you go into the air raid shelter?
A.209 - It was getting quite late and it was quite a walk back to the Mess and I did not think I was in very good condition to be seen on the street when I was getting sick so I went down in the shelter, remained there for a few minutes or was going to remain there for a few minutes and I threw up again and more or less blacked out at the time and I can't recall anything else until I was riding in a 5 cwt
Q.210 - Just tell us what happened then?
A.210 - Well, I found myself in the 5-cwt pulled up at the Mess. I got out. The corporal followed me into the mess and I saw I was sick on my tunic so I took it off and my Sam Browne belt. The corporal handed me my personal belongings and asked me if I was all right and I said I was quite all right
Q.211 - Between 15 May and 8 Aug had you had any drink?
A.211 - No, sir
Q.212 - Why?
A.212 - I was in training for track meets nearly every Wednesday afternoon and Saturday afternoon
Q.213 - And do you drink very much?
A.213 - No, except the odd occasion, on a week-end or on leave
Q.214 - To what do you attribute the fact that you had this black-out?
A.214 - I attribute it to the rum I had had in one pub. The beer I had, there was nothing wrong with that apparently but the rum didn't taste very good and I had a little peppermint in it and that is where I think the sickness came from

CROSS-EXAMINATION BY PROSECUTOR

Q.215 - Your conclusion is that the cause of your trouble was from doped liquor?
A.215 - Well I blamed it on thebad rum and also on the fact that I had not had any liquor for some time which caused me to vomit
Q.216 - Then what I am to take from that is this - in the first place you said that you had not had any liquor for a long time and any liquor you had taken would affect you more than if you had been drinking?
A.216 - Yes, sir
Q.217 - In the second place you had suspicions about what you did drink?
A.217 - Yes, sir
Q.218 - Am I to take it then that normally to take two of these - - are these what are commonly known as single rums?
A.218 - Yes
Q.219 - To drink them and follow them with two beers would not affect you?
A.219 - Yes, sir
Q.220 - You don't subscribe to the opinion that rum and beer are liable to cause you trouble?
A.220 - No, sir
Q.221 - I am no authority on that; I am just wondering. Now, after this event occurred you say you were satisfied there was something wrong with the rum. Did you report the matter to anybody?
A.221 - I mentioned it to Capt. Adams next morning
Q.222 - You mentioned that you thought you had had some bad rum?
A.222 - Yes, I told him I had been sick
Q.223 - Did you tell him the name of the pub?
A.223 - Yes
Q.224 - And did you report it to the civil police?
A.224 - No
Q.225 - But you did report it to your superior officer (He was your superior officer at the time)?

A.225 - Yes
Q.226 - When you became sick out in the dark at that time did you think immediately upon becoming sick that it was the fault of this rum?
A.226 - No, I did not
Q.227 - Were you satisfied then that it was just a stage of inebriation you had reached or what was your thought there?
A.227 - I couldn't see what had upset my stomach. I thought it might have been the rum but I did not think very much about it at the time
Q.228 - You had some difficulty in walking at that time, didn't you?
A.228 - I don't recall
Q.229 - That didn't occur until later. Do I understand that?
A.229 - Well, when I went out to the bench I walked across from the bench to the air raid shelter and that is the last time I did any walking until I got out at the Mess
Q.230 - You say you had no difficulty walking from the bench to the air raid shelter?
A.230 - Yes, sir
Q.231 - Now, you heard the evidence of the constable, didn't you?
A.231 - Yes, sir
Q.232 - Do you remember him saying that two officers assisted you over to the bench at the water front?
A.232 - They walked with me
Q.233 - You don't recall receiving any assistance from them at all?
A.233 - No, sir
Q.234 - So you would quarrel with the constable on that?
A.234 - Yes, sir
Q.235 - And from that time on all was a black-out, eh?
A.235 - Yes, sir
Q.236 - I suppose you admit that you had all the symptoms of drunkenness didn't you?
A.236 - Well, I had been drinking and I suppose there was a smell of liquor on my breath. I was not drunk
Q.237 - From what you remember you were just terribly sick?
A.237 - Yes, just terribly sick

QUESTIONS BY JUDGE ADVOCATE

Q.238 - Do you remember when you were first sick on yourself - on your tunic?
A.238 - Over on the bench and I did vomit down in the shelter
Q.239 - But was it when you were over on thebench that you vomited on yourself - on your tunic and your tie?
A.239 - No, I didn't vomit on my tunic and tie that time
Q.240 - Was there vomit on your tunic and tie when you got back to the Mess?
A.240 - Yes, but I didn't have my tie on
Q.241 - You don't remember what time that was?
A.241 - I suppose in the air raid shelter
Q.242 - Was that before you blacked out?
A.242 - Yes
Q.243 - How did you come to do it on yourself, on your tunic? Weren't you strong enough to lean over?
A.243 - Well, I was really awfully sick. I blacked out, I would say almost when I got over there. I had not been sitting there very long. I couldn't get into the air raid shelter; there was no door there so I sat down on the bottom step. I was sick later on again
Q.244 - I am afraid you don't quite get my question. What I am asking is how is it that you came - - Do you remember being sick on yourself, on your clothes? There has been evidence that there was vomit there?
A.244 - Yes
Q.245 - Do you remember when that got there? Was that when you were conscious?
A.245 - I don't know when the vomit got on my tunic; I just kept being sick

Q.246 - Do you remember going and leaning over anything when you were sick?
A.246 - Well, when I passed out - - I don't just remember what my position was when the policeman found me
Q.247 - But do you remember what your position was when you were sick and vomiting?
A.247 - I was bent over
Q.248 - Precisely where were you in the shelter?
A.248 - Well, there is quite a steep stairs down into the shelter and I was down near the bottom
Q.249 - On the steps there, right at the bottom?
A.249 - Yes, just about the bottom step I would say
Q.250 - Well, were you strong enough to go and be sick somewhere?
A.250 - I didn't want to get up on the street
Q.251 - Now, when you got back to the Mess where were you when you took off your tunic and belt?
A.251 - I was inside the Mess itself
Q.252 - In the ante-room or hallway?
A.252 - In the hallway
Q.253 - And did you leave your tunic and belt there?
A.253 - No, I went upstairs and took my tunic and belt with me. I had to unroll my bed - camp cot
Q.254 - You were able to manage that all right?
A.254 - Yes

QUESTIONS BY THE COURT

Q.255 - When did you have your meal that night?
A.255 - When I went back to the Mess
Q.256 - What time?
A.256 - About 7 o'clock
Q.257 - Do you remember how much you ate?
A.257 - It was just a small cold salad
Q.258 - It would not be very much?
A.258 - No
Q.259 - And when did you have the rum - what time?
A.259 - I would say about 9 o'clock
Q.260 - And would you describe to the Court how you felt next morning?
A.260 - I seemed to feel all right next morning. I was out with the track team all the next day
Q.261 - Did you report to your M.O.?
A.261 - No. I spoke to Capt. Adams and told him that I had been sick the night before and I think one or two others

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS STANDS DOWN

2nd Witness for the Defence, Captain Steward Alexander Adams, 10 Cdn Inf. Bde Coy, RCASC, having been duly sworn is examined by the Defending Officer

Q.262 - Your full name for the record?
A.262 - Stewart Alexander Adams
Q.263 - And you are with?
A.263 - 10 Cdn Inf Bde Coy 4 Cdn Armd Div
Q.264 - What have you been doing the last couple of months in England?
A.264 - On Jun 24 I joined the 4th Div and on the 27th I was detailed as Divisional Troops Sports Officer, training the track team for the 4th Div Army Service Corps at that time and later the divisional team until Jul 7th. At that time I took over the training of the 2nd Corps ASC team and had the 2nd Corps ASC team up until Aug 7th
Q.265 - Before you joined the Army, Capt. Adams, what was your profession - I suppose I should call it a profession?
A.265 - Just prior to joining the Army I was in the clothing business. Just prior to that from '24 to '35 I was a professional hockey player

Q.266 - Who did you play for last?
A.266 - Last I played with was Chicago Black Hawks
Q.267 - Do you know the accused, Lieut. Herringer?
A.267 - Yes, I do
Q.268 - Will you tell the court just when he came under your Command and what his duties were and how he behaved himself?
A.268 - I took over training of the 2nd Corps ASC team on Jul 7th and we had one meet for the Army ServiceCorps on Jul 14th. At that time Mr. Herringer was my ace high jumper. He won the 2nd Corps high jump. He also competed in the running broad jump at that time and I believe the hop, step and jump. We moved down into Brighton and we were attached to the 4 Cdn Armd Bde Coy RCASC and trained at the Greyhound Stadium and Hove Recreation Ground. Mr. Herringer at all times was of great assistance to me. In the entire month that he was under my charge I have never known him to take as much as a glass of beer. He also assisted me in training high jumpers which was one event I did not know much about and he more or less supervised it for me. We were in very strict training as we had to be as we were being watched all the time and we were quite anxious to make a good showing, the reason being that 2nd Corps did not put up a good showing in the tabloid and we were going after sports very strongly. We worked up the Army Service Corps and Mr. Herringer was on two teams, the ASC team and also the 2nd Corps ASC team and we had a meet on Aug 7th at which he won the high jump and all during that month I have never known him to have a drink and his character was exemplary as far as I was concerned
Q.269 - I have two questions I would like to ask you. Did you have any conversation with Herringer on Monday 9th of August?
A.269 - Yes, Mr. Herringer came to me on the morning of Monday Aug 9th and spoke to me and he told me he had gone down townthe previous night and went in and had a couple of drinks of rum and he said that it was funny when they told him the price. He said it knocked him for a loop. Those are the words he used. He said it seemed funny at the time, the cheap price of the rum
Q.270 - Did he carry on his duties?
A.270 - He carried on. He got up that morning and carried on training as we were getting in shape for the meet on the 14th
Q.271 - Now, you have been in Brighton for how long?
A.271 - Just a little more than a month - five weeks
Q.272 - Did you at any time hear - -

Judge-Advocate - I don't see that what he heard in Brighton can be considered as evidence

Q.273 - Do you know of your own knowledge whether or not any bad liquor has been sold in Brighton?

Judge-Advocate - You can ask him if bad liquor has been sold to him or if he has purchased or drunk bad liquor in Brighton

CROSS-EXAMINATION BY PROSECUTOR

Q.274 - Now, the conversation you had with the accused which you have related when he returned on Monday the 9th, is that the only conversation you had with him in respect to these events?
A.274 - It is
Q.275 - So that his only words to you were that he had had a couple of drinks which knocked him for a loop and no other explanation given?
A.275 - I never asked him for any other explanation. I didn't ask him and he didn't volunteer any because I didn't think it necessary

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

3rd Witness for the Defence, Capt. Lawrence Ruhale Rabson, 3 C.C.S., RCAMC, having been duly sworn is examined by the Defending Officer

Q.276 - Just give your name please to the court?
A.276 - Lawrence Ruhale Rabson
Q.277 - You are a medical officer?
A.277 - Yes, sir
Q.278 - And have been practising medicine for some seven years?
A.278 - Correct
Q.279 - And prior to the War you came to England on a two-years post-graduate course?
A.279 - Yes, sir
Q.280 - And you are at present associated with the 3 C.C.S. Canadian Army?
A.280 - Yes
Q.281 - I have two questions to ask you and on those questions you will be entitled to give your opinion. If an individual 24 years of age had been in training for two and a half months - strenuous training and had not had a drink of liquor or beer during that period and has two drinks of rum which might have either ether or wood alcohol in the contents, what effect would that have in your opinion upon the individual?
A.281 - Well, in the case of professional athletes who are accustomed to drinking and who have been in strict training for a long time they find that at the end of their training alcohol has a much more marked effect on them than during the normal course of their lives and should the alcohol be contaminated with any other ingredient such as ether or wood alcohol it is much more marked and has a tendency to produce sickness and all the other complications
Q.282 - What other complications?
A.282 - Well the excessive effects of the exhiliration is just sleepiness and coma
Q.283 - Then what? Suppose the individual vomits?
A.283 - Well, it would tend to relieve the absorption if he vomited

CROSS-EXAMINED BY THE PROSECUTOR

Q.284 - I presume, doctor, that the hangover - you know what I mean when I say "hangover" - where liquor is contaminated with ether or wood alcohol would be much more severe?
A.284 - Yes, normally is unless the patient vomits the whole ingredients up
Q.285 - But in the normal course the hangover would be longer and more severe?
A.285 - Yes
Q.286 - That is, the tendency to have a big head the next day would be much more evident?
A.286 - Yes, depending on the amount absorbed
Q.287 - Would you venture to give us some of the symptoms of drunkenness as you understand them as a medical practitioner?
A.287 - Well, the symptoms usually depend a great deal on the subject's previous habits whether he was a heavy drinker or an abstainer. If he was an abstainer alcohol either makes him sick or tends to produce its effects much more rapidly than on a chronic. I think the first symptom is one of exhilaration and that is followed by a loss of caution sense, followed furthermore by a feeling of sleepiness and that is usually followed by loss of memory for events which occurred in that time. That is the general picture
Q.288 - Did you mention the use of limbs etc?
A.288 - Yes, the postural sense. There is a disturbance of the sense of control
Q.289 - There has been some talk in cross-examination of a witness before you came in in which it was mentioned that the accused was sick. Well, am I right in suggesting that sickness and drunkenness have a tendency to go together?
A.289 - Yes, generally severe drunkenness, when a patient has consumed a great amount of alcohol or alcohol which is in any way affected
Q.290 - It tends to create sickness?

A.290 - Yes

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

4th Witness for the Defence, Lieut.-Col. F. D. Bell, D.A.D.O.S., 2 Cdn Div having been duly sworn is examined by the Defending Officer

Q.291 - Col. Bell, your initials are?
A.291 - F D
Q.292 - You are D.A.D.O.S. of 2 Cdn Div, sir?
A.292 - That's right
Q.293 - We have brought you here today, Col. Bell, to give character evidence if you have any to offer. Do you know Lieut. Herringer?
A.293 - Yes, I know Lieut. Herringer
Q.294 - Can you tell us when you first met him?
A.294 - Well, I am a friend of his family and a distant relative of theirs and I met him as a boy on the ranch
Q.295 - Where?
A.295 - Maple Creek
Q.296 - What observations did you form? What type of a chap is he?
A.296 - Well, to my knowledge knowing him there he is a very fine chap a very fine athlete and scholar. I don't think there is any more I can say about him
Q.297 - What sort of esteem is the family held in in the district?
A.297 - His father is a very influential business man in the town, a relatively good-sized town in Western Canada and a relatively wealthy town

PROSECUTOR DECLINES TO CROSS-EXAMINE THIS WITNESS

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

5th Witness for the Defence, Major J. H. Carson, Sask Horse, 3 C.A.C.R.U. having been duly sworn is examined by the Defending Officer.

Q.298 - Would you identify yourself Major Carson please to the court?
A.298 - I am Major J. H. Carson, No. 3 C.A.C.R.U., Cdn Army
Q.299 - Major Carson, do you know Lieut. Herringer?
A.299 - Very well, sir
Q.300 - And would you tell the court, please, when you first met him and how long you have known him and what you have to say so far as his character and integrity are concerned?
A.300 - Yes. I have known Mr. Herringer about I would say roughly 20 years. I have known him all his school days in Maple Creek. My ranch is 20 miles south of Maple Creek and Mr. Herringer's father is the President of the Southern Wool Growers Association which is one of the biggest associations in Canada and he is very reliable. Nobody would ever think of doubting his word for a minute. He is one of the outstanding citizens of the Province
Q.301 - Will you please keep your evidence to Mr. Herringer?
A.301 - I was giving the fact that I knew the family. They have lived in Maple Creek ever since I can remember. Mr. Herringer here went to school in Maple Creek, was quite a good athlete taking part in most of our sports and was one of the up and coming young youths and then he went to the University of Saskatoon. He applied to get into our Regiment when we mobilized but we were full up with officers at the time and couldn't take him so he applied elsewhere and got over here before we did but the Herringer's in Maple Creek are very highly respected and there is quite a large family of them and they have all done well. There is just one other brother who is in the Air Force but in my opinion Mr. Herringer is a very capable young man and trustworthy. Any work I ever knew him to have or do he certainly carried it out satisfactorily.

THE PROSECUTOR DECLINES TO CROSS-EXAMINE THIS WITNESS

QUESTIONS BY THE COURT

Q.302 - Can you tell us what Lieut. Herringer's reputation for sobriety has been?
A.302 - Yes. Before he came over to England it was practically nil. At home around there the young lads didn't care much for liquor. We had the armouries in Maple Creek and went to dances but there was very little liquor there and the young lads of that age were certainly not of the liquor type. We had no beer parlours at that time and they just left it alone
Q.303 - The point I was trying to bring out was this. I suppose that you are here to give evidence as to Lieut. Herringer's character with particular reference to the charge which is before the court and it is obvious if the evidence is to be of any value at all what we really need to know is what you know, if anything at all, of His personal habits with regard to liquor and sobriety
A.303 - I would say they were good. I never heard of him being tight and I would know because I had eight other officers from Maple Creek all of Mr. Herringer's age and I knew where Mr. Herringer was and he came down and visited with my officers and he certainly did not drink any while he was there and he didn't drink any while he was out there and I would definitely say it is not a habit

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

6th Witness for the Defence, Major W. T. O'Rourke, R.C. Chaplain, H.Q. 1st Cdn Army, having been duly sworn is examined by the Defending Officer.

Q.304 - Would you just identify yourself, Major O'Rourke, with your name, rank and who you are associated with?
A.304 - R.C. Chaplain, H.Q. 1 Cdn Army, W. T. O'Rourke
Q.305 - Major O'Rourke, do you know the accused, Herringer?
A.305 - I do
Q.306 - And would you tell the court under what circumstances you knew him and as a result of knowing him how you found him in your associations where you met?
A.306 - I have known the accused for a period of eight or nine months and Messed with him for about four months and during that time I have found him an officer and a gentleman in the best sense of the term and his conduct was excellent
Q.307 - What about his sobriety in the Mess?
A.307 - I never on any occasion saw him under the influence of liquor

PROSECUTOR DECLINES TO CROSS-EXAMINE THIS WITNESS

QUESTIONS BY THE COURT

Q.308 - When did you first live in the same Mess as the accused?
A.308 - 10 Feb 43
Q.309 - And have you been messing with him all the time since?
A.309 - From the 10 Feb to the middle of May and I am over here several times a week

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

7th Witness for the Defence, Capt. W. D. Hungerford, 2 i/c and Sports Officer, 46 Cdn Gen Tpt Coy RCASC having been duly sworn is examined by the Defending Officer.

Q.310 - What are your initials, Capt. Hungerford?

A.310 - W. D.
Q.311 - And you are associated with what unit?
A.311 - 46 Cdn Gen Tpt Coy
Q.312 - And what is your capacity in that Unit?
A.312 - I am the 2 i/c and the sports officer
Q.313 - And as sports officer did you have anything to do with Lieut. Herringer in the past four or five months?
A.313 - I have been the sports officer of the 46 Cdn Gen Tpt Coy, sir, since Mar of this year and as such I have been organizing all the teams and all the athletes of this Unit have come directly under my supervision of which the accused is one
Q.314 - During the time he has been under your supervision how does he act and what has his reaction been towards sobriety and his character as an officer?
A.314 - I can only say, sir, that he has given me every assistance and support. He has also given me assistance with other lads in the Unit
Q.315 - What about his personal habits?
A.315 - His personal habits have been exemplary insofar as they have been brought to my attention and as far as I know
Q.316 - What about sobriety?
A.316 - I have never seen him under the influence since I have been here and I never knew him before that time
Q.317 - In civil life what was your occupation?
A.317 - Practising law
Q.318 - Where?
A.318 - London, Ontario

PROSECUTOR DECLINES TO CROSS-EXAMINE THIS WITNESS

IN THE OPINION OF THE COURT AND THE JUDGE ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

THE DEFENDING OFFICER MAKES THE FOLLOWING CLOSING ADDRESS:

I will try and be as short as I possibly can. Gentlemen of the court and may it please the court, I am reminded of the ancient days of Greece by history when some of the great athletes performed great feats. I think all the members of the court will remember the great deeds of Pheippides, the great runner who ran 40 miles in the battle of the Marathon and in those days they were building up athletes and Greece was known for the great athletic events which took place in Sparta and various other parts of Greece. We in the Canadian Army in the past year owing to the static position the Canadian Army is in have stressed athletics and it has been a great source of pride and interest to the various officers, N.C.Os and privates who come down on Wednesday and Saturday to see the athletes perform. It has been a great source of admiration to the different corps to watch their particular group and a great source of pride to the senior officers. But who were these men who went out and trained hard so that these events could come to pass? They were private soldiers and N.C.Os and a very few officers. The accused is one of those who has acquitted himself quite nobly in his athletic prowess. Evidence has been presented to the court in the shape of the Canada Weekly showing the accused winning the high jump.

That is the introduction. I now turn to the evidence. What is the evidence? In my opinion, gentlemen, the evidence is not strong enough for a conviction. You have the first witness, Special Constable Kent who was an honest man - not a drinking man mark you, and he tells you that he smelled liquor and he helped carry him down and put him on the steps and then he finds him at the bottom again and his tunic was soiled and he was incapable of movement but he also admits that he could have been ill. He does not bring out to this court that the accused was drunk.

Then you have the next witness, Sgt. Pettman and he also gives

the story of how he found him lying in the air raid shelter across the bench and he says he was incapable of movement and he classifies him as being drunk because his clothes were soiled and he was asked the question "Could he have been ill?" and he said "Yes".

Now, we come to the next witness, Cpl. Faulkins, who is a Canadian Corporal. Incidentally passing back to Sgt. Pettman he does not forget to get the remark in that he has had experience with Canadian troops getting drunk. He just whips that in as sort of a side-cross smash. Next witness is Cpl. Faulkins who is the corporal who took him home and he carried him out and then he said in cross-examination he was quite surprised when he got back when he found that he was able to walk into the Mess, take off his tunic and look for his necktie. He didn't stagger and he was quite surprised. There was some question about the smell of liquor, whether he gave that evidence in the preliminary or not. We admit he had some drink and if he smelled some liquor he might have smelled it on his breath or on his tunic.

Now, let us look at the accused. The accused has come before you a young man. There is nothing against his character. He is 24 years of age, he comes from a good family, he is a graduate of the University of Alberta in Commerce. He is an athlete. He has told you his story and I ask you to believe that story. He has told you he went from the 15th of May to the 7th of August and had no beer or liquor whatsoever and that night he went in and had a couple of drinks. It is my contention and our defence that that liquor he got at 11d - and the court can take judicial notice of what the regular price of a single rum is - was liquor fermented in some way that caused Herringer to become sick - not drunk gentlemen, to become sick and that evidence is corroborated. We have tried to bring everything we can before the court to assist you. That evidence is corroborated by Capt. Rabson that it is quite possible if you did get liquor which was fermented to have the symptoms as Herringer has explained to you. The fact that he became so conscious when he got out of the peep and acted differently was the fact that he vomited and got the poson out of his system. Now, that is the story he told you. He told Capt. Adams that he had been knocked for a loop. He didn't hide it from Capt. Adams; he was his senior officer. He told him he had been knocked for a loop and all the evidence is quite clear that he had been knocked for a loop.

Now, gentlemen, this is not a case of an officer who has disgraced himself, getting drunk in a public place, in a Mess or in London or anywhere where he would be a disgrace to the Canadian Army. He walked out between two officers and sat on a bench, a most natural thing to do, and tried to get some fresh air to recuperate himself. Then he went over to an air raid shelter. It was getting late and dark and he felt himself getting sick. He went down there - a natural thing to do - and he was knocked out. Now, you have heard the evidence the Defence has called. We have called as character evidence Capt. Adams as to what type of lad he was in assisting him in training and how he found him during that period. You have heard the evidence of the doctor, Col. Bell's evidence who knew him and my purpose in bringing this witness, gentlemen, was that you could get the picture of him in Canada, not just someone who knew him in a Mess in England but we went right back to his background and got an idea of what type of boy he is. He has come here, Col. Bell, and I can assure you that he was sincere in everything he said about this young man. You have heard here the evidence of Major O'Rourke. None of these were supoaened; they came here voluntarily to give evidence on behalf of this young man.

Now, I don't want to keep the court long but my contention and my submission is this, that he took some liquor that was bad liquor or liquor that was fermented with something that caused him to get sick. Remember he had very little to eat that night. He had a light salad. He had been on a long period of training and that in itself and I ask you to take notice of what effect it would have on an individual who had been in marvellous physical shape, who had very little to eat, and who had not drunk for a long time and then get some poisoned liquor in his system.

Now, the Prosecution has been extremely fair in the way they have conducted this case. I have prosecuted and defended many cases in England since I have been over here free gratis and I must say that the Prosecution has been very fair. I am sure Capt. Bell would agree with me on this point that we are entitled to a reasonable doubt and that doubt must come to you consciously so that you down in your own heart must be absolutely convinced without any doubt that he was drunk. If there is the slightest doubt in your mind that he did receive that liquor and as a result of getting that bad liquor became sick, then he is entitled to that doubt. You have all taken an oath to try this accused without partiality and to try him on the merits of the case.

Now, gentlemen, I would ask you - - I have never asked a court to acquit an accused before. That is your duty and when I have finished I have completed the work I have been assigned - to defend the accused and the responsibility rests with you but I ask you, gentlemen, with all the facts of this man before you, we need young officers in the Canadian Army who have excelled in sports because if they excell in sports they will excel in battle. The other day the English papers were full of Captain Verity the English cricketer and the way he led his men on the battlefield and you will find in your experience of war that men who have excelled in athletics have been wonderful leaders and I submit we need this man and I also submit that we have proved to this court that this man has all those qualities and I ask you gentlemen from the bottom of my heart to acquit the accused.

THE PROSECUTOR MAKES THE FOLLOWING CLOSING ADDRESS:

May it please the court. I think there are only two matters that the court has to decide in this case. The first is "Was the accused drunk?" and the second is "If he was drunk was there some factor which relieves him from the responsibility of being drunk?" Now, drunkenness is a very hard thing to define. It is something like trying to define the beauty of a rose. Actually no word-picture can give you the sensation you get when you look at something beautiful. When you ask a man what are the symptoms of drunkenness you only get half the picture but most people know a drunken man when they see one. In this case we have a constable who says the man was drunk and we have a provost who is accustomed to dealing with this type of thing. He says the man was drunk. There is no axe to grind with these people and therefore you must give some weight to their testimony.

I was rather struck with the testimony of the accused. I thought he was trying to tell the truth and in his testimony he said himself that his sensations and to me they sounded very much like the sensations which you would expect a person who is intoxicated to have. He said he was sick. The medical testimony corroborates the fact that sickness in the last stages of inebration or drunkenness were concurrent. I think it rather corroborates the story which the provost and the constable were trying to relate and I submit that the court should give some consideration to the point.

MUF.

Now, the other branch of the argument appears to be that the accused drank something he did not know he was drinking just the same as if a man went to take a drink of beer and took a drink or strychnine or something like that. That is extending the case further but that is the point. Now, I think the case is pretty thin when you try to suggest that this was poisoned liquor or liquor which was so adulterated that it did not have any of the usual qualities which liquor can be expected to have and I rather think that the results which drinking this liquor accomplished were caused by the fact that it had been a light dinner and an abstinence from liquor for some time. Those are thoughts which I pass on to the court and the medical testimony indicated that if there was some adulteration of the liquor supply there would be a tendency for a longer, tougher hangover. Apparently in this case there was no hangover at all. Evidently the officer was very quick to recuperate and I think the tendency of the evidence was to show that the liquor was doing its normal duty but was rather used unwisely under the circumstances.

I may say I am quite struck with the attitude of the accused. Apparently he is a very fine soldier and gave very honest evidence but it is only my duty to point out to the court some of the evidence that I think is applicable here and I do so and submit it to you for that purpose.

THE JUDGE ADVOCATE SUMS UP AS FOLLOWS:

May it please the court. In the opinion of the court and of the Judge Advocate a summing-up on the facts is unnecessary but the court have asked for a direction on certain matters of law which may give rise to difficulty. The function of the Judge-Advocate is to explain the law and the function of the court is to apply that law to such facts as it has found proven in evidence. The credibility of witnesses and the weight which should be given to any evidence is entirely a question for the court.

The accused is charged with one offence, namely drunkenness and that charge is laid under Section 19 of the Army Act. In the evidence one or two of the witnesses were permitted to say that the accused was drunk which was the very thing which the court has to try. Now, I wish to point out at this stage that whether or not the accused was drunk is entirely a matter for the court to decide. In some such cases, however, as a matter of convenience - as a convenient way of describing what a witness saw he is allowed to make that statement. The rule is stated in one text book on evidence "Witnesses may, however, describe the apparent condition of people and things, for here the phenomena are often too numerous and vague to be otherwise conveyed". Now, I just mentioned that to emphasize to the court that it should not accept the opinion of witnesses as to whether or not he was drunk, that the court have the responsibility of deciding that on the evidence which has been put before it as to the condition of the accused at the time in question.

Court - But is it not a fact that the opinion of witnesses is admissible evidence?

Judge-Advocate - It is not admissible for the purpose of opinion-evidence in this case. There are cases of expert opinion but that is what I wanted you to be clear on

Court - But you have just told us and this is one of them where it is difficult or impossible for a witness to convey the actual detailed condition of things and in order to describe them it is permissible for the witness to state - -

Judge-Advocate - It is not a question of opinion-evidence; it is a question of rather a convenient way of describing a stated condition

Court - Summarizing it is this. When a witness says so and so was drunk

that is a description of all the [illegible] on which the witness has come to that conclusion [illegible]
Judge-Advocate - Well, I think that the quota[illegible] it as well as anything, sir. If it wel[illegible] I have read part opinion-evidence the witness would not be[illegible] matter of because he is not a qualified expert and [illegible] to say that which the court has to try. Sometimes, if [illegible] very question get a certain type of description and the only [illegible] way to is permitted to say it. What I want to make [illegible] the witness is that the court does not adopt the opinion of [illegible] clear Court - No, because the witness may be mistaken [illegible] witness. Judge-Advocate - No, but a witness is normally not permitted [illegible] sir. an opinion on the whole issue which the court is trying, [illegible]

It is not possible to give an apt and comprehensive defi[illegible] of drunkenness. The Judge-Advocate of the British Forces [illegible] ruled that no person should be convicted of drunkenness [illegible] Section 19 of the Air Force Act unless the court is sati[illegible] that he was so much under the influence of drink as to be drunk according to the view of the ordinary reasonable man. While that ruling was specifically made for the British Air Forces the same principle is applicable under the British Army Act, and I accordingly direct the court that it should be applied in the present case. For the assistance of the court I will read part of the ruling made by the British JAG at that time. It will be noted that he was discussing Section 19 of the Air Force Act. For present purposes there is, however, no distinction between the section he was discussing and the section under which the accused officer is charged. The ruling reads in part as follows:

"The offence of drunkenness under Section 19 of the Air Force Act consists of being in a state of intoxication in consequence of taking alcohol or an intoxicating drug or a combination of both. The Air Force Act purposely refrains from defining the meaning of drunkenness and makes no distinction whether it is committed on duty or not on duty. Whether in any particular case the accused person is in a 'state of intoxication' is a question of fact for the decision of the court. In deciding whether the accused was in a state of intoxication or not, the court should attach great weight to the fact that he was unfit to be entrusted with Air Force duties by reason of an overindulgence in alcoholic liquor or a drug, but I am unable to adopt that such a test is the sole factor in deciding the guilt or innocence of an accused person charged under Section 19 of the Air Force Act. The fact that the offence of drunkenness was committed on duty is an aggravating factor which could properly be taken into account by the court on conviction in awarding punishment".

In passing I might note that that particular part does not apply here as there is no suggestion that this officer was on duty. Then, going on with this opinion -

"When a similar point was put to my predecessor in 1933 he ruled as follows; 'I am by no means sure that the difficulties which we would be likely to incur from having a definition might not be greater than any which we may encounter from not having any' Drunkenness is one of those things which it is easier to recognize when it occurs than to define comprehensively. Lord Justice Greer gave effect to this view when, in the case of R. v. Pressdee, 20 C.A.R., at p.96 he said "Drunk" is what an ordinary reasonable person would consider such". Then he goes on to some examples which are not pertinent here and then says "I think that the only safe rule is that no person should be convicted of drunkenness under Section 19 of the Air Force Act unless the court is satisfied that he was so much under the influence of drink as to be drunk according to the view of the ordinary reasonable man".

In the present case one of the main grounds the defence puts forward is that even if it is admitted for purposes of argument that the accused was at the time in question then in the condi[illegible]

that is a description of all the circumstances on which the witness has come to that conclusion?

Judge-Advocate - Well, I think that the quotation which I have read put it as well as anything, sir. If it were a straight matter of opinion-evidence the witness would not be allowed to say that because he is not a qualified expert and it is the very question which the court has to try. Sometimes it is practical way to get a certain type of description and that is the only reason the witness is permitted to say it. What I want to make perfectly clear is that the court does not adopt the opinion of any witness.

Court - No, because the witness may be mistaken

Judge-Advocate - No, but a witness is normally not permitted to express an opinion on the whole issue which the court is trying, sir.

It is not possible to give an apt and comprehensive definition of drunkenness. The Judge-Advocate of the British Forces has ruled that no person should be convicted of drunkenness under Section 19 of the Air Force Act unless the court is satisfied that he was so much under the influence of drink as to be drunk according to the view of the ordinary reasonable man. While that ruling was specifically made for the British Air Forces the same principle is applicable under the Army Act, and I accordingly direct the court that it should be applied in the present case. For the assistance of the court I will read part of the ruling made by the British JAG at that time. It will be noted that he was discussing Section 19 of the Air Force Act. For present purposes there is, however, no distinction between the section he was discussing and the section under which the accused officer is charged. The ruling reads in part as follows:

"The offence of drunkenness under Section 19 of the Air Force Act consists of being in a state of intoxication in consequence of taking alcohol or an intoxicating drug or a combination of both. The Air Force Act purposely refrains from defining the meaning of drunkenness and makes no distinction whether it is committed on duty or not on duty. Whether in any particular case the accused person is in a 'state of intoxication' is a question of fact for the decision of the court. In deciding whether the accused was in a state of intoxication or not, the court should attach great weight to the fact that he was unfit to be entrusted with Air Force duties by reason of an over-indulgence in alcoholic liquor or a drug, but I am unable to accept that such a test is the sole factor in deciding the guilt or innocence of an accused person charged under Section 19 of the Air Force Act. The fact that the offence of drunkenness was committed on duty is an aggravating factor which could properly be taken into account by the court on conviction in awarding punishment".

In passing I might note that that particular part does not apply here as there is no suggestion that this officer was on duty. Then, going on with this opinion -

"When a similar point was put to my predecessor in 1933 he ruled as follows; 'I am by no means sure that the difficulties which we would be likely to incur from having a definition might not be greater than any which we may encounter from not having any' Drunkenness is one of those things which it is easier to recognize when it occurs than to define comprehensively. Lord Justice Greer gave effect to this view when, in the case of R. v. Presdee, 20 C.A.R., at p.96 he said "Drunk" is what an ordinary reasonable person would consider such". Then he goes on to some examples which are not pertinent here and then says "I think that the only safe rule is that no person should be convicted of drunkenness under Section 19 of the Air Force Act unless the court is satisfied that he was so much under the influence of drink as to be drunk according to the view of the ordinary reasonable man".

In the present case one of the main grounds the defence puts forward is that even if it is admitted for purposes of argument that the accused was at the time in question then in the condit-

ion which is described by certain of the witnesses for the prosecution, that that condition was due mainly or entirely to illness and not to drunkenness. That again, is a question of fact for the decision of the court. If the court comes to the conclusion that the accused was in the condition described but the court is not satisfied on the evidence beyond any reasonable doubt that the condition in which the accused was found was the result of drunkenness the finding must be one of "Not Guilty".

Having considered the particular charge I will now pass on to some principles which are applicable to all trials of this character. It is a fundamental principle of British law that an accused person is presumed to be innocent until proven guilty. The onus of proof, therefore, rests throughout on the prosecution and the accused is entitled to the benefit of every reasonable doubt. If after hearing all the evidence and carefully considering it, the court finds itself in doubt as regards the charge or any essential ingredient thereof, the accused must be found not guilty. The accused is not under any obligation to satisfy the court as to his innocence before he is entitled to an acquittal. It is for the prosecution to satisfy the court beyond any reasonable doubt that the accused is guilty before it may properly so find.

Reasonable doubt has been variously defined. The definition I know is "such a doubt as upon a calm view of the whole evidence a rational understanding will suggest to an honest heart". It now rests with the court to make its finding upon the charge in accordance with the oath taken by the members at the commencement of the trial.

THE COURT IS CLOSED FOR CONSIDERATION OF THE FINDING

THE COURT IS RE-OPENED

Court - Lieut. Herringer, the finding of the Court being subject to confirmation will be promulgated later.

THE DEFENDING OFFICER MAKES THE FOLLOWING PLEA IN MITIGATION OF PUNISHMENT:

May it please the court, apparently you have found the accused guilty of the charge here today. You have just heard the regimental conduct sheet - the last 12 months nil, offences nil since enlistment, 2 days in custody. I don't propose to elaborate at all on my address. Character witnesses came here today voluntarily and gave you the character of this young man. The evidence of Major Carson who came all the way down from Oxford at his own expense speaks for itself. I feel when you have surveyed all the circumstances of this case that it is not a case for Dismissal from the Service, it is not a case for Cashiering, it is not a case for even a Severe Reprimand. If this young man is Dismissed from the Service his whole life is blighted, his whole life is blighted and that responsibility rests on you gentlemen when you make your decision. He has a sister in the Armed Forces over here, he has a brother in the Air Force, he has a father and mother in Saskatchewan. He has been a credit to the Army for participating in the events which he has this Summer. He has had distinction in athletics. You heard what the 2 i/c said and I earnestly ask you when you come tomake your decision as to the sentence, that you take all those things into consideration, that you have before you a young man 24 years of age and you either make him or you break him.

You either make him or you break him and I would like to say that if Herringer should be in the witness box charged with drunkenness - and I am quite serious about this - there are thousands of other Canadian officers who should be here today and I ask you gentlemen to seriously consider your sentence.

The President having announced that the sentence of the Court being subject to confirmation will be promulgated and that the proceedings in open court are accordingly terminated in accordance with the provisions of Overseas R.O. 3262 the court is closed to consider the sentence.

Certified to be a true transcript
of the shorthand notes taken by me
at the G.C.M. described on page 1.

(W.J.Hethercut) S/Sgt
Court Reporter
H.Q. 2 Cdn Corps

6 Sep 43

59

E

Finding

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused Lieut James George Herringer 46 Can General Transport Company RCASC is Guilty of the charge

[signature] Major

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Capt Raymond Samuel Viscount, 46 Can Gen Tpt Coy RCASC is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes - MFB 355744 AFA 76

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked "X-7", signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

(Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Cross-examined by the accused. No

Question to the accused.

Do you wish to address the Court? *Answer.* Yes (See p 55 of transcript)

The Court is closed for the consideration of the sentence.

60

F

Sentence

The Court sentence the accused Lieut James George Herringer Sentence.
To be reprimanded Reprimand

Signed in the field this fourth day of ~~August~~ September 1943

Neil V Isaacs
Judge Advocate Major

Wm Whitting Brigadier

Confirmed.

Signed in the Field this 8th day of September 1943.

Mervyn Sansom
(E. M. Sansom) Lt-Col.
G.O.C.
3 Corps Troops

Promulgated and extracts taked.

Signed in the field this 13th day of Sept. 1943.

Lawrence Capt A/Adj.
46 CORPS GEN. TPT. COY.
R.C.A.S.C.

46 Cdn Gen Tpt Coy R.C.A.S.C.

MC7

4 Sep 43.

Lieut. J.G. Herringer
46 Cdn Gen Tpt Coy RCASC

This is to certify that the m/n officer was on this day examined by me and found medically fit to undergo Court Martial.

Malcolm G Ranney Capt.
(M.G. Ranney) Capt.,
Medical Officer
HQ Comd 2 Cdn Corps
Tpt Column - RCASC

F

Sentence

The Court sentence the accused Lieut James George Herringer Sentence. Reprimand
To be reprimanded

Signed in the field this fourth day of ~~September~~ August 1943

Presiding Officer Brigadier

Judge Advocate Major

Confirmed.

Signed in the Field this 8th day of September 1943.

(E. W. Sansom) Lt-Gen.
G.O.C.
1 Cdn. Corps

Promulgated and extracts taken.

Signed in the field this 13th day of Sept. 1943.

Capt/Adj.

48 CDN. GEN. TPT. COY.
R.C.A.S.C.

E

Finding

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused Lieut James George Herringer 46 Cdn General Transport Company RCASC is Guilty of the charge

Maj Military Prosecutor

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Capt Raymond Maunsel Viscount, 46 Cdn Gen Tpt Co, RCASC is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes - MFB 3559 AFA 6 74

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked "X-74", signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

(Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Cross-examined by the accused. No

Question to the accused.

Do you wish to address the Court? *Answer.* Yes (See p 55 of transcript)

The Court is closed for the consideration of the sentence.

ORDERS BY LIEUT-GENERAL E. W. SANSOM, CB, DSO,
G O C 2 CDN CORPS

"A" Campbell Brig
President.

GENERAL COURT MARTIAL
Lieut. James George HERRINGER,
46 Cdn Gen Tpt Coy, R.C.A.S.C.

The detail of officers as mentioned below will assemble in the lines of 46 Cdn Gen Tpt Coy., RCASC, on Saturday, the 4th day of September, 1943, at 1000 hrs., for the purpose of trying by General Court Martial the accused person named in the margin (and such other person or persons as may be brought before them).

PRESIDENT

Brigadier G. S. N. Gostling, E. D.,
Comd 10 Cdn Inf Bde

MEMBERS

Lieut-Col C. S. Bolsby, D.F.C.	2 Cdn Corps Rft Camp, Tor Scot R.
Major V. E. C. Odlum,	29 Fd Coy, RCE
Major J. F. Paterson,	3 CCS, RCAMC
Capt. D. H. Eckold,	HQ 2 Cdn Corps Tpt Coln, RCASC

WAITING MEMBERS

Capt. R. Church,	6 LAA Pl, RCASC
Capt. J. Tilley,	2 CCS, RCAMC

JUDGE ADVOCATE

Major N. C. Fraser, DJA, 2 Cdn Corps is appointed Judge Advocate

Capt. E. D. Bell, 19 SP Regt, RCA will act as Prosecutor

Capt. W. H. Heffernan, HQ 2 Cdn Corps Tps RCASC will act as Defending Officer

The accused will be warned and medically examined and all witnesses duly required to attend.

Comd 2 Cdn Corps Tpt Coln RCASC will detail an escort for the accused.

Officer Commanding 46 Cdn Gen Tpt Coy RCASC will detail an Orderly Officer and Court Orderly

Officer Commanding 46 Cdn Gen Tpt Coy RCASC will provide suitable accomodation for the Court and for the witnesses.

The proceedings will be forwarded to ~~G O C~~ 2 Cdn Corps

Signed this 2nd day of September, 1943.

E. W. Sansom

(E. W. Sansom) Lieut-Gen
G O C 2 Cdn Corps

M.F.B. 353
22M—5-41 (572-3)
H.Q. 1772-20-620
A.F.B. 396

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
	Lieutenant	J.G. Herringer	46 Cdn Gen Tpt Coy, R.C.A.S.C.

1. The following is a fair and true summary of the entries in the [redacted] Regimental [redacted] Service and General or Company Conduct sheets of the accused, [redacted] of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	Nil times	Nil times
For	times	times
For	times	times
For	times	times
[redacted]		

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

[redacted]

3. The accused is not under sentence at the present time.

[redacted]

4. The accused has been in confinement awaiting trial on the present charges, for [redacted] days in civil custody, and 2 days in military Air Force custody, making a total of 2 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is [redacted] 24 years

6. The date of his commission specified in his record of service is [redacted] 10 May 41

7. [redacted]

8. [redacted]

9. [redacted]

10. [redacted]

11. (In the case of an officer.) The accused holds in the [redacted] unit the rank of Lieutenant dated 10 May 41, and in his regiment (or corps), the rank of Lieutenant dated 10 May 41.

12. The accused [redacted] commissioned [redacted]

[redacted]

Note.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number [redacted] Rank Lieut Unit [redacted]

Name Herringer J.G. of 46 Cdn Gen Tpt Coy, RCASC

Note.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
N/A				

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 2nd day of September 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked [redacted] signed by the president, and annexed to the proceedings.

M.F.M. 6
(A.F.O. 122)
40/P & S/136 (2637)

No. Lieut Name Herringer J.G. Sqn., Battery, or Company | Corps 136/1 | Date of enlistment 9/5/41 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet Nil | No. and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED TRUE COPY OF REG
ENTRIES FROM RECORDS HELD
IN MY CUSTODY.

Adjutant
46 Cdn Gen Tpt Coy
R.C.A.S.C.

(P.T.O.)

SUMMARY OF EVIDENCE.

Summary of evidence in the case of Lieut. J.G. Herringer, 46 Cdn. Gen. Tpt. Coy. R.C.A.S.C., Cdn. Army overseas, charged with drunkeness.

The Commanding Officer directs that the evidence be taken on oath.

First Witness.

768483 Sgt. Pettman R.J. C.M.P. H.Q. sworn states:

I am Sgt. Pettman of C.M.P. H.Q. Brighton. On the ninth of August I was on duty at the C.M.P. H.Q. Brighton. Upon receiving information from the civilian police, I proceeded in company with Corporal Dench to Maxims air-raid shelter, where I saw the accused J.G.Herringer of the 46 Cdn.Gen.Tpt. Coy. This was at 0015 hours on the 9th. of August.

This officer was lying across a bench and he was incapable of any movement, the front of his tunic on the left side was soiled from being sick onit, his neck-tie was also soiled the same way and had to be removed later at H.Q.

When I arrived at the air-raid shelter I spoke to this officer and shook him but he made no reply. He was sleeping at this time. His hat was lying on the bench at the side of him.

This officer was unable to walk and had to be supported on each side by the corporal and mayself up the stairs of the shelter and into the van.

He was brought to C.M.P. H.Q. and had to be carried into the building. He was placed on the bed where he remained until the escort from the 4 C.A.B. Coy. R.C.A.S.C. came for him at 0300 hrs. Lieut. Herringer did not say anything inteligable during this whole time.

Lieut. Herringer was carried out of this H.Q. to the vehicle brought to this H.Q. at 0300 hrs. by the corporal of the escort and corporal Dench. We removed his personal belongings for safe custody and theses were handed to the escort when he arrived, for which we received a receipt.

R.J. Pettman Sgt

768483 Sgt. Pettman R.J.

The accused declines to cross-exame this witness.

Second Witness.

Special constable C 35 Edward Albert Kent of Brighton police sworn states.

I am Edward Albert Kent, on the night of August 8th. I was on duty in Brighton. At 2210 hrs. on the 8th. of August I was standing on the east side of Maxims facing the water front when I saw two officers leading another one between them across the kings rd. and placed him on the seat on the sea front.

The officer was seated facing Maxims. He was sitting on the seat with his knees apart his elbows on his knees and hands covering his face, his cap was on the ground at his feet. The next time I saw the officer it was at 2340 hrs. and he was on the second step from the bottom of Maxims air-raid shelter.

I recognize this officer as Lieut.J.G. Herringer,whom I now see.

Lieut. Herringer was incapable of movement so I took him into the shelter and put him on a seat there. I then phoned and reported the episode to the civilian police headquarters.

I could smell liquor from his person.

When the C.M.P. escort took Liuet.Herringer away from the shelter he was supported between two of the escort.

Edward Albert Kent

Edward Albert Kent.

The accused declines to cross-examine this witness.

Third Witness.

A63210 Cpl. Faulkin D.W. 4 C.A.B. Coy. R.C.A.S.C. sworn states.

I am Cpl. Faulkins, while on duty as regt. police corporal on August 9th. I received a call from the duty officer that the C.M.P. at Brighton had phoned and I was detailed as an escort to pick up an officer from their H.Q.

I proceeded to Brighton in company with a driver of the 5 cwt. in which I rode. On arriving at the C.M.P. H.Q. I found Lieut. J.G. Herringer lying asleep on a cot in the H.Q. I carried him out to the car and put him in the front seat, I could smell liquor on him and he had been sick on the front of his tunic.

I brought him to the officers mess of the 4 C.A.B. Coy. arriving about ten minutes after we left the C.M.P. H.Q. On arrival at the Mess, Lieut. Herringer got out of the car and walked into the mess without any assistance. He removed his tunic and sam-browne belt and noticed the loss of his tie. Then I returned his personal belongings to him, I asked him if he was alright and he answered "yes" and seemed to be perfectly normal by this time.

Cross-examined by the accused.

Q. Was there any attempt made to arouse me before you carried me out to the car.

A. No, there was not.

Q. Was I able to sit in the front seat of the 5 cwt. without any assistance.

A. Yes, you sat there without any assistance during the trip back to the mess.

Cpl Faulkins D.W.

A63210 Cpl. Faulkins D.W.

The accused was warned as follows;

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

The accused: I desire to give evidence under oath.

The accused Lieut. J.G.Herringer, 46 Cdn.Gen.Tpt.Coy. R.C.A.S.C., sworn states:

On the night of August 8th. I went into Brighton at about 2030 hrs. I visited a public house and had two double drinks of rum which I found cost much less than the usual price.

I then went to another public house in Brighton and had a couple of drinks, there I met a couple of Canadain officers. Soon after this the pubs closed and we went out into the street.

Accused's evidence continued on next page.

I began to feel sick so we crossed over to the water-front where I sat down on a bench and later became sick.

I remained there for some time and as it was after the curfew and I was still feeling sick, I crossed the street to Maxim's air-raid shelter. At about this time I think I passed out and I don't remember anything until I found myself in the 5 cwt. on the way to the mess.

I went into the mess with the corporal and noticed that my tunic was soiled, so I removed it and my sam-browne belt. The corporal returned my personal belongings and asked if I was alright.

Lieut. J.G.Herringer.

I certify that R.P.4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this 26 day of Aug, 1943.

Captain R.E. Viscount.

(Officer taking Summary)

293 f. Em. Herren. J. B.

Original.

Correspondence to be PINNED here.

D-10867 Gnr. Herron, B.J.
1 Cdn Survey Regt. R.C.A.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this eleventh day of JULY, 1941,

Whereas it appears to me, the undersigned, [redacted] CHIEF ENGINEER, CDN CORPS., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers [redacted] appointed or detailed hereunder.

* Omit if not applicable.

*(1. [redacted]

*(2. [redacted]

*(3. [redacted]

[redacted]

President.

Rank.	Name.	Regiment.
Major.	G.F. Clingan, M.C.	Cameron H of O (MG)

Members.

Rank.	Name.	Regiment.
Captain	A.E. BOGGISS, DCM, MM	1st Med Regt. R.C.A.
Lieutenant.	J.W. CORNEILLE	R.C.O.C.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed C.L. Hertzberg Brigadier.
(C.SL. Hertzberg).
Commanding Chief Engineer, Cdn Corps.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-10867 Gnr. HERRON, B.J. L Cdn Survey Regt. R.C.A.	First Charge. A.A. Sec 15 (1) as per Charge Sheet.	Guilty	Guilty Forfeits 2 days pay under FR I 149 (1)(a) 5 days detn Mac. A.J.B. J.W.C.	Finding & Sentence Confirmed (Illegible)

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) C. Hertzberg Brigadier. (C.S.L. Hertzberg)
Convening Officer (c)

(Signed) A.A.C. Chipman maj'r
Chief Engineer, Cdn Corps. 1st Can C H Q (O16)
President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the fifteenth day of July 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
~~3. The interpreter~~ 3. The shorthand writer
~~4. The officers under instruction~~
were duly sworn.

* Omit if not applicable.

Signed this 15th day of July 1941.

A.A.C. Chipman maj'r
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and ~~sentence~~ in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~"I direct that the soldier named in the margin be not committed to prison until further orders."~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this Sixteenth day of July 1941

C. Hertzberg BRIGADIER.
Confirming Officer.

Promulgated and extracts taken in the case of D-10867 Gnr Herron, B.J.

(*a*) (Dated) 17 July 41 (Signed) A. Adelie CAPTAIN, RCA.
ADJUTANT, 1 SURVEY REGIMENT, RCA.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(33739) W. 40015—695 200 M 1/40 P. St. C. Ltd.

The accused has elected trial by Court Martial, refusing to accept a summary award.

CHARGE SHEET

The accused, D10867, Gunner HERRON, B.J., Sound Ranging Battery, 1 Canadian Survey Regiment, RCA., a soldier of the Canadian Army (Overseas)

is charged with

Sect. 15 (1) A.A. / Absenting himself without leave

in that he

While on active service, in the Field, absented himself without leave, from 0800 hrs 14-April-1941 until 2150 hrs, 15-April-1941. (Total absence 1 day 13 hrs 50 mins). (Sect. 15 (1) A.A.).

Field: JUL 6 1941 (Date)

(G. M. Currie) Lt.-Col.
Commanding 1 Canadian Survey Regt. RCA.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

BRIGADIER.
(C.S.L. Hertzberg)
Chief Engineer, Cdn Corps.

Dated in the Field.
This 11th day of July 41.

Major

1 CANADIAN SURVEY REGIMENT
Canadian Corps
Home Forces

15-Jul-41.

TRIAL of D10867 Gnr. HEBRON, E.J., by Field General Court Martial.

Prosecutor: ... ... Capt. A. C. Leslie, 1 Cdn. Survey Regt.

Defending Officer: ... Lieut G.H.W.McKee, 1 Cdn. Survey Regt.

The Court properly constituted R.P. 106 & 107.

President: Major G.F.Clingan, M.C., Cam. Highlanders of Ottawa (M.G.)

Members: Capt. A.E. Boggis, 1 Cdn. Medium Regt. RCA

Lieut. J.W. Corneille, R.C.O.C.

The Court opened at 1015 hrs and the Convening Order was read.

The accused was given the right to challenge the members of the Court and the stenographer. (R.P.110).

The Court, witnesses and stenographer were duly sworn.

The accused was arraigned by the President of the Court

After arraignment and plea of guilty, the accused elected to make no statement nor call witnesses; R.P. 35(b) complied with.

The Prosecutor, having been sworn, submitted statement of character and true copy of M.F.M.6.

The defending officer made the following statement:-

"Sir, the accused has pleaded guilty to the crime. He does not wish to bring any witnesses as to character beyond the M.F.M.6 and character statement which has been presented to the Court. While admitting guilt of the crime, he did not commit the crime as an act of wilful disobedience. The absence without leave was at the conclusion of a pass when the accused got into some trouble.

The Court adjourned to consider the evidence at 1045 hrs.

Certified true transcript of evidence.
15 July 41

I certify that D. 10867 Gr
R.J. Herron of the 1 Can.
Survey Regt is in a fit
state of health and fit
to undergo trial by Court Martial

11th July 1941

A. E. McPherson
Capt RCASC

STATEMENT OF CHARACTER OF ACCUSED -

D-10867, Gnr. Herron, B.J.

1. There are three entries on the conduct sheet of the accused.

2. The accused has not been previously convicted.

3. The accused is not under sentence at the present time.

4. The accused was in open arrest awaiting trial on the present charge from 15 April/41 to 17 April/41, when he was released without prejudice to rearrest. Again placed in open arrest 5 July/41 awaiting trial.

J. M. Carriel

(G. M. Carriel) Lt.-Col., RCA.
C.O. 1 SURVEY REGIMENT, RCA, CASF.

SUMMARY OF EVIDENCE

In the case of D-10867, Gunner Herron, B.J.

Of The

18-Apr-41.

1st CDN. SOUND RANGING BATTERY, RCA

1st Canadian Survey Regt. RCA

1. On question being put to him, accused requests evidence be taken down under oath.

FIRST WITNESS - having been duly sworn, states:-

I, K-15103, L/Sgt. Aldous, A.C.F., acting in capacity of Troop N.C.O. in charge of 'D' Troop, while checking the roll for the above mentioned Troop at the Battery Parade at 0800 hours, 14-Apr-41 found Gnr. Herron absent from Parade. On checking with the Orderly N.C.O. on that day, found that Gnr. Herron had failed to return from his week-end pass. He was not seen again by me until 2230 hours, 15-Apr-41. That is all sir.

.....L/Sgt.

Cross-examined by Accused:

Q. Sgt. Aldous, you said that you had seen me at 2230 hours. I was in my quarters at the said time when L/Sgt. Aldous had reported to have seen me, and I say that L/Sgt. Aldous did not see me at that time.

A. Sir, I had been informed by Bdr. Gillies of Gnr. Herron's return at approximately 2220 hours. I went to the quarters, Married Quarters No. 8., and saw that Gnr. Herron was there. That is all sir.

SECOND WITNESS - having been duly sworn, states:-

I, D-10873, L/Bdr. MacNutt, W.M., acting in the capacity of Orderly N.C.O. on Monday, April 14-41, went to the Guard Room at between 0750 hours and 0755 hours on that day, 14-April-41 and checked over the pass book with the Guard Commander and found that Gnr. Herron had not signed in at that hour. I reported this fact to L/Sgt. Aldous and Sgt. Briscoe on the morning parade at 0800 hours. That is all sir.

.....L/Bdr.

Accused declines to cross-examine.

THIRD WITNESS - having been duly sworn, states:-

Sir, I, B-86715, L/Bdr. Merritt, G.W., acting in the capacity Orderly N.C.O., April 15-41, obtained signature of Gnr. Herron at approximately 2155 hours. I also witnessed to the effect that at approximately 2200 hours Gnr. Herron was placed under Open Arrest by Guard Commander, L/Bdr. Blundun. That is all sir. I have an addition sir - re obtaining signature of Gnr. Herron, it is meant I obtained signature in Pass book and recorded time reported in as 2150 hours. That is all sir.

.....L/Bdr.

Accused declines to cross-examine.

(Cont. over to sheet -2-)

FOURTH WITNESS - having been duly sworn states:-

I, K-98241, L/Bdr. Blundun, P.D., acting in the capacity of Guard Commander on the 15th April reported Gnr. Herron in at 2150 hours, sober and properly dressed. I placed him under Open Arrest at approximately 2200 hours on orders from L/Bdr. Merritt, Orderly N.C.O. That is all sir.

P.D. Blundun L/Bdr.

Accused declines to cross examine.

The accused declines to make a statement.

B.J. Herron

Taken down by me at the Field this 18th day of April, 1941 in the presence of the accused. Rule of procedure No. 4 complied with.

Major, RCA
O. C. 1 Cdn. Sound Ranging Battery, R. C. A.

LIST OF WITNESSES IN THE CASE OF -

D-10867, Gnr. Herron, E.J.

1 Cdn. Svy. Regt.

For the Prosecution

K-15103, L/Sjt. Aldous, A.C.F.
1 Cdn. Survey Regt.

D-10873, L/Bdr. MacNutt, W.M.
1 Cdn. Survey Regt.

B-28715, L/Bdr. Merritt, G.W.
1 Cdn. Survey Regt.

K-98241, L/Bdr. Blundun, F.D.
1 Cdn. Survey Regt.

For the Defence

K-98275, Gnr. McGowan, A.
1 Cdn. Survey Regt.

A-54622, Gnr. Bistany, P.J.
1 Cdn. Survey Regt.

D-10820, Gnr. Olsen, A.
1 Cdn. Survey Regt.

K-98276, Gnr. Matthews, P.H.
1 Cdn. Survey Regt.

No. D-10867 Name HERRON, Borden James | Sqn., Battery, or Company S/R Bty | Corps RCA | Date of enlistment 23/10/40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) 100M—8-39 (1723) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Certified true copy

Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Headquarters 25.11.40	Gnr.		AWL from 0700 hrs 25/11/40 to 1800 hrs 25/11/40. (11 hours)	Bdr Zygan Bdr MacKenzie	Admonished	25/11/40	Maj McLeod	Forf 1 days Pay - A.S.P.
Headquarters 30/12/40	Gnr.		AWL from 2200 hrs 30/12/40 to 0900 hrs 30/12/40 (11 Hrs)	I/Sjt.Aldous Bdr MacKenzie	10 days CB Fine 2 days Pay	30/12/40	Maj McLeod	Forf 1 day Pay - A.S.P.
Greenlands Farm 15 1/41	Gnr		A.A. Sect. 15(2) Failing to appear at the place of parade appointed by his commanding officer.	I/Sjt Aldous	7 days C.B.	16/4/41	Maj McLeod	

(P.T.O.)

4J-106
PR- HERRON GH

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 733, and in lieu of Kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on AF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 26 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on AF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : ~~To be reduced to the rank of~~ L/Cpl. To forfeit sixty days pay —

(Sgd) ..... Nov 29/44 (Sgd) J. M. Pigott Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

~~I direct that the accused be not committed to prison or detention barracks without further orders.~~ (1. AA 57A. Delete if none.)

Date 10 Dec 44 (Sgd) [illegible] Brig

Commanding 4 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

B155208 Pte Herron G.H 10 Dec 44. Kbt. T. L. Wood 6 Syst. Coy

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED. I.R. Regt. C.

RECEIVED 2 JAN 1945 MG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED

RECORDED AT CMHQ IN AB 169 ... 45-106

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig FN Caboldu Comd 4 CDN INF BDE Dated 24 NOV 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent & confirmed rank and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
Pte	~~Capt~~ L/Cpl	George Henry	HERRON	[illegible]

PROCEEDINGS REVIEWED

[illegible] 2 Jan

REVIEWING OFFICER, MG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) Nov 29/44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns to RPs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for duties and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 34, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1530 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2) L.P.

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to ..... as interpreter ?~~ Ans ..... L.P.

~~The Interpreter is sworn.~~(1) Do you object to ..... as shorthand writer ? Ans ..... L.P.

~~The shorthand writer is sworn.~~(1) L.P.

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs comprising the Court, etc :

President	Major	J. M. Pigott	R.H.L.I.
Member	Capt.	F. J. Chauvin	Essex Scot
Member	Capt.	E. H. Whitcombe	R.H.L.I.
Judge-Advocate			
Prosecutor	Lieut.	A. H. Krueger	R.R.C.
Defending Offr	Lieut.	A. C. Gillespie	R.R.C.

Questions by President : Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans No (3)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (5) and fn 2 were not followed. See DI p 2.)

A8. The accused B155208 A/Cpl Herron G. before arraignment makes(s) (no) ~~of~~ plea(s) (1) L.P.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) ~~not~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (does ~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. L.P.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*ii*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B--PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on a plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court, considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the charge(s). The accused is (are) so informed, and he (they) does (do) change(s) his (their) plea(s) on charge(s). Para B of the Schedule is amended accordingly.~~ p 4 B.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex X, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C--PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded ~~GUILTY~~ are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D--PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para. If submission not made. 2. Arguments on submission, answer and reply not recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence. (1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....Do you intend to call witnesses on your behalf ?
Ans.....Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 56(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E--PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes through my defending officer (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, as to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 1323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No B-155208 A/Cpl HERRON, George Henry, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

Sec 15 (1) Army Act

- in that he -

In the Field, absented himself without leave from 1000 hrs, 26 Oct 44, and remained absent until he reported to "C" Coy Clerk, 1 Bn The Royal Regiment of Canada, at 2120 hrs, 3 Nov 44. (Total Time Absent: 8 days, 11 hrs, 20 mins.)

IN THE FIELD
20 Nov 44.

(R.M. Lendrum) Lt-Col,
Officer Commanding,
1 Bn The Royal Regt of Canada.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(F N Gabeldu) Brig
Comd - 4 Cdn Inf Bde

IN THE FIELD
27 Nov 44

J. M. P.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B155205	Pte	A/Cpl	George Henry	HERRON	R Regt C

J. M. P.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Nov 44 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J M PIGGOTT	PHLI

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt to be	detailed by OC ESSEX SCOT	
A Capt to be	detailed by OC PHLI	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
A Capt to be	detailed by OC R REGT C	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

(F. O'Connor) Brig
Signed personally. RP 105 fn 2. (Rank.)

Dat: 26 Nov 44

Commanding 4 CDN INF BDE
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Character Witness for defence

H-2041072 L/Cpl Metzer A.J. having been duly sworn states -

I have known Cpl. Vernon approx 3 months. We have been together in the same platoon all this time & fought side by side. He was promoted to his present rank in the field over the previous N.C.O.'s last their rank by going A.W.L. He has always carried out his orders well & done a good job. Has never known him to be in any trouble before this. His section have confidence in him & would like to have him back.

A.J. Metzer

C.O. Capt Major

MEDICAL OFFICER'S CERTIFICATE

I certify that No. B-155208 A/Cpl. Vernon, G.H. 1 R. Regt C. is fit to undergo trial by Court-Martial today.

IN THE FIELD
29 Nov 44

Medical Officer

Plea of Mitigation in the case of
B. 155208 A/Cpl Herron George Henry.
I would like to draw the attention of the
Court to the following.
A/Cpl. Herron has a dependant grandmother.
He joined the army in Feb. 1943 and
arrived in the U.K. on 2 May 44. and joined
the Regiment in France early in August
He arrived in the field a private, and
when moving forward on 14 Oct. his section
N.C.O. was absent, and he took over the
section.
In view of his work and reliability in that
area (near Mont Mue) he was promoted to
A/L Corporal on 22 Oct. 44.
He has been in the lines continually and
was restless and battle weary, so I feel
sure this unfortunate breach of rules would
not have happened.
He has a very good record in the Army
and has proved his worth in action.
A large award will cause the forfeiture
of his chances of Army Gratuity.
In view of these facts, I beg the
leniency of the Court.

A Gillespie Lt.
Defending Officer.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No B-155208 A/Cpl HERRON, George Henry, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas:-

The accused is infm of his rights.

By Direction of the Commanding Officer the Summary of Evidence is taken on oath.

FIRST WITNESS B-16994 A/Cpl Boulanger, M., 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, having been duly sworn, states:

For the Prosecution

I am B-16994 A/Cpl Boulanger, M., section leader in 15 pl, "C" Coy, and the accused, B-155208 A/Cpl Herron, G.H., whom I now recognize, is a member of my pl. At approx 1800 hrs, 22 Oct 44, A/Cpl Herron, G.H., was included amongst the personnel sent from "C" Coy, 1 Bn The Royal Regiment of Canada, to "A" Echelon, 1 Bn The Royal Regiment of Canada on "LOB." When the "LOB" personnel returned to "C" Coy, 1 Bn The Royal Regiment of Canada, at approx 1900 hrs, 26 Oct 44, A/Cpl Herron, G.H., was not present.

The accused declines to cross-examine this witness.

M. Boulanger

(M. Boulanger) A/Cpl.

SECOND WITNESS B-67217 A/CSM McCartney, J.R., 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas.

For the Prosecution

A statement of this witness' evidence purporting to be signed by him has been read over to the accused and is included in this summary and is marked as Exhibit "A."

I certify that the attendance of this witness cannot be readily procured owing to the exigencies of the service and to the expense and loss of time involved. The accused does not demand the attendance of this witness for purpose of cross-examination.

Exhibit X

J.W. Bigott Majors

A.H. Krieger Lt

(A.H. Krieger) Lt,
Officer Detailed to Take Summary.

THIRD WITNESS B-70227 Cpl Baker, J.N., 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, having been duly sworn, states:

For the Prosecution

I am B-70227 Cpl Baker, J.N., cpl clerk of "C" Coy, 1 Bn The Royal Regiment of Canada. At 2120 hrs, 3 Nov 44, the accused, B-155208, A/Cpl Herron, G.H., whom I now recognize, reported to me that he was returning from his absence without leave.

The accused declines to cross-examine this witness.

J.N. Baker

(J.N. Baker) Cpl.

The accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or to give evidence on oath or to call witnesses in his defence at this point.

I certify that the foregoing Summary of Evidence, consisting of TWO pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

IN THE FIELD
20 Nov 44.

(A.H. Krieger) Lt,
Officer Detailed to Take Summary.

Schedule of Convictions by a Court Martial or Civil Court, of summary award under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ *Rank* _____ Name _____ of _____ Regiment (or as the case may be).

(*INSTRUCTION—A verbatim extract from the regimental books, stating their convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		-NIL-		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 20th day of Nov 44.

(A.R. James) Lt.
Officer IC Records, 1 A REGT C.

13. **The accused has served as a non-commissioned officer continuously, without reduction, to the present date.**

In the rank of _____ Date of Promotion.

In the rank of N/A years.

In the rank of _____ years.

(INSTRUCTIONS—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph retained amended accordingly.*)

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
B-155208	A/Cpl	Herron, G.H.	1 R Regt C.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, provision being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For	Sec 15 (1) AA	1 times 1 times
For		times times
For		times times
For		times times
For		times times

[redacted]

or

[redacted]

2. [redacted]

[redacted]

3. The accused is not under sentence at the present time. [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 17 days in military custody, making a total of 17 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is [redacted].

6. The date of his [redacted] attestation specified in his record of service is 10 Feb 43.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr 9 mos.

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr 9 mos service.

9. The accused is entitled to reckon 1 yr 9 mos service for the purpose of determining his pension, etc.

10. [redacted]

11. [redacted]

12. [redacted]

W.1.5937/1189 3M. 5/44. P. Ltd. T53-3.

9-16 155205 Pte. HERRON, George Henry

R-~~225626~~ No | Name | Sqn, Battery, or Company | Corps CAN FUS | Period not reckoning towards freedom from extra fine | Date of enlistment 10-2-43 | Sheet No One | Signature OC Company, etc D.A. Baldwin, Lieut. | Service or Proficiency Pay | Badges | Character

MFM 6 (AFB 122) 40/P&S/156 (3438)

Date of last entry in Company Conduct Sheet	No and date of last drunk	Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
						Entries Nil ~~26-2-43~~ 1-3-43				D.A. Baldwin, Liput	
						NIL				Reg J.S. Paige Maj.	
Sorel, Que. Pr Rupert		27-11-43	Pte			AWL from 0001 hrs 27 Nov 43 to 2305 hrs 3 Dec 43 (6 days 23 hrs 5 mins) Total Forf of pay 17 days	Documentary	10 days detention forfeits 10 days pay FR&I 149-1(b)	4 Dec 43	J.S. Garney, Major T.G. Lang, Lt. A/Adjt.	7 days pay FR&I 149-1(a)

Certified True and Correct Copy of Original Document in my possession:

(G.H. James) Lt,
Officer IC Records, 1 R REGT C.

(PTO)

Exhibit "A"
Referred to in summary.

I am B67217, C.S.M. McCartney J R of H.Q. Coy. 1 Bn. The Royal Regt. of Canada.

At 1000 Hrs. 28th Oct. 44 I called the roll of all L.O.B's resting in "A" Echelon area. B155208, Cpl. Herron G H failed to answer his name. I then made a thorough search of the area and was unable to locate him. I then marked him duly absent.

C.S.M. McCartney J.R.

5 R- 142
Tyr. Huron, N.Y.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D-163 Tpr HERRON, William Theodore - 2 CGRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
~~2nd~~			
~~3rd~~			
~~4th~~			
~~5th~~			

(Note : As to Findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence~~ for ~~beginning on~~ (date) (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :
To undergo detention per a period of One Hundred and Twenty (120) days.

(Sgd) 13 Aug/45 (Sgd)
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 56. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders~~ (1) WB
(1. AA 57A. Delete if not used.)

(Sgd) H.W. Brownfield Brig

Date 22 Aug 45 Commanding Commanding "C" Group, Can Reinforcement Unit.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D163 Tpr Herron W.T.	23. Aug. 45	G.R. Smith MAJOR ADMN. OFFR. 2 C.G.R.U.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 4 SEP 1945 CMHQ

RECORDED AT CMHQ IN AB 168 5K-142

FIELD GENERAL COURT-MARTIAL

CFA96 (To lieu of AFA31) 40/P & R/1696 (E)(44) 4/388

Convened ~~at~~ Brig HON Brownfield CBE MC Comd "C" Gp, CRU dated 11 Aug 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-163	Tpr	William Theodore	HERRON	2 CGRU

PROCEEDINGS REVIEWED 3 Sept 45 JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held at ~~Hall of Trial~~ (country) ENGLAND on (date(s)) 13 AUG 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1120 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused :~~ Do you object to ~~no interpreter ! Ans~~

~~The Interpreter is sworn.~~(1) Do you object to C.76127 Sgt BAUDRAIS as shorthand writer ? Ans NO
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO SIR (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under~~ instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	LT-COL	D.L. REDMAN	HQ CRU
Member	CAPT	W.H. MARSHALL	2 CGRU
Member	LIEUT	W RUTHERFORD	2 CGRU
~~Judge-Advocate~~			
Prosecutor	LIEUT	C.E. ENNIS	2 CGRU
Defending Offr	LIEUT	A.S. SWIFT	2 CGRU

Questions by President : Is the Prosecutor a lawyer ! Ans N/A Is the Defending Offr a lawyer ! Ans N/A (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 8.)

A8. The accused before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA~~, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO STR.....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans..... Do you intend to call witnesses on your behalf? Ans.....
Ans..... Are they witnesses as to character only? Ans.....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (6). *RP* 45, 120(*A*). 2. *AA* 54(3). *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans NO-SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Nay Sir, Mate (NOTE A)(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6). *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas AO* 309, 2323, *MML p* 80, 737-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, D.163 Tpr HERRON William Theodore, Canadian Armoured Corps, on the strength of "E" Coy., "D" Wing, No. 2 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHEN ON ACTIVE SERVICE

A.A. Sec 15(1) — ABSENCE WITHOUT LEAVE

in that he,

in the Field, did absent himself without leave from 0800 hrs 22 May 45 until 0935 hrs 27 Jul 45 when surrendering to the Civil Police at Kidderminster.

(Absent 66 days 1 hr 35 mins)

Dated at Bordon, Hants this 6th day of August 1945.

(W. A. TOWNSLEY) COL RCA
Officer Commanding
No. 2 Canadian General
Reinforcement Unit

To be tried by Field General Court Martial

Brigadier
Commanding "C" Group, Cdn Reinforcement Units
(Convening Officer)

11 Aug 45
Bordon, Hants.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
D-163	Tpr		Willaim Theodore	HERRON	2 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence set forth in the Charge Sheet attached and on (date) this date endorsed by me, [illegible], "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial; ([illegible])

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Colonel	D.L. Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	To be detailed by CO	2 CGRU
Lieutenant	To be detailed by CO	2 CGRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND
(Country.)

Date 11 Aug 45

(Signed personally. RP 105 fn 2.) Brigadier
(Rank.)

Commanding "C" Group, Cdn Reinforcement Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA95 (1st Issue of AFA3) 40/P & S/1697 (4031)

(See overleaf for oaths and notes for use on trial.)

D163. Spr. W. L. Huron.

So anxious was he to do his part in the war that this lad boosted up his own age in order to inlist in the army; his actual age was at that time only seventeen years.

Now, at the age of twenty one he has a fine record as a soldier, four years of overseas service, over a year and a half of fighting with a regiment that saw plenty of action and suffered many casualties — The 4th Princess Louise Dragoon Guards. In that time he was twice wounded, each time recovering and returned to action. It would seem that he had been the almost "Perfect Soldier" for there are no entries of misconduct in his M & M 6.

Such was his record on VE day, but! Crowned off by the dull army life in England following VE day; The army had failed to keep this adventurous youth occupied as it had taught and kept him occupied in four long years of training and fighting; he let go, forgot temporarily his good soldiering and went awl. He was not long away before he realized his own mistake, so once more proving himself a good soldier he gave himself up ready to take its punishment for his one misdeed

A soldier such as this lad has been "deserves a break". I hope the court will see it's way clear to be very lienient with him.

E-3
Maj A Swift Lt

Medical Officers' Certificate
K.R. (Can) Para 557

I certify that I have this morning examined No D/63 (Rank) TPR. HERRON. (name)
of #2 C.G.R.U. and in my opinion he is fit ~~unfit~~ to undergo
trial by Court Martial.

~~Station~~

Date 13 May 8/45.

Sgd. ..... (Medical Officer)

SUMMARY OF EVIDENCE in the case of D163 Tpr William Theodore HERRON, on the strength of "E" Coy., "D" Wing, No. 2 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS for the Prosecution

Capt. S. Whitaker, RCA, Administrative Officer of "D" Wing, No. 2 Canadian General Reinforcement Unit, Canadian Army Overseas, having been duly sworn, states:

I am Capt. S. Whitaker, RCA, of No. 2 Canadian General Reinforcement Unit, Administrative Officer of "D" Wing and as such I produce from Wing Orderly Room files the following documents which have been shown to the Accused:

The first document, which is marked Exhibit "A" is a Certified True Copy of a Declaration of a Court of Inquiry held on the 13th day of Jun 45 in the case of D163 Tpr Herron W. T., which declares that D163 Tpr Herron, W. T., absented himself without leave at 0800 hrs 22 May 45 from his unit at Whitley, Surrey, and which declares that D163 Tpr Herron W.T. is deficient in kit in the amount of £5-19-2½ Vocabulary Price and in the amount of £4-7-10½ Unexpired Wear Value.

The second document, which is marked Exhibit "B" is a Certificate of Surrender to the Civil Police of a Deserter or Absentee Without Leave, Army Form C 1617 dated 27 Jul 45, signed by Holloway, Officer of Police in charge of Croydon Police Station, which declares that D163 Tpr Herron W. T., surrendered himself to P. S. 35 Z Grove at 0935 hrs 27 Jul 45 at Kidderminster.

S. Whitaker
(S. Whitaker) Capt RCA

The Accused declines to cross-examine this Witness.

W. T. Herron
(D163 Tpr Herron W. T.)

The Accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything, or to give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing, and may be given as evidence.

The Accused declines to make a statement and reserves his defence.

W. T. Herron
(D163 Tpr Herron W. T.)

I certify that the foregoing Summary of Evidence, consisting of One (1) Page and Two (2) Exhibits, was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (c)(d)(e) and (f) have been complied with.

E+A

C. E. Ennis
(C. E. Ennis) Lieut RCA

Bordon, Hants
6 Aug 45

D163. Spr. W. L. Heron.

So anxious was he to do his part in the war that this lad boosted up his own age in order to inlist in the army; his actual age was at that time only seventeen years.

Now, at the age of twenty-one he has a fine record as a soldier, four years of overseas service, over a year and a half of fighting with a regiment that saw plenty of action and suffered many casualties — the 4th Princess Louise Dragoon Guards. In that time he was twice wounded, each time recovering and returned to action. It would seem that he had been the almost "Perfect Soldier" for there are no entries of misconduct in his M & M 6.

Such was his record on VE day, but! Crowned off by the dull army life in England following VE day; the army had failed to keep this adventurous youth occupied as it had taught and kept him occupied in four long years of training and fighting; he let go, forgot temporarily his good soldiering and went awl. He was not long away before he realized his own mistake, so once more proving himself a good soldier he gave himself up ready to take its punishment for his one misdeed

A soldier such as this lad has been "deserves a break". I hope the court will see it's way clear to be very lienient with him.

C-3
Maj A Swift Lt

Medical Officers' Certificate
K.R. (Can) Para 557

I certify that I have this morning examined No D/163 (Rank) IPR. HERRON W. (name)
of #2 C.G.R.U. and in my opinion he is fit ~~unfit~~ to undergo
trial by Court Martial.

Station

Date 13 Aug 8/45.

Sgd. .....
(Medical Officer)

Exhibit "A"

RECORD of the Declaration of a Court of Inquiry assembled at Bordon, Hants., on the 13th day of June 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.D-163 Tpr HERRON, W.T., of No. 1 C.A.R.U.

DECLARATION

The Court declare that No. D-163 Tpr HERRON, W.T., of No. 1 CARU.,

illegally absented himself without leave from his unit at No. 1 C.A.C.R.U. at Whitley, Surrey at 0800 hrs on the 22nd day of May 1945, that he is still so absent, and that on the 13th Jun 45 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE
See att. list marked Appx. "B".			

Signed at Bordon, Hants., this 14th day of Jun 1945

Sgd; Capt. K.W. Mackie, CAC, 1 C.A.R.U. — President

Sgd; Lieut. N.A. Lafferty, CAC, 1 C.A.R.U. — Member

Sgd; Lieut. J.S. MacBeth, CAC, 1 C.A.R.U. — Member

Signature of Commanding Officer Sgd; W.A. TOWNSLEY Col., C.O., No 1 C.A.R.U.

Certified true copy

Signature of Officer having custody of original record

(G.C. SMITH) Major, CAC., Officer in charge of Regt'l Documents. Admin. Offr., No 2 CGRU.

W 375-AFB 115
85/392 (6610)

PENDIX "E"

DEFICIENCIES - REGIMENTAL KIT (D.163 Tpr Herron W T)

Article	No	Vocabular Price £	s	d	Unexpired Wear Value £	s	d
Blouses battle dress	1	1	9	1	1	1	4
Boots ankle	1	1	8	10	0	19	6
Badges cap	1	0	0	5	0	0	5
Brushes shaving	1	0	1	8	0	1	3
Brushes tooth	1	0	0	6	0	0	6
Brushes boot polishing	1	0	1	3	0	0	9½
Combs hair	1	0	0	2	0	0	2
Caps tank battalion	1	0	4	5½	0	3	4
Forks table	1	0	0	4	0	0	1
Knives table	1	0	0	8	0	0	5
Knives clasp	1	0	0	10	0	2	9½
Mugs enemel	1	0	0	9	0	0	6
Spoon NS dessert	1	0	0	5	0	0	2
Shirts angola drab	1	0	9	1	0	0	1
Shoes canvas	1	0	10	2½	0	7	6½
Trousers battle dress	1	1	9	3½	1	1	5½
Razor safety set	1	0	0	3	-	-	-
Holdall	1	0	0	10	0	0	6½

Total Vocabular Price £5 - 19s - 2½d

Total Unexpired wear value £4 - 7s - 10½d

(K W MACKIE) Capt. CAC 1 CANU
PRESIDENT

IMMEDIATE.

Army Form C.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depots are shown in the **Monthly Army List.**

† NOTE.—Special instructions apply in war for the disposal of absentees and deserters from the Army, who surrender to the civil police, e.g., such personnel will be taken over from the civil authorities by the O.C. the nearest military unit or the O.C. Troops at the nearest military station. (A.C.I. 480/1940).

(27699) W.L.22801/3249 30,000 7/44 A.& E.W.Ltd. **Gp.498**

Exhibit "B"

I CERTIFY that the man whose personal description is given below surrendered himself to* RS 35 2 London at Huddersfield at (hour) 7.35 P on the 27th day of July as being No. D 163 (Rank and Name) Trooper John HERRON. 1. a deserter (or absentee without leave) from and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 21 Height 5 Feet 6 3/4 Inches
Complexion Fair Hair Brown
Eyes Blue
Marks wt. scar back of right knee
In uniform or plain clothes Plain clothes.

Probable Date and Place of Attestation	29. 5. 41 Montreal
Probable Date of Desertion or beginning of absence, and from what place	14. 5. 45 Notting.

CROYDON

Signature of Officer of Police in charge of Station: Holloway PHC
Croydon Station
27. 7. 45. Date of Signature.

Army Form, O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies only in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds incurred by the ..... Police in the case of No. .....

who surrendered to the Police at ..... on .....

Payable to .....

CERTIFIED that this statement of expenses is correct.

{Superintendent or Officer in charge of Police Station at .....

Date of Signature.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D163	Tpr	HERRON William Theodore	No, 2 C G R U

NOTE.—The Field Conduct Sheet is to be produced in court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, punishment being given for the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized honour, rank or gallantry or distinguished conduct in the field should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A. A. Sec. 15 (1) AWL ..... 3 times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet ..... 24 Dec 43

Date of last entry in Field Conduct Sheet ..... 17 Apr 44

[redacted]

*Strike out if not applicable.

[redacted]

4. The accused has been awaiting trial on the present charges [redacted] for ..... 17 days in military custody, *i.e.*, ... 0 days in open arrest, ... 17 days in close arrest; of [redacted]

5. The present age of the accused is 24 yrs 1 mo 16 days

6. The date of his ..... attestation ..... 29 May 41

[redacted]

7. The service which the accused is allowed to reckon is 4 yrs 2 mos 15 days

†State the military decorations (if any) held by accused.

8. The accused is in possession of† CVSM & Clasp

9. (*If the accused is a warrant officer or N.C.O.*). [redacted]

Date of Promotion.

[redacted]

F + B

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(20504) W1.42120/4296 42,000 11/44 A.S.K.W.Ltd. 650/4/44 Forms/B.296/4

No. D·163 Name HERRON, W.T. Sqn, Battery, or Company | Corps C.A.C. | Date of enlistment 29-5-41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/156 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
C.M.F.	24-12-43	Tpr.		A.A. 15 (1) (Absent 1 day 14hr. 30 min)		27 days det'n.			
C.M.F.	27-12-43	Tpr.		A.A. 15 (1) (Absent 6 days 12 hrs.)		27 days pay.			Tot. Forf. 36 days pay.
C.M.F.	17-4-44	Tpr.		A.A. 15 (1) (Absent 1 hr 30 min)		7 days pay			

Certified true copy from MFM 4 held in my possession.
9 Aug 45

(J.H.STEPHEN) Capt
Records Officer
No. 2 Cdn Gen Rft Unit

LIST OF WITNESSES

PROSECUTION

Capt. S. Whitaker, RCA No. 2 Canadian General Reinforcement Unit

DEFENCE

Nil

LIST OF EXHIBITS

"A" Certified True Copy of a Declaration of a Court of Inquiry held on the 13th day of Jun 45 in the case of D163 Tpr Herron W. T.

"B" Certificate of Surrender to the Civil Police of a Deserter or Absentee Without Leave, Army Form C 1617 dated 27 Jul 45 in the case of 163 Tpr Herron W. T.

STATEMENT OF THE ACCUSED IN ACCORDANCE WITH RP 14(B)

I, D163 Tpr Herron, W. T., of No. 2 Canadian General Reinforcement Unit, consent to have an Officer appointed by the Convening Officer to represent me at my trial by Court Martial.

W. T. Herron
(D163 Tpr H[illegible])

Received from Lieut C E[illegible]
to take the Summary of
Summary of Evidence
Sheet, in the case

LIST OF WITNESSES

PROSECUTION

Capt. S. Whitaker, RCA No. 2 Canadian General Reinforcement Unit

DEFENCE

Nil

LIST OF EXHIBITS

"A" Certified True Copy of a Declaration of a Court of Inquiry held on the 13th day of Jun 45 in the case of D163 Tpr Herron W. T.

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STATEMENT OF THE ACCUSED IN ACCORDANCE WITH RP 14(B)

I, D163 Tpr Herron, W. T., of No. 2 Canadian General Reinforcement Unit, consent to have an Officer appointed by the Convening Officer to represent me at my trial by Court Martial.

W. T. Herron
(D163 Tpr Herron W T)

Received from Lieut C E Ennis, RCA Officer detailed to take the Summary of Evidence, one (1) copy of the Summary of Evidence and one (1) copy of the Charge Sheet, in the case of D163 Tpr Herron W. T.

W. T. Herron
(D163 Tpr Herron W. T.)

DDD 700

PTE HERTL L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : Pte Louis Heath

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty to charge but Guilty	Guilty	with the exception that the absence without leave commenced at 2215 hrs 22 Dec 43
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 paras 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of Kit see RP 44 fn 6.)

At present under sentence for ~~beginning on~~ (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which 10 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for 6 months.

(Sgd) W.J. Lawson Wyse 15 Feb 44 (Sgd) A.P. Fell

Judge-Advocate, if any. Date awarded. President. (RP 45, 50A)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I confirm the finding and sentence

~~I withhold confirmation of the finding and sentence~~ 770

(1. AA 57A. Delete if not used.)

Date 16 Feb 44 (Sgd) F.F. Worthington (F.F. WORTHINGTON) Maj-Gen

Commanding 4 Cdn Armd Div

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
~~K 88647 Pte~~ B83879 Pte Heath, Louis	19 Feb 44	Miller Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

DDA-102

FIELD GENERAL COURT-MARTIAL

Convened by Order of F.F. Worthington Maj Gen Comd 4 Cdn Armd Div dated 14 Feb 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 21, 109. As to reasons for showing (a) permanent or substantive rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B 83879	Pte	Louis	Heath	4 Cdn Armd Div Sig Regt Coy RCASC

PROCEEDINGS REVIEWED

Clifford Swan Capt.

10 Mar 44

REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 15 Feb 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Cessions do NOT include all relevant fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1315 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 562(c). Delete, if not applicable.)

A5. President to accused : Do you object to ~~as interpreter~~ as interpreter ? Ans

The Interpreter is sworn.(1) Do you object to ~~as shorthand writer~~ as shorthand writer ? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt Col	U.R. Fell	HQ 4 Cdn Armd Div
Member	Captain	J.H. Cruikshank	29 Cdn Armd Recce Regt
Member	Lieut	C.D. Glover	10 Cdn Inf Bde Coy RCASC
Judge-Advocate	Major	W.J. Lawson	HQ 4 Cdn Armd Div
Prosecutor	Captain	C.J. Delong	4 Cdn Armd Bde Coy RCASC
Defending Offr	Captain	J.J. Grant	4 Cdn Armd Bde Coy RCASC

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused Pte Louis Heath before arraignment make(s) (no) (his) plea (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposed, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is cleared and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B, D and E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ~~4~~ 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or recalling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*I. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. yes See "M" .(5)
(*I. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (~~that~~) to advise accused to change his (~~their~~) plea(s) of Guilty to Not Guilty on the charge(s). The accused is (~~are~~) so informed, and he (~~they~~) change(s) his (~~their~~) plea(s) on the charge(s). Part I of the Schedule is amended accordingly.
(*I. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. ~~On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.~~(1)
(*I. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. ~~The Summary of Evidence is marked Ex ____, initialled and read aloud by the President.~~(1)
(*I. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.~~

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. ~~As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.~~(1)
(*I. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*I. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO .(1)
(*I. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~no~~) (no) opening address.(1)
(*I. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*I. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(*I. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. Give sworn evidence . Do you intend to call witnesses on your behalf ? Ans. yes . Are they witnesses as to character only ? Ans. both as to fact & character
(*I. RP 114, 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*I. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*I. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces ~~the finding(s), if any, of Not Guilty,~~ and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(1)
(*I. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : ~~Do you wish to give evidence yourself or to call any witnesses as to your character~~ ?(1) Ans. ~~—~~
(*I. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3)
(*I. MFB 355 or MFB 294. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. yes I have my defending Officer See "N" .(2)
(*I. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*I. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*I. When several accused tried separately see RP 96(b). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by 9th law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B-83879 Pte Louis Hertl 4 Cdn Armd Bde Coy RCASC a soldier of the Canadian Army Overseas is charged with when on Active Service,-

First Charge
Sec 15 (1)
A.A.

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field on 23 Dec 43 absented himself without leave from his unit 4 Cdn Armd Bde Coy R.C.A.S.C. from 2200 hrs on said 23 Dec 43 until he surrendered himself to Cpl Falkins, D.R. in charge of the Regt'l Police of 4 Cdn Armd Bde Coy R.C.A.S.C. at 1730 hrs 5 Feb 44.

[signature]
[illegible]
Officer Commanding
4 Cdn Armd Bde Coy R.C.A.S.C.

In the field

7 Feb 44.

Hq 4 Cdn Armd Div

To be tried by F.G.C.M.

[signature]
(F.F.WORTHINGTON) Maj-Gen
GOC 4 Cdn Armd Div

In the Field
14 Feb 44

OK. Full kit
Pass

CFASS (In lieu of AFA3)
40/FA&R/1097 (L4618)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy; AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see NML Chap V paras 20 and 23, PP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/ronk or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B 63879	Pte	Louis HERTZ		4 Cdn Armd Bde Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and as endorsed by me, (date) 14 Feb 44 ; and whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior qualified authy~~ ~~or by an offr of my staff for same~~ ;

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior qualified authy~~ ~~or by an offr of my staff for same~~ ; (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reason I have attached hereto.~~ (RP 106(E). Delete, if none appointed.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

PRESIDENT.

Lt Col (Rank.)	V.R. FELL (Must be named. RP 106.)	Hq 4 Cdn Armd Div	(Unit.)

MEMBERS.

Capt (Rank.)	J.H. Crichton	29 Cdn Armd Recce Regt	(Unit.)
Lieut (Rank.)	C.D. GLOVER (Named or detailed. RP 106.)	10 Cdn Inf Bde Coy RCASC	(Unit.)

WAITING MEMBER.

Lieut (Rank.)	J.A. McLEAN (Named or detailed, if any. RP 106.)	6 Fd Pk Sqn RCE	(Unit.)

JUDGE-ADVOCATE.

Major (Rank.)	W.A.D. GUNN (Must be named, if any. RP 106.)	Hq 4 Cdn Armd Div	(Unit.)

On Active Service in the Fd in England (Country.)

Date 14 Feb 44

J.F. Hertzberg (Signed personally. RP 106(2).)

(F.F. HERTZBERG) Maj Gen (Rank.)

Commanding 4 Cdn Armd Div Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/FA8/1697 (25603)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 63879	Pte		Louis	HERTL	4 Cdn Armd Bde Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 14 Feb 44 endorsed by me, (~~or by an offr of my staff for me~~), is to be tried by Field General Court-Martial;

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~);
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto~~.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt Col	V.R. FELL	Hq 4 Cdn Armd Div	

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	J.H. Crichton	29 Cdn Armd Recce Regt	
Lieut	C.D. GLOVER	10 Cdn Inf Bde Coy RCASC	

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	J.A. McLEAN	6 Fd Pk Sqn RCE	

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Major	W.A.D. GUNN	Hq 4 Cdn Armd Div	

On Active Service in the Fd

in England (Country.)

Date 14 Feb 44

J.F. Hertzog (Signed personally. RP 105(2).)
(F.F. HERTZOG)
Commanding 4 Cdn Armd Div
Convening Officer.

Maj Gen (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

O.C. 4 Cdn Armd Div pres.

This is to certify that I have examined the accused, B-63879 Pte. Hertl, L., and find him fit this date to undergo trial by FGCM

M.O.

15 FEB 44

OK Ted Good Jim

Statement made by accused :-

I did not intend to go A.W.L. At the time I left the bois I was suffering from loss of memory.

First witness for Prosecution

A 63386 Sgt Purdy M.H. of 4 C.A.B. Coy Base being duly sworn states :-

About 1600 hrs 23 Dec 43 I went to my quarters and I found there the accused. His bed was made up. I asked him what he was at the trg was - I asked his name & I reported back to my duties. We went on to my private that evening & came back about 1800 hrs - He asked me if I had a pass & I told him no. I gave it to him. About 2100 hrs I had a look about & found accused was not there. About 0600 hrs I had roll call, accused did not answer his name. I called roll again next morn & accused was absent. I don't see what duties were dropped up. accused bed was lying on the floor & seemed to be all there. Sworn & cross-examined. Nothing further.

Cross examined by defending Offr :- I am sure I gave warning pass to accused. As far as I know it was him. I don't know if accused took seriously his assignment with him or not.

Exam by the court :- I don't remember anything.

The accused told me when he was when I asked him. There was no hesitation on his part. The last time I saw accused after morning parade was about 1830 hrs. Next time I saw him was 0600 hrs 44. Cpl Gordon asked Cpl about accused's bed. R.P. p 34(b) complied with

Second witness for Prosecution

A 63210 Cpl Falkins D.W. 4 C.A.B. Coy Base being duly sworn states :-

On 5 Jan 44 accused reported into guard room & told him he was. I turned in my report to Sgt Ross, got my instructions & recalled him & dismissed. accused didn't say anything then when he reported in, the last time when he was I checked his service book. I was in charge of the regimental police.

Cross examined by defending Offr :-

accused had no reason to dislike with him

when he arrived. As far as I know he had his money
at that time. Some arrived for him later. I had
no trouble with him when he was under arrest.

Exam. by the court:
He was carrying his service book. I got it from him.
I had to check it to know who he was. When he reported in
his appearance was quite good. R.P.8 36 complied with

Third witness for the Prosecution
Captain William Graham Ross 4 CAB by name
being duly sworn states:
Accused arrived at this unit on 24 Dec 43
in mid afternoon from 1 CASCRU. Accused was taken on
strength of this unit on 24 Dec 43. I am the Orderly Officer
of this unit.

Cross examined by defending Officer:-
On a mass arrival for Christmas leave his list is to
be checked. I don't know if accused's was checked
or not from personal knowledge. The records show that it
was. Leave; NDHQ R.P. 8 36 complied with

Final witness for defence Defence
The accused B 838791 Pte Louis Hall having been duly
sworn states:-
Born at Vienna Austria 8 May '07. ~~I don't know~~
I don't know where my mother is or I would have her
here for 6 months. The last I heard she had been
relieved from a concentration camp in Austria.
Have a sister - she also was in concentration camp.
I don't know where she is now. My youngest brother was
beheaded because he refused to join Hitler's army for
the occupation of Poland. My second brother - I heard
heard from him I enlisted 8 Sep 39 in the army,
in Toronto. I am naturalized. 3 days after I enlisted
it got worrying to get out of the army. The worrying was
signed "Hall Hitler". I don't say it I have been watched by
enemy agents. Agents have been sent to orderly room
against me. In civil life I was troubled with loss of
memory. Sometimes once or twice a year. When I have these
spells I can't remember what I have done.

I had trouble with my work as a result. My wife used to be worried. She that I deserted by the whole operation to the court. I was 4 years with my unit in this country coming from K.U. I wanted to go to my own unit. I had £18 or £19 when I arrived at this unit. I had 28 days when I reported to good record. When I came to I was in Glasgow Scotland. I was in a casualty, when I came to it is like a relief — something lifted from my head. I have been treated in civilian life for this ailment, but not in the army. I have been sick before. I went away twice — A.W.L. on this same account. I went to friends in London where I stayed. They made me come back to camp. They brought me back. I did not get any treatment in it. I did not want to get out of the army. When in K.U. I used to get in draft for my wives. Tried several times — I did not take any drinks when I left. I took drinks to leaving the unit on 20 Dec. I was on leave at that time. I sent for them when I came back. — underskirts — underwear — shirt — towel — handkerchief — the parcel was registered. It was sent back to me by registered mail.

Cross examined by Prosecuting Officer:-

Came to Canada in 1928. Was skilled in civil life. Worked for Precision Dye & Cutting Co in Toronto. Worked there five years. Steady employment. I worked different places. Was employed from 1932 until I joined up in 1939. When I was employed everybody it was because there was steady work. The longest spell out 3 months — the last one lasted about 41 days. I did not know how long I was away. With A.W.L. I did not say where I stayed. When I came to I was in Glasgow. I had £18 when I came to unit. When I came to in Glasgow when I woke up in casualty I did not know where I was. I got back from Glasgow by train. I had single fare going up.

Re-examined by Capt. Officer:-

I did not get Sgt Purdy for price of beer.

To the Court:- When I have lapses of memory I do not know who I am. When I was with friends in London was one of the times I had lapse of memory. I had the lapse of memory when I left this unit. I have not got Purdy at present. The only one I recollect here was the Warrant Officer. He took me over to the hut. I could remember Sgt Wagg. Nothing else that happened on 23 Dec 43

Wagg

When I came back I reported at the guard room I didn't tell anyone that I had a lapse of memory.
When I went to yuma pw camp in Glasgow, I asked "is this glasgow" I enquired about train time. When I came out of camp I think I had a board, because I stood in yuma.
I remember leaving R. U. for this camp. I didn't know name of camp. I knew name of regiment I was the name written on a piece of paper. I enquired at Haywards Heath for location of camp. I was bad during treatment for this ailment while in the army. I have had target treatment in the army for my ailment but all I got was aspirin.
R.P. 8 3(6) complied with

Second witness for defence

K78867 Pte Wicks Glosn 4 Cdn Armd Recce Coy Recce
being duly sworn states:-
I joined at this unit on 23 Dec 43. When I was in hut assigned to me I met one N.C.O. I cannot tell you whether including the N.C.O. for a piece of paper. I got the paper but I was too small.
Cross examined by Prosecuting Offr
The N.C.O. gave me a fairly large piece of paper. It would be large by I should say I did not use it. I put it on my bed. I don't know if I gave it to anyone to read.

To the court:- When I left camp that day I was in company with the accused. I went to Tunbridge Wells - we went to Crowborough. Both got in the bus going to Tunbridge Wells. The accused didn't tell me what he was going to do. The accused did not say anything unusual about the accused. I did not notice anything unusual about the accused for 2 or 3 months. I took unknown leave. I can't say what the accused took etc in a hut bag. I can't say what it was. It had something. It had something. We didn't leave camp together was at night pretty dark. We did not leave camp together by arrangement.
I met the accused not on the road near the gate when I left the camp. It was about 1930 hrs. We then walked down road to bus stop. The accused got on the bus near the station in Tunbridge Wells. Accused said we would have to be careful of the red caps, it might not have been said in these words but that was what was meant - I said I don't think they will bother us. We had talked about this while on the bus and after we got off the bus. We both went into railway station at Tunbridge Wells.

We were in Station sometimes. There were real cops there. We were both trying to keep clear of real cops. We wanted quite a while around the platform. I saw accused again in Weston-on-Hill about two weeks later. I was talking to him. He said he had a pretty good time at Xmas. We were talking together about people whom we were acquainted with in that village i.e. Weston on Hill. Talked general topics. I was with him first at the time. Shortly afterwards the accused left & I don't know where he went. The next time I saw him was in the guard room in the unit lines. He said to me words to the effect "they got you in here too". I asked him where he had been & he said I don't quite know, I have been all over. He asked me about conditions in the guard room about pads etc.

When I met the accused out at the road at the gate on night of 23 Dec 43 he ~~said to me~~ " asked me for a light. Then he said are you going my way - we talked about how the boys ran. He left us did not travel together.

The accused came to the place i.e. the house where I was in Weston on Hill. ~~[illegible]~~. He knew my friends down there. He had just come down there. He was acquainted there.

The accused was carrying something at the time I met him at the gate, but I don't know what it was. It seemed to me it was something he had under his arm.

The friends I know in Weston on Hill are also known to the accused. I had not told the accused the exact place where I was going to stay in Weston on Hill.

R.P. 83 (b) Complied with

Third witness for defence

B82778 S/Sgt Golding T 46 Coy Gp. Transport Coy Bedford being duly sworn states :-

Been with Coy since 15 Sep 39. Knows accused since June 1940, left unit Oct 20th 1943 to go to hospital. I am with workshops. He also was there. Accused was always considered as good workman - never caused any trouble - very conscientious.

Was examined by prosecuting officer :- He was a tradesman - a blacksmith - He was good. He was a good welder. He took pride in his work. This type of work would take years to learn.

To the Court :- I never noticed anything about the accused that led to mental lapses. He never talked about his family & then got over it. He was liked by the boys and worked

accounting his nationality. Towards the latter part when he was with us this holiday changed in the Army.
R 178836 complied with.

Fourth witness for Defence
B 82744 Sgt James Lawrie Morrison 46 Cdo Gen Transport
Case having been duly sworn states:-

Been with unit since mobilization. Knew accused when he came to us in Jan 40 until Oct 43 when he left us to go to hospital. I knew him when I was a private myself. Latterly I have been his Section Sgt. He is very efficient soldier - gave us no trouble - did his duty when warned - did everything in efficient manner.

No questions by Prosecuting Offr

To the court - I didn't notice anything about the accused re mental lapses. He was a little moody at times. He would go away & sulk & seemed depressed at times.

Closing address by defending Offr:-
Endeavoured to prove that accused is subject to spells only by his own evidence. That he had the spells in Canada. That anxiety & worry played on his mind over his mother & family. His background is good. The worry caused these his family had had an effect on his mind. Holiday in unit also helped. The worry & did contributed to his worry. He had worry when he left here & when he arrived back. He had no shillings. Everything points to extraordinary case. As to missing of pass, clothing. He left laundry in London. When he arrived here he sent for it & received it. Sgt Purdy. Accepted that accused handed him for paper, Glover swore it was he who asked for the paper. Sgt Purdy could be mistaken. accused has every reason to want to be in this war on account his family. He does not want to get out. Realization of coming to stay must undoubtedly have a baneful effect on his mind. Steps should be taken to have accused treated by brain specialists. Mental stress is becoming bad. When he left here he was not in his proper mind. He did not leave with intent of going A.W.L.

Closing address by Prosecuting Offr:-
There are 2 points concerned in this case:-
(1) the accused claim of being lapse of memory and (2) that there was no intent of going A.W.L.
accused stated came to London in 1928 - employed in 1932 & employed steadily until 1939. Said he was merchant & [illegible]

employed by Co making precision tools. Story left of Troop. Coy & total accused was an exceptionally good workman. Employed in civil life as machinist - in army as blacksmith. Period of 4 to 7 years required to be skilled in either of these trades. In civil life accused continued to be employed as machinist with firm also of high grade of work which he was entrusted with fine class of spells.

When spells came mind became a blank. Does it not seem strange he could work steadily employed from 1912 to 1939 & still suffer from a disease where at times he could remember nothing not even his name.

No evidence submitted to court that accused may suffered any spells since time of enlistment until he joined this unit - Hence this accused very conveniently on 23 Dec 43 until 4 Jan 44. It doesn't seem reasonable that accused would wander around streets of England & Glasgow & must be picked up by civil police or by M. P's

P to Glasgow stated he met accused on road to Cowdenbeath both got on bus & went to station at Tunbridge Wells. Said they were trying to evade M. P's at that time. All on train - destination Bedford. There they parted. Glover met accused two weeks later after leaving camp. Reasonable to assume they used various trains to reach Glasgow they were both A. W. L, & if accused was suffering from lapse of memory he could easily return to his unit.

When accused left camp he was in possession of £18. Such an occasion would arise if a person was going to spend a period time away from camp.

I agree with defending officer that accused should be examined by a psychiatrist, & I suggest it would that this is done before sentence is passed on the man.

WOY

Summing up by Judge Advocate

The question arises did the accused have the intent of committing this crime? I will read to you from Wharton's Criminal Law Vol 1 page 109 para 83. (Reads). In my opinion, which opinion you do not have to accept, Flora, the second witness for the defense told a story from which you can determine whether the accused was intent or not, that is, of course if you believe Flora, and I don't know why you wouldn't, also Flora was called by the accused. From the evidence Flora, I think the accused can hardly know what he was doing.

WDY

Statement in writing also by depending Officer:-

You have heard more briefly. I wanted you to hear him & realize the type of man he is. I think he is sincere in all he has said & that he has impressed you that way. His record in civil & army life has been good. His two N.C.O's have spoken highly of him. The subject of loss of memory is hard to diagnose by we laymen. I don't believe it is malingering in this case. The accused has given a straight forward story as far as he knows. Questions have come up about his loss of memory - they are hard to answer. The way he has maintained his attitude as a soldier while having loss of memory. This is shown by the glove on the fear of military police.

Lott

SUMMARY OF EVIDENCE

in the case of

B-83879 Pte Hertl,Louis, 4 Cdn Armd Bde Coy H.C.A.S.C. C.A. a soldier of the Canadian Army placed on Active Service.

Charge 1. Absent without leave.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS Capt W.G. Ross, 4 Cdn Armd Bde Coy RCASC C.A., having been duly sworn states,-

I am Capt.W.G.Ross Adm Offr of 4 Cdn Armd Bde Coy RCASC. On 23 Dec 43, ~~B-83879~~ Pte Hertl, L., arrived on a draft from No.1 Cdn A.S.C. R.C. He was taken on strength of this unit with effect 24 Dec 43. Pte Hertl, did not, to my knowledge, return to this unit again until 5 Feb 44.

(W.G.Ross) Capt

The accused declined to cross-examine this witness.

SECOND WITNESS A-63386 Sgt Purdy,M.H., 4 Cdn Armd Bde Coy RCASC a NCO of Wksp Pl. At approx 1600 hrs 23 Dec 43 a draft arrived from No. 1 CASC RC. Pte Hertl was one of the men that arrived on that draft. Hertl was posted to Wksp Pl and had reported to Hut No 27 for accommodation. I was Sr NCO living in Hut 27 and it was my duty to call the roll at Tattoo and Reveille. Pte Hertl did not answer to his name at Tattoo,2200 hrs 23 Dec 43 or at Reveille, 0600 hrs 24 Dec 43. I have not seen Pte Hertl since approx 1900 hrs 23 Dec 43 until to-day (7 Feb 44) and to my knowledge has not answered to his name on any roll call since 23 Dec 43.

(M.H.Purdy) Sgt

The accused declined to cross-examine this witness.

THIRD WITNESS A-63210 Cpl Falkins, D.W., 4 Cdn Armd Bde Coy RCASC C.A. having been duly sworn states,-

I am Cpl Falkins, D.W., of 4 Cdn Armd Bde Coy RCASC C.A. in charge of Regt'l Police. While on duty on 5 Feb 44, B-83879 Pte Hertl,L. reported in to me at 1730 hrs. I placed him under close arrest and turned in my report to Capt Ross.

(D.W.Falkins) Cpl

The accused declined to cross-examine this witness.

QUESTION TO THE ACCUSED

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you will give will be taken down in writing and may be given in evidence.

ANSWER BY ACCUSED

I wish to give evidence upon oath.

The accused B-83879 Pte. Hertl, L., having been duly sworn states:-

I suffer from loss of memory. I have been like this in civilian life and it is getting worse all the time. It is my many worries that are worrying me. I have a mother in Germany who was released from a Concentration Camp on account of ill health and I have not heard from her in six months. I would like to have a medical exam or be sent into action. For further reference I can refer you to my old Company, the 46 Gen Tpt Coy RCASC. I was with them for four years.

Louis Hertl

(L. Hertl) Pte.

I certify that Rules of Procedure 4 (C), (D), (E), and (F) have been complied with.

Taken down by me in the presence and hearing of the accused In the Field this 7th day of February 1944

(W.T. Grierson) Lieut.
4 Cdn Armd Bde Coy R.C.A.S.C.

M.F.M. 6
(A.F. B.122)
40/P & /8135 (2068)

No. B.83879 Name HERTL, L. | Sqn., Battery, or Company | Corps CDN. ARMD. BDE. Date of enlistment 8-9-39 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet 21-9-42 | No. and date of last drunk NIL | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26-12-42	Pte		A.A. 15(1) A.W.L. from 1200 hrs 26-12-42 till 0830 hrs 28-12-42 (1 day 20 hrs 30 mins)	S/Sgt. Graham	5 days pay forf.	28-12-42	Capt. Costigan	Forf. 2 days pay
Field	23-12-43	Pte		A.A.15(I) WOAS AWL from 2200 hrs 23 Dec 43 to 1730 hrs 5 Feb 44. (43 days 19 hours 30 minutes)	Documentary	6 Months Det	F.G.C.M. 15 Feb 44.	Lt/Col V.R.Feth President of Court	

Certified true copy from the regimental books in my custody

Administrative Officer
4 Can Armd Bde Coy R.C.A.S.C.
Officer i/c Regimental Books.

(P.T.O.)

Ex "X" Force stores

M.F.B. 355
HQM—11-41 (3275)
Wkly 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-83879	PTE.	HERTL, L.	4 CAB Coy RCASC

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets or Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, and of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	Nil times	1 times
For	times	times
For	times	times
For	times	times
For	times	times

Nature of [illegible] or distinguished conduct

Nil

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

by a court-martial or a civil court, of summary awards under Section 47 of the Army Act, and [illegible] under S.A. 79 are set out in the Schedule [illegible]

3. The accused is not under sentence at the present time.

The accused is not under sentence of [illegible]

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 2 days in military custody, making a total of 2 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 36 years 9 months

6. The date of his attestation specified in his record of service is 8 Sept 1939

7. [illegible]

8. [illegible]

9. The accused is in possession of or entitled to a military air force decoration, or a military air force reward (or to a military air force decoration or reward). State any air force decoration or reward. Canadian Voluntary Service Medal

10. [illegible]

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force ~~unit~~

..... dated ....., and in his regiment (or corps), the rank of .....

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, No. [redacted] Rank [redacted] Unit

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

Certified true copy from the regimental books in my custody

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7 day of Feb'44. W.G.Ross (Capt.)
Adjutant, 4 CAB Coy, RCASC.
Officer i/c Regimental Books.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

4M. 13

Spr. Hastegrave L.A.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D-16269 Spr Leonard Albert HESLEGRAVE 1 CERU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A.8(1)	NOT GUILTY	NOT GUILTY	
2nd	A.A.22	Guilty	Guilty	
3rd	A.A.8(1)	Guilty	Guilty	
4th	A.A.8(2)	Guilty	Guilty	
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :
To undergo Detention for a period of Sixty (60) days.

(Sgd) ..... Judge-Advocate, if any. 9 Jan 45 Date awarded. (Sgd) ..... President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that~~ the accused be not committed to prison or detention barracks ~~until further orders~~.(1) N/A
(1. AA 57A. Delete if not used.)

(Sgd) E.B. Connelly Brig

Date 12 Jan 45 Commanding 2 Corps CRU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
L A Heslegrave 1CERU 16269	15 Jan 45	J.P. Cadell Capt

PART II. ORDERS
DATE 16 Jan 45 ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED. RECORD
No. 1 Cdn. Engineers' Holding Unit. C. 2 Cdn. Engineers' Reinforce Unit. C.

13

RECORD 2/1776 AB 160 4mm 13

22 JAN 1945

FIELD GENERAL COURT-MARTIAL

CFA66 (In lieu of AFA81) 40.P.& S./1000 (1944) 4/388

Convened by Order of Brig A.B. Connelly Comd "B" Gp CRU dated 4 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R., (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-16269	Spr	Leonard Albert	HESLEGRAVE	1 CERU

PROCEEDINGS REVIEWED IN THE REVIEWING OFFICER'S BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 9 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any~~ and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which matrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused : Do you object to ..... as interpreter ?~~ Ans .....

~~The Interpreter is sworn.~~(1) Do you object to C/16626, Sgt SHANLEY WE as shorthand writer ? Ans N.O
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans N.O S.O.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt-Col	D.L. Redman VD	HQ CRU
Member	CAPT	F.J.C. RIDLEY	1 CGRU
Member	LT	R.J. DANCEY	164 SCRU
~~Judge-Advocate~~			
Prosecutor	LT	A.R. BAYLES	1 CERU
Defending Offr	LT	H.S. BEAGLE	1 CERU

Questions by President : Is the Prosecutor a lawyer ? Ans N/A Is the Defending Offr a lawyer ? Ans N/A(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea.(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35-A, 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A94 to record proceedings. 2. RP 22, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D" and B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO - SIR (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO SIR (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOT-ATT
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is disallowed on the ..... charge(s), and allowed on the 1st charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4) 1st charge
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO - SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *AFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Pay is not liable NOT-ATT (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

1.7

CHARGE SHEET

The accused D.16269 Spr. Leonard Albert HESLEGRAVE, RCE, No 1 Canadian Engineer Reinforcement Unit, a soldier of the Canadian Army (Overseas) is charged with:-

First Charge AA8(1) WHEN ON ACTIVE SERVICE, STRIKING HIS SUPERIOR OFFICER, BEING IN THE EXECUTION OF HIS OFFICE

in that he

at Woodside Croydon at approx. 1700 hrs 16 Dec 44, did intentionally strike with his fist on the side of the head, P.10910 Cpl. Walsh of No 1 Cdn Base Park, RCE, when Cpl. Walsh ordered by B.22456 Sgt. Smith, G.E. attempted to stop him running away from escort under command Sgt Smith, G.E.

Second Charge AA22 WHEN IN ARREST, ATTEMPTING TO ESCAPE

in that he

at Woodside Croydon at approx. 1715 hrs on 16 Dec 44 when proceeding under arrest to the Guard Room No 1 Cdn Base Park Company broke away from his escort and attempted to escape.

Third Charge AA8(1) WHEN ON ACTIVE SERVICE, STRIKING HIS SUPERIOR OFFICER BEING IN THE EXECUTION OF HIS OFFICE

in that he

at Woodside Croydon at 1700 hrs 16 Dec 44 did strike with his fist in the face, B.29077 CSM Kelly of No 1 Cdn Base Park, RCE, when refused his pass while he was under close arrest.

CHARGE SHEET

FOURTH CHARGE
AA 8(2)

WHEN ON ACTIVE SERVICE USING THREATENING LANGUAGE TO HIS SUPERIOR OFFICER

in that he

at Woodside Croydon at Approx. 1655 hrs on 18 Dec 44 after having been checked for his manner of addressing H.29077 CSM Kelly did say to CSM Kelly "I don't give a damn what you want, if you will take off that tunic I'll show you".

Hcl.

(H.G.J. WOODS) Lt. Col.
A/Commanding Officer
No 1 Cdn Engr Rft Unit
Canadian Army (Overseas)

In the Field
3 Jan 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

4 Jan 45

(A.B. Connelly) Brig
Comd "B" Gp
Cdn Rft Units.

M7

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names. Surname.	Unit.
D-16269	Spr	Leonard Albert HESLEGRAVE	1 CBRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 4 Jan 45 endorsed by me, (or by an offr of my staff for me),” To be tried by Field General Court-Martial ”.

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lt-Col (Rank.)	D.L. Redman VD (Must be named. RP 106.)	HQ CRU (Unit.)

MEMBERS.

Captain	to be detailed by OC	1 CBRU
Lieutenant (Rank.)	to be detailed by OC (Named or detailed. RP 106.)	1 CASCRU (Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(A.B. Connelly) (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Date 4 Jan 45

Commanding "B" Gp Cdn Aft Units.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAGO (To Encl of AFAS) 40/P & S/1697) (4001)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE.

K.M. (Cond) Rules 557.

I certify that I have this morning examined

No. D.162.69 ... Spr. Hesketh-Prichard ... A.R. .....

of ... A.I.C.E.R.U. ..... and in my opinion he

is ~~unfit~~ fit to undergo Trial by Court Martial.

Station ... Field .....

Date ... 9.7.42 .....

..... R.A.M.C.
Medical Officer.

CASE OF

D.16269 Sapper HESLEGRAVE, L.A. 1 C.E.R.U.

Trial on 1st Charge

PROSECUTION

FIRST WITNESS.

B.22456, Sgt. Smith, G.E. of 1 Cdn Base Park, R.C.E. being duly sworn states:

"On 1st Dec 44 at approximately 1655 hrs I was guard commander and I was summoned into the yard on CSM. Kelly's orders. CSM. Kelly in the hearing of the accused told me to escort the accused from the yard. I went into the Orderly Room and phoned the guard for two escorts, I then went back out into the yard. It was then I heard CSM. Kelly and Spr. Heslegrave in conversation. Spr. Heslegrave did state to CSM. Kelly words to the effect, "take off your coat and I will show you". I went back into the Orderly Room to hurry the escorts down, came out of the Orderly Room again and in the meantime CSM. Kelly placed Spr. Heslegrave under close arrest. Spr. Heslegrave at this time was in the latrine, the two escorts were with him. I waited until he was through then Spr. Heslegrave stated that he wished to see CSM. Kelly so that his wife could be informed of the circumstances. With the two escorts, myself in charge, we proceeded into the Orderly Room to see CSM. Kelly. The escorts did not have Spr. Heslegrave by the arm but one on either side walking. Spr. Heslegrave walked up to the corner of the Orderly Room occupied by CSM. Kelly. CSM. Kelly had Spr. Heslegrave's pass in his hand. Spr. Heslegrave did then stike CSM. Kelly. It was a blow with his right fist to CSM. Kelly's left side of his face about the heighth of the mouth. Spr. Heslegrave did then state to CSM. Kelly"that is something I have wanted to do for a long time". The two escorts and myself intervened and we proceeded to the Guard Room. On leaving the Orderly Room the escort on the right of Spr. Heslegrave opened the door in addition so he had to step back. Spr. Heslegrave did then bolt from the other escort. The two escorts and myself gave chase. Spr. Heslegrave ran out of the yard towards Beckford Road. He ran approximately 150 yards along this Beckford Road. Down the street two of our men were standing in conversation on the sidewalk, one of them was Cpl. Walsh. Upon my orders of "stop that man" Cpl. Walsh did block his route. Spr. Heslegrave did then attempt to spring over Cpl. Walsh who was blocking his way. In doing so, Cpl. Walsh received a blow on his head while Spr. Heslegrave attempted to jump over him. Cpl. Walsh was blocking the way. The escorts and myself then took over and we proceeded to the Guard Room with Spr. Heslegrave. The accused was not drunk. His breath smelt as if he may have been drinking. His eyes were not clear. I could not catch him running. Spr. Heslegrave had his strength."

CROSS EXAMINED

A. Immediately after Cpl. Walsh blocked Spr. Heslegrave's way I saw Cpl. Walsh feel the side of his head. He did not say anything about it.

Q. In what position was Cpl. Walsh when he and the accused came in contact?
A. Cpl. Walsh stood facing in the direction that the accused was coming from. His feet were placed apart and his arms cut-spread. He stood in that position and waited for Spr. Heslegrave to come to him. The distance when he went to block was approximately 15 feet between the accused and Cpl. Walsh.

Q. In other words he was standing in an upright position?
A. Yes.

Court. In what manner did Spr. Haslegrave attempt to evade Cpl. Walsh?
A. Spr. Haslegrave while running attempted to spring over Cpl. Walsh.

Q. How could he have landed the blow?
A. In doing so Cpl. Walsh received a blow to the head. It must have been from the arms of the accused. The escorts and myself intervened.

SECOND WITNESS.

B-5857 Spr Galbraith, J.T. being duly sworn states:

"On the 18 Dec 44 the accused left the room in which CSM. Kelly was. I had actually stopped a moment to pick up his hat and I was behind him. Spr. Downey was behind to open the door. When the door was opened Spr. Heslegrave pushed Spr. Downey behind the door, sprung through the door and pulled the door closed behind him leaving both escorts inside the room. I opened the door and gave chase. I gave chase out into the road down which the accused was running. Spr. Downey and the Sergeant of the guard were behind me. As we were running down the road Cpl. Walsh and some other Sergeant were coming up towards us and the guard Sgt. shouted "stop that man". Cpl. Walsh stepped in and grabbed Spr. Heslegrave as he was running along. I came up and grabbed him. I did not actually see any blow struck. They naturally grabbed for each other. We escorted the accused back to the Guard Room. The accused had been drinking. I had seen him at a kiddies party previously. From his conversation I would say definitely he was drinking. He could walk but his conversation was not normal.

CROSS EXAMINED

Q. When Spr. Heslegrave attempted to hurdle Cpl. Walsh what was the position?
A. Cpl. Walsh was more or less standing with his hands up in front of him open.

IN THE OPINION OF THE COURT IS IS UNNECESSARY TO COMPLY WITH RP 83(B)

THIRD WITNESS

B-55168, Spr. Downey, M.B. being duly sworn states:

"As the accused, Spr. Galbraith and I were leaving the office of CSM. Kelly, Spr. Haslegrave bolted through the door. We were given an order of command to pursue by Sgt. Smith. We took after the accused who ran down Beckford Road. Cpl. Walsh was in Beckford Road ahead of us. Sgt. Smith gave a command to halt that man. Cpl. Walsh then blocked his way. I was too far behind to see what actually happened. When I got up to them the accused was again in custody. Spr. Galbraith and I took him to the Guard Room. I did not see a blow struck. I did not think that any man in his normal sense would have done what the accused did. The accused when normal acts like a gentleman all the way through.

Q. Did you know that Cpl. Walsh had received a blow on the head?
A. I did not know anything about Cpl. Walsh receiving a blow on the head.

CROSS EXAMINED.

Q. Were you close enough to see Spr. Heslegrave hurdle over Cpl. Walsh.
A. No. There was a fumble but I could not see him hurdle over Cpl. Walsh.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

FOURTH WITNESS

P.10910, Cpl. Walsh, J.F. being duly sworn states:

"On the 18 Dec 44 at approximately 1700 hrs as I was proceeding down Beckford Road to the camp area I noticed at the time one man running with three men chasing him. I could not determine from the position where I was who the man was until he was approximately 15 feet from me. Then Sgt. Smith said "stop that man". As the man came towards me I held my hands up and out in order to stop him. As I proceeded to stop him he attempted to hurdle over my body. While he was doing this I received a blow on the back of my head. This happened while he was hurdling in my opinion it was either his elbow or his hand. The man was the accused whom I now recognize.

FOURTH WITNESS (Cont'd)

I had no conversation with the accused. Sgt. Smith and the two escorts took charge of him and took him back to the Guard Room.

CROSS EXAMINED.

Q. Did you stop in the path of the accused when he was running?
A. Yes sir.

Q. As he attempted to hurdle you did you change your position?
A. No sir.

Q. Did you remain standing?
A. I remained standing but his weight upon me knocked me down. He ended up practically on my back.

Q. You did receive a blow on the back of your head?
A. Yes sir.

Q. Could you have hit your head on something?
A. Not very well.

Q. Could that something be the accused?
A. Yes it could have been the accused.

Q. Was the blow with a clinched fist?
A. It is pretty hard to determine this.

THE PROSECUTION IS CLOSED.

The Defending Officer submitted that the charge should be dismissed because the Prosecution had failed to make a prima facie case for the following reasons:

In connection with the charge of striking his superior officer, Cpl. Walsh with his fist on the side of the head, I would like to point out that the statement of B.22456, Sgt. Smith, C.E. reads as follows: "Cpl. Walsh blocked his way and Spr. Heslegrave tried to jump over him. In so doing Cpl. Walsh received a blow on the head".

The evidence of Cpl. Walsh reads as follows: "Sgt. Smith ordered me to stop the man they were running after. As he attempted to hurdle over me I stepped in front of him to stop him and received a blow on the head".

In both cases the evidence shows that Cpl. Walsh was in a tackle position and that Spr. Heslegrave tried to hurdle over him. There is no proof of a deliberate blow with a clenched fist on the head of Cpl. Walsh.

For this reason I would ask the court to dismiss the charge of striking Cpl. Walsh with his fist on the head.

The Prosecutor replied stating that in his opinion he had made a prima facie case.

THE COURT WAS CLOSED.

THE COURT RE-OPENED.

The Court allows the submission of the Defending Officer and states that the first charge is dismissed.

PLEA IN MITIGATION OF SENTENCE

In summing up the case of Spr Heslegrave to the Court, first, I would like to outline the accused's life up to the time of arrest. He joined the Canadian Active Army on the 5 Dec 39 at Montreal. He was 24 years old and come from a family of six. His father was the only parent living and there was also three sisters and two brothers who are the Canadian Navy. On the 26 Dec 39 he came overseas with the 4th Fd Coy. From then up to this time, he has changed units a few times and also spent a few months in hospital undergoing a knee operation which had lowered his category to L3. Also during this time the accused has had more than his share of bad luck and disappointments. In Jan 1942, he was happily married to an English girl and in Jan of 1943 they were blessed with one child. But their happiness was shortlived and the accused was plunged into sorrow when his wife died in Apr 1943. At the same time he received word from home that his father had died also. This was not the end of his bad luck for in Jul 1943 his only baby died leaving him alone with his sorrow. Despite this the accused continued to soldier and he later met another girl and was married again in Apr 1944. It was with her at their home in Croydon that he was spending his leave. He left his home on the afternoon of 16 Dec to visit his friends at his old unit and also to attend the party being held for the children of the district. The accused has told you his actions during his stay in the unit and he did nothing to attract attention by other NCOs and his behaviour was very much in order. When he met the CSM he was on his way home to his wife who was anxiously awaiting his return. He never arrived and it must be of great concern to her to know her husband was brought about to get himself arrested. This must be very trying days for his wife who is expecting a baby in the near future. There is no need to review the accused's army record but for the length of service it is far from being a bad record. I would like to stress the fact that for a soldier who had met the CSM in the pub earlier in the afternoon and who had also been present in camp among Senior NCOs and Officers, his dress and conduct must have been good or otherwise he would have been checked. There is also very strong signs of provocation on the part of the CSM toward the accused and if he had let him pass on his way after stopping him without going to all the trouble to call an escort which the court must agree was really unnecessary, the accused would not be here to-day. The turn of events brought on by the CSM's hasty, unnecessary action caused the accused to do things of which he had never done before and which was not his true nature. In closing I would like to ask the court to give careful consideration to his long service record in the Canadian Army Overseas and also the possible damaging results that an unjust and heavy punishment might have on his pregnant wife. I beg the court to give this fair consideration and thought and to impose the minimum sentence on the accused.

Respectfully submitted,

(Signed) Lt H.S. BEAGLE.

1

Summary of Evidence

Summary of Evidence in the case of D-16269 Spr Leonard Albert Heslegrave, Royal Canadian Engineers Reinforcement Unit, a soldier of the Canadian Army (Overseas)

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

First Witness
for the prosecution

B-22456 Sgt Smith, G.E., on strength of 1 Canadian Base Park, R.C.E., a soldier of the Canadian Army (Overseas) having been duly sworn states.

I am B-22456 Sgt Smith, G.E. on strength of 1 Canadian Base Park R.C.E. I was on duty as guard sergeant on the ~~night~~ 18 December 1944. At about 1655 hrs I was notified by a soldier to see CSM Kelley. I went from the orderly room to the yard where he was; he ordered me to escort Spr Heslegrave from the yard. I went back to the orderly room to phone two guards to act as escorts. When I came back to the yard the CSM and Spr. Heslegrave were facing each other and talking. I heard Spr Heslegrave say to the CSM "If you take that coat off I'll show you". The escorts hadn't turned up yet but in the meantime Spr. Heslegrave was placed under close arrest by CSM Kelley. I waited in the lavatory for Spr Heslegrave and the 2 escorts which CSM Kelley had procured in the interval. Spr Heslegrave wished to see CSM Kelley in order to notify his wife. We all went to the orderly room. CSM Kelley had Spr. Heslegrave's pass in his hand. Spr. Heslegrave then struck CSM a blow with his right fist, as the two escorts

(cont'd)
First Witness
for the prosecution

were not holding him. Spr. Hestlegrave said that was what he had wanted to do for a long time. I was ordered to take the prisoner to the guard room under escort. Coming out the right escort opened the door and I followed in rear. Escort on the left was next the wall; then the prisoner bolted and ran approximately 40 yards to Beckford Road turning right. Myself and the escorts gave chase. Ahead of us having the way was Cpl Walsh and another soldier. I shouted to them to stop that man. Spr. Hestlegrave, Cpl. Walsh blocked his way and Spr Hestlegrave tried to jump over him. In doing so Cpl. Walsh received a blow on the head. Escorts and myself then caught up and closed with him. With Cpl Walsh and an escort on either side and myself to the rear holding on to the prisoner's web belt we proceeded to the guard room. En route Spr. Hestlegrave asked me to take my hands off his belt as he could walk by himself. At the guard room the guard took over.

The accused declines to cross examine the witness.

G. E. Smith

(B22456 Sgt. SMITH. G.E.)

Second Witness
for the prosecution

B-27210, Spr. Rogers, R.J., on strength of 1 Cdn. Base Park, a soldier of the Canadian Army overseas, having been duly sworn states:

I am B-27210 Spr. Rogers, R.J. on strength of 1 Canadian Base Park, R.C.E. On the 18 December 1944 I was on duty in the orderly room at the switch board. At approximately 1700 hrs I heard a noise and turning around saw Spr. Hestlegrave strike C.S.M. Kelly with a right hand punch to the left hand side of his mouth.

Q. "Is that all you saw or heard of the affair?"
A. "Yes. I had a call in at the time."

The accused cross examined this witness

Q_2 "Could you see me plainly"
A_2 "Yes."

This concludes my evidence

R. J. Rogers
(B-27210, Spr. Rogers, R.J.)

Third Witness
for the prosecution

B29077, C.S.M. Kelly, G.J., on strength of 1 Cdn. Base Park, a soldier of the Canadian Army overseas, having been duly sworn states

"I am B-29077, C.S.M. Kelly, G.J., on strength of 1 Cdn Base Park R.C.E., a soldier of the Canadian Army overseas. At approximately 1655 hrs, 18 Dec 44 on duty I encountered Spr. Hestlegrave in the

Third Witness
for the prosecution
Camp

yard. His tunic was open in front, his hat was in his shoulder strap and hands in pocket. On passing him he said "Hello, Kelly". I stopped and asked him if he was on pass. When he replied in the affirmative I asked to see it. He produced it and it was in order. I then told Spr. Hestlegrave I wished N.C.O's in this camp be addressed by their proper rank. Spr. Hestlegrave became abusive and said "You never liked me when I was here before and I don't like you any better now. He also asked me to take off my tunic and became very belligerent. I remonstrated that he shouldn't take that attitude. He persisted in his abuse and I called Sgt. Smith who appeared out of the orderly room to fall in an escort, take Spr. Hestlegrave to the gate, give him his pass and warn him not to come in the camp any more without authority. Spr. Hestlegrave said "I don't give a damn what you want, take off your tunic and I'll show you". I then placed him under close arrest and ordered Sgt Smith to take him to the guard room. I then went to the orderly room. About 2 or 3 minutes later Spr. Hestlegrave was escorted in by Spr's Downey and Galbraith under command of Sgt. Smith. Spr. Hestlegrave said to me "Give me my pass". I replied "You are under close arrest" "Your pass will be forwarded with charges and movement order to 1 C.E.R.U. in the morning. I then turned to end the interview. I was half turned when Spr. Hestlegrave sprang from his escort and struck me on the left side of the mouth with his fist saying "I have been wanting to do that for a long time". I then ordered Sgt Smith to take him to the guard room. I wish to state that Spr. Hestlegrave seemed sober to me.

cont'd
Third Witness
for the prosecution

Q. "Did you see Spr. Hestlegrave escape"?
A. "No. I saw him running by the orderly room window."

The accused declines to cross-examine the witness

A. Kelly
(B-29077, CSM Kelly G.J.)

Fourth Witness
for the prosecution

B-5857, Spr. Galbraith, J.T. on strength of 1 Can Base Park, a soldier of the Canadian Army overseas, having been duly sworn states:

I am B-5857, Spr. Galbraith, JT on strength of 1 Can. Base Park, R.C.E., a soldier of the Canadian Army Overseas. On the 1st December 1944 at approximately 1710 hours I was standing in front of our orderly room talking to Spr. Downey when the CSM called us over and told us to march Spr. Hestlegrave to the guard room as he was under close arrest. As we were bringing him over Spr. Hestlegrave walked into the latrine. The CSM ordered us to follow him in and take him to the guard room as soon as he was finished his business. Before he had finished the guard sergeant came in to the latrine and the prisoner asked him ~~to~~ if he could see the CSM before going to the guard room. We marched him to the orderly room. He walked up to the CSM and asked for his pass. CSM told

cont'd
Fourth Witness
for the prosecution

Spr. Heatlegrave he was under close arrest and couldn't have it, and to march him back to the guard room. As their conversation finished and the C.S.M. turned away Spr. Heatlegrave struck him in the mouth. The guard sergeant and myself grabbed him and the other guard fell in on his left. I stopped to pick up Spr. Heatlegrave's hat. The other escort was in front and as he opened the door the prisoner jumped through and pulled the door after him. I opened the door and ran after him. Spr. Denny and the Sgt Guard followed. As we were running down the street Cpl. Walsh stopped out of the Sergeants shout and stopped him. I came up with the others and we marched him to the guard room, turned him over to the guard.

Q. "after he was stopped by Cpl. Walsh did the prisoner make any further attempt to escape."

A "No."

The accused cross-examined this witness

Q. "Would you say I was drunk?"

A. "I am not a medical authority, but I would not say you were sober."

J. T. Galbraith

(B5857 Spr. GALBRAITH, J.T.)

Fifth Witness
for the prosecution

B-55168 Spr. Downey, M.B., on strength of 1 Can. Base Park, a soldier of the Canadian Army overseas, having been duly sworn states:

"I am B-55168 Spr. Downey, M.B. on strength of 1 Canadian Base Park, a soldier of the Canadian army overseas. On the 18 December 1944 at approximately 1700 hrs I was coming into the yard of the camp and saw C.S.M. Kelly talking to Spr. Hestlegrave. I was called over to act as escort to Spr. Hestlegrave who was under arrest. He asked to go to the latrine and we followed him in. As he finished his business I asked him what the score was and I did not get any answer. Sgt. Smith came in and we started for the guard room. The prisoner asked to see C.S.M. Kelly. We took him to the orderly room and he asked the C.S.M. for his pass. Words were exchanged and Spr. Hestlegrave lost his temper and struck the C.S.M. on the jaw. We then started for the guard room again. As the door was opened the prisoner bolted and pulled the door shut as he went. We chased him down the street where he was blocked by Capt. Walsh. We came up, got our breath and started back, and without any further fuss turned him over to the guard.

The accused cross-examined this witness

Q1. "In the 18 months I have known you would you say I was aggressive

A. "In that time I have never known you to be in a jam"

Q2 "Would you say this happening was my normal nature

A. "No"

M. D. Downey
B 55168 Spr. DOWNEY, M.B.

Sixth Witness
for the prosecution

B-28468 Cpl. Christopher, A.L., on strength of 1 Canadian Base Park, a soldier of the Canadian Army overseas, having been duly sworn states:

"I am B-28468 Cpl. Christopher, A.L. on strength of 1 Canadian Base Park, a soldier of the Canadian Army overseas. On the 14 December 1944 at approx 1750 hrs I was coming from the men's mess to the orderly room of 1 Cdn Base Park. upon nearing the orderly room I saw C.S.M. Kelly and Spr Hestlegrave and heard the C.S.M. say 'you're under arrest'. I then entered the orderly room

A few minutes later I saw two soldiers and the guard sergeant escort Spr. Hestlegrave into the orderly room and approach C.S.M. Kelly. Spr. Hestlegrave said something to the C.S.M. which I did not hear, broke loose from his escort, struck the C.S.M. and ran out of the orderly room followed by the escort and the guard sergeant a little later I saw Spr. Hestlegrave being escorted back to the guard room"

The accused declines to cross examine this witness.

A.L. Christopher

(B-28468 Cpl. CHRISTOPHER, AL)

Seventh Witness
for the prosecution

P-10910, Cpl. Walsh, J.F. on strength of 1 Canadian Base Park, a soldier of the Canadian Army overseas, having been duly sworn states:

Cont'd
Seventh Witness
for the prosecution

"I am P-10910 Cpl. Walsh, J.F., on strength of 1 Canadian Base Park, a soldier of the Canadian Army overseas. On the 18 December 1944 at approximately 1700 hrs I was proceeding down Beckford Road, the street on which 1 Base Park Company is billeted. I noticed a soldier running with three others chasing him. At that moment as they drew closer to me, one of them whom I recognized to be Sgt Smith ordered me to stop the man they were running after. As he attempted to run over me I stepped in front of him to stop him and received a blow on the head. But I was successful in stopping the prisoner whom I then saw to be Spr. Hesthegrave. The others, Sgt Smith, Spr. Downey, Galbraith and myself then took the prisoner to the guard room. I left and did not see the prisoner again until now.

The accused declines to cross-examine this witness

J Walsh
(P10910 Cpl. WALSH, J.F.)

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence

The accused reserves his defence

I certify that the foregoing summary of evidence consisting of nine pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.

R.L. Sippell Lieut.
((R. L. SIPPRELL) Lieut R.C.E.
Offijs detailed to take
the Summary of Evidence

In the field
21 Dec 1944

SUMMARY OF EVIDENCE

Summary of Evidence in the case of D-16269 Spr Leonard Albert HESLEGRAVE, Canadian Engineers Reinforcement Unit, a soldier of the Canadian Army (Overseas)

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS
For the prosecution

B-22456 Sgt Smith, G.E., on strength of 1 Canadian Base Park, R.C.E., a soldier of the Canadian Army(Overseas) having been duly sworn states:

I am B-22456 Sgt Smith, G.E., on strength of 1 Canadian Base Park, R.C.E. I was on duty as guard sergeant on the 18 December 1944. At about 1655 hrs I was notified by a soldier to see CSM Kelley. I went from the orderly room to the yard where he was; he ordered me to escort Spr Heslegrave from the yard. I went back to the orderly room to phone two guards to act as escorts. When I came back to the yard the CSM and Spr Heslegrave were facing each other and talking. I heard Spr Heslegrave say to the CSM "If you take that coat off I'll show you". The escorts hadn't turned up yet but in the meantime Spr Heslegrave was placed under close arrest by CSM Kelley. I waited in the lavatory for Spr Heslegrave and the two escorts which CSM Kelley had produced in the interval. Spr Heslegrave wished to see CSM Kelley in order to notify his wife. We all went to the orderly room. CSM Kelley had Spr Heslegrave's pass in his hand. Spr Heslegrave then struck CSM a blow with his right fist, asthe two escorts were not holding him. Spr Heslegrave said that was what he had wanted to do for a long time. I was ordered to take the prisoner to the guard room under escort. Coming out the right escort opened the door and I followed in rear; escort on the left was next to the wall, then the prisoner bolted and ran approximately 400 yards to Beckford Road turning right. Myself and the escorts gave chase. Ahead of us barring the way was Cpl Walsh and another soldier. I shouted to them to stop that man, Spr Heslegrave. Cpl Walsh blocked his way and Spr Heslegrave tried to jump over him. In doing so Cpl Walsh received a blow on the head. Escorts and myself then caught up and closed with him. With Cpl Walsh and an escort on either side and myself to the rear holding on to the prisoner's web belt we proceeded to the guard room. Enroute Spr Heslegrave asked me to take my hands off his belt as he could walk by himself. At the guard room the guard took over.

The accused declines to cross-examine the witness.

(B-22456 Sgt SMITH, G.E.)

SECOND WITNESS
For the prosecution

B-27210 Spr Rogers, R.J., on strength of 1 Cdn Base Park, a soldier of the Canadian Army(Overseas), having been duly sworn states:

"I am B-27210 Spr Rogers, R.J., on strength of 1 Canadian Base Park, R.C.E. On the 18 December 1944 I was on duty in the orderly room at the switch board. At approximately 1700 hrs I heard a noise and turning around saw Spr Heslegrave strike CSM Kelley with a right hand punch to the left hand side of his mouth."

Q. "Is that all you saw or heard of the affair"?

A. "Yes, I had a call in at the time".

The accused cross-examines this witness.

Q. "Could you see me plainly"?

A. "Yes".

This concludes my evidence.

(B-27210 Spr ROGERS, R.J.)

THIRD WITNESS
For the prosecution

B-29077 CSM Kelley, G.J., on strength of 1 Cdn Base Park, a soldier of the Canadian Army(Overseas), having been duly sworn states:

"I am B-29077 CSM Kelley, G.J., on strength of 1 Canadian Base Park, R.C.E., a soldier of the Canadian Army(Overseas). At approximately 1655 hrs 18 Dec 44 while on duty I encountered Spr Heslegrave in the yard at Hamp. His tunic was open in front his hat was in his shoulder strap and hands in pocket. On passing him he said "Hello Kelley". I stopped and asked him if he was on pass. When he replied in the affirmative I asked to see it. He produced it and it was in order. I then told Spr Heslegrave I wished NCO's in this camp be addressed by their proper rank. Spr Heslegrave became abusive and said"You never liked me when I was here before and I don't like you any better now" He also asked me to take off my tunic and became very bellegerent. I remonstrated that he shouldn't take that attitude. He persisted in his abuse and I called Sgt Smith who appeared out of the orderly room to fall in an escort, take Spr Heslegrave to the gate, give him his pass and warn him not to come in the camp any more without authority. Spr Heslegrave said"I don't give a damn what you want,; take off your tunic and I'll show you". I then placed him under close arrest and ordered Sgt Smith to take him to the guard room. I then went to the orderly room. About two or 3 minutes later Spr Heslegrave was escorted in by Spr's Downey and Galbraith under command of Sgt Smith. Spr Heslegrave said to me "Give me my pass", I replied,"you are under close arrest" "Your pass will be forwarded with charges and movement order to 1 C.E.R.U. in the morning. I then turned to end the interview. I was half turned when Spr Heslegrave sprang from his escort and struck me on the left side of the mouth with his fist saying " I have been wanting to do that for a long time" I then ordered Sgt Smith to take him to the guard room. I wish to state that Spr Heslegrave seemed sober to me

THIRD WITNESS(Cont'd)
For the prosecution

Q. "Did you see Spr Heslegrave escape"?

A. "No, I saw him running by the orderly room window".

The accused declines to cross-examine the witness.

(B-29077 CSM KELLEY, G.J.)

FOURTH WITNESS
For the prosecution

B-5857 Spr Galbraith, J.T., on strength of 1 Cdn Base Park, a soldier of the Canadian Army(Overseas), having been duly sworn states:

"I am B-5857 Spr Galbraith, J.T., on strength of 1 Canadain Base Park, R.C.E., a soldier of the Canadian ~~Exxx~~ Army(Overseas). On the 18 December 1944 at approximately 1710 hours I was standing in front of our orderly room talking to Spr Downey when the CSM called us over and told us to march Spr Heslegrave to the guard room as he was under close arrest. As we were bringing him over Spr Heslegrave walked into the latrine. The CSM ordered us to follow him in and take him to the guard room as soon as he was finished his business. Before he had finished the guard sergeant came into the latrine and the prisoner asked him if he could see the CSM before going to the guard room. We marched him to the orderly room. He walked up to the CSM and asked for his pass. CSM told Spr Heslegrave he was under close arrest and couldn't have it, and to march him back to the guard room. As their conversation finished and the CSM turned away Spr Heslegrave struck him in the mouth. The guard sergeant and myself grabbed him and the other guard fell in on his left. I stopped to pick up Spr Heslegrave's hat. The other escort was in front and as he opened the door the prisoner jumped through and pulled the door after him. I opened the door and ran after him. ~~Ixxxxxxxxxxxxxx~~ Spr Downey and the Sgt of the guard followed. As we were running down the street Cpl Walsh stepped out at the Sergeants shout and stopped him. I came up with the others and we marched him to the guard room, turned him over to the guard."

Q. "After he was stopped by Cpl Walsh did the prisoner make any further attempts to escape"

A. "No".

The accused ~~cross~~-examined this witness.

Q. "Would you say I was drunk"?

A. "I am not a medical authority, but I would not say you were sober".

(B-5857 Spr GALBRAITH, J.T.)

FIFTH WITNESS
For the prosecution

B-55168 Spr Downey, M.B., on strength of 1 Cdn Base Park, a soldier of the Canadian Army(Overseas), having been duly sworn states:

"I am B-55168 Spr Downey, M.B., on strength of 1 Canadian Base Park, R.C.E., a soldier of the Canadian Army(Overseas). On the 16 December 1944 at approximately 1700 hrs I was coming into the yard at the camp and saw CSM Kelly talking to Spr Heslegrave. I was called over to act as escort to Spr Heslegrave who was under arrest. He asked to go to the latrine, and we followed him in. As he finished his business I asked him what the score was and I did not get any answer. Sgt Smith came in and we started for the guard room. The prisoner asked to see CSM Kelly. We took him to the orderly room and he asked the CSM for his pass. Words were exchanged and Spr Heslegrave lost his temper and struck the CSM on the jaw. We then started for the guard room again. As the door was opened the prisoner bolted and pulled the door shut as he went. We chased him down the street where he was blocked by Cpl Walsh. We came up, got our breath and started back, and without any further fuss turned him over to the guard.

The accused cross-examined this witness.

Q. "In the 18 months I have known you would you say I was aggressive"?

A. "In that time I have never known you to be in a jam".

Q. "Would you say this happening was my normal nature"?

A. "No".

(B-55168 Spr DOWNEY, M.B.)

SIXTH WITNESS
For the prosecution

B-28468 Cpl Christopher, A.L., on strength of 1 Cdn Base Park, a soldier of the Canadian Army(Overseas), having been duly sworn states:

"I am B-28468 Cpl Christopher, A.L., on strength of 1 Canadain Base Park, a soldier of the Canadian Army(Overseas). On the 16 December 1944 at approx 1700 hrs I was coming from the Men's Mess to the orderly room of 1 Cdn Base Park. Upon nearing the Orderly Room I saw CSM Kelly and Spr Heslegrave and heard the CSM say "you're under arrest". I then entered the orderly room. A few minutes later I saw two soldiers and the guard sergeant escort Spr Heslegrave into the orderly room and approach CSM Kelly. Spr Heslegrave said something to the CSM which I did not hear, broke loose from his escort, struck the CSM and ran out of the orderly room followed by the escorts and the guard sergeant. A little later I saw Spr Heslegrave being escorted back to the guard room".

The accused declines to cross-examine this witness.

(B.28468 Cpl CHRISTOPHER, A.L.)

SEVENTH WITNESS
For the prosecution

P-10910 Cpl Walsh, J.F., on strength of 1 Canadian Base Park, a soldier of the Canadian Army(Overseas), having beenduly sworn states:

"I am P-10910 Cpl Walsh, J.F., on strength of 1 Canadaan Base Park, a soldier of the Canadian Army (Overseas) On the 18 December 1944 at approximately 1700 hrs I was proceeding down Beckford Road, the street on which 1 Cdn Base Park Company is billeted. I noticed a soldier running with three others chasing him. At that moment as they drew closer to me, one of them whom I recognized to be Sgt Smith ordered me to stop the man they were running after. As he attempted to hurdle over me I stepped in front of him to stop him and received a blow on the head. But I was successful in stopping the prisoner whom I then saw to be Spr Heslegrave. The others, Sgt Smith, Sprs Downey, Galbraith and myself then took the prisoner to the guard room. I left and did not see the prisoner again until now".

The accused declines to cross-examine this witness.

(P-10910 Cpl WALSH, J.F.)

The accused was cautioned as follows:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and maybe given in evidence.

The accused reserves his defence.

I certify that the foregoing summary of evidence consisting of five pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with

In the Field
21 Dec 44

(R.L. Sipprell) Lieut R C E
Officer detailed to take the
Summary of Evidence.

I certify the above to be a true copy of the original Summary of Evidence.

R L Sipprell Lt

EXA

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D16869	Spr	Leonard Albert HESLEGRAVE	Unit No. 1 C.E.R.U.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The entries herein stated should correspond with the number of Entries in the Field Conduct Sheet, attendance being given to the most serious offence in each entry. If the charge is for deserting or absent without leave, the entries for desertions or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. 15(1) ..... 1 ..... times.

For .... times.

For .... times.

For .... times.

Date of first entry in Field Conduct Sheet 18 Aug 44

Date of last entry in Field Conduct Sheet 18 Aug 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. ~~The accused has not undergone any period of detention~~ RB

~~Details of each such period, and the authority ordering it, are as follows :—~~

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 2 / days in military custody, *i.e.*, nil days in open arrest, 2 / days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 29 and 4/12ths years

6. The date of his attestation / calling up for military service is 5 Dec 39

7. The service which the accused is allowed to reckon is 4 and 9/12ths years

Delete the military possessions (if any) held by accused.

8. The accused is in possession of: CVSM and Clasp

9. ~~If the accused is a non-commissioned officer, the date on which he was promoted to the present rank is :—~~ NIL

Date of Promotion.

In the substantive rank of .....

~~In the temporary rank of~~ .....

~~In the acting rank~~ .....

EY RB

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*26075) Wt.30721/9701 £2,000 9/45 A.E.F.S. Ltd. Gp.690

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the records in my custody, are correct to the best of my knowledge and belief.

Signed this 9th day of January 1945

[illegible] Major RCE
Administrative Officer
No 1 Can Eng Rft Unit
Canadian Army Overseas

No D16269 Name HESSELGRAVE L.A. | Sqn, Battery, or Company | Corps R.C.E | Date of enlistment 5 Dec 39 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet 15 Jul 42 | No and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc H.Watson Maj | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed 15 Jul 44. Last entry 15 Jul 42. Cases of drunkenness -- Nil Awarded one Good Conduct Badge 15 Jul 44 DO Pt 11 No 35 d/21 Jul 44.							HW Maj.		
Field	17 Aug 44	Spr		Sec 15(1) AA A'L from 2359 hrs 16 Aug 44 to 2240 hrs 17 Aug 44 (Absent 22 hrs 41 mins).	Cpl MacAskiel	Admonished	18 Aug 44	(B.R.KER) Colonel	Forf 1 days pay Art 149 (1)(a) FR&I
CERTIFIED TRUE COPY OF THE ORIGINAL DOCUMENT					(REV FRANGLEY) Major Officer Having Custody of Regimental Books. #1 Cdn Engr Rft Unit.				

(PTO)

LIST OF WITNESSES

List of witnesses in the case of D-16269 Spr Leonard Albert HESELGRAVE, Royal Canadian Engineers , No 1 Canadian Engineer Reinforcement Unit, a soldier of the Canadian Army (Overseas).

FOR THE PROSECUTION

B-22456	Sgt Smith, G.E.	1 Cdn Base Park Coy.
B-27210	Spr Rogers, R.J.	1 Cdn Base Park Coy.
B-29077	CSM Kelly, G.J.	1 Cdn Base Park Coy.
B-5857	Spr Galbraith, J.T.	1 Cdn Base Park Coy.
B-55168	Spr Downey, M.B.	1 Cdn Base Park Coy.
B-28468	Cpl Christopher, A.L.	1 Cdn Base Park Coy.
P-10910	Cpl Walsh, J.F.	1 Cdn Base Park Coy.

FOR THE DEFENCE

nil

LIST OF EXHIBITS

FOR THE PROSECUTION

nil

FOR THE DEFENCE

nil

RECEIPT OF DOCUMENTS

I, D-16269 Spr Leonard Albert HESELGRAVE, hereby acknowledge receipt of one copy of the Charge Sheet and Summary of Evidence in my case.

L A Heselgrave

(D-16269 Spr Heselgrave, L.A.)

APPLICATION FOR DEFENDING OFFICER

I desire to have an officer assigned to defend me in the event of a Field General Court Martial.

L A Heselgrave

(D-16269 Spr Heselgrave, L.A.)

GG-136
GNR HESLIN S.D.

GG/136 G

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 2nd day of June, 1943.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery 3 Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable. [redacted]

63

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	E.G. SCOTT	3 A Tk Regt RCA

Members.

Rank.	Name.	Regiment.
Capt.	J.R. BARKER	4 Lt A A Regt RCA
Lieut.	R.H. EVANS	12 Fd Regt RCA
Waiting Member Lieut.	W.M. DIRKS	13 Fd Regt RCA

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (P.A.S. Todd) Brigadier,
Commanding C.R.A., 3 Cdn Div.
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-85443 Gnr. HESLIN, S.D. 3 Cdn A Tk Regt RCA.	(1) Sec. 40 A.A.	Guilty	Guilty	I confirm the findings of the Court, but vary the sentence to be 90 days detention and to be placed under stoppage of pay in the sum of $10.0.0. To make good the damage to the vehicle, and To be placed under a further stoppage of pay in the sum of $5.12.0 to make good the loss of the revolver.
	(2) Sec. 15 (1) A.A.	Guilty	Guilty	
	(3) Sec. 24 (2) A.A.	Not Guilty	Guilty Sentence - 90 days detention and stoppage of pay $19.2.0. for damage to vehicle and further stoppage of pay $5.12.0 for revolver. 4 June 43 E.H. Scott Maj	

Signed
6 C.R.A. 3 Cdn Div.
7 June 43

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— *No*, *sir*.

(Signed) _____ (Signed) E.H. Scott Major
(P.A.S. Todd) Brigadier,
Commanding C.R.A., 3 Cdn Div. 3 a/Tk. Regt. R.C.A.
Convening Officer (c) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

R.H. Scott Maj

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 4th day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~) n/a.
*(4. ~~The officers under instruction~~) n/a.
were duly sworn.

*Omit if not applicable.

Signed this 4th day of June 1943.

E.H. Scott Maj.
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~) n/a.

Signed this 7 day of June 1943.

Confirming Officer.
(P.A.S. Todd) Brigadier,
C.R.A., 3 Cdn Div.

Promulgated and extracts taken in the case of B 85443 GNR. HESLIN. S.D.

(a) (Dated) 11 June 1943 (Signed) R.H. Chilmon Capt adj

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23579) W1-46179-500 50 000 2-43 A.& E.W.Ltd. Gp.699

B2
E.9 Form
may

CHARGE SHEET

The accused B.85443 Gnr. Stephen Delbert Heslin of the 52nd Bty., 3 Cdn Anti-Tank Regt., R.C.A., a soldier of the Cdn Army placed on Active Service is charged with:-

First Charge
Sec. 40 A.A. Neglect to the prejudice of good order and military discipline in that he at Wiston, Sussex, on the 3rd April, 1943, did operate W.D. vehicle CM 4230572 without authority thereby causing damage to the said vehicle to the extent of £19.2.9.

Second Charge
Sec. 15 (1) A.A. Absenting himself without leave in that he when in open arrest at Wiston, Sussex, absented himself without leave from 0500 hrs 5 April 1943, to 1050 hrs 13 April 1943. (Absent 8 days 5 hrs 50 mins).

Third Charge
Sec. 24(2) A.A. Losing by neglect public property in his charge in that he on 13 April 1943 was unable to account for Smith and Wesson revolver # 726758 which had been previously issued to him. (Value £5.12.0).

In the Field
20th May 1943.

J. S. Shin.
(W.P. Shin) Lieut.-Colonel
C.O. 3 Cdn Anti-Tank Regiment

To be tried by Field General Court Martial.

(F.A.S. Todd) Brigadier
C.R.A. 3 Cdn Div.

E. A. Scott Major

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held at in the field

on the 4th day of June 1943 by order of

Brigadier R. O. S. Todd Commanding C.R.A. 3 Cdn Div

dated the 2nd day of June 1943

President.

Major E. A. Scott 3 a/Tk. Regt. R.C.A.

Members.

Capt. J. R. Baker 4 Fd. A. Regt. R.C.A.

Lieut. W. M. Wicks 13 Fd. Regt. R.C.A.

, Judge Advocate.

Trial of* B85443 Gnr. Hostin S.D. 3 Cdn A Tk Regt R.C.A.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that Lt. R. H. Dann is not available to serve owing to illness. Lieut W. M. Wicks 13 Fd. Regt. R.C.A.

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.*

The accused is brought before the Court.

Prosecutor,† Lieut. W. T. Pimbis 3 Cdn. a/Tk. Regt. R.C.A.

Counsel‡ or defending officer† Lieut. J. E. Cameron 3 Cdn. a/Tk Regt R.C.A.

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked G signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

* I have satisfied myself that none of the officers detailed as members of the Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the 3rd charge before this Court is called. E. A. Scott Major

Mil. Form B. 271
1035—8-41 (3319)
H.Q. 1772-89-224

B

The President, members and ~~judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~ N.A.

Charge-Sheet

Instruction.
If the accused has elected to be tried under Army Act, sec. 48 (8) the fact should be here recorded.

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Answer. guilty sir.

Are ~~you~~ guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Answer. guilty sir.

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer. not guilty Sir

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer. N.A.

The accused having pleaded Guilty to 1st and 2nd charges, the provisions of Rule of Procedure 35 (B) are here complied with. N.A.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

Proceedings on Plea of Not Guilty

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. no, sir

~~The prosecutor makes an opening address (hands in a written address, which is read, marked ——, signed by the President, and attached to the proceedings).~~

The prosecutor declines to make an opening address.

The prosecutor proceeds to call witnesses.

First witness for prosecution. F 6169 L/Bdr Hargett L.A. 3 A/Tk. Regt RCA.

being duly sworn, is examined by the prosecutor.

Q1 What is your position in the unit?
A1. I am technical storeman of the 52 A/Tk Rgt RCA.
Q2. Do you recognise this form?
A2. Yes sir. I recognise this as the M.F.M. 500 of our Harbin. This is his signature which I obtained from him on the 26 March 43 in exchange 26158.

The Accused declines to cross examine the witness.

Second witness for prosecution. F 6097 B.Q.M.S. Curphey W.C., 3 A/Tk Regt RCA.

being duly sworn is examined by the prosecutor:

Q1 What was your position on 13 April 43?
A1 On 13 April 43 I was B.Q.M.S. of the 52 A/Tk Rgt RCA.
Q2 Did you have anything to do with the check on your Harbin revolver at the time he left?
A2 On his absence being reported, I recorded the last shot he slept and took his bolt to Rgt Q. stores but I

could not find the revolver. I then reported to Major Ross that the pistol was missing. The accused has not produced the pistol since his return and no trace has been found of it.

Q3 What is the value of the pistol?

A3. The vocabulary price on the 21 may 1943 was £5-12-0.

Q4 Has Gnr. Heslin offered to sign a cash debit voucher for the value of the pistol?

A4 No, sir.

The defending officer examines the accused:

Q5 Do you remember what time of day you searched the hut for gnr. Heslins kit?

A5 About 0900 hrs.

Q6 He left at 0500 hrs?

A6 yes sir.

Q7 So the kit was unattended from 0500 hrs to 0900 hrs.

A7 yes sir.

Q8 A mans personal belongings are customarily left on or near his bed. If any of these articles are lost or stolen is that regarded by Q.M. stores as a loss by neglect.

A8 Yes, sir. it is loss by neglect.

The accused wishes to make a statement on oath:

3 65403 Gnr. Heslin S.D. 3 A/Tk Regt. RCA being duly sworn states:

Sir at approximately 0400 hrs on the 5th of April when I absented myself from my quarters my kit was on my head and my pistol was then in the holster. That is the last time I saw the pistol.

The prosecutor declines to cross examine the accused.

This defending Officer.

A man must not a belonging as left on his bed - during all early hours the man revolver and holster will be left on his head. He should be certain that such articles will not be taken. He expects his kit & he safe there.

It would different if he left it hanging out on a peg but leaving it with his kit is customary.

If it is taken from there it is not his fault.

Granted he lost the revolver but it is not to my mind but it is not a serious offence or neglect. Among a

M
2.11. Sept 1917

Prosecutor Address by Prosecutor N.E.A. Jan 1922

There is no question that Fred Horton was armed with the hammer. We have his statement that he left it on his bed when he decided to break away. When going on bail a man takes with him his kit with him so he can get it over to some one else or put it into safe keeping

When a man goes A.W.L. the authorities act as promptly as possible to collect his kit and take it into safe keeping. It seems to me that if a man is going to go A.W.L. he should make some effort to avoid the arrest the authorities in their effort to safe guard his effects

by putting any valuable out of
sight hoop or other holder which can
be locked.

Anything short of that must
be construed as negligence.

The French ordered the court
cleared.

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused B85443 Gnr. Heslin S.D.
is found guilty of 3 47th Regt RCA
all the charges

*The summary ~~(or abstract)~~ of evidence is read, marked H signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Yes sir.

Answer. The accused in mitigation of punishment ~~says~~ [illegible].

~~He~~ hands in a written statement, which is read, marked I, signed by the President, and attached to the proceedings.]

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

D. H. Scott
Major

D

The prosecution is closed.

Defence

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes sir

Question. Do you intend to call any other witness in your defence?

Answer. No sir

Question. Is he a witness as to character only? *Answer.*

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[Hands in a written address which is read, marked signed by the President and attached to the proceedings.]

---

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

R.A. Instr

D2

Instruction.
The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

The accused, B85443 Gnr. Harlin S.D. 3 a/Tk Regt. R.C.A.
having been duly sworn states:
I at approximately 0400 hrs on the 8th of April, when
I absented myself from my quarters my kit was on
my bed and my pistol was stored in the kitbag. That
is the last time I saw the pistol.

The Prosecutor declines to cross-examine the witness.

The defending officer makes an address which is marked "M"
signed by the president and attached to the proceedings.

The prosecutor makes an address which is marked N
signed by the president and attached to the proceedings.

E. A. Scott

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused B85 443 Gnr. Heslin S.D. 3 AFK Regt RCA.

is found guilty of all the charges

*The summary ~~(or abstract)~~ of evidence is read, marked H, signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

yes sir.

Answer. The accused in mitigation of punishment ~~says~~ says:

or hands in a written statement, which is read, marked I, signed by the President, and attached to the proceedings.]

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

E. H. Scott
major

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer.

no sir.

Evidence as to character.

4 Jan 43

Courts - Martial

Don Weston

I E. M. Form

Plea in mitigation to charge I

May it please the court to take into consideration the following points when deliberating sentence. Though curiosity and enthusiasm for driving Don Weston thought that would do no harm in driving the jeep up the road and back again, purely to gain the experience of steering the type of vehicle. It was not with the intent of using the vehicle for pleasure for the jeep was driven only approx 300 yds from its parking place and on turning around to come back the unfortunate accident occurred. There was no attempt was made to ~~[illegible]~~ the camp grounds.

In conclusion I wish the court consider the reason for driving the vehicle and the short distance that it travelled.

Plea in mitigation Colonel H.

I 2
2. A. Inf. Bde
Major

Tom Hobbs joined the army at the age of seventeen and as he was too young for the field he was sent to C.H.R.A. for a year. When the accident which the jury accused Tom Hobbs on his youth and reading to the first natural impulse which is to avoid trouble and get away from it all he went A.W.O.L.

After a short absence the first impulse wore off he had time to think and realise that running away from trouble was no solution. He then voluntarily reported himself A.W.O.L. in Nottingham. Unsupported he went to Aldershot where he was taken into custody.

This is Tom Hobbs first court martial, crimes on his W.A.W.C. are not of a serious nature, and but mainly crimes originating from his youthful tendencies. I submit that Tom Hobbs realizes his mistakes and would strive to be a good soldier.

Would the court martial also take into consideration the length of time he has been kept under close arrest awaiting court martial.

18 in hospital.
34 in detention awaiting custody

E

Finding

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

is Guilty of the 3rd Charge

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Lieut W. T. Parkin 3 a/76 Sept R.E.A. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

I produce this statement

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked J, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes sir.

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

~~Cross-examined by the accused.~~ Nil

The accused declines to cross-examine this Witness

Question to the accused.

Do you wish to address the Court? *Answer.* No sir

The Court is closed for the consideration of the sentence.

C.A. 1st mod

F

Sentence

The Court sentence the accused 895443 Pte. Heslin S.W. Sentence.
3 a/Tk Regt. R.C.A.

to 90 days detention and stoppage of pay to the amount of £ 19.2s.9d for damage to W.D. vehicle and further stoppage of pay to the amount of £ 3.12s.0d to make good loss of position.

3rd ANTI-TANK REGIMENT R.C.A. C.A.(A)

In the case of B.85443 Gnr. Stephen Delbert Heslin, of the 52nd Bty, 3 A.Tk. Regt., R.C.A. C.A. (A)

List of Exhibits

"A" - Part II of Road Accident Report dated 8th April 43
Marked K and attached to proceedings dtd. 6th

"B" - M.F.C. 800 - Individual's Clothing and Equipment Statement of B.85443 Gnr. Stephen Delbert Heslin.

Marked L and attached to proceedings dtd.

EXHIBIT "A"

K C.A. Smith Major

DAMAGE AND INJURY REPORT NOTES

PART II · DAMAGE TO CANADIAN ARMY VEHICLE

Vehicle No. C M 423057 2 Make Willys Type S cwt.

Particulars of damage

Frame	$ 15:0:0	Straighten bumper, head & left front fender.
Shock absorber	$ 0:14:9	
# 1 & 2 leaf left front spring	$ 0:14:0	

Estimated cost of repairs: $ 19:2:9

Labour (No. of hours) 15 hrs @ 3 $

Materials $ 16:8:9

TOTAL $ 19:2:9

Overhead

Any special remarks.

G.H.Q. Transp Dept

Date 5 April 43 (Signature) C.B. Barrett Lt

(Workshop, Unit or Dept.) [illegible]

INDIVIDUAL'S CLOTHING AND EQUIPMENT STATEMENT

Regtl. No. B85443 Rank Lnr Name Wilson L.D. Date of Attestation

DESCRIPTION OF ARTICLES	CLOTHING Number	Date of Issue	Soldier's Initials	Number	Date of Issue	Soldier's Initials	Number	Date of Issue	Soldier's Initials	Number	Date of Issue	Soldier's Initials	Number	Date of Issue	Soldier's Initials
Anklets, Web, prs.															
Battle Dress—															
Blouses, serge															
Trousers, ~~serge~~ M.C.	1	26/3/43													
Belts, waist, leather, brown															
Boots, ~~ankle~~, prs. D.R.	1	26/1/43													
" ankle, felt, prs.															
" Lumberman's, rubber, prs.															
Breeches, D.C., or trousers, S.D., prs.															
Caps															
Cloak or greatcoat, drab															
Drawers, cotton, short, prs.															
" woollen, prs.															
Gloves, ~~woollen, khaki~~, prs. Nil.	1	26/3/43													
Helmets, ~~tin~~ Crash	1	26/3/43													
Jackets ~~battle dress~~ M.C.	1	26/3/43													
Jackets, khaki, drill															
" sweater															
Mitts, pullover, leather, prs.															
Overalls—Blouses, denim															
" Trousers, denim, prs.															
Overshoes or rubbers, prs.															
Pantaloons or trousers, service, prs.															
Puttees, prs.															
Shirts, flannel, khaki															
" khaki, cotton, with short sleeves															
" service															
" under, cotton															
" woollen															
Shoes, canvas, prs.															
Socks, prs.															
Trousers, khaki, drill, prs.															
" khaki, drill, short, prs.															
Goggles.	1	26/3/43													
Jerkins leather															
Leggings.	1	26/3/43													

DESCRIPTION OF ARTICLES	NECESSARIES Number	Date of Issue	Soldier's Initials
Bags, kit			
Blacking, tins			
Bootdressing, tins			
Bootlaces, prs.			
Braces, prs.			
Brasses, button			
Brushes, boot, blacking			
" boot, polishing			
" button			
" cloth			
" hair			
" shaving			
" tooth			
Caps, comforter			
Combs			
Discs, identity, with cord			
Dressings, first, field			
Forks			
Holdalls			
Housewives			
Knives, clasp, and lanyard			
Knives, table			
Razors, safety			
" blades			
Sponges, pipeclay			
Spoons, table			
Towels, hand			
Badges, arm			
Badges, cap			
Badges, shoulder or worsted, prs.			
Buttons, G.S., large			
" " small			

Free Issues only will be accounted for on this form.

Signature of Soldier [signature] Signature of Quartermaster

M.F.C. 800
40638—10-40 (7366)
H.Q. 1772—39-1543

CERTIFICATE TO BE SIGNED BY ACCOUNTING OFFICER ON TRANSFER OR ATTACHMENT OF SOLDIER

Certified that the record detailed on this form is correct

Certified that the record detailed on this form has been verified with the articles in possession of the soldier

On transfer or attachment to this unit	Date	Signature of Accounting Officer	On transfer or attachment to undermentioned Unit	Date	Signature of Accounting Officer

EQUIPMENT (a)	Date of Issue	Date of Issue	Date of Issue	Date of Issue	ARMS AND MISCELLANEOUS (a)	Date of Issue	Date of Issue	Date of Issue	Date of Issue
Attachments, base					Bayonets and Scabbards				
Bags, ration					Bottles, oil				
Bandages					Pistol 9mm 796758	1 25/3/43			
Belts, web					Pullthroughs				
Bottles, water					Rifles				
Braces					Swords and Scabbards				
Carriers, cartridge									
" entrenching tools									
Cases, pistol									
Covers, towels					Blankets				
Frogs, bayonet					Sheets, ground				
Haversacks									
Helmets, steel									
Lanyards, pistol	1 25/3/43								
Packs									
Pouches, ammunition	1 25/3/43								
Pouches, bomb									
Straps, rifle									
Sticks, jack, ski									
Straps, shoulder									
" web, supporting									
Ties, cord									

Transferred

Attached

(a) Arms and equipment will not be transferred with the soldier unless authorized by the D.O.C.

On return of any article the **Q.M.** will initial in the date column opposite the article returned and line through in red ink.

Signature of Soldier [signature]

Signature of Soldier .....

Signature of Soldier .....

Signature of Soldier .....

Signature of Soldier [signature]

Signature of Soldier .....

Signature of Soldier .....

Signature of Soldier .....

EXHIBIT "17"

K E.H. Scott

DAMAGE AND INJURY REPORT NOTES

PART II - DAMAGE TO CANADIAN ARMY VEHICLE

Vehicle No. C M 423657 2 Make Willys Type S. cwt.

Particulars of damage

Frame	£ 15:0:0	Straighten bumper, hood & left front fender.
Shock absorber	£ 0:14:0	
# 1 & 2 leaf left front spring	£ 0:14:0	

Estimated cost of repairs:	Labour (No. of hours)	Materials	TOTAL	Overhead
£ 19:2:9	18 hrs @ 3s	£ 16:8:9	£ 19:2:9	

Any special remarks.

G.R.S. Henry Dept

Date 5 April 43 (Signature) C.B. Barnett Lt

(Workshop, Unit or Dep[illegible]

PART V—INJURY TO PERSONS

(NOTE:-The reporting Medical Officer should state whether or not he has actually examined the injured person, or persons. If he has not, the source of his information should be given.)

Name MEIN Sgt N/A Age N/A Occupation N/A

Address N/A

If under age 21, Name of Parent N/A

Address N/A

Particulars of injury; history of the case since the accident and present condition:

N/A

Period of actual or anticipated absence from work N/A

Whether permanent disability is likely to result and, if so, to what extent N/A

Any special remarks

N/A

Hospital, if any N/A

Date 5 Mar. 43 Signature of M.O. [illegible]

Summary of Evidence in the case of B.85443 Gnr Stephen Delbert Heslin of the 52nd Bty., 3 Cdn A/Tk. Regt.

The Commanding Officer (Lt-Col. J.P. Phin) of the 3rd Cdn. Anti-Tank Regt. directs that all evidence shall be taken under oath.

First Witness for the Prosecution: Major J.V. Rose of the 52nd Bty., 3 A/Tk Regt. duly sworn states:-

On the afternoon of 3 April 1943 Gnr. Heslin was brought before me on a trivial offence. I sentenced him to C.B. and ordered that he would clean a set of tire chains by hand. At about 2000 hrs, after hearing a report of an accident to my 5-cwt, I carried out an investigation. I found the vehicle at the back of the Orderly Room in a damaged condition; obviously the result of a collision. Further investigation disclosed the spot where the vehicle had collided with a stone wall about 100 yards to the South of the Orderly Room. Closer examination disclosed evidence of chain marks between the wheel tracks, these marks being caused by the dragging of chains behind the vehicle. I immediately returned to the Orderly Room and sent for Gnrs. Crosby, Heslin and Winters and, after questioning, Crosby and Heslin admitted having used the vehicle for the purpose of dragging tire chains. I placed them under open arrest and ordered them to return to their quarters. I had not given permission to either of these men to use the vehicle, and normally this vehicle is only used on my authority.

J.V. Rose Maj. R.C.A.

The accused declines to cross-examine the witness. R.P. 4 (E) has been complied with.

Second Witness for the Prosecution: F 6144 Bdr Hiltz, H.E. of the 52nd Bty., 3 A/Tk. Regt. duly sworn states:-

On 3rd April 1943 on my way to the billets, I saw Gnr Heslin and Gnr Crosby sitting in a Willy's 5-cwt. Gnr Heslin was behind the wheel and Gnr Crosby was in the seat beside him. The vehicle was stationary. I had walked on about 60 feet when I heard the vehicle start up and then hit the wall. I looked back and saw Gnr Crosby sprawled in the middle of the road. Gnr Heslin was just getting out of the vehicle from behind the wheel.

H.E. Hiltz - Bdr.

The accused declines to cross-examine the witness. R.P. 4 (E) has been complied with.

3rd ANTI-TANK REGIMENT, R.C.A., C.A. (A)

Summary of Evidence in the case of B.85443 Gnr Stephen Delbert Heslin of the 52nd Bty., 3 Cdn A/Tk. Regt.

The Commanding Officer (Lt.-Col. J.P. Phin) of the 3rd Cdn Anti-Tank Regt. directs that all evidence shall be taken under oath:-

Third Witness for the Prosecution: C 16555 Sgt Barrett, E., of No 35 L.A.D., R.C.O.C., duly sworn states:-

The estimate ~~xx~~ (Exhibit A) of damage to the Willy's 8-cwt No. CM 4230872, dated 5 April 1943, appearing in Part II of the road accident report made out by Gnr Heslin is a true statement of the damage to said vehicle as estimated be me on 5 April 1943. The signatures on it is my signature.

E. Barrett Sgt

The accused declines to cross-examine the witness. R.P. 4 (E) has been complied with.

Fourth Witness for the Prosecution: F 6051 Sgt Leblanc, P.L., of the 52nd Bty., 3 A/Tk Regt duly sworn states:-

I was orderly sergt from 4th April to 11th April, 1943. I found that the accused was absent at 0500 hrs, 5 April 1943, I made a check of the whole Battery area & and was unable to find him. I reported this to the Orderly Room. Everyday for the rest of my tour of duty, until 1800 hrs 11th April, I checked up and found that Gnr Heslin was still absent.

P.L. LeBlanc S/Sgt

The accused declines to cross-examine the witness. R.P. 4 (E) has been complied with.

Fifth Witness for the Prosecution: F 6052 Sgt Hallowell, C.E., of the 52nd Bty., 3 A/Tk Regt duly sworn states:-

When I took over my tour of duty as Orderly Sergt. at 1800 hrs 11th April, 1943, Gnr Heslin was reported as absent. I checked that evening at 2300 hrs and on the next day at 0600 hrs and at 2300 hrs, and at 0600 hrs, 13 April, and found him to be still absent. At approximately 1050 hrs, 13th April 1943, I placed Gnr Heslin under close arrest at the R.A.P. in Steyning, where he had reported. I returned Gnr. Heslin to the Unit Guard Room.

C.E. Hallowell Sgt

The accused declines to cross-examine the witness. R.P. 4 (e) has been complied with.

Summary of Evidence in the case of B.85443 Gnr. Stephen Delbert Heslin of the 52nd Bty., 3 A/Tk Regt.

Dealing with 3rd Charge, Plea "Not Guilty" 22/.

The Commanding Officer (Lt-Col. J.P. Phin) of the 3rd Cdn Anti-Tank Regt. directs that all evidence shall be taken under oath:-

Sixth Witness for the Prosecution: F 6169 L/Bdr Hergett, L.A., of the 52nd Bty., 3 A/Tk Regt duly sworn states:-

On 26th March 1943, S & W Pistol #726758 was issued to Gnr Heslin by me from 52nd Battery Stores. His signature for it is shown on his MFM 800. (Exhibit B)attached.

L.A. Hergett L/Bdr.

The accused declines to cross-examine the witness. R.P. 4 (e) has been complied with.

Seventh Witness for the Prosecution: F 6097 R.Q.M.S. Curphey, W.C., 3rd A/Tk Regt. duly sworn states:-

Before becoming R.Q.M.S. on 2 May 1943 I was B.Q.M.S. of the 52nd Bty. A Smith & Wesson Service Pistol #726758 was shown on our records to be on charge to Gnr Heslin on 26 March 1943. On being informed that Gnr Heslin was absent I checked his sleeping hut and gathered up his kit, but could find no trace of the pistol. I reported this to Major Rose. When Gnr Heslin returned I asked him about the pistol. He told me that he had left it on his bed, but he could not produce it. Since then all our pistols have been checked and turned into R.H.Q. with the exception of officers' pistols, and pistol #726758 is still missing. The vocabulary price of this pistol is $25.03 ($5.12.0).

W C Curphey R/QMS

The accused declines to cross-examine the witness. R.P. 4 (e) has been complied with.

The accused declines to make any statement. R.P. 4(e) has been complied with.

(W.T. Purkis) Lieut. RCA

J. P. A. [illegible]

M.P.B. 355
40/P & E/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B 85443	Gnr	Heslin Stephen Delbert	3rd Cdn Anti-Tank Regt.

1. The following is a fair and true summary of the entries in the ~~Service and Cheque~~ Regimental ~~and Squadron, Battery~~ Conduct sheets ~~conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~or before a~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For A.W.L. A.A. Sec 15(1)	3 times	5 times
For Absence from parade 15- 1	times	1 times
For Con. to Prejud. 40 AA	3 times	3 times
For Disob. lawful comd AA 9-1	times	1 times

Number of instances of gallantry or distinguished conduct Nil.

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence of [illegible] to [illegible] day of [illegible].~~

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and 52 days in military custody, making a total of 52 days in custody, of which 18 days were spent in hospital.

5. The present age of the accused according to his record of service is 19 years 3 months ~~attestation paper is~~

6. The date of his commission specified in his record of service is attestation / attestation paper N/A

7. The service which the accused is allowed to reckon towards discharge is 1 yr 11 mons 24 days 1yr 11 mons

8. The accused is entitled to reckon 24 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force / military decoration, or air force / military reward (or is in possession of or entitled to). State any air force / military decoration or reward. N/A

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force
.....dated....., and in his regiment (or corps), the rank of unit
.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

In the rank of.....Date of promotion.
In the rank of.....years.
In the rank of.....years.
In the rank of.....years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number.....Rank.....
Name.....Regiment
of.....

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21st day of May 1943 (T.W.Gilmour) Capt. Adjt.,
Officer i/c Rest'l Documents 3 Cdn A.Tk.Regt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

278 B. Ste Hunter Rd.
279 B. " Curran Pl.

H-1699 Pte. Hester G.D.
B-76729 Pte. Curran E.J.
No.1 Cdn (MG) Hldg Unit

Army Form A.3.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 19th day of June, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS,CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial;

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

President.

Rank.	Name.	Regiment.
Major	F.F. Northrup E.D.	No.2 Cdn Inf Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	T.S.A. Sutherland	No.1 Cdn (MG) Hldg Unit
Lieutenant	A. M. Mackenzie	No.1 Cdn Inf Hldg Unit
Lieutenant	D.F. Newson	No.3 Cdn Inf Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed L. F. [illegible], Brigadier

Commanding Cdn Base Units,Cdn Army.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
	are charged jointly			
U-1599 PTE. HESTER, G.D. B-76729 PTE. CURRAN, K.J. (Tor Scot reinforcements) No.1 Cdn(MG) Hldg Unit.	First Charge A.A. sec 11 or Alternative Second Charge A?A. sec 40 Third Charge A.A. sec 11 or Alternative Fourth Charge A.A. sec 40 Fifth Charge A.A. sec 40 See Charge Sheet attached.	Guilty. Guilty Not Guilty Not Guilty Guilty Guilty Not Guilty Not Guilty Not Guilty, Guilty Special finding as to 5th charge. GUILTY, except that damages were to extent of $22.90 and not $15.00 as charged. To undergo detention for ninety (90) days, and to be put under stoppages of pay until they have made good the sum of $22.90 in respect of damage to W.D.vehicle CM4202003. (Each to pay $11.45)	

• Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No.

(Signed) L. Thorp. Brigadier (Signed) H. Hontrup Mayn.
Commanding Cdn Base Units, Cdn Army. *President.*
Convening Officer (e)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 25th day of June 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~) Sentence read over to accd.
*(4. The officers under instruction)
were duly sworn.

• Omit if not applicable.

Signed this 25th day of June 1941.

H. Hontrup Mayn.
President of the Court Martial.

C. Certificate in case of death sentence.

• See footnote (*b*) on page 762 M.M.L. 1929.

~~I certify that~~ the terms of *A.C.I. 370 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

• To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison until further orders.~~*

Signed this 10th day of July 1941

L. Thorp Maj Gen
Confirming Officer. Commanding

Promulgated and extracts taken in the case of U 1599 Pte. Hester G.D.

(*a*) (Dated) 15th July, 41 (Signed) R.E. Curran Major
No. 1 (M.G.) Holding Unit C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B76729 Pte. Curran, K.J. of the Toronto Scottish Regiment, 1 Cdn. M.G. Holding Unit

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.	*Since Enlistment.
For A.A. Sec. 40	Two times	Two times.
For A.A. Sec. 15(1)	One times	One times.
For A.A. Sec. 15(2)	Three times	Three times.
For A.A. Sec. 24(4)	One times	One times.

[redacted]

[redacted]

[redacted]

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced to the Court with this statement but are not to be assessed to the proceedings.

†See Para. 664, K.R. 1955.

*The numbers herein stated should correspond with the maintenance being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and totalled.

XTC 4864/1054 50,000 2.40 W. S. Ltd. 51—8904

Description of Court by which tried, or name of Officer disposing of the charge or dispensing with Trial	Date and place of Trial or summary award or Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Second day of June, 1941

A.G. Donaldson Capt
Officer i/c Records,
1 Cdn. M.G. Holding Unit, C.A.J.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for
beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges

for nil days in Civil Custody,

and 27 days in Military Custody.

Total days.

Of which days were spent in hospital.

5. The present age of the accused according to his attestation paper is 20

6. The date of his attestation specified in his attestation paper is 27th May 1940

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name **B76729 Pte. Curran, Kenneth Jackson** of the **Toronto Scottish Regiment, 1 Cdn. M.G. Holding Unit**

Note.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

Description of Court by which tried, or name of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
		-- N I L --		

(Continued overleaf)

Certified copy.

No. B76729 Name Curran, K.J. Sqn., Battery, or Company Corps T.S.R. (MG) Date of enlistment 27-5-40 G.C. Badges Service or Proficiency Pay Character

M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	5-12-40	Pte.		A.A. Sec. 40. Conduct to the prejudice of good order & military discipline etc "Neglecting to get out of bed when ordered to do so.	L/Cpl. Laughton Pte Brady.	5 days C.B.	6-12-40	Capt. Ellis.	
Bordon	23-12-40	"		A.A. Sec. 15(1). AWL from 2359 hrs 23-12-40 until 0330 hrs 28-12-40 Time absent: 4 days, 3 hrs, 31 min.	Sgt. D. Jack	Fprf £7 days pay	30-12-40	Lt.Col. Tyner	Forf. 5 days pay FR&I 149 (1) a.
Bordon	8-1-41.	"		A.A. Sec. 24(4). Causing wilful damage to W.D. vehicle, i.e. pulling wallboards from a wooden hut.	CSM Higgins Sgt. Hartwell " Brechin (C.M.P.)	3 days C.B.	10-1-41	Lieut G. Hall	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if awarded subsequently with brief	By whom awarded	Remarks
Bordon	20-1-41.	Pte		A.A. Sec. 15(2). Failing to appear at the place of parade appointed by his C.O. "Absent from Defaulters Parade"	Sgt. Chapman	3 days C.B.	21-1-41	Lieut. G. Hall	
Bordon	2-2-41.	"		A.A. Sec. 15(2). Failing to appear at place of parade appointed by his C.O. "Absent from Church Parade"	C.S.M. Lisney	168 hrs Detn	3-2-41	Major Smart	
"	3-2-41.	"		A.A. Sec 15(2). Absent from place ~~of~~ parade appointed by his C.O. (Absent from Coy. Parade)					
Bordon	6-3-41.	"		A.A. Sec. 40. Conduct to the prejudice of good order & military discipline etc "Improper possession of property belonging to a comrade"	A/Cpl. Laughton Cpl. Whalen	28 days Detn.	8-3-41	Lt.Col. Tyner	

CERTIFIED COPY

Officer i/c Records,
1 Cdn. M.G. Holding Unit. C.A.

| | | |

Name	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	22-2-41.	Pte.		A.A. Sec. 15(1). AWL from 2200 hrs 22-2-41 until 1200 hrs 23-2-41 Time absent 14 hrs. A.A. Sec. 15(3) Being found in a place prohibited by standing orders, without a pass)	Sgt. H.A. Barrett C.S.M. Farrell.	27 days Detn	24-2-41	Major C.A. Baker	Forf. 1 days pay FR&I 149 (1) a.
Bordon	15-4-41.	Pte.		A.A. Sec. 15(2). Absenting himself from night march	Sgt. H.A. Barrett	7 days C.B.	16-4-41	Capt. J.G. Chapman	
Bordon	25-4-41.	Pte.		A.A. Sec. 15(1). AWL from 2200 hrs 25-4-41 Until 1500 hrs 5-5-41 Time absent: 9 days, 17 hrs.	Lieut. C.J. Carter Cpl. Browne	14 days Detn.	6-5-41	Major W.C. McQuade	Forf. 10 days pay FR&I 149 (1) a.

CERTIFIED TRUE COPY

R.E. Dillenbeck Lt.
Officer i/c Records,
1 Cdn. M.G. Holding Unit. C.A.

Certified Copy.

No. U 1599 Name HESTER, G.D. Sqn., Battery, or Company | Corps T.S.R.(MG) | Date of enlistment 14-10-40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 127)

Date of last entry in Company Conduct Sheet | No. and date of last trunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	18-12-40.	Pte		A.A. Sec. 15(1). AWL from 0830 hrs 18-12-40 until 2300 hrs 19-12-40 Time absent:38 hrs, 30 mins.	Provost Corps	Admonished	21-12-40	Major Davidson	Forf.2 days pay FR&I 149 (1) a.
Bordon	25-12-40	Pte		A.A. Sec. 15(1). AWL from 1530 hrs 25-12-40 until 2200 hrs 1-1-41 Time absent:7 days,6 hrs, 30 min.	Cpl. H.A. Barrett.	Forf. 24 days pay	3-1-41	Lt.Col. Carpenter	Forf. 8 days pay FR&I 149 (1) a.
Bordon,	14-2-41			A.A. Sec. 15(1). AWL from 2200 hrs 14-2-41 until 1130 hrs 18-2-41 Time absent 3 dys, 13 hrs 30 min	Sgt. H.A. Barrett	Forf. 12 days pay	19-2-41	Lt.Col. Carpenter	Forf. 4 days pay FR&I 149 (1) a.

(P.T.O.)

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Second day of JUNE 1941.

R.S. Truscott Lt

Officer i/c Records,
1 Cdn. M.G. Holding Unit, C.A.(O).

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

U-1599 Pte. HESTER, G.D. of the TORONTO SCOTTISH REGIMENT,
1 CDN. M.G. HOLDING UNIT, C.A.(O).

I. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets to be produced to Court with this statement but are not to be inserted in the proceedings.

See Para. 664, K.R. 1926.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, precedence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Interpretation.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.	*Since Enlistment.
For A.A. Sec. 15 (1).	Five times	Five times.
For A.A. Sec. 15 (2).	One times	One times.
For A.A. Sec. 15 (3).	One times	One times.
For	times	times.

[redacted]

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

W. S. Ltd. 11—9004

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for
beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges

for nil days in Civil Custody,

and 27 days in Military Custody. close arrest

Total days.

Of which days were spent in hospital.

5. The present age of the accused according to his attestation paper is 20

6. The date of his attestation specified in his attestation paper is 14th Oct. 1940.

[redacted]

[redacted]

[redacted]

CHARGE SHEET

The accused, No. G-1599, Pte. Hester G.D. and No. E-76729, Pte. Curran K.J. of the Toronto Scottish Regiment (MG) on the strength of the No. 1 Canadian Machine Gun Holding Unit, C.A.(O), an active unit of the Canadian Army (Overseas), as reinforcements for their regiments, as soldiers of the Canadian Army (Overseas), are charged with:

First Charge Sec.11 Army Act — WHEN ON ACTIVE SERVICE, neglecting to obey unit standing orders,
in that they
at Bordon, Hants, on the 28th day of May 1941, improperly used a military vehicle, # CM 4202003 for non-military purposes without having received the express permission of their Commanding Officer, contrary to standing order No. 15 (a) of No. 1 Canadian Machine Gun Holding Unit, C.A.(O).

or in the alternative

Second Charge Sec.40 Army Act — WHEN ON ACTIVE SERVICE, conduct to the prejudice of good order and military discipline
in that they
at Bordon, Hants, on the 28th day of May 1941, improperly used a military vehicle, # CM 4202003 for private purposes.

Third Charge Sec.11 Army Act — WHEN ON ACTIVE SERVICE, neglecting to obey unit standing orders,
in that they
at Bordon, Hants, on the 28th day of May 1941, improperly used a military vehicle, # CZ 4204535 for non-military purposes without having received the express permission of their Commanding Officer, contrary to standing order No. 15 (a) of No. 1 Canadian Machine Gun Holding Unit, C.A.(O).

or in the alternative

Fourth Charge Sec.40 Army Act — WHEN ON ACTIVE SERVICE, conduct to the prejudice of good order and military discipline,
in that they
at Bordon, Hants, on the 28th day of May 1941, improperly used a military vehicle, # CZ 4204535 for private purposes.

Fifth Charge Sec.40 Army Act — WHEN ON ACTIVE SERVICE, neglect to the prejudice of good order and military discipline,
in that they
at Bordon, Hants, on the 28th day of May, 1941, negligently drove Military vehicles # CZ 4204535 and # CM 4202003 thereby causing damage to the said vehicle # CM 4202003 to the extent of $35.00

(F.I. Carpenter), Lt.-Col.
O.C. 1 Cdn. (MG) Holding Unit,
C.A.(O)

BORDON HANTS
14 Jun 41

To be tried by Field General Court Martial

..... Brigadier
Commanding Cdn Base Units.

Bordon, Hants
This 14th day of June 41.

MEDICAL OFFICER'S CERTIFICATE.

I CERTIFY that No. U-1599 Pte. Hanter, G.D. 1CMGHU Regiment

is* FIT to undergo trial by Court-Martial.

Signature of the Medical Officer H.R.L.Dani Capt. R.C.A.M.C. No. 1 CMGHU

* Insert "fit" or "unfit."

(a) Here insert name of :—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence [R.P. 19 (B) (iii)].

(b) To be filled in if there has been a Court of Inquiry respecting any matters connected with the charges ; otherwise to be struck out [R.P. 19 (B) (iii)].

(c) To be filled in by the Commanding Officer.

(d) Any items not applicable to be struck out.

(e) One copy to be sent to the President ; one copy to be filed with the application for trial.

(f) Original summary of evidence to be sent to the President.

(g) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.

(h) 5 and 8 to be sent to the President.

If the accused has elected to be tried under A.A. 46 (8) the fact should be recorded at the top of this form.

(113692) W.32663/918 20,000 3/39 A.& E.W.Ltd. Gp.A/8 Forms/3116/16
(113486) W.8475/6/761 120,000 1/40 " " "

MEDICAL OFFICER'S CERTIFICATE.

I CERTIFY that No. D-76729, Pte. Curran, K.J. 1CMGHU Regiment

is* FIT to undergo trial by Court-Martial.

Signature of the Medical Officer H.K.L. Davis Capt.
R.C.A.M.C. - No. 1 CMGHU

* Insert "fit" or "unfit."

(a) Here insert name of :—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence (R.P. 19 (B) (iii)).

(b) To be filled in if there has been a Court of Inquiry respecting any matters connected with the charges ; otherwise to be struck out (R.P. 19 (B) (iii)).

(c) To be filled in by the Commanding Officer.

(d) Any items not applicable to be struck out.

(e) One copy to be sent to the President ; one copy to be filed with the application for trial.

(f) Original summary of evidence to be sent to the President.

(g) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.

(h) 5 and 8 to be sent to the President.

If the accused has elected to be tried under A.A. 46 (8) the fact should be recorded at the top of this form.

111923] W.L.23035/316 20,000 8/39 A.& E.W.Ltd. Gp.498 Forms/3116/16
119429] W.L43720/761 120,000 1/40 " "

U-1599, Pte. HESTER G.D. and B-76729, Pte. CURRAN K.J. of The Toronto Scottish Regiment (MG), of No. 1 Cdn M.G.H.U., tried by Field General Court Martial at BORDON, Hants. on the 25th day of June, 1941.

The order convening the Court, the charge sheet, summary of evidence and medical certificate are laid before the Court.

Prosecutor:	Lieut. R.R. MacGillivray,	No. 1 Cdn M.G.H.U.
Defending Officer:	Lieut. A.D. Anderson,	No. 1 Cdn M.G.H.U.

At 1000 hrs the trial commences.

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 BY THE COURT: Do you object to be tried by me as President or by any of the officers whose names you have heard read over?
A1 ACCUSED HESTER: No, sir.
A1 ACCUSED CURRAN: No, sir.

The President and members are duly sworn.

Q2 BY THE COURT: Do you object to B66944, Sgt. T. Pyburn, R.Regt.C., Cdn Base Units, acting as shorthand writer?
A2 ACCUSED HESTER: No, sir.
A2 ACCUSED CURRAN: No, sir.

The shorthand writer is duly sworn.

The charge sheet is signed by the President and annexed to the proceedings.

The accused are arraigned upon each charge in the above mentioned charge sheet.

Q3 BY THE COURT: Pte. Hester, are you guilty or not guilty of the first charge against you, which you have heard read?
A3 ACCUSED HESTER: Guilty, sir.
Q4 And I presume not guilty of the alternative charge, is that right?
A4 Yes, not guilty to the alternative charge, sir.
Q5 In other words, you are pleading guilty to the charge laid under sec 11 and not guilty to the charge laid under sec 40?
A5 Yes, sir.
Q6 Pte. Hester, are you guilty or not guilty of the third charge against you, which you have heard read?
A6 Guilty, sir.
Q7 And to the alternative or fourth charge, are you guilty or not guilty?
A7 Not guilty, sir.
Q8 Pte. Hester, are you guilty or not guilty of the fifth charge against you, which you have heard read?
A8 Not guilty, sir.
DEFENDING OFFICER: Sir, both the accused plead not guilty to that fifth charge, causing damage to a vehicle to the extent of $35.00, as read, but I understand application will be made by the prosecutor to have the amount in that charge reduced.
THE PROSECUTOR: I will submit that in evidence.
THE COURT: In other words, the plea is Guilty, with the exception of the amount of damage?
DEFENDING OFFICER: Yes, sir.
THE PROSECUTOR: It will be necessary, sir, to enter that as a plea of Not Guilty.

Q9 BY THE COURT: Pte. Curran, you have heard the charges read over. Are you guilty or not guilty of the first charge against you, which you have heard read?
A9 ACCUSED CURRAN: Guilty, sir.
Q10 Are you guilty or not guilty of the second or alternative charge against you, which you have heard read over?
A10 Not guilty, sir.
Q11 Are you guilty or not guilty of the third charge against you which you have heard read over?
A11 Guilty, sir.
Q12 Are you guilty or not guilty of the fourth or alternative charge against you which you have heard read over?
A12 Not guilty, sir.
Q13 Pte. Curran, are you guilty or not guilty of the fifth charge against you, which you have heard read over?
A13 Well, guilty as to the charge, sir, but not guilty as to the amount.

THE PROSECUTOR: As the accused men have pleaded guilty to the more serious charges, I would ask leave to withdraw the second and fourth charges in each case.

R.P.35(B) complied with in connection with the first and third charges.

Q14 THE COURT: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A14 ACCUSED HESTER: No, sir.
A14 ACCUSED CURRAN: No, sir.
Q15 On the fifth charge, do you wish to be tried on this charge together or separately?
A15 ACCUSED HESTER: Together, sir.
A15 ACCUSED CURRAN: Together, sir.

THE PROSECUTOR: Since both the accused have pleaded guilty to the fifth charge, with the exception they have taken to the amount of damage, there will be no need of proving the facts of the case beyond the facts of the damage. To do that I would like to be sworn myself and introduce some documents.

LIEUT. R.R. MacGILLIVRAY, No. 1 Cdn Machine Gun Holding Unit, the prosecutor, being duly sworn, states:-

I hereby produce a document certified by Capt. R.M. Noble, who is in command of the Repair Section, No. 2 Detachment, R.C.O.C., Bordon, in which he shows damage to the vehicle, CM-4202003 totalled $22.90. This includes the price of the ornament of the front centre 69¢, handle hood locking 32¢, limb, hood hinge and bracket 26¢, and $20.60 for time, and $1.03 representing 5% for overhead. I have compared this with the certified true copies of the records in the Ordnance Workshop and find it to be a true extract of the same. I will also attach to it these certified true copies of the original.
DEFENDING OFFICER: I admit the correctness of those figures, and have no objection to the documents referred to being submitted as evidence before the Court without further proof.

Documents signed by the President and annexed to the proceedings.

THE COURT: Do the accused men apply to give evidence themselves as witnesses?
DEFENDING OFFICER: No, sir.
THE COURT: Do you intend to call any other witnesses in your defence?
DEFENDING OFFICER: No, sir.

THE COURT: Are you putting forward any character witnesses?
DEFENDING OFFICER: None other than what will be supplied by the prosecutor, sir.
THE COURT: Have you anything whatever to say in your defence?
DEFENDING OFFICER: Nothing whatever, sir, only a statement I wish to make later on in mitigation of sentence.

THE COURT IS CLOSED FOR CONSIDERATION OF THE FINDING.

The Court being re-opened, the accused are again brought before it.

LIEUT. R.R. MacGILLIVRAY, No. 1 Canadian Machine Gun Holding Unit, being previously sworn, states:-

I produce herewith AFB296, Statements as to Character and Particulars of Service of Accused, also certified copies of MFM6.

The above statements are read, signed by the President, and annexed to the proceedings.

Q16 BY THE COURT: Are the accused the persons named in the statements which you have read?
A16 Yes, sir.
Q17 Have you compared the contents of the above statements with the regimental books?
A17 Yes, sir.
Q18 Are they true extracts from the regimental books, and are the statements of entries in the conduct sheets a fair and true summary of those entries?
A18 Yes, sir.

The defending officer declines to cross-examine this witness.

THE COURT: Do you wish to address the Court?

DEFENDING OFFICER: May it please the Court:- I would like to make a statement in mitigation of sentence. These two privates had been on duty at the M.T. car park. They had been given permission by the officer of the guard to absent themselves from the guard house, and they had noticed there was a sedan there not immobilized but with the keys attached to the ignition. For some unknown reason they made up their minds to go for a little joy-ride. Unfortunately for them, the vehicle had clutch trouble, but rather than leave the vehicle out on the road for someone else to get hold of and have the guard get into trouble, as they might quite well have done, they proceeded back to the car park to obtain another vehicle to bring the sedan back to where it belonged. They both realize the seriousness of this situation. I have examined their MFM6's and do not see anything to indicate the hardened type of criminal at all. They are both 20 years of age, and I think we can lay this offence to their extreme youth, thoughtlessness and carelessness. They have undergone 27 days of detention whilst awaiting trial by Court Martial; they have had 27 days in which to think matters over, and I think it has brought home to them the seriousness of not soldiering. They both assure me that whatever punishment this Court might see fit to impose upon them, they will still continue to carry on soldiering. Pte. Curran is a qualified signaller with nine months experience and was just about ready to go to his unit when this unfortunate affair took place. I would appreciate it if the Court would take those points into consideration before passing sentence on the accused.

THE COURT IS CLOSED FOR CONSIDERATION OF THE SENTENCE.

Summary of Evidence
in the case of

U1599 Pte. Hunter, G.D. [T.S.R.(M.G.)], No. 1 Cdn. M.G. Holding Unit, C.A.(O).

On instructions from the Commanding Officer the following evidence is given under oath.

First Witness for the Prosecution: Capt. R.S. Bruce # 2 Det. R.C.O.C., M.T. Depot. being sworn states

I am Capt. R.S. Bruce # 2 Det. R.C.O.C., M.T. Depot. At approximately 2030 hrs May 28th 41 I was returning from the Officers Club on the road which runs through the Vehicle Park of # 2 Det. R.C.O.C., when I saw a truck towing a sedan into the Park. I investigated and found that the accused, Pte Hunter, was at the wheel of the sedan CM4202003. After questioning he admitted being in improper possession of the vehicle. He and Pte Curran who was driving the truck C2 4204535, told me that they had moved the sedan in the morning from its proper place in the park to where they could more conveniently remove it and that having taken it away they had had clutch trouble and used the truck to haul it back.

I immediately contacted the commander of the guard and had Pte Hunter put in close arrest. The only people who are authorized to drive the vehicles which are in the park are personnel of the # 2 Det. R.C.O.C. in possession of a pass to the park. Both the sedan CM4202003 and the truck C2 4204535 were in the park and no authority had been issued for their removal.

R.S. Bruce Capt.

The accused declined to question the above witness

Second Witness for the Prosecution: Capt R.H. Noble, # 2 Det. R.C.O.C., C.A.(O). being sworn states:

I am Capt. R.H. Noble, # 2 Det. R.C.O.C., C.A.(O). On May 29th, 1941, I personally inspected the sedan CM4202003, at the

R.C.O.C. garage, Bordon, and found that the hood had been bent, the hood catch broken, hinges broken and springs broken due, apparently, to the sedan having run into something. The vehicle was also in need of a new clutch. The parts required for repair of the clutch amounted to approximately $ 6.00 and labor on the clutch approximately $ 6.00. Parts necessary for repairs to the hood amounted to about $5.00 and labor about $6.00. The vehicle is an old one in need of a complete overhaul and I cannot state definitely the amount of damage done until such time as this operation is completed.

R.H. Noble Capt. CMF

The accused declined to question the above witness.

Third Witness for the Prosecution: B76656 Sgt McKelvey, S, T.S.R.(M.G.), #1 CM&HU, CA(O) being sworn states:

I am B 76656, Sgt McKelvey, S, T.S.R.(M.G.), #1 CM&HU, CA(O). On 28th May 1941 I was on duty as Sgt of the guard placed by this unit on the vehicle park of #2 Det. RCOC Bordon, at 1400 hrs. At 1600 hrs Pte Bester was on duty at the sentry post near the Officers' Club and came off duty at 1900 hrs. He may have had permission to leave the vicinity of the guard room but I do not know for sure.

At 2000 hrs when I went around to change the sentries I found that the sentries on the post near the Officers' Club had Pte Harris under arrest and I confined him in the guard room on instructions from the guard Commander.

Sgt S. McKelvey
1 CM&HU

The accused declined to question the above witness.

Fourth Witness for the Prosecution. Lieut J.G.K. MacEwen, [T.S.R.(M.G.)] #1 C.M.&H.U., C.A.(O). being sworn states

I am Lieut J.G.K. MacEwen [T.S.R.(M.G.)] #1 C.M.&H.U., C.A.(O). On 28th May, 1941, I was in

command of the guard on the Vehicle Park of #2 Det. R COC, Bordon. At 1800 hrs Pte Hester whom I recognize came off seeing duty and I gave him permission to leave the vicinity of the guardroom until 2130 hrs.

J. S. H. McEwen, Lieut.
1 C.M.S.H.U., C.A.(O).

The accused declined to question the above witness.

The accused, having been duly cautioned under R. P. 4(E), makes the following statement under oath:

I am U1599 Pte Hester, G.D. (T.S.R.(M.G.)) #1 Cdn M.S.H.U., C.A.(O). On May 28th 1941 Pte Curran and I took the staff car CM4202003 for a drive. We found the keys in the car and the car not locked and drove away as the sentries on duty were patrolling the far end of their beat. After we had gone about two miles the clutch seized and being unable to drive the car further we went back and got the truck C.Z. 4204535 and hauled the sedan back. We were stopped by the guard on the gate and when we explained the situation they allowed us to drive in and were going to put us in arrest when Capt. Bruce and some other officers came along.

We did not intend to keep the sedan out for long and could have left it by the road when it stopped on us but rather than involve the whole guard in trouble we got the truck to haul it back.

W. P. Hester Pte.
1 C M & H U., C.A.(O).

Certified that R.P. 4(c)(d) 4(E) have been complied with and that the above evidence was taken down by me in the presence and hearing of the accused.
Taken down at Bordon, Hants, this 2nd day of June 1941

R. Macgillivray, Lt
#1 C.M.& H.U., C.A.(O).

Summary of Evidence
in the case of

B 76729 Pte Curran, K. J. [T.S.R.(M.G.)], No 1 Cdn. M.G. Holding Unit, C.A.(O).

On instructions from the Commanding Officer, the following evidence is taken on oath.

First Witness for the Prosecution. Capt. R. S. Bruce, # 2 Det R.C.O.C., M. T. Depot, C.A.(O). being sworn, states:

I am Capt. R.S. Bruce, # 2 Det. R.C.O.C., M.T. Depot, C.A.(O). At approximately 2030 hrs May 28th 41 I was returning from the Officers' Club along the road which runs through the Vehicle Park of # 2 Det RCOC., when I saw a truck towing a sedan into the Park. I investigated and found that the accused Pte Curran was at the wheel of the truck C.Z. 4204535. After questioning he admitted being in improper possession of the vehicle. He and Pte Hunter CM 420 2003 who was at the wheel of the sedan, told me that they had moved the sedan during the morning from its proper place in the park to where they could more conveniently remove it and that, having taken it away, they had had clutch trouble and used the truck to haul it back.

I immediately contacted the commander of the guard and had Pte Curran put in close arrest. The only people who are authorized to drive the vehicles which are in the park are personnel of # 2 Det. R.C.O.C. in possession of a pass to the park. Both the sedan and the truck were in the park and no authority had been issued for their removal.

Capt.
R S Bruce

The accused declined to question the above witness

Second Witness for the Prosecution: Capt. R. H. Noble # 2 Det. R.C.O.C. C.A.(O) being sworn, states:

I am Capt. R. H. Noble # 2 Det R.C.O.C., C.A.(O) On May 29th, 1941, I personally inspected the sedan C.M. 4202003 at the R.C.O.C. garage, Bordon, and found that the hood had been damaged, hood catch broken, hinges broken and springs broken due, apparently, to the sedan having run into something. The vehicle was also in need of a new clutch. The parts required for repairing the clutch will amount to approximately $6.00 and labor on the clutch approximately $6.00 Parts necessary for repairs to the hood will amount to approximately $5.00 and labor to approximately $8.00. The vehicle is an old one in need of a complete overhaul and I cannot state definitely the amount of damage done until such time as this operation is completed.

R H Noble Capt C.A.O.C.

The accused declined to question the above witness.

Third Witness for the Prosecution: B 76686 Sgt McKelvey, S. T.S.R. (M.G.), # 1 C.M.G.H.U., C.A.(O). being sworn states.

I am B76686, Sgt. McKelvey, S. T.S.R(M.G), #1 C.M.G.H.U., C.A.(O). On 28th May, 1941 I was Sgt. of the guard placed by this unit on the vehicle park of # 2 Det. R.C.O.C. Bordon. I took over as Sgt of the guard at 1400 hrs that day. Pte Curran was at that time off duty and was not due to go back on until 2000 hrs. At about 1600 hrs Pte Curran was given permission to leave the vicinity of the Guard House. A proportion of the men were always allowed this privilege on application to the guard commander or myself. Pte Curran was not due back at the guard house until 1930 hours. There had been a change made in the times at which the men were to go on duty but I do not know at what time the change was made nor how it affected the time that

Pte Curran was to go on duty.

At 2000 hrs. when I went around to change the guards I found that the sentries on the post near the Officers' Club had Pte Curran under arrest and on the instructions of the guard commander and I detained Pte Curran in the Guard Room. Sgt S McKelvey
1 CMGHU.

The accused declined to question the above witness.

Fourth Witness for the Prosecution. Lieut. J. G.K. Mc Ewan, (T.S.R (M.G.)) = 1 CMGHU, CA(O) being sworn states:

I am Lieut J.G.K. Mc Ewan (T.S.R (M.G.)), 1C MGHU, CH/O)

On 28th May 1941, I was in command of the guard on the Vehicle Park, #2 Det. R.C.O.C. Bordon, at 1400 hrs on that day Pte Curran whom I recognize came off duty and was given permission by me to be away from the vicinity of the Guard Room until 2130 hrs as he was not due to go back on guard until 2200 hrs. While Pte Curran was away I changed the times of some of the duties but this did not affect Pte Curran.

J. G. K. Mc Ewan, Lieut.

The accused declined to question this witness.

The accused was ~~warned~~ cautioned under R.D.P. 9(5) and, being sworn, makes the following statement:

I am B 76729, Pte Curran, K.J. (T.S.R (M.G.)) 1 C.M.G.H.U., CA(O). On May 28th 1941 at about 1845 hrs. Pte Hester and I took the sedan C.M.-4202003 out of the Vehicle Park and went for a ride. We did not intend to go for long — just for a joy-ride. As we drove away the car was not acting properly. The clutch did not operate well and I had difficulty getting it to catch when I put it in high gear. After we had driven as far as Oakhanger I decided that we had better turn back as the clutch was working so badly. As I was turning it around the clutch ceased to work entirely and we left the car to go back and get a truck to haul it in. We had considered leaving the car where it was as we had not been seen leaving but rather than get the rest of the guard into trouble

was decided to haul it back.

As we were hauling the car back into the vehicle park, ~~racing~~ we were stopped by the sentries on the gate and they were going to arrest us but first allowed us to drive in. ~~Then~~ Capt. Bruce and some other officers came along and had us arrested. This was all done on the spur of the moment and I am sorry for it now.

The damage to the front of the sedan occurred when it was being hauled back and ~~it~~ the truck stopped rather abruptly causing the sedan to bump into it.

J. Curran
#1 CM&HU, CA(O)

Certified that R.P. 4 (c), (d) and (e) have been complied with and that the above evidence was taken down by me in the presence and hearing of the accused.
Taken down at Borden, Ont., this 3rd day of June 1941

R. Lunny Gilmay, Lt
#1 CM&HU, CA(O).

W. MacTaggart Major
Pres.

LIST OF WITNESSES FOR THE PROSECUTION

Capt. R.J. Bruce,	No. 2 Detachment, R.C.O.C., M.T. Depot, C.A.(O.)
Capt. R.H. Noble,	No. 2 Detachment, R.C.O.C., M.T. Depot, C.A.(O.)
Sgt. McKelvey, S.	"TSR" Coy. No. 1 Cdn. (M.G.) Holding Unit, C.A.(O.)
Lieut. J.G.K. McEwen,	"TSR" Coy. No. 1 Cdn. (M.G.) Holding Unit, C.A.(O.)

FOR THE DEFENCE

nil

WORKSHOP REPAIR CARD

Army Form G 108

R.A.S.C. WORKSHOPS*
R.A.O.C.
Body Shop
Job No. 56
Repair Indent No. A-56
Probable date out

Unit No. 2 Det.R.C.O.C.
Make Ford Sedan
W.D. No. CM4202003
Date in 17-6-41

* Amend heading as necessary.

REPAIRS REQUIRED

HOOD STRAIGHTENED AND LINED

18-6-41	Coburn	3 hrs.
18-6-41	Thomas	3 hrs.
19-6-41	Coburn	1 hr.
	Thomas	1 hr.
20-6-41	Coburn	6 hrs.
	Thomas	6 hrs.
21-6-41	Coburn	3½ hrs.
	Giles	3½ hrs.

Hood hinge
Hood catch completed

CERTIFIED TRUE COPY

Artificer's Name (In charge of job) B.W. Leon
Tested by
Date passed out 21-6-41

Inspected and passed out by

(16561) W1.22170/1071 500,000 12/40 A.& E.W. Ltd. Gp.698 Forms G.1084/18 [P.T.O.

WORKSHOP REPAIR CARD

Army Form G 1084.

R.A.S.C. WORKSHOPS*
R.A.O.C.
Body Shop to Welders
Job No. A-56
Repair Indent No. 56
Probable date out

Unit No. 2 Det.R.C.O.C.
Make Ford Sedan
W.D. No. CM.4202003
Date in 18-6-41

* Amend heading as necessary.

REPAIRS REQUIRED

Weld Brackets on Hood

Mechanic	Time
Pte. Tracy	1½hr.

CERTIFIED TRUE COPY

Artificer's Name (In charge of job) Cpl. Mahoney
Tested by
Date passed out 19-6-41

Inspected and passed out by

(16561) W1.22170/1071 500,000 12/40 A.& E.W. Ltd. Gp.698 Forms G.1084/18 [P.T.O.

IDENTIFICATION CARD

Serial No. 56 Unit No. 2 Det.R.C.O.C.

Job No. A-56 Make Ford Sedan

R.I.No. V.D.No. CM-4202003

Date In 17-6-41 Date Out

REPAIRS REQUIRED

Department	Repair in Dept.	Re-paired	Com-plete
1. Gas tank			
2. Tyres			
3. Front axle			
4. Brakes			
5. Electrical			
6. Engine bay			
7. Heavy repairs			
8. Body tightening	Completed		
9. Lubrication			
10. Textile			
11. Paint Shop			
12. Auxilliary			

By. B.W. Leon Sgt

Certified true copy

Repairs etc. carried out

Unit's No.

Unit No. 2 Det. R.C.O.C.

Station and Date 17-6-41

R.A.O.C. WORKSHOP INDENT

(To be rendered in accordance with C.I. Part I, 1932, para. 495, or K.R. Part I, 1935, para. 433 or T.A. 342 as complied with)

Army Form G 1045
(Pads of 100)

R.A.O.C. Serial No. A-56

Commenced*

Completed*

Job No.	Designation of Vehicle or Stores quoting Regd. No. when available.	No.	Nature of Service and Authority	Summary of Costs. *Repayments. £ s. d.
	CM-4202003			Direct Labour
	Ford Sedan		Hood straightened & Lined	Materials
				Contracts
				Travelling Exes
			CERTIFIED TRUE COPY	Carriage of Stores
				On-Costs
				Total Cost

NOTE.—A separate Indent will be used for stores in each Vocabulary Section.

(Signed) W. Hall Capt

O.C.

Approved

S.O.M.E.

O.C. R.E.M. Workshops

To note completion of service (and cost).

(Signed)

S.O.M.E.

(8/706) W1254/46 333 37,500 Pads 10/40 B & S Ltd. 51-7009 Forms/G 1045/36

Unit's No.

Unit No. 2 Det. R.C.O.C.

Station and Date 17-6-41

R.A.O.C. WORKSHOP INDENT

(To be rendered in triplicate. E.R. Part 1, 1932, para. 409, or E.R. Part 2, 1935, para. 43 (or T.A. will be complied with.)

Army Form G 1045
(Pads of 100)

R.A.O.C. Serial No. A-56

Commenced*

Completed*

Job No.	Designation of Vehicle or Stores quoting Regd. No. when available	No.	Nature of Service and Authority	Summary of Costs. *Repayments. £ s.
	CM-4202003			Direct Labour
	Ford Sedan		Hood straightened & Lined	Materials
				Contracts
				Travelling Fares
			CERTIFIED TRUE COPY	Carriage of Stores
				On-Costs
				Total Cost

NOTE.—A separate indent will be used for stores in each Vocabulary Section.

(Signed)
O.C.
Approved
S.O.M.E.

O.C.
To note completion of service (and cost).
(Signed)
S.O.M.E.

* For R.A.O.C. use only

S/Tec. 30/2456/323 37,500 Pads. 10/40 B. & S. Ltd. 51-7809 Forms G 1045/36

Unit's No. ____

Unit No. 2 Det. R.C.O.C.

Station and Date 17-6-41

R.A.O.C. WORKSHOP INDENT

(To be rendered in triplicate. K.R. Part 1, 1932, para. 409, or K.R. Part 3, 1935, para. 13 for T.A. will be complied with.)

Commenced* ____

Army Form G 1041
(Pads of 100)

R.A.O.C. Serial No. A-56

Completed* ____

Job No.	Designation of Vehicle or Stores quoting Regd. No. when available.	No.	Nature of Service and Authority	Summary of Costs †Repayments. £ s.
	CM-4202003			Direct Labour
	Ford Sedan		Hood straightened & Lined	Materials
				Contracts
			CERTIFIED TRUE COPY	Travelling Exes
			[illegible]	Carriage of Stores
				On Costs
				Total Cost

NOTE.—A separate form will be used for stores in each Vocabulary Section.

* For R.A.O.C. use only.

(Signed) [illegible]

O.C. [illegible]

Approved ____

S.O.M.E. ____

O.C. [illegible]

To note completion of service (and cost).

(Signed) ____

S.O.M.E. ____

(5726). W1.20408/375. 37,500 Pads. 10/40. B. & S. Ltd. 51-7889. Forms G 1041/36.

REQUISITION FOR STORES

W.D. NO. CM-4202003 DATE 20-6-41

DEPT. Body Shop U.S. NO. A-56

DESIGNATION SECTION	PART NUMBER	REQUIRED	ISSUED	BOOKED
Limb, Hood hinge & Bracket	1	1		

DEMANDED BY ____ ISSUED BY ____ BOOKED BY ____

W.D.NO. CK-4202003

DEPT. Body shop

DESIGNATION SECTION

Ornament front centre

Handle, hand locking

REQUISITION FOR REPAIR

DATE 18-6-41

T.S.AND. A-56

PART NUMBER	IT CONTAINS	NUMBER REQUIRED
01A 8218A	1	1
01A 8219A	1	1

DEMANDED BY

ISSUED BY

RECD BY

REQUISITION FOR STORES

DATE 18-6-41

W.D.NO CM-4202003 W.S.NO A-56

DEPT Body shop

DESIGNATION SECTION	PART NUMBER	REQUIRED	ISSUED	FOLIO
Ornament front centre	01A 8218A	1	1	
Handle, hand locking	01A 8215A	1	1	
CROSSED OUT ONE COPY				

DEMANDED BY ✓ ISSUED BY ✓ REC'D BY ✓

EXPENCE IN VEHICLE CM-4202003 FORD SEDAN

Indent No. A-56

Parts Used	Cat. No.	Price
Ornament front centre	01A 8218C	.69
Handle hood locking	01A 8215A	.32
Limb, Hood hinge & bracket	91A 16797	.26

Time	No. Hrs.	
Body Shop	26 hrs	$20.60
Welding Shop	1½ hrs	1.03 5% OVERHEAD

TOTAL $22.90

Per:IB

STATEMENT BY THE ACCUSED IN ACCORDANCE WITH R.P. 14 (B)

I, No. B-76729, Pte. Curran, K.J. desire to have an officer assigned by the Convening Officer, to represent me at my trial by Court-Martial.

I desire the services of Lieut. J.M. Prescott, if he is available.

Pte K.J. Curran
.....

BORDON HANTS
4 JUNE 41

75 J.

REGIMENTAL DOCUMENTS

H.Q. FILE No. .....

NAME U1599 PTE HESTER G.D. REGIMENTAL No. .....

UNIT OF ENLISTMENT ..... RANK .....

	CONTENTS	NON-EFFECTIVE BY
	COMBINED DECLARATION FORM OR ATTESTATION AND MEDICAL HISTORY (M.F.M.1 & 1A) OR (M.F.M.2 & 2A)	DEATH
	SERVICE AND CASUALTY FORM (M.F.M.4 & 4A) (A.F.B.103)	DATE
	PARTICULARS OF FAMILY (M.F.M.5)	CAUSE
	FIELD CONDUCT SHEET (M.F.M.6) (A.F.B.122)	AUTHORITY
	CERTIFICATE OF SERVICE (M.F.M.8) COPY OF, OR DISCHARGE CERTIFICATE (M.F.M.7) COPY OF	
	FORM OF WILL (M.F.M.10 OR M.F.M.10A)	
	DENTAL HISTORY SHEET	DISCHARGE
	MEDICAL REPORT OR CASE HISTORY SHEET	DATE
	MEDICAL EXAMINATION ON LEAVING THE SERVICE	REASON
	TRANSFER CLOTHING STATEMENT	AUTHORITY
	LAST PAY CERTIFICATE (M.F.D.930A)	
	PROCEEDINGS ON DISCHARGE	
	PROCEEDINGS COURT OF ENQUIRY	DESERTION
	DECLARATIONS COURT OF ENQUIRY	DATE
	PAY SHEETS	AUTHORITY
	CARDS	
	SUNDRY	

Correspondence to be PINNED here.

755.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Sixteenth day of JUNE, 19 42.

Whereas it appears to me, the undersigned, an officer in Command of 5 Canadian Infantry Brigade Group Canadian Army (A.F.), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial, [illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

[illegible] In my opinion, military exigencies, namely the dispersion of units, difficulties of communication, and other difficulties, render it inexpedient to comply with these rules inconsistent to Appendix "A" to D.R.O. 772 on the trial of the soldier named in the margin.

PROCEEDINGS REVIEWED

Deputy Judge Advocate General 10 Feb 43

President.

Rank.	Name.	Regiment.
MAJOR	T. B. Donald	Calg Highrs

Members.

Rank.	Name.	Regiment.
Captain	P. Savoy,	Fus M R [illegible]
Lieut.	H. B. Gourlay,	Sigs 2 Cdn Div.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed G.W. Whitehead
(G.W. Whitehead) Brigadier
Commanding 5 Cdn Inf Bde Group
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
U 1599, Pte Gordon David Hester, Tor Scot R (MG), a soldier of the Canadian Army (A.F.)	FIRST CHARGE A.A.Sec. 15(1) Absenting Himself without leave (See charge sheet attached).	Guilty	Guilty	To undergo 120 days Detention J S Donald major 22/6/42 Confirmed GHW

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) G H Whitehead (G. H. Whitehead) Brigadier
Commanding 5 Cdn Inf Bde Gp.

(Signed) Jhs B. Donald Major
Convening Officer (*e*)

President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 22nd day of June 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

* Omit if not applicable.

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

Signed this 22nd day of June 1942

Jhs B Donald Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.I. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 1942

President of the Court Martial

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*I direct that the soldier named in the margin be not committed to prison until further orders.)

Signed this 27 day of June 1942

G H Whitehead Brig
Confirming Officer.

Promulgated and extracts taken in the case of U 1599 Pte. Hester, G.D.

(*a*) (Dated) 29 JUNE 42. (Signed) W McClark Lieut. A/Adj.

Promulgated and extracts taken in the case of THE TORONTO SCOTTISH REGT. (M.G.) C.A.

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(41779) Wt. 40113—891 300M 6/40 P.St. G.(2)

CHARGE SHEET

The accused, U. 1599, Pte. Gordon Daved HESTER, Tor Scot R (MG), a soldier of the Canadian Army (A.F.) is charged with:

A.A. SEC. 15(1) ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the field, absented himself without leave from 2359 hrs 19 May 42 until 0630 hrs 8 Jun 42.

TOTAL ABSENCE 19 DAYS 6 HRS 31 MINS

(G.E.N. Gostling) Lt-Col,
Comd - Tor Scot R (MG),
C.A.C.

MEDICAL OFFICER'S CERTIFICATE

This is to certify that -U1599 Pte Hester, G.D. has been examined by me this date and found fit to undergo a FIELD GENERAL COURT MARTIAL.

(J. J. Milner), Captain, R.C.A.M.C.
Medical Officer att'd Tor Scot R (MG)

DATE 22 June 42

Prosecuting officer: Lt. Dyer; } Do. Not R

Defending officer: Lt. R.C. Hilborn

4.

1 V 1599 Pte Gordon David HESTER Tor Scot R

22 June 1942

2 Court Maj J. B. McDonald Calg Highs
Capt P Savoy 2 M R
Lieut H.D. Courtenay Sigs 2 Cdn Div.

3 Pte Lieut J H H Dejardins Lawyer Tor Scot R
Def. Lieut B J Robinson Tor Scot R

4 Guilty Just 1 only charge

5 35 (B) complied with

6 Summary of evidence as per Appendix

7 A2B 296 + certified copy "M.D.M 6 Field

8 Pte's conduct sheet has previous entries. A long period of detention previously has caused loss of pay & many A.I. parent. He is absent 36 days to date. Has made several attempts to have deferred pay handed over & complains that nothing has been done about it. Interested there in the reason now in fed up and wants out Awk

Certified a true record of the trial. 22nd June 1942.

Thos R Donald. Major
Pres Court

ABSTRACT OF EVIDENCE IN THE CASE OF

U. 1599, Pte. Gordon David HESTER, Tor Scot R (MG), a soldier in the Canadian Army (A.F.)

FIRST WITNESS B.76038, L/Cpl. Bazar, C.W. "A" Coy Tor Scot R (MG) will say:

Sir, at Toat Farm Camp on 20 May 42 at 0700 hrs I called Reveille roll call, Pte. Hester did not answer his name. Upon further investigation I found that he had not returned from his midnight leave on 19 May 42, since his pass had not been turned into Coy Ord Room. I therefore marked him absent from 2359 hrs 19 May 42. I did not see Pte. Hester again until he returned on 8 June 42.

SECOND WITNESS Owing to the exigencies of the service it is found impossible to produce M.20896, Sgt. Ferguson, W.J. of No. 6 Coy, Cdn Pro Corps, but the certificate of surrender concerning this case is attached as appendix "A".

THIRD WITNESS B.76046, Cpl. Robertson, R.W. "D" Coy Tor Scot R (MG) will say:

Sir, at Compton Camp on 8 June 42 I was Gd Cmdr and at 1240 hrs that day the Cdn Pro Corps placed U. 1599, Pte. Hester, G.D. in my charge since he was being returned from A.W.L. under close arrest. I was also handed certificate of surrender of this soldier. I immediately placed him in the Gd Room, under close arrest.

The accused, U. 1599 Pte. Gordon David Hester, "A" Coy Tor Scot R (MG), after having been duly cautioned, in accordance with A.R. 42, declined to make a statement.

TAKEN DOWN BEFORE ME THIS 9th DAY OF JUNE, 1942, IN THE PRESENCE AND HEARING OF THE ACCUSED.

(D.J. Wilkins) Capt.,
A/ADJT - Tor Scot R (MG)
C.A.C.

THE CANADIAN MILITARY POLICE

Appendix "A"

LONDON AREA

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1) (J).

I A.J. Davies, Lieut. C.M.P. No 6 Cdn. Prov. Coy. Detention room. ~~Provost Marshal~~, London Area, certify that:-

Reg.No. H-1599 Rank. Pte. Name. Hester, G.E.

REGIMENT. "D" Coy. Toronto Scottish Regt.

UNIT.

STATIONED AT. Three Bridges.

SURRENDERED HIMSELF TO No. M-20808 Rank. Sgt. Name. Ferguson, W.J.

of the No 6 Coy. Canadian Provost Corps.

on the 4th day of June 1940, at 0630 Hrs. HE WAS DRESSED IN. Battle-dress AS AN ABSENTEE WITHOUT LEAVE.

Assistant Provost Marshal
London Area.

No. 1599 Name Hester G.D. Sqn., Battery, or Company A Corps Tor Scot Regt Date of enlistment 14 Oct 40 G.C. Badges 'C' Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc. | Character

MFM 6 (A.F.B. 128) 500M-8.39-3 H.Q. 1771-4

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	13-12-40	Pte.		A.W.L. 38 hrs 30 mins 15(1)A.A.	Provost Corps	admonished for 2 days pay	21-12-40	Maj. Dandun	
"	2-12-40	"		A.W.L. from 1530 hrs 25-12-40 to 2200 hrs 1-1-41	Cpl. Barrett	24 days pay for 8 days pay	3-1-41	Lt-Col Carpenter	
"	14-2-41	"		A.W.L. 3 days 13 hrs 30 mins 15(1) A.A.	Sgt. Barrett	12 days pay for 4 days pay	19-2-41	Lt-Col Carpenter	
"	22-2-41	"		A.W.L. 14 hrs 15 (1) A.A.	Sgt. Barrett Gdsn Farrel	27 days detn for 1 days pay	26-2-41	Maj. G.A.D. Dyer	
"	25-2-41	"		A.W.L. 9 days 17 hrs 15(1) A.A.	Lieut Carter Cpl. Browne	14 days detn for 10 days pay	6-6-41	Maj. Wo made	
"		"		See 11 A.A. See 40 A.A. See 11 A.A.		90 days detn stoppages £11.45 Tot. Por. 11½ days pay			

Released from Detn barracks, Witley, 23 Aug 41 Remission earned 30 days.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishments awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	23-3-41	Pte		A.W.L. 1 day 23 hrs 15 mins	L-C.Craddock	21 days detn for.2 days pay	26-3-41	Lt-Col Carpenter	
London	11-10-41	"		Improperly dressed Sec 40 A.A. 15(1) A.A.	L-C Broughton	for.4 days pay	30-10-41	Lt-Col Carpenter	
Stone Cross Field	22-12-41	"		Failed to rise at reveille Sec. 40 A.A.	Pte.Dickerson Sgt.Weaver	7 days C.B.	22-12-41	Maj.G.R.Cooper	
	1-1-42	"		A.W.L. 2 days (Sec 15(1) A.A.)	Sgt.Weaver	14 days F.A.	5-5-42	Lt.Col.Gosling	Total For 2 days pay FAI 1497(1)(a)

Certified true copy

D.H.Adams
Capt

(substitute for A.F.B. 206) B P2.
(or N.A.B. 206.)

1BD

No. U.1599 Name Hester. G.E. Unit TOR. SCOT. R. (MG) CA(O)

Age 21 Married or Single Single. No. of Dependents I

Date of Apprehension 14 Oct. 40

No. of days spent in Close Arrest (to date of Trial)

Civil ____ Military 13 days. Hospital ____

Total ____

Date and Place of Trial: 22 June. 41

Station: In the Field.

(To be signed and dated as at date of Trial).

D. Mackie Capt.

for (D.M. Dowling), Lt. Col.,
Comd. - Tor Scot R (MG)
C.A.O.

BB-26 (case #3)

PTE HESTER G.D.

See B-278 for 1st case

See J-75 for 2nd case

BB-26

Army Form A.8.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

"A."

Order convening the Court, day

On Active Service, this Twenty-sixth day of March, 19 43

Whereas it appears to me, the undersigned, an officer in Command of Second Canadian Division, Canadian Army Overseas

persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[redacted]

*(1. [redacted]

*(2. [redacted]

* Omit if not applicable.

Proceedings Revised 1/34 "A"

	President.	Regiment.
Rank.	Name.	
Major	F.J. Gilmour	RCA att'd HQ 2 Cdn Div
	Members.	
Rank.	Name.	Regiment.
Major	(to be detailed by O.C., Fus M R)	Fus M R
Captain	(to be detailed by O.C., Cams of C)	Cams of C
Waiting member Lieut	(to be detailed by O.C., S Sask R)	S Sask R

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

*Signed (J.H. Roberts) Major-General, Commanding 2 Cdn Div Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
U.1599 Pte Gordon David HESTER, Tor Scot R (MG)	FIRST CHARGE AA Sec 15(1) (See Charge Sheet attached)	Guilty	Guilty	
	SECOND CHARGE AA Sec 22 (See Charge Sheet attached)	Guilty	Guilty	
	THIRD CHARGE AA Sec 15(1) (See Charge Sheet attached)	Guilty	Guilty	
			9 months detn 29 March '43 F Gilmour Major RCA	Confirmed. J.H.R.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) J.H. Roberts (J.H. Roberts) Major-General, *Commanding* 2 Cdn Division *Convening Officer* (*e*)

(Signed) F Gilmour Major RCA *President.*

(*a*) Appointment ~~acting rank~~ or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 29th day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) JHR
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this 29th day of March 1943.

F Gilmour Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 370 of 1918 have been complied with.

Signed this ~~30th~~ day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.) J.H.R.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 30th day of June 1943.

J H Roberts Maj-Gen.
Confirming Officer.

Promulgated and extracts taken in the case of U.1599 Pte Gordon David Hester.

(*a*) (Dated) 1 Apr 43 (Signed) H Wilsdale Capt. A/Adjt THE TORONTO SCOTTISH REGT. (M.G.) C.A. (D)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

In accordance with CARO 2084 the original sheet was destroyed after six months.

No. [illegible] Name Lester [illegible] Sqn., Battery, or Company [illegible] Corps [illegible] Date of enlistment 14-10-40 G.C. Badges Service or Proficiency Pay

M.F.M. 6
A.F.B. 122
17SM—7-41 (1519-20)
H.Q. 1771-39-1632

Date of last entry in Company Conduct Sheet 22-2-41 No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				AWL 10 days . . sec. 15 (1)	Cpl. Browne	14 dys det.n	6-6-41		FOR 10 DAYS PAY.
Gordon 25-4-41		Pte.		Failed to obey standing orders	Lieut. Carter	90 dys det.n	16-7-41	C.O.	
"		"		Neglect to mnl. good order sec. 40		for 30 dys pay			
				Failed to obey standing orders		then, of all 40			
				. . sec. 1		Confirmed by Maj-Gen. L. . Force.			
Released from det. Barracks after 90 dys det.n									
Aldershot 22-7-41				W.P. 2 days . . sec. 15(1)		sentence expired 30 dys			
London 1-10-41				Improperly dressed sec.40	L/Cpl. Broughton	21 dys det.n	20-8-41	LT.COL. CARPENTER	FOR 7 DAYS PAY
					Pte. Dickson	for A dys rem 70-10-41		M. . .	
Stone (Transit) 8-12-41		"		Failed to rise at reveille	Sgt. Sevier	7 dys C.B.	22-12-41	Major Porter	
				. . sec. 40					
				W.P. 2 days . . sec. 15(1)	Sgt. Sevier	14 dys F. . .	5-5-42	Lt. Col. Wilson	FOR 2 DAYS PAY
Field 1-5-42		"							

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 13-5-42		Pte.		AWL 20 dys A.F. Sec. 15 (1)	T/C Baker Cpl Robertson Documentary	120 dys det. & 28-6-42		C.O.	For 20 dys pay.
Released from the detention barracks Bradley Downs on 10 Sept. 42 sentence having expired. Remission earned under "Rules for detention barracks and Military Prisons" 30 dys Norm. Initials W.O.									
Ewshot 7-1-42		Pte.		L 5 dys A.F. Sec. 15 (1)	T/C Duff	28 dys F.E. & 28 dys pay.	11-11-42	Lt. Col Gwinnie	For 5 dys pay

Certified true copy - RK Templeton Lt.
25 Mar 43 for & on behalf of Dale Capt adjt.
for Lieut & (R.D.)
C.A.D.

Ws Smith Capt

CHARGE SHEET

The accused No. U.1599 Private Gordon David HESTER Tor Scot R (MG), a soldier of the Canadian Army Overseas is charged with:-

FIRST CHARGE
A.A. SEC. 15(1) ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the field, 1 Jan 43, absented himself without leave from 2400 hrs. 1 Jan 43 until 1340 hrs. 2 Mar. 43.

ABSENT 59 days, 13 hrs. 40 minutes.

SECOND CHARGE
A.A. SEC. 22 WHEN IN LAWFUL CUSTODY, ESCAPING

In that he

In the field, on 6 Mar 43, at 0830 hrs. 6 Mar 43, when under escort in the Men's Mess Hall, escaped.

THIRD CHARGE
A.A. SEC. 15(1) ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the field, on 6 Mar 43, absented himself without leave from 0730 hrs. 6 Mar 43 until 1825 hrs. 22 Mar 43.

ABSENT 16 days, 10 hrs. 55 mins.

In The Field
24 Mar 43

(E. O. Johnson), Major,
T/Comd - Tor Scot R (MG)
C.A.O.

To be tried by F.G.C.M.

26 Mar 43

(J.H. Roberts) Major-General,
G.O.C. 2 Cdn Div

"B" E. O. Johnson Major

I wish a Defending Officer.

I desire the services of Lieut. G.L. Mitchell, if he is available.

Signature L.D. Yeates

**All printed matter not applicable to the particular Court being held should be struck out when initialled by the President.

A

Army Form A 9.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a ~~Field General~~ Court-Martial held at Field on the ~~twenty-ninth~~ day of March 1943 by order of Major General J. H. Roberts Commanding 2 Cdn Div dated the 26 day of March 1943

President.

Major F. J. Gilmour R.C.A. att'd Hq 2 Cdn Div

Members.

Major P.E. Lambert F.M.R.

Captain R.S. Snider Comm of C

Trial of* U 1599 Private G.D. Hester Tor Scot Judge Advocate

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ is not available to serve owing to , ~~waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lt. J.K.T. Defew Tor Scot R (M.G.)

Counsel‡ or defending officer† Lt. G.L. Mitchell Tor Scot R.

At 1030 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

The President, members and ~~judge-advocate~~ are duly sworn. HB

~~The following officers under instruction are duly sworn.~~ HB

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (3) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read ? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read ? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read ? *Question.*

Guilty *Answer.*

HB ~~Are you guilty or not guilty of the fourth charge against you, which you have heard read ?~~ *Question.*

Answer.

The accused having pleaded Guilty to all charges, the provisions of Rule of Procedure 35 (B) are here complied with. HB

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

HB

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[~~The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.~~]

The accused 4-1599 Pte GD Hester is found guilty of absence

†The summary (~~or abstract~~) of evidence is read, marked "G" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. No sir

~~The accused in mitigation of punishment says.~~

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~

H Fishwick
Major
Pres

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character ?

Question to the accused.

Answer.

Evidence as to character.

COUNTER NUMBER 168423

HOUR 10 12

OPERATOR'S INITIALS DM

RELIEVING OPERATOR NMB

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

The Court find that the accused

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lt J.H.H Dopson is duly sworn.

Question by the President. Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* AFB 196 & Car Copy 4 M.F.M.G.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the President, and annexed to the proceedings.

Question by the President. Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes.

Question. Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes.

Cross-examined by the accused.

[Intervention only by reason of the nature of the offence or of the accused or of circumstances. The finding of the Court remains but liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must proceed with the inquiry and award of that additional punishment.]

Question to the accused. Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

SUMMARY OF EVIDENCE

In the case of No. U.1599 Private Gordon D. HESTER, Tor Scot R (MG), a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The accused does not demand and the C.O. does not direct the evidence be taken on oath.

FIRST WITNESS for the prosecution - Capt. G.M.C. Dale, Adjt Tor Scot R (MG), states:

"I produce:

(1) Certified true copy of a record of a declaration of a Court of Enquiry, held on 23 Jan 43, and declaring that No. U.1599 Pte. Hester, G.D. absented himself without leave from 2400 hrs. 1 Jan 43. (Attached as Exhibit "A")

(2) Certificate of Surrender, A.F.O. 1617, purporting to be signed by the Officer of Police in charge of West End Central Police Station, shewing that No. U.1599 Pte. Hester, G.D. surrendered himself at 1340 hrs. 2 Mar 43, (Attached as Exhibit "B"), both of which relate to the accused whom I recognize".

The accused declines to cross-examine.

Signature - G.M.C. Dale Capt. Adjt

SECOND WITNESS for the prosecution - No. B.76335 Pte. Long, R.F., Regimental Police, Tor Scot R (MG), states:

"On 6 Mar 43 I was on duty taking five prisoners from the Guard room to the Mess Hall. At about 0730 hrs. No. U.1599 Pte. Hester, G.D., who was one of them, escaped. He was at the front of the line and I was at the rear. When I got through to the table where were eating, he was gone. I immediately told the Provost Sgt.

The accused declines to cross-examine.

Signature R.F. Long

THIRD WITNESS for the prosecution - No. B.76313 Sgt. Norgate, L.E. Sgt. of the Regimental Police, Tor Scot R (MG), states:

"On the 6 Mar 43, No. U.1599 Pte. Hester, G.D., whom I recognize, was in my custody under close arrest awaiting trial. At about 0745 hrs. 6 Mar 43, as a result of information I had received, I had a check made of the roads in the immediate vicinity of the camp for Pte. Hester. He was not found.

The accused declines to cross-examine.

Signature _____

FOURTH WITNESS for the prosecution - No. B.31146 Cpl. Sissie, D.C., "D" Coy, Tor Scot R (MG) states:

"I was Guard Cpl. on 22 Mar 43. No. U.1599 Pte. Hester, G.D., whom I recognize, reported in to me at 1825 hrs. 22 Mar 43, sober, and properly dressed. I placed him under arrest and informed the guard commander.

The accused declines to cross-examine.

Signature G.D. Sissie

SUMMARY OF EVIDENCE

In the case of No. U.1599 Private Gordon D. HESTER, Tor Scot R (MG), a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The accused does not demand and the C.O. does not direct the evidence be taken on oath.

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(2) Certificate of Surrender, A.F.O. 1617, purporting to be signed by the Officer of Police in charge of West End Central Police Station, shewing that No. U.1599 Pte. Hester, G.D. surrendered himself at 1340 hrs. 2 Mar 43, (Attached as Exhibit "B"), both of which relate to the accused whom I recognize".

The accused declines to cross-examine.

Signature - G.M.C. Dale Capt. Adjt

SECOND WITNESS for the prosecution - No. B.76335 Pte. Long, R.F., Regimental Police, Tor Scot R (MG), states:

"On 6 Mar 43 I was on duty taking five prisoners from the Guard room to the Mess Hall. At about 0730 hrs. No. U.1599 Pte. Hester, G.D., who was one of them, escaped. He was at the front of the line and I was at the rear. When I got through to the table where were eating, he was gone. I immediately told the Provost Sgt.

The accused declines to cross-examine.

Signature L.F. Long

THIRD WITNESS for the prosecution - No. B.76313 Sgt. Morgate, L.B. Sgt. of the Regimental Police, Tor Scot R (MG), states:

"On the 6 Mar 43, No. U.1599 Pte. Hester, G.D., whom I recognize, was in my custody under close arrest awaiting trial. At about 0745 hrs. 6 Mar 43, as a result of information I had received, I had a check made of the roads in the immediate vicinity of the camp for Pte. Hester. He was not found.

The accused declines to cross-examine.

Signature _____

FOURTH WITNESS for the prosecution - No. B.32146 Cpl. Simmie, D.C., "D" Coy, Tor Scot R (MG) states:

"I was Guard Cpl. on 22 Mar 43. No. U.1599 Pte. Hester, G.D., whom I recognize, reported in to me at 1525 hrs. 22 Mar 43, sober, and properly dressed. I placed him under arrest and informed the guard commander.

The accused declines to cross-examine.

Signature Cpl. D. Simmie

G 109/2

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Lt J.K.H Dafen is duly sworn.

Question by the President. Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* QFB246 & Cert Copy of M.F.M 6

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President. Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes.

Question. Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes.

Cross-examined by the accused.

[Instructions as to inquiry as to nature of the service of the accused as a determining factor, in electing the Court to award such punishment as is given to this to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of the additional punishment.]

Question to the accused. Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

F

~~Sentence.~~

~~The Court sentence the accused~~

Sentence.

(2)

The Accused, having been duly cautioned in accordance with R.P. 4(E) says:

"I do not wish to make a statement now".

Signature L.D. Hester

The Accused does not wish to call witness in his defence at this point.

CERTIFIED THAT R.P. 4 complied with.

In the Field
24 March 43.

(J. H. H. Depew), Lieut.
The Tor Scot R (MG) C.A.O.
Officer Detailed to take the Summary.

Exhibit "A"

RECORD of the Declaration of a Court of Inquiry assembled at PHEASANT COPSE, Petworth, Sussex, on the 23rd day of January, 1943, for the purpose of investigating and recording the absence without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. U.1599 Pte. HESTER, G.D., "A" Coy Tor Scot R (MG).

D E C L A R A T I O N

The Court declare that No. U.1599 Pte. HESTER, G.D. "A" Coy Tor Scot R (MG) illegally absented himself without leave at 2400 hrs. on the 1st day of January, 1943, that he is still so absent, and that on the 22 Jan 43, he was deficient, and that he is still deficient of the following articles:-

Articles	Unexpired Value	Full Value
B.D. Blouse, serge	£. 1. 0. 9.	£ 1. 7. 8.
B.D. Trousers, "	1. 1. 7.	1. 7.11.
Boots, ankle	16. 1½	1. 1. 6.
Badges, cap	4	5½
Greatcoat, Drab	2.17. 9	3.17. 0½
Comb, hair	0½	2
Dressing, first field	9	1. 1
	£. 5.17. 4	£ 7.15.10

Capt. W.S. Dinnick, President,

Lieut. J.G. Bongard Member

Lieut. K.D.C. Turnbull Member

Signed at Pheasant Copse

this 23rd day of JAN 1943.

Signature of Commanding Officer E.G. Johnson, Major

Certified true copy

(G.M.C. Dale), Capt.
Adjt - Tor Scot R (MG)
C.A.C.

In The Field
25 Mar 43

1719

IMMEDIATE.

Army Form O.1617 *
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depots are shown in the Monthly Army List.

† Note.—Special instructions apply in war for the disposal of absentees and deserters from the Army, who surrender to the civil police: e.g., such personnel will be taken over from the civil authorities by the O.C. the nearest military unit of the O.C. Troops at the nearest military station. (A.C.I. 488/1940).

(20429) W1.46452/405 25,000 7/42 A & E.W.L.td. Gp.698 Forms/O.1617/13.

Exhibit "B"

Army Form O.1617
R.A.F. Form 1617

I CERTIFY that the man whose personal description is given below surrendered himself to Police Sergeant 138 Brown at Little Harbour St, Ayr (hour) 1.45pm on the 2nd day of August as being No. W. 1599 (Rank and Name) Private Gordon David HESTER, a deserter (or absentee without leave) from 1-1-43 and it appears to me from his confession that he is a deserter or absentee without leave.

*After the word "to" to be inserted the name and rank of the police officer concerned.

Age 22 Height 5 Feet 8 Inches
Complexion fresh Hair brown
Eyes hazel
Marks Nil
In uniform or plain clothes Plain clothes.

Probable Date and Place of Attestation	London 14.10.40
Probable Date of Desertion or beginning of absence, and from what place	1.1.43 Petworth, Sussex.

T/Sergeant Inspector

Signature of Officer of Police in charge of West End Central Station.

2.8.43 Date of Signature.

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies ~~only in the case of~~ the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds incurred by the ..... Police in the case of No. .....

who surrendered to the Police at ..... on .....

Payable to .....

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at .....

Date of Signature.

(Substitute for AFB 296 or MFB 359.

STATEMENT OF CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED:

No. U.1599 Name HESTER, G.D. Unit TORONTO SCOTTISH

Age 22 Married or Single SINGLE No. of Dependents NIL

DATE OF ATTESTATION OCT. 14 1940

No. of days in close arrest (To date of Trial)

CIVIL _____ MILITARY 12 DAYS. HOSPITAL _____

TOTAL 12 DAYS.

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATIONS OF RANK, IF ANY:

NIL

A CERTIFIED TRUE COPY OF M.F.M. 6 MUST ACCOMPANY THIS FORM.

E.G. Johnson Major

E. G. Johnson / Major,
T/ Comd. - The Tor Scot R (MG)

DATED THIS 29 March, 1943.
Station: In The Field
(To be signed and dated as of date of trial)

MEDICAL CERTIFICATE (K.R. (CAN) 557)

I certify that I have this morning examined No. U. 1599 Hester G.D. of Toronto Scottish and in my opinion he is fit to undergo trial by Court Martial.

Station - In The Field

DATE 29-3-43

R.C. Woolcombe Lieut
MEDICAL OFFICER

H. Johnson Maj

4M - 129.
Plé. Hermanski M.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~AB [illegible] beginning~~ beginning on (date) D.B.(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 51 days, of which [illegible] days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : To be imprisoned with hard labour for 12 months.

(Sgd) ..... Judge-Advocate, if any. 15 Dec 44 Date awarded. (Sgd) D.S. Beatty Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.66(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(7). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed.

CFR I direct that the prisoner be [illegible] barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) T.J. Cabeldu Brig

Date 15 Dec 44 Commanding 4 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B.45499 Pte [illegible], Marion	20 Dec 44	(Signed) W.O. Avery Capt & Adjt

R.H.J.I.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4M-129

(FORM 1(b) (for use of AFAS) G.S., P.A.S. (1964))

FIELD GENERAL COURT-MARTIAL

Convened by Order of BRIG F.J. CABELDU Comd 4 Cdn Inf Bde dated 9 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/B or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.45499	Pte	MARION	[illegible]	RHLI

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 12 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fmn HQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet[1] attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1145 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) [illegible]

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : [illegible] Ans [illegible] DSE

[illegible] Ans DSE

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	D.S. BEATTY	R Regt C
Member	Capt	C.A. RICHARDSON	11 Cdn Fd Regt
Member	Capt	[illegible]	RHLI
Judge-Advocate			
Prosecutor	Lt	J.F. LAMESS	RHLI
Defending Offr	Lt	E.A. CLIVE	RHLI

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when PP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused before arraignment makes [illegible] plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to Ref cited. Insert in All rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Bnd III Vol 9

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No (5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3. *MML p* 54 *para* 47. *4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~ DSB DSB DSB
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(*1. RP* 155. *2. RP* 40(*A*), *see* 60(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(3) (*b*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB* 355 *or AFB* 296. *2. MFM* 6. *3. RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s) and in mitigation of punishment?(1) Ans Yes statement of defending offr attached (2)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas AO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1B), 68(1), *KR Can* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B43499 Pte HETMANSKI, Marion, 1 Bn Royal Hamilton Light Infantry, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
Section 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field absented himself without leave from 2200 hrs 25 Oct 44 until 1420 hrs 11 Nov 44.

Total absence 18 days 16 hrs 20 min.

In the field
28 Nov 44

(Signed) W.[illegible]. Whitaker Lt-Col
Cond 1 Bn RHLI, Cdn Army C/S

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field
9 Dec 44

(Signed) F.M. Cabeldu Brig
Cond 4 Cdn Inf Bde

(Initialed) DGS

DSR

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit
B.43499	Pte		Marion	IWINSKI	RHLI

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 9 Dec 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General FNC Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

FNC 4. I ~~am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President for the reasons I have attached hereto~~.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

FNC 5. ~~I also appoint as Judge Advocate thereof the Offr mentioned hereunder~~.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	D.M. BEATTY	R Regt C

MEMBERS.

A Capt to be detailed by CO 11 Cdn Fd Amb

A Capt to be detailed by CO RHLI

(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

A Capt to be detailed by CO Essex Scot

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

FNC

~~JUDGE-ADVOCATE~~.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
	N/A	

On Active Service in the Fd

in HOLLAND (Country.) (Sgd) F.N. Cabeldu (Signed personally. RP 105 fn 2) Brig (Rank.)

Date 9 Dec 44 Commanding 4 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

I certify that No B.43499 Pte HETMANSKI, M. 1 Bn RWLI Regt

is fit to undergo trial by Court-Martial.

In the Field
18 Dec 44

(Sgd) S. Lerman Capt

(Initialed) DGB

Exhibit "A"
DSB

SUMMARY OF EVIDENCE IN THE CASE OF No. B.43499 Pte HETMANSKI, M. of "B" Coy, RHLI, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken under oath.

FIRST WITNESS FOR THE PROSECUTION

Capt. W.C. Avery, Adjt RHLI, having been sworn states:-

"I produce Army Form B 252 containing evidence of L/Cpl C.R. Rodger and W.U. Moore to the effect that the accused at 1430 hrs, 11 Nov 44 was absent from his unit in Brussels and was at that time and place apprehended by the military authority.

AF B252 is attached as Exhibit "A".

"I produce Certificate of Arrest purported to be signed by the officer Commanding 120 Provost Coy CHQ.

Certificate of arrest is attached as Exhibit "B".

(Sgd) W.C. Avery

The accused declines to cross-examine this witness.

SECOND WITNESS FOR THE PROSECUTION

C.120919 Cpl JENNINGS, G. of "B" Coy RHLI, having been duly sworn states:

I am C.120919 Cpl Jennings, G. of "B" Coy RHLI. I know the accused, Pte Hetmanski, M. as a member of my section which was No 6 Section of 11 Platoon. I had been on leave in Antwerp the day before on an afternoon pass and returned to my section's billet late at night on the 23 Oct 44. I heard on return that we were to do an attack next morning. When I checked my section at approximately 0600 hrs, 24 Oct 44, the accused was not present. I made inquiries from other members in the section and made a search of the area but the accused's whereabouts was not known nor could he be located. I marked him absent as from 0600 hrs 24 Oct 44.

The accused whom I have known for over a year in the RHLI has always been a good soldier and I was surprised at his absence. He had complained prior to the time of his absence about his feet which I saw on a couple of occasions. They were blistered and festered. He did go to the Medical Officer for treatment and was instructed to carry on by him.

(Sgd) George Jennings

The accused declines to cross-examine this witness.

The accused having been duly cautioned in accordance with RP 4(e) says:

"I do not want to make a statement nor call any witnesses."

I certify that Rules of Procedure 4(c)(D)(E)(F) and(G) have been complied with. I certify that the foregoing summary of evidence consiting of three pages was taken down by me in the presence of the accused this 27 Nov 44.

(Signed) G.A. Marren Capt
Officer detailed to take Summary of Evidence.

In the Field

CHARGE MP/120/11/296 Army Form B 252
(See King's Regulations)

ROYAL HAMILTON LIGHT INFANTRY Regiment
(~~Battery~~ ~~Squadron~~ ~~Troop or~~ Company)

B

Initialed) DSB B

CHARGE against No. B.43499 Rank Pte

Name HETMANSKI, M.

Place Date of Offence

OFFENCE WOAS Absent from 2200 hrs 23 Oct 44 until apprehended by the Military Police at RUE NEUVE BEUSSELS 11th November 1944 at about 1420 hrs.

(Sgd) J.F. Glen Capt

COMMANDING 120 PROVOST COY, CHQ

Names of Witnesses :—

7685974 L/Cpl C Rodger 120 Provost Coy CMPolice
1593670 L/Cpl W Moore 120 Provost Coy CM Police

4397010 Cpl. J. Allen 610 Coy CMP (VP)

Signature of O.C. Battery, Squadron, Troop or Company) Statement attached

Punishment Awarded)

By whom Awarded)

Adjutant.

P.T.O.

30188. Wt.W21274/1961. 2,000,000 10/42. K. & H., Ltd. G657/47.

This is Exhibit "A" in the case of B.43499 Pte Hotmanski, M. taken before me this 27 Nov 44.
(Sgd) G.A. Marron Capt

Statement of **EVIDENCE** in the Case of No. B.43499 Pte Hotmanski, M. "B" Coy 1 Bn Royal Hamilton Light Infantry 2 Cdn Division.

Sir at Brussels on Saturday 11 Nov 1944 at about 1420 hrs, I was on duty in RUE NEUVE accompanied by L/Cpl W. Moore, CM Police where I saw the above named soldier. I asked him for his pass and he replied that he had lost his unit and was absent. I arrested him, conducted him to the PRINCE ALBERT BARRACKS, where I obtained his particulars, verified same from his AB 64, and handed him over to the NCO i/c Guard to be detained.

Receipt for prisoner attached.

(Sgd) C R Rodger L/C
CM Police

In the Field
11 Nov 44

REMARKS

Sir:
I have read over and corroborate the above statement.

In the Field
11 Nov 44

(Sgd) W.W. Moore L/Cpl
CM Police

Receipt by the N.C.O. i/c Guard of a soldier in arrest handed over to him by the Military Police.

No B.43499 Rank Pte Name HETMANSKI, M.

Coy B Unit RCOI 2 Cdn Div

Station

Sir,

I was Commander of the Prince Albert Barracks Guard on the 11 Nov 1944, when about 1450 hrs (time) the above named soldier was handed over to me by the Military Police.

He was sober (condition)

Station Brussels

Date 11 " 1944

Signature (Sgd) 43507010 J Allen Cpl

Unit 6lo Coy CMP (VR)
N.C.O. i/c Guard.

DSB

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT, SECTION 163(1) (jj)

I certify that No B43499 Rank Pte Name HETMANSKI, M.

(Unit) Royal Hamilton Light Inf was arrested at Brussels

at 1420 hrs on 11 Nov 44 (Date) He was dressed in

Uniform

~~Plain-Clothes~~

Date 11 Nov 44

Signature of Provost Marshal AFM or other officer into whose custody the above-named person was taken of arrest.

(Signed) J.P. Blen Capt

(Rank)

(Unit or Appointment)

COMMANDING 180 PROVOST COY GHQ CORPS OF MILITARY POLICE

NOTES.

1. This certificate MUST be signed personally by the officer concerned.
2. In no circumstances may it be signed by one officer "for" another, or by anyone who does not hold commissioned rank.
3. In no circumstances should the place of apprehension by described as "In the Field". The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

Ex B
DSB

M.F.B. 155
22M—5-41 (579-5)
H.Q. 1772-99-630
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B.43499	Pte	Marion [illegible]	1 Bn [illegible], CA(Os)

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	Nil times	Nil times
For	times	times
For	times	times
For	times	times
For	times	times

[illegible]

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

[illegible]
Air Force Act A.F.A. 73
[illegible]

3. The accused is not under sentence at the present time.

or,

[illegible] Beginning on the [illegible]

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 31 days in military custody, making a total of 31 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 22 years 2 months.

6. The date of his attestation specified in his record of service is 23 Jun 41

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of military military State any air force decoration or reward. military CVSM & Clasp

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of

Pte HETMANSKI, M.

The accused has a very good record. No crimes since joining the army. Came over to France with the Regt. and has been with them since that time. Also while awaiting court martial has been doing duty in the front line, and has shown no tendency to leave.

Ex B
DSB

M.F.B. 358
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B.43499	Pte	Marion [illegible]	3 Bn RCI, CA(Ob)

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	Nil times	Nil times
For	times	times
For	times	times
For	times	times
For	times	times

[illegible]

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

[illegible] Air Force Act A.F.A. 73 [illegible]

3. The accused is not under sentence at the present time.

or,

[illegible] Beginning/day

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 31 days in military custody, making a total of 31 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 22 years 2 months.

6. The date of his [illegible] specified in his record of service is 23 Jun 41.
attestation

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of [illegible] military military [illegible] State any air force decoration or reward. military CVSM & Clasp

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ~~Permanent Force~~ unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number R.65499 Rank Pte Unit

Name PERMANENT, Marion of 1 Bn RCLI (CAO) Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	NIL			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th day of December 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

(Signed) W.O. Avery Capt & Adjt
1 Bn RCLI, CA(Os).

Pte HETMANSKI. M.

The accused has a very good record. No crimes since joining the army. Came over to France with the Regt. and has been with them since that time. Also while awaiting court martial has been doing duty in the front line, and has shown no tendency to leave.

Ex "C" DSB

No. B.43499 Name HETMANSKI, M. Sqn, Battery, or Company | Corps CIC | Date of enlistment 23 Jun | GC Badges N/A | Service or Proficiency Pay N/A | 3/17 MFM 6 (AFB 122) 40/PAS/106 (5413)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Entries Nil					
				Certified true copy taken from regimental documents in my custody. (Signed) W.O. Avery Capt & Adjt 1 Bn RHLI, CA(Os)					

(PTO)

4M-129

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA48) (U.P.A.S. 1064)

Convened by Order of BRIG F.N. CABELDU Comd 4 Cdn Inf Bde dated 9 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.43499	PTE		MARION	HETMANSKI	RHLI

Certified true copy
W.O. Avery Capt
A.D.J.
Cdn Sec GHQ 21 Army Gp

PROCEEDINGS REVISED Date 5 Jan 45 Cdn Sec G.H.Q. 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) HOLLAND on (*date(s)*) 12 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, J.A., if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3) DSB DSB

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1045 hours trial commences. DSB

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected not to be tried by court-martial instead of dying death was summarily by the Court~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~be tried by me as President or by any of the Members of the Court?~~ DSB

~~The Prosecutor informs the Court that accused elected not to be tried by court-martial instead of dying death was summarily by the Court~~ DSB

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D.S. BEATTY	R Regt C
Member	Capt	C.A. RICHARDSON	11 Cdn Fd Amb
Member	Capt	W.V.HOWARTH	RHLI
Judge-Advocate			
Prosecutor	Lt	J.F.LAWLESS	RHLI
Defending Offr	Lt	H.A.OLIVER	RHLI

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (~~no~~) (~~a~~) DSB DSB plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (*separately*) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~has considered~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B DSB

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Bol III Vol 7

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused:

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn b.)

~~Accused was sentenced to [illegible] beginning on [illegible]~~ DSB (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 31 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for 12 months.

(Sgd) ..... 12 Dec 44 (Sgd) D.S. Beatty Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Dated (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

CFN ~~I withhold from the accused the benefit of the [illegible] and direct that the sentence be carried into execution~~

(Sgd) F.N. Cabeldu Brig

Date 15 Dec 44 Commanding 4 Cdn Inf Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B.43499 Pte HETMANSKI, Marion	20 Dec 44	(Signed) W.O. Avery Capt & Adjt R.H.L.I.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, ete, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 105 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; assuring and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), DSB call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s). DSP If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(3), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(4), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(5)

President to accused : Do you wish to make a statement ? Ans. No (5)
(*1. RP 37(E). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers that accused's statement (5) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) charge(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*) DSB DSB DSB

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded G[illegible] are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B [illegible] under C2. If any plea is changed to Not Guilty, trial there[illegible] with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof [illegible] sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form [illegible] p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

DSD

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Do you intend to call witnesses on your behalf ?
Ans Are they witnesses as to character only ? Ans
(*1. RP 155. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(E).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy of Conduct Sheet(s) DSB purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A A 162(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) DSB and Conduct Sheet(s) DSB, and in mitigation of punishment ?(1) Ans Yes Statement of defending offr attached. (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove an oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas HO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B43499 Pte HETMANSKI, Marion. 1 Bn Royal Hamilton Light Infantry, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
Section 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field absented himself without leave from 2200 hrs 23 Oct 44 until 1420 hrs 11 Nov 44.

Total absence 18 days 16 hrs 20 min.

In the field
28 Nov 44

(Signed) W.P. Whitaker Lt-Col
Comd 1 Bn RHLI, Cdn Army C/S

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field
9 Dec 44

(Signed) F.N. Cabeldu Brig
Comd 4 Cdn Inf Bde

(Initialed) DSB

DSB

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if outharized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate outhy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.43499	Pte		Marion	HETMANSKI	RHLI

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 9 Dec 44 endorsed by me, ~~[DO/D AS THEY MAY ARRIVE]~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General
FNC Court-Martial; (~~and that it is not practicable to delay the trial for reference to the proper authority~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

FNC 4. I ~~[appoint as President, (a) the Offr next in seniority to me, (b) [illegible] as President, to act as such at the trial]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

FNC 5. ~~[I also appoint as Judge Advocate at the trial the Offr mentioned hereunder]~~.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Maj	D.S. BEATTY		R Regt C

MEMBERS.

A Capt to be detailed by CO 11 Cdn Fd Amb

A Capt to be detailed by CO RHLI
(Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

A Capt to be detailed by CO Essex Scot
(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

FNC ~~JUDGE ADVOCATE~~.

(Rank.) N/A (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in HOLLAND (Country.) (Sgd) F.N. Cabeldu (Signed personally. RP 105 fn 2) Brig (Rank.)

Date 9 Dec 44 Commanding 4 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA85 (In lieu of AFA3) 40-7 & 8-1407 (4951) (See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

I certify that No B.43499 Pte HETMANSKI, M. 1 Bn RHLI Regt

is fit to undergo trial by Court-Martial.

In the Field
12 Dec 44

(Sgd) S. Lerman Capt

(Initialed) DSB

Exhibit "A"
DSB

SUMMARY OF EVIDENCE IN THE CASE OF No. B.43499 Pte HETMANSKI, M. of "B" Coy, RHLI, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken under oath.

FIRST WITNESS FOR THE PROSECUTION

Capt. W.O. Avery, Adjt RHLI, having been sworn states:-

"I produce Army Form B 252 containing evidence of L/Cpl C.R. Rodger and W.U. Moore to he effect that the accused at 1420 hrs, 11 Nov 44 was absent from his unit in Brussels and was at that time and place apprehended by the military authority.

AF B252 is attahced as Exhibit "A".

"I produce Certificate of Arrest purported to be signed by the Officer Commanding 120 Provost Coy (HQ.

Certificate of arrest is attached as Exhibit "B".

(Sgd) W.O. Avery

The accused declines to cross-examine this witness.

SECOND WITNESS FOR THE PROSECUTION

C.120919 Cpl JENNINGS, G. of "B" Coy RHLI, having been duly sworn states:

I am C.120919 Cpl Jennings, G. of "B" Coy RHLI. I know the accused, Pte Hetmanski, M. as a member of my section which was No 6 Section of 11 Platoon. I had been on leave in Antwerp the day before on an afternoon pass and returned to my section's billet late at night on the 23 Oct 44. I heard on return that we were to do an attack next morning. When I checked my section at approximately 0600 hrs, 24 Oct 44, the accused was not present. I made inquiries from other members in the section and made a search of the area but the accused's whereabouts was not known nor could he be located. I marked him absent as from 0600 hrs 24 Oct 44.

The accused whom I have known for over a year in the RHLI has always been a good soldier and I was surprised at his absence. He had complained prior to the time of his absence about his feet which I saw on a couple of occasions. They were blistered and festered. He did goto the Medical Officer for treatment and was instructed to carry on by him.

(Sgd) George Jennings

The accused declines to cross-examine this witness.

The accused having been duly cautioned in accordance with RP 4(c) says:

"I do not want to make a statement nor call any witnesses."

I certify that Rules of Procedure 4(c)(D)(E)(F) and(G) have been complied with. I certify that the foregoing summary of evidence consiting of three pages was taken down by me in the presence of the accused this 27 Nov 44.

(Signed) G.A. Marron Capt
Officer detailed to take Summary of Evidence.

In the Field

CHARGE M/130/11/296 Army Form B 252
(See King's Regulations)

ROYAL HAMILTON LIGHT INFANTRY Regiment
Battery
Squadron
Troop or
Company

B

(Initialed) DKB B

CHARGE against No. B.45499 Rank Pte

Name [illegible]

Place Date of Offence 25 Oct 44

OFFENCE WOAS Absent from 2200 hrsuntil

apprehended by the Military Police at [illegible]

BRUSSELS 11th November 1944 at about 1400 hrs.

(Sgd) J.F. Glen Capt

COMMANDING 190 PROVOST COY, CMP

Names of Witnesses:—

7685974 L/Cpl C Rodger 190 Provost Coy CMPolice

1583670 L/Cpl M Moore 190 Provost Coy CM Police

4397010 Cpl. J. Allen 610 Coy CMP (VP)

Signature of O.C. Battery, Squadron, Troop or Company Statement attached

Punishment Awarded

By whom Awarded

Adjutant

P.T.O.

20188. Wt.W3107/4/1941. 2,000,000. 10/42. K. & H., Ltd. G66/745.

This is Exhibit "A" in the case of B.43499 Pte Hetmanski, M. taken before me this 27 Nov 44.
(Sgd) G.A. Marron Capt

Statement of **EVIDENCE** in the Case of No. B.43499 Pte Hetmanski, M. "B" Coy 1 Bn Royal Hamilton Light Infantry 2 Cdn Division.

Sir at Brussels on Saturday 11 Nov 1944 at about 1420 hrs, I was on duty in RUE NEUVE accompanied by L/Cpl W. Moore, CM Police where I saw the above named soldier. I asked him for his pass and he replied that he had lost his unit and was absent. I arrested him, conducted him to the PRINCE ALBERT BARRACKS, where I obtained his particulars, verified same from his AB 64, and handed him over to the NCO i/c Guard to be detained.

Receipt for prisoner attached.

(Sgd) C R Rodger L/C
CM Police

In the Field
11 Nov 44

REMARKS

Sir:
I have read over and corroborate the above statement.

In the Field
11 Nov 44

(Sgd) W.V. Moore L/Cpl
CM Police

Receipt by the N.C.O. i/c Guard of a soldier in arrest handed over to him by the Military Police.

No B.43499 Rank Pte Name HETMANSKI, M.

Coy B Unit RHLI 2 Cdn Div

Station

Sir,

I was Commander of the Prince Albert Barracks Guard

on the 11 Nov 1944, when about 1450 hrs (time)

the above named soldier was handed over to me by the Military Police.

He was sober (condition)

Station Brussels

Date 11 Nov 1944

Signature (Sgd) 4397010 J Allan Cpl

Unit 610 Coy CMP (VM)

N.C.O. i/c Guard.

DSB

CERTIFICATE OF ARREST IN ACCORDANCE WITH
ARMY ACT, SECTION 163(1) (2)

I certify that, No B43492 Rank Pte Name [redacted], H.
(Unit) Royal Hamilton Light Inf was arrested at Brussels
at 1420 hrs on 11 Nov 44 (Date). He was dressed in
Uniform
~~Plain clothes~~

Date 11 Nov 44

Signature of Provost Marshal
APM or other officer into
whose custody the above-named
person was taken on arrest.

(Signed) J.F. Blum Capt

(Rank)
(Unit or Appointment)
COMMANDING 180 PROVOST COY CMP
CORPS OF MILITARY POLICE

NOTES.

1. This certificate MUST be signed personally by the officer concerned.
2. In no circumstances may it be signed by one officer "for" another, or by anyone who does not hold commissioned rank.
3. In no circumstances should the place of apprehension by described as "In the Field". The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

Ex B
D&D

M.F.B. 355
2SM—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B.43499	Pte	Marion HETMANSKI	1 Bn RHLI, CA(Os)

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	Nil times	Nil times
For	times	times
For	times	times
For	times	times

[redacted]

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

[redacted]
Air Force Act A.F.A. 73

3. The accused is not under sentence at the present time.

or,

[redacted]

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 31 days in military custody, making a total of 31 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 22 years 2 months, [redacted]

6. The date of his [redacted] specified in his record of service is attestation [redacted] 23 Jun 41

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of [redacted] State any air force decoration or reward. military military CVSM & Clasp military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank ~~of~~ Permanent Force unit dated ....., and in his regiment (or corps), the rank of dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number B.43499 Rank Pte Unit

Name HETMANSKI, Marion of 1 Bn RHLI (CAD) Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	NIL			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th day of December 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

(Signed) W.O. Avery Capt & Adjt
1 Bn RHLI, CA(Os).

Pte HETMANSKI, M.

The accused has a very good record. No crimes since joining the army. Came over to France with the Regt. and has been with them since that time. Also while awaiting court martial has been doing duty in the front line, and has shown no tendency to leave.

Ex "C" DSB

No. B.43490 Name HETMANSKI, M. Sqn, Battery, or Company | Corps CIC | Date of enlistment 23 Jun | GC Badges N/A | Service or Proficiency Pay N/A | 3/17 MFM 6 (AFB 122) 40/PAM/136 (5413)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Entries Nil					
				Certified true copy taken from regimental documents in my custody.					
				(Signed) W.O. Avery Capt & Adjt 1 Bn RHLI, CA(Os)					

(PTO)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternatives charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 732, and as to loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1) DHB

(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 31 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court : To be imprisoned with hard labour for 12 months

(Sgd) ..... Judge-Advocate, if any. 12 Dec 44 Date awarded. (Sgd) D S Beatty Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6 44(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally, AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.)

(Sgd) F N Wheeler Brig

Date 15 Dec 44 Commanding 4 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B43499 Pte Helmenski Marian	20 Dec 44	[illegible] Capt RHLI

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 24M-124

CPA246 (To lieu of APA2) 40/P AV 87/1698 (6/6)

FIELD GENERAL COURT-MARTIAL 4/38B

RECEIVED 25 JAN 1945 CMHQ

Convened by Order of LIEUT-GEN E H CARLEBU Comd 4 CDN INF BDE dated 7 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B43499	PTE		MARION	HELMENSKI	Odn. Sec. CHQ 2 Cdn Army Gp

PROCEEDINGS REVIEWED 15 Dec 44 Cdn Sec CHQ 2 Cdn Army Gp

H/Lt Pinsent Asst 27 Jan 45 MHT REVIEWING OFFICER, JAG BRANCH C.M.H.Q. ENGLAND

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ..... on (date(s)) 12 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. Vol 132

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance see procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1045 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to ..... as interpreter ?~~ Ans DNO

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ?~~ Ans DNO

~~The shorthand writer is sworn.(1)~~ DP

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 16, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	D S Beatty	R Regt C.
Member	Capt	C A Richardson	11 Cdn Fd Amb
Member	Capt	W V Howarth	RHLI.
Judge-Advocate			
Prosecutor	Lt	J F Lawless	RHLI
Defending Offr	Lt	H A Oliver	RHLI

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused before arraignment make(s) (no) ~~a~~ plea. (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Vol III Fol 7

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur wher there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to counsel see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 86, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No.(5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) changes his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. ..... Do you intend to call witnesses on your behalf ?

Ans. ..... Are they witnesses as to character only ? Ans. .....

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. No

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Age and Particulars of Services(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)

(*1. MFB 355 or AFB 294. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement of Age and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. No. Yes. Statement of defending Offr attached.(2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, RP 48. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B43499 Pte HETMANSKI, Marion., 1 Bn Royal Hamilton Light Infantry, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
Section 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field absented himself without leave from 2200 hrs 23 Oct 44 until 1420 hrs 11 Nov 44.

Total absence 18 days 16 hrs 20 min.

In the field
28 Nov 44

(W.D. Whitaker) Lt-Col
Comd 1 Bn RHLI, Cdn Army O/S

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field
4 Dec 44

.....Brig
Comd 4 Cdn Inf Bde

D16.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B43409	PTE		MARION	HOFMAYER	WIR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) [illegible] endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	D S BEAMISH	R Regt C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt to be detailed by CO 11 Cdn Fd Amb		
A Capt to be detailed by CO FWLI		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
A Capt to be detailed by CO Essex Scot		

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
	N/A	

On Active Service in the Fd

in HOLLAND (Country.)

(F M CAMPBELL) (Signed pursuant to RP 105 fn 2.) BRIG (Rank.)

Dat 3 Dec 44 Commanding A CDN INF BDE

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1641 (6143)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

I certify that No. B43499 Pte METHANSKI, M. 1 Bn NZLI Regt,

is ..... to undergo trial by Court Martial.

In the field
12 Dec 44

.....

section which was no. 6 section of 11 Platoon. I had been on leave in Antwerp, the day before ~~23~~ afternoon pass and returned to my section's billet late at night on ~~23~~ 23 ~~Oct~~ 44. I heard on relieving that we were to do an attack next morning. When I checked my section at approximately 0600 hrs 24 ~~Oct~~ Oct 44, the accused was not present. I made enquiries from other members in the section and made a search of the area but the accused's whereabouts was not known nor could he be located. I marked him absent as from 0600 hrs, 24 ~~Oct~~ Oct 44.

The accused whom I have known for over a year in the R.H.L.I. has always been a good soldier and I was surprised at his absence. He had complained prior to the time of his absence about his feet which I saw on a couple of occasions. They were blistered and festered. He did go to the medical officer for treatment and was instructed to carry on by him.

George Jennings

The accused declines to cross-examine this witness.

The accused having been duly cautioned in accordance with R P 44(c) says:-

"I do not want to make a statement, nor call any witnesses."

I certify that Rules of Procedure 44 (C), (D) (E) (F) and (G) have been complied with. I certify that the foregoing summary of evidence consisting of three pages was taken down by me in the presence of the accused this 27 Nov 44.

G.S. Marrow
Capt.
Officer detailed to take Summary of Evidence.

In the Field.

CHARGE MP/100/11/296 Army Form B.252
(See King's Regulations)

THE ROYAL HAMILTON LIGHT INFANTRY Regiment
Battery
Squadron
Troop or
Company

A B B

CHARGE against No. B43499 Rank Pte

Name HETMANSKI M.

Place ..... Date of Offence .....

OFFENCE In O.A.S. absent from 22 Coy 1400 hrs 10 Sept 44 until apprehended by the British Police at Rue de Neuve Bruxelles 11th November 1944 at about 14.20 hrs

J.T. Lee Capt.
COMMANDING 120 PROVOST COY. R.A.C.

Names of Witnesses:—
7683976 Sgt C REDDEN 120 Provost Coy Can Pro Corps
13793670 L/Cpl W. MOORE 120 Provost Coy Can Pro Corps
B77010 Cpl T. ALLEN 610 Coy Can Int Corps

Signature of O.C. Battery, Squadron, Troop or Company ..... Statement attached

Punishment Awarded .....

By whom Awarded .....

Adjutant.

P.T.O.

... is exhibit A in the case
of B-43499 Pte Hofmanski H.
taken before me this 27 Nov 44
28 Marrden
Capt

Statement of **EVIDENCE** in the case of
No. B. 43499 Pte HOFMANSKI. H.
"B" Coy 1 Bn. Royal Hamilton Light Inf.
2 Cdn. Division.

Sir

At BRUSSELS on Saturday 11 Nov 1944
at about 1620 hrs I was on duty at Rue
NEUVE accompanied by Pte W. Roche C.M.
POLICE, when I saw the above named
soldier. I asked him for his pass and he
replied that he had lost his unit and
was absent. I arrested him, conducted
him to the PRINCE ALBERT BARRACKS, where
I obtained his particulars, verified same
from his A.B.64, and handed him over
to the N.C.O i/c Guard to be detained.
Receipt for prisoner attached.

In the Field **REMARKS** C. E. Rodgers 4C
11. Nov. 44. C. M. Police

Sir, I have read over and correctly
the above statement
In the Field W. T. Moore
11. Nov. 44. Cpl. R.C.

Receipt by the N.C.O. i/c Guard of a soldier in arrest handed over to him by the Military Police.

No. B43499 Rank Pte Name HETMANSKI M.

Coy. B Unit R.H.L.I. 2nd CANADIAN INF. DIV.

Station.....

Sir,

I was Commander of the PRINCE ALBERT VOLUNTEERS Guard on the 11 NOV 1944, when about 14:30 hrs (Time) the above named SOLDIER was handed over to me by the Military Police.

He was SOBER (Condition)

Station BRUSSELS Signature [illegible]

Date 11 NOV 1944 Unit 610 Coy CCRE 6th

N.C.O. i/c Guard.

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT, SECTION 163 (1) (ii)

I certify that No. B43499 Rank Pte Name Hetmanski M. of (Unit) Royal Winnipeg Light Infantry was arrested at Brussels at 14.20 hrs on 11 Nov 44 (Date). He was dressed in Uniform ~~Plain clothes~~

Date 11 Nov 44

Signature of Provost Marshal AFHQ or other officer into whose custody the above-named person was taken on arrest. [signature] (Rank) (Unit or Appointment)

COMMANDING 128 PROVOST COY. G.H.Q. CORPS OF MILITARY POLICE

NOTES.

1. This certificate MUST be signed personally by the officer concerned.
2. In no circumstances may it be signed by one officer "for" another, or by anyone who does not hold commissioned rank.
3. In no circumstances should the place of apprehension be described as "In the Field". The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

In lieu of Army Form B296

R.C.P.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number B43449 Rank Pte Name Marion HETMANSKI Unit 1 Bn RHLI, CA(Os

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheet of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:-

	Within last 12 months	Since enlistment
For	nil times	nil times

There are no entries in the conduct sheet of the accused.

2. The accused has not been previously convicted.

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for ....Nil.....days in civil custody, and ..31.....days in military custody, making a total of .....31.....days, of which .....Nil..... days were spent in hospital.

5. The present age of the accused according to his record of service is ....22 years 2 months.

6. The date of his attestation specified in his record of service is.....23 Jun 41.....

10. The accused is in possession of CVSM and clasp

Schedule of convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused

No B43449 Rank Pte Name Marion HETMANSKI Unit 1 Bn RHLI (C

Nil

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th day of December 1944

(WO AVENY) Capt & Adjt,
1 Bn RHLI, CA(Os).

O/C
DAD

No B43499 Name HETMANSKI, M Sqn, Battery, or Company | Corps CIC | Date of enlistment 23 Jun 45 | Badges n/a | Service or Proficiency Pay n/a

MFM 6 (AFB 122) 10/PAS/136 (3438)

Date of last entry in Company Conduct Sheet n/a | No and date of last drunk n/a | Period not reckoning towards freedom from extra fine n/a | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Entries Nil					

Certified true copy taken from regimental ducuments in my custody.

(WO KVIKY) Capt & Adjt,
1 Bn KILT, CA(Os)

(FTO)

Pte Hetmansky M.

DH

the accused has an
very good record. No crimes
since joining the army
Came over to France with
the Reg in act and has
been with them since
that time, the whole
awarding contributed
has been doing duty
in the front lines, and
has shown no hesitancy
to leave.

5 T-1.35

Pte. Helgen, J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L 86711 Pte (A/Cpl) John HETYEI 4 Bn Regina Rifles att Cdn Sec HQ Brussels Grn

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 41	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 46 days, of which 22 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for sixty (60) days.

~~Judge Advocate, if any.~~ 11 SEP 45 ~~(Sgd)~~ F A Baillargeon President. (RP 45, 58)

Date awarded. Major

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.(*)~~ ~~(*. AA 57A. Delete if not used.)~~

(Sgd) K Stewart Col

Date 20 Sept 45 Commanding Cdn Sec I Corps HQ Brit Army of the Rhine

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
L 86711 Pte (A/Cpl) Hetyei J	20 Sept 45	"CB Perdman" Capt Dpty Judge Adv Hq Brussels Grp.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT JAG HQ IN AB 150 51-132

RECEIVED 8 OCT 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPA90 (To Issy of AFA3) 45/P & S/1698 (10/10) 4/38B

Convened by Order of Brig GWA Tarleton DSO MC Comd Brussels Grn dated 8 Sep 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
L 86711	Pte	(A/Cpl)	John	HETYEI	4 Bn Regina Rifles (att Cdn Sec HQ Brussels Grp)

PROCEEDINGS REVIEWED

90 days Lg Brody may

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in ~~(country)~~ BELGIUM on ~~(date(s))~~ 11 Sep 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

(IV - p 1)

A1. The President, Members, ~~waiting Members, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, [illegible] 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to VICTOR LEAKY as interpreter? Ans~~

~~The Interpreter is sworn(1). Do you object to ..... as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68B. If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F A BAILLARGEON	Gen List	Cdn C M Centre
Member	Capt	D L MACDONELL	Cdn Scots	Cdn C M Centre
Member	Capt	P J POULIN	RCA	Cdn C M Centre
~~Judge Advocate~~				
Prosecutor	CAPT	K A McKENZIE		CDN CM CENTRE
Defending Offr	MAJOR	PS OSLER	RCA	CDN CM CENTRE

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES (*)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused L 86711 Pte(A/Cpl)John HETYEI before arraignment make(s) (no) ~~no~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A6 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does (do) ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Letter from Pte Hetyei Brussels Grp 11 Sep 45

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witness by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), to call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO SIR (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement (1) : The Court thinks (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or P art not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

~~C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)~~
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(2) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath cannot carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. .....
Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 45(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. GIVE EVIDENCE MYSELF
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statements and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. YES, THROUGH MY DEFENDING OFFICER (2)
(*1. RP 37(C), 46c(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and also J.A. if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences consigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
L 86711	Pte (A/Cpl)	John	HETYEI	4 Bn Regina Rifles (att Cdn Sec HQ Brussels Grn)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 8 Sep 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)		(Unit.)
Major	F A BAILLARGEON	Gen List	Cdn C M Centre

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)		(Unit.)
Capt	D L MACDONELL	Gen Scottish	Cdn C M Centre
Capt	P J POULIN	RCA	Cdn C M Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Date 9 Sep 45

G W Tarleton Brigadier (Rank.)

(Signed personally. RP 105 fn 2.)

(G W Tarleton)

Commanding Brussels Garrison

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAAS (To Dmn of AFAS) 40/F & S/1647 (A81)

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused, L-86711 Pte (A Cpl) John BETYEI, 4 Bn Regina Rifles, attached to Cdn Section HQ Brussels Garrison, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 41
Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE THAT IS TO SAY, ASSAULT OCCASIONING ACTUAL BODILY HARM, CONTRARY TO SEC 47 OF THE OFFENCES AGAINST THE PERSONS ACT, 1861,

in that he

in the Field on 27 Jul 45 assaulted Maria VAN BROECKHOVEN thereby occasioning her actual bodily harm.

In the Field
3rd Aug 45

(L P Swyan) Lt col
Commanding
Cdn Sec H Q Brussels GARRISON

To be tried by Field General Court-Martial

(G W Tarleton) Brigadier
Commanding
Brussels Garrison

In the Field
8th Sep 45.

MEDICAL OFFICER'S CERTIFICATE

I certify that No. L-86711 Pte. (A/Cpl) BERTRAM J.
4 Bn Regina Rifles, Att'd: Cdn Sec Brussels Gmng'ment
is FIT to undergo trial by Court Martial.

11 Sep 45. Signature of Medical Officer

MEDICAL OFFICER'S CERTIFICATE

I certify that No. L-86711 Pte. (A/Cpl) BERTRAM J.
4 Bn Regina Rifles, Att'd: Cdn Sec Brussels Gmng'ment
is FIT to undergo trial by Court Martial.

11 Sep 45. Signature of Medical Officer

NB.

L 86711 Pte (A/Cpl) John Hetyei
4 Bn Regina Rifles
att Cdn Sec HQ Brussels Grn

E1

The accused L 86711 Pte (A/Cpl) John Hetyei, 4 Bn Regina Rifles att Cdn Sec HQ Brussels Grn being duly sworn states;

I am single. I landed in France 7 Jun 44 with NB Cameron of Canada. I stayed with them until first week in Jun 45. With them without break all during the campaign. I was a wasp driver. There were 3 of us left out of 63 in our platoon. The only charge I ever had against me was for a dirty rifle and I got 3 days C B.

I don't know anything at all about the fight I had in Brussels 27 Jul 45. I had

just begun a 72 hr leave from COF and I just drink occasionally. I usually get happy and laugh when I drink. It is most unusual and I have no particular explanation for that evening. That is not my custom. When I came to, my wallet with 2000 Belg Francs and about 200 German marks was missing. I was in hospital with concussion for 3 weeks following the fight. When I received the concussion I am not sure. I never saw Frau Van Broeckhoven before. I did not know her and had no reason to like or dislike her. When she gave evidence at the Summary she cried on my shoulder and said she didn't want to see me get into trouble

I remember going into the cafe and buying one bottle of cognac and drinking it with the friend who was with me. After that ~~I remember~~ he bought a bottle and I remember having had a few drinks out of it. No similar incident to the one in question ever happened to me before.

I had volunteered for C.O.F. I don't know if my wallet was missing or not before I became involved in this affair. I had a blackout after a few drinks from the second bottle.

I did not want ~~the~~ Maria Van Broekhoven to have to come here this morning and give evidence again she is too highly emotional and would probably break down again and don't want to subject her to any further stress. R.P. 83(6) complied with.

E3 Plea in Mitigation 4 11.

Hetyei

You have heard Hetyei's own statement as to his character and actions on in connection with the offence.

I hoped to have offrs from his unit here to back it up, but he has changed units recently and all offrs of his old one, Queens Own Cams of Can, who know him well have gone back to Canada.

It is obvious that the assault was in no way voluntary, or intended in any way at all. This puts it in the category of an unfortunate accident rather than a deliberate crime. The woman who was hurt fully realizes this and she herself does not want him punished. As punishment is mainly substantially imposed to redress a wronged person, I ask that her own wishes be respected.

This is for practical purposes his very first offence. He fought with his unit from 7 Jul 44 to VE day without a break. Very few men did this and it is a most creditable performance.

He has been under arrest already for 46 days and was in hosp with concussion received on the 27 Jul for 3 weeks. He is an A/ Cpl. So he has already undergone considerable punishment for his fit of near insanity, besides the loss of money. He

latter is not an Army punishment, but is a personal one to him and should be considered.

He was on leave at the time of the offense. This does not excuse getting drunk but it is a mitigating circumstance in that it is a very common occurrence among all ranks on leave.

For all these reasons I suggest the punishment he has already undergone is ample to fit this particular case

Adj
Actg Off

Bullard
Pres.

ARMY FORM B. 250 (WAR.)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L-86711	Pte(A/Cpl)	METYBI J	4 Bn Regina Rif-Con Sec HQ Brussels Garrison

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For NIL entries(original MFM 6 not available) entry.

For ..... times.

For ..... times.

For ..... times.

EXHIBIT "B"

Date of first entry in Field Conduct Sheet NIL

Date of last entry in Field Conduct Sheet NIL

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for NIL beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for N/C days in civil custody : and for 46 46 days in military custody, i.e., N/C days in open arrest, 22 days in close arrest : of which ..... days were spent in hospital.

5. The present age of the accused is 25 Years

6. The date of his attestation ~~enlisting or joining for military service~~ is 21 May 42

7. The service which the accused is allowed to reckon is 3 years 3 months

*State the military decorations (if any) held by accused.

8. The accused is in possession of** CVSM & CLASP

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously without reduction, to the present date —

	Date of Promotion.
In the substantive rank of	-----
In the war substantive rank of	------
In the acting rank of	Cpl

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 27th day of Sept. 11 Aug 62

Lieutenant Colonel

No. L-8671 Name [illegible] J Sqn. Battery, or Company Corps CIC Date of enlistment 21May42 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40(1)/8/136 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY SHEET NIL entries Original MFM 6 not available	1 Sep 45				

Officer having custody of Regtl Books and Documents

Exhibit "C"

(PTO)

Summary of Evidence in the case of L-36711 Pte (A-Cpl) John HUTTY, 4 Bn Regina Rifles, attached to Cdn Sec HQ Brussels Garrison, a soldier of the Canadian Army Overseas(COF)

Charge- AA 41 Committing a Civil Offence- Common Assault

By direction of the CO the evidence is taken on oath.

Exhibit "A"

J Baillargeon Pres.

(2) 208

M 10737 L/C Elliott, H.N. having been duly sworn states:—

I am M10737 L/C Elliott H.N., 2 Can L of C Provost. At approx 2200 hrs 29 July 45 I, accompanied by 3306130 L/C Kirkum, R., of 247 Coy C.M. Police, was on duty on walking patrol on Rue de Croisades, Brussels.

We received a request for assistance from mme. Alice Lamaire. We went with her to a Cafe 76 Rue Du Marchee

Outside the cafe I saw a soldier whom I can recognise & now know to be L 86711 Cpl. Hetyei J., ~~R.C.R.~~ 4 Bn. Regina Rifles.

A woman was lying on the pavement & Cpl. Hetyei was astride her & striking her with both fists. I grabbed him round the neck & pulled him from the woman. He took my thumb between his teeth & bit it to the bone.

L/Cpl Kirkum then held him while I telephoned Coy H. Q. for assistance. The "stand-to" soon arrived. I placed Cpl. Hetyei under close arrest & sent him with the "stand-to" to the Coy H.Q. guard room.

I then took the woman he had been striking Marcia VanBrocklova to the Can. M.I.R. where her injuries & my own were attended to

Cpl. Hetyei was in very bad condition. It was under the influence of liquor & ● it

W.J. Elliott.

XB

certainly had the best of him. He was just wild & fighting mad, — we could hardly hold him. I investigated the source of his liquor the Cafe Riedekerke — but found nothing suspicious.

The accused declines to cross examine this witness.

H. N. Elliott.

Alice LAMAIRE (Madame R. Rossel) having been duly sworn states :—

I am Alice Lamaire, my married name is Rossel, & I live at 97 Rue de Lorient, Etterbeek Brussels. My sister Maria Van Brockhoven & I were visiting at the home of our parents & we decided to go to the last show at the cinema. About 21.00 hrs.

As we walked down the street we noticed that a soldier was following us. We did not know him & had never seen him before. His attitude was threatening so we ran away & into a cafe, 76 Rue du Marche. He followed us into the cafe, seized my sister by the hair & started to strike her. I tried to separate them but the soldier struck me, & I then went to find the military police. I found the one who is now outside, & we came back to the cafe.

My sister was lying on the floor of the cafe when I came back & the soldier was shouting & making a disturbance at the doorway. The police had trouble arresting him.—

My sister had fainted. There was blood on her face, she had a black eye, & some of her teeth were missing. The provost accompanied my sister & I to a Canadian doctor in the Rue St. Lazare & some other provost came & took the soldier away.

The accused declines to cross examine this witness.

Alice Lamaire

(8) (8)

Maria Van Broeckhoven having been duly sworn states:-

I am Maria Van Broeckhoven, 77 Staeylanden Street Aarschot, - & my father's address is Rue du marche No. 23. I work at my father's house every day.

My half sister (23), Alice Lemaire, and I were visiting at the home of my father. I don't remember the day or the date. We decided to go to the cinema.

We passed a Canadian soldier on the street. He is the one who is here now. He was very drunk & shouting. We were afraid of him as he was just acting like a madman so we ran away & into a cafe. He was very drunk, it was the cognac, & I do not blame him for what he did.

He followed us into the cafe. He grabbed me by my hair & tried to pull me out in the street. I struggled but fell. He dragged me outside & struck me twice on the head while I was lying on the pavement. I then fainted & don't remember any more. I have no idea what time this occurred.

When I came to I was in the cafe. A Canadian provost, a Belgian policeman, my half sister, & some others were present. They took me to a Canadian doctor in the Rue St. Lazaire. Three of my teeth were broken so the doctor extracted them. He also gave me the necessary care to cure my other injuries. My own doctor extracted the other two teeth.

M Van Broeckhoven

The soldier was very drunk with the cognac + I do not hold him responsible for what happened. I do not wish that he should be punished heavily for what he did because he didn't know.

The accused declines to cross examine this witness.

M Van Braeckhoven

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness

I certify that the foregoing Summary of Evidence consisting of Seven pages, was taken down by me in the presence of the accused and that RP 4 (C)(D)(E)(F) and (G) have been complied with.

(K A McKenzie) Capt

Officer detailed to take Summary of Evidence

Dated in the Field
29 Aug 45

LIST OF WITNESSES

PROSECUTION M-10737 L cpl ELLIOTT H N 2 Cdn L of C Pro Coy

Alice LAMAIRE (Madame R Rossel) 97 Rue de Lorient Etterbeek Brussels

Maria VAN BROECKHOVEN 23 Rue du Marché BRUSSELS

Defence

NIL

X Y

LIST OF EXHIBITS

NIL

I, the undersigned hereby acknowledge having received one copy of the Summary of Evidence and one copy of the Charge Sheet, free of charge on 8 Sep ~~Aug~~ 45.

J. Hetyei.

~~I-8671~~ Pte (A cpl) HETYEI J

I, the undersigned desire the services of an Officer to represent me at my trial by FGCM.

I desire the services of

if he is available

8 Sep ~~Aug~~ 45

J. Hetyei

~~I-8671~~ Pte (A cpl) HETYEI J

Minute of Promulgation.

FGCM
L86711 Pte (A/Cpl) HETYEI J
4 Bn Regina Rifles, att Cdn Sec
HQ Brussels Grn

Charge:

Sec 41 AA — WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE THAT IS TO SAY, ASSAULT OCCASIONING ACTUAL BODILY HARM, CONTRARY TO SEC 47 OF THE OFFENCES AGAINST THE PERSONS ACT, 1861,

in that he

in the Field on 27 Jul 45 assaulted Maria VAN BROECKHOVEN thereby occasioning her actual bodily harm.

Date of trial: 11 Sep 45

Finding: Guilty

Sentence: To undergo detention for sixty (60) days

Date of sentence: 11 Sep 45

Confirmation:

Confirmed -

20 Sep 45 — "HC Koran" Col
Commanding Cdn Sec 1 Echn
HQ Brit Army of the Rhine

Time in confinement awaiting trial - a total of 46 days, of which 22 days were spent in hospital.

Promulgated and extracts taken:

Accused	Date	Signature of Offr.
L-86711 Pte (A/Cpl) Hetyei J	26 Sept 45	[signature] Capt DAPM, Cdn Sec HQ [illegible]

MM-65
CPL HEWER F.R.

A-3064 Cpl (A/Sgt) Hewlett, Frank Raymond,
Royal Canadian Regiment,
3 Cdn Infantry Reinforcement Unit.

MM 65

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this twenty-third day of July, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if application

* ~~I am unable to appoint —~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~for the following reasons, namely: —~~

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major.	A. S. Pettapiece	H.Q. C.R.U.

Members.

Rank.	Name.	Regiment.
A Captain	to be detailed by O.C.	4 C.I.R.U.
A Lieutenant	to be detailed by O.C.	4 C.I.R.U.
A Lieutenant	to be detailed by O.C. Waiting Member	3 C.I.R.U.

*Signed Colin Greenfield Brigadier.

Commanding "D" Group, Cdn Rft Units.
Convening Officer.

Alex S Pettapiece Major

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

9

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A-3064 Cpl.(A/Sgt) HEWER, Frank, Raymend. R.C.R. 3 C.I.R.U.	First Charge --- A.A. Sec.40 Second Charge --- A.A. Sec.40 See Charge Sheet Attached.	Guilty Guilty	Guilty Guilty Sentenced to undergo detention for a period of thirty (30) days. 26 Jul 43. CWP.	Confirmed 28 July 1943 E.W. Wardrobe Brig

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"

*Answer (to be recorded on separate sheet if necessary) :—

(Signed) E.W. Wardrobe, Brigadier. (Signed) Arthur S. Bettauer, Major

Commanding "D" Group, C.R.U. — President.
Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 26th day of July 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The Interpreter)
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 26th day of July 1943.

Arthur S. Bettauer, Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L., 1929.

*I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 28 day of July 1943.

E.W. Wardrobe, Brig
Confirming Officer.

Promulgated and extracts taken in the case of A 30 64 Cpl 3/4th Hewer Frank Raymond.

(a) (Dated) 29/July/43 (Signed) D. Fletcher Lt Col

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(28566) W1-28000/431 60,500 12/42 A.& E.W.,Ltd. Gp.698

The accused elects that he be tried by Court Martial.

CHARGE SHEET

The accused, regimental number A-3064 Cpl (A/Sgt) Frank Raymond HEWER, Royal Canadian Regiment, on the strength of 3 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
A.A.Sec 40

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

At Ash Station, England, at or about 2355 hrs, 17 Jul 43, did use foul, obscene and abusive language in a public place, referring to a member or members of C.M.Police.

SECOND CHARGE
A.A.Sec 40

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

At Aldershot, Hants., at or about 0025 hrs, 18 Jul 43, refused to produce his pay book MBM 1, when called upon to do so by a Military Policeman.

Dated In the Field
22 July 1943.

J.A. McIntosh
(J.A.McIntosh) Colonel,
Commanding Officer,
3 Cdn Inf Reinf Unit,

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

IN THE FIELD
23 JULY 43.

E.W. Haldenby
(E.W. Haldenby) Brigadier.
Commander
"D" Group, Cdn Rft Units.

Arthur J. Bettaney, Major
President

Medical Officers Certificate.
K.R.(Can) para.557.

I certify that I have this morning examined No. A-3644
A/Sgt. (rank) HEWER, B.R. (R.C.A.) (name) and in my opinion he is fit to undergo trial by Court Martial.

Station A 3 C I R.U

Date. 26-7-43

(Sgd) (Medical Officer)

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT Kalyoubia Barracks, Egypt, Land
ON THE 26th DAY OF July 1943

The accused F.O. 2nd Cl. (Actg. Sgt.) Hare, J.R. Unit. 3 C.I.R.U.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the President or any Member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Maj. A.J. Lettapie Unit. H.Q.C.K.U.

Members Capt. K.M. Tankbell Unit. H.C.I.R.U.

Lt. H.B. Taylor Unit. H.C.I.R.U.

~~The officers under instruction are duly sworn:-~~

~~..... Unit.~~

~~..... Unit.~~

Prosecutor Capt. W.L. MacKenzie Unit. 3 C.I.R.U.

Defending Officer Lt. A.C. Wake Unit. 3 C.I.R.U.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces ~~MFB 355~~, AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
(b) Calls witnesses as to character.
(c) Calls witnesses in mitigation of punishment.
(d) Addresses the Court by his Defending Officer.

O/S R.O. 3262 was complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Attached Sheet

Arthur J. Lettapie
Maj.

1st Witness in Mitigation — The accused having been duly sworn, states (attached hereto)

1st Character Witness — Maj: C.V. Clark, of 3 C I R 4, having been duly sworn, states

I have known the accused for over 3 years. Off and on he has been under my command. I was I who recommended him for his 1st stripe. He is a very reliable and trustworthy NCO and his conduct has always been above reproach. He is an excellent instructor.

2nd Character Witness — P16 ~~Hong~~ 425 C.S.M. Brennan, R. of O. of 3 C I R 4, having been duly sworn, states

I have known the accused for about 2 years. He was under my command for about 1 year. I think he is an excellent NCO and a good worker. His manners and bearing have been beyond reproach. He is a very good instructor.

2nd Witness for Mitigation — 449716 Sgt. Maynard, J.V. of 3 C I R 4 having been duly sworn, states,

On the date in question I saw the accused being returned to 3 C I R 4. There were 4 persons there. There was an argument about whether Sgt. Kinnard was going to see an ex Provost Sgt or not. I saw him being forcibly detained by two of the escort. I did not hear him use any profane language.

2nd Witness in Mitigation — 866650 S/Sgt McKinney, C.G., one of the Sgt's Police of 3 C I R 4, having been duly sworn, states,

I saw the accused being returned to barracks at the night in question. There were 5 or 6 persons with him. I saw one of the provost party Sgt. there.

The defending officer made an address. (attached hereto)

A.L.

Statement of Sgt Hewitt.

I joined the army in Sept 1939 and came overseas in Aug 1940. I have served with the Royal Canadian Regt in the field for approximately 2 years as a full corporal. I was sent to the 3. C. I. R. D. in Jan and made an acting Sgt. in April 43.

On July 11th I started duty on our regt was about 6:30 and drove steadily until about 10:30 when I decided to go to bed to me a friend. I was under the influence of alcohol at the time. The reason I drank as much as that I have been very depressed staying at this holding unit. I have tried to get my unit but am unable to do so now that they have gone into action. It has played on my mind and I am very upset at not being with them. I was not in a normal frame of mind.

When I arrived at Ark, I decided it was too late to see my friend, so I asked a porter about the train to Aldershot could be caught. He directed me across the track. I started across the track leading and some shouted at me. I stopped at the next they I knew had forcefully pulled me off the platform. I felt the actions were unwarranted and that they were not Treating me with the respect due a N.C.O.

I do not recall very my abusive language.

I bought a ticket & returned to Aldershot. When I reached the station I was surrounded by eight provost. The rest of me had felt it was not necessary for the 8 to be right of them.

I refused to hand over my book but requested to be taken to the provost Sgt. at No 3. C. I. R. D. The provost forcefully grapped me and gave it No 3 C I R D they forcefully restrained me from seeing the provost Sgt.

In spite of my language and abuse, took full possession and

told me to go to bed.

The whole ceremony would not have taken place, had I not been depressed about not being with my unit and the fact drank so much. Also I do feel that the present and unnecessary face with me at was somewhat hasty.

F.H. Howell Sgt.

HHH

Re Sgt. Howe.

Mr. President and members of the Court

Firstly, I would like to call the court's attention to the evidence of major Clark and C.S.M. Brennan both very well qualified to judge the ability of a soldier. According to this evidence the accused possesses exceptional ability as a N.C.O. I submit it would be a shame for the accused to lose his rank and be reduced to the position of a private simply as a N.C.O. in this unit, especially at the present time.

Secondly, I would like you to take into consideration what I consider to be the two chief mitigating factors in this case. The accused was definitely under the influence of liquor he was not his normal self. Had he not been drinking, I am sure, the circumstances which led up to the injury of this boy would never have occurred. Furthermore, the accused tells me and I believe him that he is sincerely depressed with boy's attempt at holding unit. He wishes to be with his unit and be used to rejoin them. Especially so, now that he sees it taking an active part in the pursuit of Germans and has found, as soldiers he has trained with us now in battle. I would refer you to the evidence of F/Lt Sutton and F/Lt Smith where they stated the accused said "I want to stay in the unit and die like my mates." This) shows great an ample evidence of his state of mind

The accused under the influence of liquor, felt that he was not being treated by the parent unit with consideration due a N.C.O. and thus) submit led to his refusal duty.

A.H.

to bid over his pay book who ordered to do so.

The accused M.T.M.C is not clear but I submit all the charges & it are very much in order. There is no suggestion of a previous charge of drunkenness or of disorderly conduct.

The accused is only 22 years of age; I have talked to him at I know he has learned his lesson. I ask the court to take a long view of the circumstances, not to depart the leniency of a N.C.O. of the ranks, but to be lenient considering the mitigating factors and to pass such on the charge. by award I would suggest as a proper punishment a severe reprimand.

A/C Wells Dismissed.

Defaulters Office

HHL

99

Statement of EVIDENCE in the case of:-

No. A. 3084 Sgt. P.E.Hewer,
No. 3 Canadian Reinforcement Units.,
Salamanca Barracks,
Aldershot.

Sir,

At Ash on the 17th July 1943 at about 23. 55 hours I was on duty in the Ash Railway Station, where I saw the above named N.C.O. He was walking on the permanent way between the electric rails. I, at once, took him away from the rails released him and requested him to go on to the platform. He said "Fuck the platform and you shower of bastards too" He was now standing on the level crossing, a porter informed me that a train was coming and I again requested the above N.C.O. to get on to the platform. He refused, as the train was in sight I took him on to the platform, and he said" I want to stop on the rails and die like my mates"I told him that he had better catch his train. He said"You fucking red caps are always trying to frame us boys"You are a shower of bastards" These words were shouted in a loud voice in the presence of female passengers and the porters of the above railway station.

I asked him for his particulars and he replied" No fear, fuck you"

He boarded the train for Aldershot, I also boarded the train.

At Aldershot I again requested his particulars in the presence of Cpl. H.Fuller C.M.Police, and he refused.

He was then conducted to Salamanca Barracks, where I obtained his particulars for this report.

L/Cpl.
C.M.Police.

Aldershot.
17th July 1943

Sir,

I have read over and corroborate the above statement.

Aldershot.
17th July 1943

L/Cpl.
C.M.Police.

and gave 4 hours of standing
to. The military Policeman
then told him not to use
that kind of language
and to get onto the platform
I then told the Military
Policeman that a Woman was
Coming and as the sgt
still refused to move the
Policeman took him to the
Platform where he again
used obscene language
in the presence of females
passengers. The policeman
then advised him to go
a board his train for
a short time he returned
after walking a few paces
and shouted to the police
man "You fucking Redleg
you are always trying

Statement by Mr Windsor Porter at ASH RAILWAY STATION.

I was on DUTY at ASH RAILWAY STATION at about 11.55 PM when a Canadian Sgt attempted to walk along the footpoint way placed to electrified. I told him to stand still but he kept walking. A military Policeman then came and removed him onto the level crossing and at the same time ask[illegible] got onto the platform he replied "Fuck the flat"

I [illegible] "You are only a load of Bastards" with the Profession said "No fear Fuck you"

Signed
[illegible]
18.7.43

I Mr Batchler Porter at ASH RAILWAY STATION was in company with Mr Windsor and the statement he has made is correct

Signed
18.7.43
AS Batchler

Exhibit B2C

Statement of **EVIDENCE** in the case of

No. A. 3064 Sgt. P.S.Mower.,
No. 3 Canadian Reinforcement Units.,
Salamanca Barracks, Aldershot.

Sir,

At Aldershot on the 18th July 1943 at about 00.25 hours I was on duty in Aldershot Town Railway Station, where I saw the above named N.C.O.

I ordered him to produce his P.B.I but he refused.

I again ordered him but he still refused. I pointed out the offence to him but he said" You can stick me in the guard room but I'm not going to show you my pay book"

I conducted him in the duty truck to Salamanca Barracks, where I saw the O.C. of the above N.C.O and explained the circumstances of the case. He ordered the above N.C.O. to give me his particulars

I obtained his particulars for this report and the above N.C.O. was conducted to his billets by the above Officer.

Aldershot.
18th July 1943

Cpl.
C.M.Police.

Sir,

REMARKS

I have read over and corroborate the above statement.

Aldershot.
18th July 1943

L/Cpl.
C.M.Police.

CHARGE

Army Form B 252
(See King's Regulations)

No. 2 Canadian Reinforcement Unit — Regiment
Battery / Squadron / Troop or Company

CHARGE against No. A 3064 Rank Sgt.

Name Hewer P.E.,

Place Aldershot Date of Offence 18th July 1943

OFFENCE W.O.A.S. Refusing to comply with an order given by a Military Policeman i.e., Failing to produce his M.B.l. at Aldershot Town Station at about 00.25 hours

Names of Witnesses:—
Cpl. H.Fuller C.M.Police.
L/Cpl. Salter C.M.Police.

ASSISTANT PROVOST MARSHAL
ALDERSHOT AREA

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

30071. Wt.P.44829/122. (300,000) 1/42. K. & H., Ltd. (465/4)

SUMMARY OF EVIDENCE

in the case of

Regimental number, A-3064 Cpl (A/Sgt) Frank, Raymond HEWER, Royal Canadian Regiment, on the strength of 3 CIRU, a soldier of the Canadian Army Overseas, having been placed on active service.

The accused does not require the evidence to be taken on oath.

FIRST WITNESS
Prosecution

L/Cpl Salter A., C.M.Police.

"I hereby certify that the presence of this witness is owing to his being employed at a distance from 3 CIRU, not readily procurable, or available and a statement of his evidence has been read over to the accused and is attached hereto as Exhibit "A".

(W.S.MacPherson) Captain,
Officer detailed to take
Summary

"I do not require the presence of this witness for cross-examination".

(F.R.Hewer)

SECOND WITNESS
Prosecution

L/Cpl Shirt F., C.M.Police.

"I hereby certify that the presence of this witness is owing to his being employed at a distance from 3 CIRU, not readily procurable, or available and a statement of his evidence has been read over to the accused and is attached hereto as Exhibit "A".

(W.S.MacPherson) Captain,
Officer detailed to take
Summary

"I do not require the presence of this witness for cross-examination".

(F.R.Hewer)

THIRD WITNESS
PROSECUTION

Mr E.Windust, Porter, Ash Railway Station.

"I hereby certify that the presence of this witness is owing to his being employed at a distance from 3 CIRU, not readily procurable, or available and a statement of his evidence has been read over to the accused and is attached hereto as Exhibit "B".

(W.S.MacPherson) Captain
Officer detailed to take
Summary

"I do not require the presence of this witness for cross-examination".

(F.R.Hewer)

FOURTH WITNESS
Prosecution

Mr A.S.Batchelor, Porter, Ash Railway Station.

"I hereby certify that the presence of this witness is owing to his being employed at a distance from 3 CIRU, not readily procurable, or available and a statement of his evidence has been read over to the accused and is attached hereto as Exhibit "C".

(W.S.MacPherson) Captain
Officer detailed to take
Summary

"I do not require the presence of this witness for cross-examination".

(F.R.Hewer)

FIFTH WITNESS
Prosecution

Cpl H.Fuller, C.M.Police.

"I hereby certify that the presence of this witness is owing to his being employed at a distance from 3 CIRU, not readily procurable, or available and a statement of his evidence has been read over to the accused and is attached hereto as Exhibit "D".

(W.S.MacPherson) Captain
Officer detailed to take
Summary

"I do not require the presence of this witness for cross-examination".

(F.R.Hewer)

The accused was cautioned as follows:-

"Do you wish to make any statement or give evidence? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused elects to make no statement, nor to give evidence and reserves his defence.

I certify the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that the Rules of Procedure 4(c)(d)(e) and (f) have been complied with.

(W.S.MacPherson) Captain
Officer detailed to take
Summary

Dated in the Field
this 21st day of July 1943.

FOURTH WITNESS
Prosecution

Mr A.S.Batchelor, Porter, Ash Railway Station.

"I hereby certify that the presence of this witness is owing to his being employed at a distance from 3 CIRU, not readily procurable, or available and a statement of his evidence has been read over to the accused and is attached hereto as Exhibit "C".

(W.S.MacPherson) Captain
Officer detailed to take
Summary

"I do not require the presence of this witness for cross-examination".

(F.R.Hewer)

FIFTH WITNESS
Prosecution

Cpl H.Fuller, C.M.Police.

"I hereby certify that the presence of this witness is owing to his being employed at a distance from 3 CIRU, not readily procurable, or available and a statement of his evidence has been read over to the accused and is attached hereto as Exhibit "D".

(W.S.MacPherson) Captain
Officer detailed to take
Summary

"I do not require the presence of this witness for cross-examination".

(F.R.Hewer)

The accused was cautioned as follows:-

"Do you wish to make any statement or give evidence? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused elects to make no statement, nor to give evidence and reserves his defence.

I certify the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that the Rules of Procedure 4(c)(d)(e) and (f) have been complied with.

(W.S.MacPherson) Captain
Officer detailed to take
Summary

Dated in the Field
this 21st day of July 1943.

Major

No. A-3064 Name HEWER F.R. Sqn., Battery, or Company Depot Corps R.C.R. Date of enlistment 15-9-39 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F. B.122) 40/P&S/8136 (2965)

Date of last entry in Company Conduct Sheet 8-1-43 No. and date of last drunk NIL Period not reckoning towards freedom from extra fine Sheet No. two Signature O.C. Company, etc. M.Patterson Maj. Character Good

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				PREVIOUS SHEET DESTROYED 15-3-40	R.B.Merritt Lieut.				
Toronto Ont.	21-5-40	Pte		AWL from 2200 hrs,21-5-40 to 0600 hrs, 21-5-40. A.A.Sec 15(1)	Sgt Daly	Admonished	22-5-40	Major Hare	Forf 1 days FR&I. RBM
Camp Borden	3-6-40	Pte		AWL from 0600 hrs, 3-6-40 to 0100 hrs, 6-6-40 A.A.Sec 15(1)	Sgt Eagan	3 days C.B.	6-6-40	Capt Freeland	Forf 3 days pay FR&I RBM
Camp Borden	19-6-40	Pte		AWL from 0900 hrs, 19-6-40 to 2200 hrs, 19-6-40 A.A.Sec 15(1)	Cpl Handsley	Admonished	20-6-40	Major Hare	Forf 1 days pay FR&I RBM
Bordon Hants	21-9-40	A/Cpl		AWL from 2359 hrs, 21-9-40 to 1630 hrs, 22-9-40. A.A.Sec 15(1)	Sgt Wilmot	Admonished	22-9-40	Capt Patterson	Forf 1 days pay FR&I RBM
In the Field	17Apr42	Cpl		A.A.Sec 15(1) WOAS,AWL from 1200 hrs,17 Apr 42 until 1830 hrs,17 Apr 42. Time 6 hrs, 30 min.	Cpl Arsenault	Admonished	18Apr42	Capt E.G. Nelson	Forf 1 days pay FR&I 149 (1)(a).

.....p.t.o.....

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	28-8-42	Cpl		A.A.Sec 40,WOAS, neglect to the prejudice, etc., did fail to carry out duties of an NCO,did allow a Pte soldier to walk on a public road improperly dressed.	RSM McKenzie	Reprimanded	29Aug42	Capt A.S.A. Galloway	ASG
In the Field	8-1-43	Cpl		A.A.40 did not lay out kit for inspection.	CSM Goodridge A/Sgt Cordieux	Reprimanded	9-1-43	R.A.Couche	JSG

CERTIFIED TRUE COPY .....

(E.D.MacArthur) Captain,
Adjutant,
3 Cdn Inf Reinf Unit.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A3064	Gnr (A/Sjt)	FRANK RAYMOND HEWER	R A R – 3 C I R U

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the held conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 577, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, provision being given in the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AWL – AA 15(1)	0 times	5 times.
For Neglect to the prejudice AA 90 – 1 times		2 times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct. NONE

or

~~There are no entries in the conduct sheets of the accused~~

2. The accused has not been previously convicted, *or*

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence to~~ _____ beginning on the _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges, for no days in civil custody, and nil days in military custody, making a total of nil days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 22 years 1 month

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 15 Sep 39

~~7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is _____ service.~~

~~8. The accused is entitled to deferred pay or gratuity in respect of _____ service.~~

~~9. The accused is entitled to reckon _____ service for the purpose of determining his pension, etc.~~

~~10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or reward*)).~~

~~11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of _____~~

~~12. (*In the case of an officer.*) The accused holds in the army the rank of _____ dated _____ and in his regiment (*or* corps *or* department) the rank of _____ dated _____~~

(*16648) Wt.30584/602 75,000 12/40 A & E.W. Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. A32664 Rank Cpl (A/Sgt) Name HEWER F.R. of R.C.R. - 3 C.I.B.U. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions ad dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26th day of July 43

Arthur S. Letourneau Major

A.C.T. Hewer Capt
Records Officer,
3 Cdn. Inf. Reinf. Unit
Canadian Army (Overseas)

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of ____ Date of Promotion. ____

In the rank of ____ years, ____

In the rank of ____ years ____

(Instructions—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court martial the information may be inserted from such sources as are available, and the paragraphs concerned amended accordingly.*)

#3 CANADIAN INFANTRY REINFORCEMENT UNIT

I, A-3064 Sergeant A.R. Hewitt do request the services of Captain W.R. Marshall as Defending Officer at my trial.

A.R. Hewitt

3 CANADIAN INFANTRY REINFORCEMENT UNIT

I, F-J-3064 Sergeant F.R. Hume do hereby certify that I have received, free of charge, this 22nd day of July, 1943, a copy of the Charge Sheet and Summary of Evidence concerning my trial.

F.R. Hume

LIST OF EXHIBITS

Exhibit "A"	Statement purporting to be signed by L/Cpl Salter,A. (C.M.Police)
	Statement purporting to be signed by L/Cpl Shirt,F. (C.M.Police)
Exhibit "B"	Statement purporting to be signed by Mr E.Windust, (Porter, Ash Railway Stn)
Exhibit "C"	Statement purporting to be signed by Mr A.S.Batchelo (Porter, Ash Railway Stn)
Exhibit "D"	Statement purporting to be signed by Cpl Fuller,H. (C.M.Police)

LIST OF WITNESSES

Prosecution

L/Cpl Salter A.	C.M.Police
L/Cpl Shirt F.	C.M.Police
Mr E.Windust	Porter, Ash Railway Station
Mr A.S.Batchelor	Porter, Ash Railway Station
Cpl Fuller H.	C.M.Police

Defence

NIL

COUNTER NUMBER 168529

HOUR 10:20

OPERATOR'S INITIALS HMB

RELIEVING OPERATOR _____

Affidavit

PROVINCE OF ONTARIO
COUNTY OF CARLETON
TO WIT:

I, Helen M. Barclay of the City of Ottawa, in the County of Carleton, an employee of the Department of National Defence, make oath and say:

1. THAT I am presently employed as a camera operator making microphotographic copies of Departmental documents for the purpose of providing a permanent record of same.

2. THAT on the date indicated therein I did make microphotographic copies of files listed in Appendix "A" hereto and of all documents contained thereon.

3. THAT the said microphotographic copies may be identified from the indexing data and the job and reel numbers contained in Appendix "A".

SWORN before me at the City of Ottawa, in the County of Carleton, this day of A.D. 19

CAMERA OPERATOR

A NOTARY PUBLIC

Dated OCT. 27 1952

APPENDIX "A" TO THE AFFIDAVIT

CAMERA OPERATOR'S REPORT

	JOB NO. 44	REEL NO. 31
	BOOK NO. 9-5	
PRODUCTION DATA	44-31A.	INDEXING DATA 44-31B.
	DATE	HOUR
STARTED		
FINISHED		
TOTAL NO. OF HOURS		6
TOTAL NO. OF IMAGES		5270

BEGINS WITH HATHEK F. HERBERT A. J.H.
1. HAY J.T. HEMMINGS L.
2. HAYES S.A. HENRI A.J.
3. HAZEL J.B. HERBERT P.
ENDS WITH HEBERT A. HEWER E.B.

J.O.

END

SECOND

SIDE

REEL NO. 44.31